

(2004) 07 AHC CK 0172
In the Allahabad High Court
Case No : Second Appeal No. 14 of 1980

Bhabhuti Singh (deceased by LR)	Vs	APPELLANT
Bhagauti Prasad (deceased by LRs) and Another		RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Evidence Act, 1872 — Section 61
Registration Act, 1908 — Section 17

Citation : AIR 2004 All 439 : (2005) 1 AWC 646

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.C. Singh, for the Appellant; H.R. Misra and V.K. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This is a defendant's appeal. The plaintiff Bhabhuti Singh, filed a suit for cancellation of sale deed dated 14th February, 1977 with the allegation that the plaintiff and defendant No. 2. Ram Singh are real brothers and when their father became fairly old he by a family settlement dated 13th March, 1958, partitioned the entire agricultural land between his two sons, the plaintiff and defendant No. 2 and according to 1958 family settlement plot No. 657 area 87 decimal, plot No. 464 area 0.1 decimal and plot No. 466 area 04 decimal came to the share of both the brothers jointly along with plot No. 92. After the family partition of 1958 was acted upon, both the brothers are in possession on their respective plots. It is admitted case of the parties that thereafter the consolidation operation started and the plots in dispute were jointly recorded in the name of their father as at that time their father was alive. During the consolidation operation nobody, neither the plaintiff nor defendant, raised any objection that there had been family settlement and that the plots should be exclusively recorded in their names. The entries in the revenue records continued to be the same even after the death of the father, which was during the course of consolidation operation. Therefore, both the brothers have filed application for

correction of revenue papers in which they have accepted the execution of family settlement and they have come to their respective possession. It was also stated that defendant No. 1. Bhagauti Prasad had full knowledge of the aforesaid family settlement but despite the knowledge defendant No. 1 has executed sale deed in favour of the plaintiff. Thus the suit that defendant be restrained from interfering with the possession of plaintiff over the plots in dispute on the basis of sale deed of the year 1977 which is said to have been executed by defendant No. 2 in favour of plaintiff which is a registered sale deed.

2. As against this defendants' case is that all the allegations are incorrect. They have denied that there has been any family settlement nor any partition and both the sons, namely, the plaintiff and defendant No. 1, continued to be joint owner and they were cultivating their respective plots. The document, which is said to be family settlement, is forged and fictitious document. The plaintiff and defendant No. 1 have never been in the exclusive possession of their respective plots but they were joint owners. The sale deed executed by defendant No. 1 is regarding half share in favour of the plaintiff.

3. The trial Court framed issues as to whether the sale deed dated 14th February, 1977 that Ram Singh has executed in favour of Bhagauti Prasad, as stated in paragraph 10 of the plaint, is liable to be cancelled which is registered sale deed and whether the plaintiffs Ram Naukar Singh has ever entered into in family settlement dated 15th March, 1958 as alleged. It is also stated that whether the Titimba (codicil) dated 4th March, 1970 between the plaintiff and defendant No. 2 is in existence and if so what is its effect. Further issues were as to whether suit is barred by Section 49 of the U. P. Consolidation of Holdings Act.

4. The trial Court relied upon two documents, which were not exhibited during the course of trial and decreed the suit. Aggrieved thereby defendant No. 1. Bhagauti Prasad, filed appeal before the lower appellate Court. The lower appellate Court has found that in fact the suit is barred by provision of Section 49 of U. P. Consolidation of Holdings Act. The document family settlement cannot be relied upon as this purports to transfer the rights in immovable property, which is not admissible in evidence unless the same is registered u/s 17(1) of Registration Act. It is admitted case that the document is not registered document. Therefore, the lower appellate Court has found that the document cannot be relied upon. The lower appellate Court has also held that since the aforesaid codicil has not been executed, the same cannot be relied upon and the trial Court has erred in law and further the suit is barred by provision of Section 49 as it is admitted case of the parties that during the consolidation operation, which admittedly took place after the alleged family settlement and codicil came in existence, the name of father continued to be recorded and the names of the sons do not find place in the revenue records. No objection of any sort was raised during the consolidation operation, therefore, after the death of the father both the sons would be ? entitled to inherit jointly and the stand taken by the plaintiff cannot be accepted. The lower appellate Court, therefore, allowed the

appeal, set aside the decree and found that the sale deed relied upon by the appellant which is a registered sale deed will prevail upon two documents set up by the respondents and further that the plea taken by the defendant No. 2 is barred by provisions of Section 49 of the Consolidation of Holdings Act.

5. Both the counsels have relied upon certain decisions of this Court as well as the Supreme Court. The decision relied upon by the appellant reported in *Shiromani and Others Vs. Hem Kumar and Others*, hold that the document effecting partition of the joint family property and value more than Rs. 100/- by means and bounds is necessarily required to be registered and if such document is not registered the same cannot be relied upon because of bar of Section 17(1) of the Registration Act. The other decision relied upon by learned counsel for the appellant is reported in *Bankey Bihar Vs. Surya Narain alias Munnoo*, wherein learned single Judge, relying upon the decision of Supreme Court, held that the deed of family arrangement has been rightly held to be inadmissible in evidence as it was hit by Section 17(1) of the Registration Act as this clearly amounts to creating right in the property. Another decision relied upon by learned counsel for the appellant is three-Judge judgment of Supreme Court, reported in *Kale and Others Vs. Deputy Director of Consolidation and Others*, wherein it was held that the family settlement must be bona fide so as to resolve family dispute and purports to divide the family property equitably amongst various members of the family.

6. As will be clear from the judgment of the trial Court the defendants have raised the plea that the family settlement was forged document, therefore, applying the test laid down by the Supreme Court decision, the appellate Court has not committed error in holding that the family settlement cannot be relied upon.

7. On the other hand learned counsel for the plaintiff-respondent has relied upon the decision of Apex Court, *Rajeshwar and Another Vs. Board of Revenue and Others*, wherein the Apex Court has ruled that a suit filed u/s 229 B of U. P. Zamindari Abolition and Land Reforms Act cannot be said to be barred by virtue of provisions of Section 49 of Consolidation of Holdings Act.

8. By giving considered thought to the rival contentions and in view of the law laid down by the Apex Court reported in *Kale and Others Vs. Deputy Director of Consolidation and Others*, and other decisions of this Court, I do not find any error in the findings arrived at by the lower appellate Court whereby the lower appellate Court has set aside the findings recorded by the trial Court so as to warrant any interference u/s 100 of CPC in this Second Appeal. In this view of the matter this appeal deserves to be dismissed and is hereby dismissed. Interim order, if any, stands vacated.