

(1914) 01 BOM CK 0011
In the Bombay High Court
Case No : First Appeal No. 254 of 1912

Chandrashankar Pranshankar

APPELLANT

Vs

Bai Magan

RESPONDENT

Date of Decision : 28-01-1914

Acts Referred:

Registration Act, 1908 — Section 17(e)

Citation : AIR 1914 Bom 55 : (1914) 16 BOMLR 236 : 24 Ind. Cas. 730

Hon'ble Judges : Batchelor, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—This suit was filed by the plaintiffs to obtain possession of a certain dwelling house according to the terms of a deed executed on the 21st March 1903 by Bhaidas Rajaram for himself and members of his family. By that document it was recited that it had been resolved at a meeting of creditors that if creditors of the family firm represented by Bhaidas to the extent of a ₹22,000 out of the total number of ? creditors claiming 1,61,8001 should sign the deed before midnight on the 5th March 1903, Bhaidas should make over to the trustees all the assets of tin: family specified in Schedule B, subject to a special condition regarding the family houses at Kelapith, namely that the trustees should allow the family to live therein up to the 20th of October 1903 in the same manner as it had been living there after getting a lease passed by Bhaidas, and that thereafter the family should take the house and make over the same forthwith into the possession of the trustees. By the 9th clause it was stated that Bhaidas having made over the whole of the trust properties and assets belonging to the family for the benefit of the creditors the family was reduced to a destitute condition, and therefore, the creditors passed a Resolution to the effect that they should be allowed to occupy the dwelling house as aforesaid and that the trustees should pay an allowance of Rs. 40 a month to Bhaidas up to the same date, namely the 20th of October, and the creditors coming in under the deed agreed that after all the goods and properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should

remain outstanding against Bhaidas and the minor members of his family, but the whole claim should be understood to be written off against them, and Bhaidas and the minors were to make use of the deed as a release passed by them on their behalf, and by subsequent clauses it was provided that the trustees were to manage the properties for the benefit of all the creditors interested, and the monies realized from time to time were to be distributed amongst such creditors in proportion to their claims. The period during which the occupation of the dwelling house was permitted to Bhaidas and his family has long since expired, but a notice to quit having been served upon them they refused to comply with it and the present suit was, therefore, instituted to eject them.

2. The deed was not registered, and objection was taken at the hearing that it was inoperative in respect of the Immovable properties mentioned in Schedule B, and that, therefore, the title plaintiffs to the house in question was not established.

3. If the document is a composition deed within the meaning to of the Registration Act it d as not require registration (see Section 17, Clause (e) This very document has twice come before the Previous litigation, on one occasion before a Bench consisting of myself and Mr. Justice Knight and on another occasion before a Bench consisting of Sir Narayan Chandavarkar and my present Colleague Mr. Justice Batchelor. In the first case the deed was held to have passed the property to the trustees so as to defeat an attaching creditor who attached subsequent to the execution of the deed, and in the judgment the deed is referred to as a trust and composition deed. In the second case the trustees sought to recover rent from the tenants of certain Immovable property mentioned in the Schedule to the deed, but it was held that the document was compulsorily registrable, and not having been registered it could not be admitted in evidence. The Court there said: "There is nothing whatever in the language of the deed to show that there was any composition, any settlement with the creditors that the debtor should pay less than he owed to them and that they agreed to accept that composition. The essential test of a composition-deed is that there ought to be a compounding of debts due. Of that there is no trace whatever so far as the language of this document is concerned." Shekh Adam Hasanali Vs. Chandrashankar Pranshankar, . It does not appear from the record which we have examined that any translation of the deed was supplied to the Court. The Court's opinion appears to have been based upon *The Queen v. Cooban* (1886) 18 Q.B.D. 269 where the question was whether a *cessio bonorum* for the benefit of creditors by a document which incorporated a release by the creditors was a composition-deed within the meaning of certain Municipal rules so as to disqualify the debtor from election to a Municipal office.

4. In the first case disposed of by myself and Mr. Justice Knight it was not disputed that the deed now before us was a composition-deed. In the second case, though it was disputed, the Court was not referred to a definition of the

term "composition-deed", which is to be found in the Acts of the Indian Legislature. That definition we have now been referred to and much reliance is placed upon it. It is the definition which has been found in all the general Stamp Acts of the Government of India from 1869 up to the present time. It is now to be found in Article 22 of Schedule I of Act II of 1899, and it runs as follows :?" Composition Deed, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license for the benefit of his creditors". That definition covers three classes of instruments: (1) an assignment for the benefit of creditors (2) an agreement whereby payment of a composition or dividend is secured to the creditors (3) an inspector ship deed for the purpose of working the debtor's business for the benefit of his creditors. It is not disputed that the deed now before us falls under the first class, and it is contended on behalf of the appellants that it also falls under the second class in that the creditors compound by giving a release for their debts in consideration of the assignment of property the proceeds of which are to be distributed rateably among them, whether or not such proceeds are more or less than the amount of their claims and it is argued that the Stamp Act is a Statute in part material with the Registration Act and that the definition contained therein should be used for the purpose of interpreting Section 17(e) of the Registration Act.

5. Now the exemption of composition deeds from the compulsory provisions of the Registration Act dates from the Registration Act of 1866 and has been continued through all subsequent Registration Acts up to the present time. The question, therefore, is whether the term " composition deed " was either in ordinary parlance or in the understanding of lawyers limited so as to exclude an assignment in trust for the benefit of creditors, the creditors being parties and releasing their claims. A reference to Murray's Dictionary will show that in ordinary pa 1 lance a compounding or composition of claims does not necessarily exclude a general agreement for settlement of debts, although no exact sum may be arrived at as the amount of the settlement, and the case of Bamanji Manikjiv. Naoruji Palanji (1864) 1 B.H.C.R. 233 shows that the Chief Justice thought that the agreement whereby the property was assigned to trustees for the benefit of the creditors signing the trust deed was a composition deed. Chandra- Why then should it be assumed that the Legislature in enacting the Registration Act of 1866 intended that the term should have some more restricted signification? It appears to me that the definition in the Stamp Act may be taken as an indication J, that the Legislature had no such intention. The Stamp Act may not be strictly speaking in part materia with the Registration Act, but a lawyer preparing a deed such as we have here for an insolvent client or for his creditors would have first to see what stamp was required upon the document and for that purpose would have to look at the definitions in the Stamp Act and

after having got the document duly stamped would have to consider whether it required registration. It would be a very extraordinary thing if the Legislature intended that the term "composition deed " in the Registration Act should mean something else than the same term in the Stamp Act and the inclusion of the term in Section 17 of the Registration Act shows it was intended to apply to a transfer of Immovable property and not to a mere agreement to take fractional payment of money in settlement of claims. The decision of this Court in Shekh Adam Hasanali Vs. Chandrashankar Pranshankar, states the test of a composition deed to be that there ought to be a compounding of debts due. It appears to me that judged by this test the document in question would be a composition deed.

6. In *Pennell v. Rhodes* (1846) 9 Q.B. 114. Patteson, J. said: " I think that, under the Statute (5 & 6 Vic. c. 122, Section 14), compounding is an arranging with the creditor to his satisfaction. If there is a binding arrangement for discharge of the debt, from which neither party can recede, and with which the creditor is satisfied, it is a compounding, though something still remains to be done." The case of *Malnkchand v. Manilal* ILR (1904) 28 Bom. 364: 6 Bom. L.R. 296 decided by Chandavarkar and Batty JJ., appears to me to support the same conclusion. There the debtor passed a document whereby three persons were appointed trustees, which was signed by the debtor and some of his creditors, but not registered, and by it the judgment-debtor made over to the trustees his Immovable property, goods and the account-books for sale on the day he signed the deed. The Court there said: "Certain Immovable and moveable property of the debtor and his account books are vested in the trustees for the purpose of paying his creditors. There is no conveyance of the Immovable property of the debtor to the creditors. Under these circumstances we think the Chandra lower Courts were right in holding that the deed fell within the exemption of Clause (e) of Section 17 of the Registration Act. The deed recites that the composition is " for the benefit of all the creditors and all of them are to derive equal benefit from it."

7. It does not appear to me that the decision of the Queen's Bench Division in *The Queen v. Cooban* (1886) 18 Q.B.D. 269. affords any assistance in the present case. The words of the rule were held to have a particular and restricted implication, and an earlier case of *Aslatt v. Corporation of Southampton* (1880) 16 CH.D. 143, decided by Sir George Jessel, shows how special words in such a connection may limit the ordinary notion of compounding. In my opinion the document falls within Clause (e) of Section 17 of the Registration Act and did not require registration, nor does it, for the reasons given in *Maluhchand's* case, require registration under the provisions of Section 5 of the Trusts Act of 1882. I would, therefore, reverse the decree of the lower Court and remand the case for trial after admission in evidence of the deed in question. Costs costs in the cause.

Batchelor, J.

8. The only question before us is whether the document Ex. 67 is a "composition deed" within the meaning of Section 17 of the Registration Act. The document,

after reciting that the family business, Which Naginbhai had carried on in his life, was "very extensive and complicated", continues : " He (Naginbhai) is now dead and I, Bhaidas, am not able enough to carry on the said business further and settle its claims and debts, and myself pay off the debts due to creditors and the sons of Naginbhai are minors therefore it is not possible for them also to continue the family business. Taking all these facts into consideration, it appeared to me that by continuing the family business for a longer time we as well as the creditors would have to suffer a great loss." In consequence of these considerations it is then set out, in para 9 of the deed, which in the original Gujarati is called a " composition deed," that " I, the said Bhaidas, have made over the whole of the goods and properties and assets belonging to our family for the benefit of the creditors." Para 10 provides that " we the creditors also hereby give in writing that after all the above goods and properties are made over to the trustees as mentioned above, no other claim whatever with regard to the amounts due to us shall remain outstanding against Bhai das and the minors, but the whole claim shall be understood to have been written off as against them and Bhaidas and the minors and their descendants are duly to make use of this document against us as a release passed by us in that behalf." Then in para II there is a provision that the trustees are to devote the proceeds of the trust properties to the payment of the creditors " in proportion to their respective claims," as the original is officially translated. It may be observed, however, upon this phrase that the Gujarati does not necessarily bear the precision of meaning conveyed by the English rendering, and may mean no more than that payments are to be made to the creditors " in regard, or relation to their claims."

9. In Shekh Adam Hasanali Vs. Chandrashankar Pranshankar, it was held by my brother Chandavarkar and me that this deed was not a composition deed, but a mere cessio bonorum or deed of arrangement assigning Bhaidas' property to trustees for the payment of the creditors. I still think that that decision was right on the arguments which were then submitted to us, and I venture to doubt whether in English law, from which the technical expression is derived, this document would be held to be a "composition deed. It is not, in my opinion, substantially distinguishable from the deed which in *The Queen v. Cooban* (1886) 18 Q.B.D. 269 was held by Denman and Hawkins, JJ., to be not a composition deed. The reasons for which the deed in that case was held to be not a composition deed are, I think, exactly applicable to the deed in this appeal, for, to use the words of Hawkins, J. there is not " anything to show that the property which the debtor has assigned will not produce twenty shillings in the pound for his creditors. It contains no provision by which any one creditor can be compelled to take less than twenty shillings in the pound if he can get it, for all the property is to be divided, and there is no obligation on any creditor to take less than the full amount of his debt. The deed, therefore, does not bind the creditors to take less than the full amount of their debts, and it cannot properly be called an arrangement for a composition it is in fact an assignment of all his property by the debtor for the benefit of his creditors, who, however, are not asked to make

any sacrifice but who are authorised to divide all the debtor's property amongst themselves." If, then the matter rested here, I should feel bound to hold that the deed in suit is not a composition deed for the simple reason that a composition deed is a deed which compounds, and this deed does not compound. The assignor, moreover, does not even profess to be insolvent, but the arrangement is made merely to avoid a possible loss in the future.

10. The only consideration which moves me now, not without hesitation, to abandon this opinion is a consideration which was not placed before the Court when the case of *Shekeh Adam v. Chandrashankar* was decided: I mean the definition enacted by the Indian Legislature in Article 22 of Schedule I of the Indian Stamp Act, 1899. For "composition deed" is there defined as meaning *inter alia*, "any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors." Having regard to this definition, to the fact that the Stamp Act is in large measure in *pari materia* with the Registration Act, and to the favour with which such deeds are regarded by the law, I think the better opinion is that the deed in controversy here is a composition deed within the meaning of the Indian Registration Act.

11. Mr. Inverarity has pointed out that when in 1866 the first Indian Registration Act was passed, which exempted composition deeds, there was no statutory definition of "composition deed" either in the then prevailing Stamp Act or elsewhere and there is much force in the consequent argument that when a composition deed was first exempted from registration by the Legislature, what was exempted must have been a composition deed as the phrase was understood by English lawyers, and that the undefined phrase was retained, preserving this original meaning, in the successive Registration Acts *per in curiam* of the special definition which in the meanwhile had crept into the Stamp Act. But to read the two Acts in this way would come very near to reading them as if the Legislature had created traps not only for the unwary, but for the reasonably wary and, whatever the Legislature may have intended in fact, I think that any time after the Stamp Act of 1869, which first enlarged the phrase by statutory definition, it must be taken to have intended that the "composition deed" of the concurrent Registration Act should bear the same meaning. It is open to the Indian Legislature, if it think fit, to enact that a mere *cessio bonorum* shall for certain purposes be regarded as a composition, and, having regard to the definition in the Stamp Act, I conceive that that is what has happened in reference to the phrase as used in the Registration Act.

12. For these reasons I agree that the deed in suit is exempt from the necessity of registration.