

(1982) 06 GUJ CK 0020

In the Gujarat High Court

Case No : Civil Revision Application No. 785 of 1982

Jayantilal Mohanlal

APPELLANT

Vs

Narshi Ramji

RESPONDENT

Date of Decision : 30-06-1982

Acts Referred:

Registration Act, 1908 — Section 17(1)

Citation : AIR 1982 Guj 347 : (1982) GLH 719 : (1982) 2 GLR 422

Hon'ble Judges : V.V. Bedarkar, J

Bench : Single Bench

Advocate : N.N. Gandhi, for the Appellant; R.J. Oza, for the Respondent

Judgement

1. This revision petition has raised a small, but interesting point of law, as to whether the document which ultimately refers to the share in an amount is required to be registered merely because that share emanates from the share in the property which was to be sold, proceeds realised and distributed.

2. It is an admitted position that the present petitioner Jayantilal Mohanlal, Narsinh Ramji (predecessor of opponent No. 1), and Ruda Kana opponent No. 2, entered into an agreement at Talaja that there was a transaction for the sale of Wadi between Pandya Jayantilal Mohanlal (present petitioner) and Sagar Hariram, which was cancelled by Sagar Hariram and Narsinh Ramji decided to purchase that Wadi and petitioner Jayantilal had no objection against that, and there is no right, title or interest of Jayantilal, so far as that is concerned, and to which Jayantilal has agreed. I would not refer to in details, because the entire case is based on one Kabulat or agreement on which the suit is filed. The agreement was that after the sale proceeds were realised by the opponents, deducting the expenses, the entire amount was to be distributed in three shares. As no amount was paid to Jayantilal, he filed a suit for accounts and realisation of the amount on the basis of the agreement dated 1-6-1967. During the deposition of Jayantilal (present petitioner) he proposed to produce that document of Kabulat as an evidence in support of his case to get the amount

after the accounts are settled. This was objected to, on the ground that it creates interest in the immovable property and, therefore, it is required to be compulsorily registered u/s 17 of the Registration Act, 1908 (hereinafter referred to as "the Act"). This objection prevailed with the learned Civil Judge, Senior Division, Bhavnagar, and therefore, he refused to exhibit that document, which is Mark 4/4.

3. Mr. N. N. Gandhi, learned Advocate for the petitioner, took me through the entire document and showed to me that in fact it does not create any right, title or interest in the property nor does it declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in Immovable property, as required by Section 17(1)(b) of the Act, to which the learned trial Judge has made reference.

4. The learned trial Judge observed that in the Kabulatnama there is reference to one-third share of the petitioner in the property, and from that the learned trial Judge came to the conclusion that there is declaration of one-third share and, therefore, the document is compulsorily registerable.

5. Now, if we refer to the document, which is Kabulat, the first part of that document is what I have already stated above, mentioning the transaction between Jayantilal and Sagar Hariram and preparedness of Narsinh Ramji to purchase the Wadi. The second clause is important. It mentions that as per the earlier measurements, as two plots were to be kept by Hariram, the remaining land was to be converted into non-agricultural land and divided into plots and those plots were to be sold and whatever sale-proceeds would be available were to be distributed as mentioned below that para. It is also mentioned in this second clause that in the Wadi Jayantilal has one-third share. Clause (a) of para 2, it is stated that the value of the Wadi would be Rs.15,000/-, and including the amount of Rs.2,000/- which was earlier given by Narsinh Ramji and Ruda Kana to Pandya Jayantilal, the total amount would be Rs.17,000/-, and that amount was to be taken by Narsinh Ramji and Ruda Kana at the first instance. Clause (b) says that after deducting the aforesaid amount of Rs.17,000/-, from the additional realisation, whatever amount would be there, after deducting the amount for the sale document or procedure for making the land nonagricultural, was to be equally distributed between Ramji Narsinh, Ruda Kana and Jayantilal Mohanlal in equal proportion. The suit is based on the last Clause (c), because the petitioner was not paid any amount after giving the accounts.

6. The learned trial Judge seems to be under an impression that because in para 2 of the Kabulat mention is made, showing that Jayantilal has one-third share in the Wadi, he came to the conclusion that this is a declaration as envisaged u/s 17(1)(b) of the Act.

7. Now, in fact, this is not a declaration, but merely a recital of the existing facts. On this count there are decisions cited before me by Mr. Gandhi, which clearly

support his case. The earliest decision on this count is the decision of the Bombay High Court in *Sakharam Krishnaji v. Madan Krishnaji* (1881) ILR 5 Bom 232. Therein, after considering the document which purported to be a release paper, wherein it was stated that houses were built by Madan Krishnaji with his own property (money) and, therefore, the executants, i. e. the three brothers and their heirs and representatives declared to have no interest of any kind whatsoever, and also after considering Section 17 of the Registration Act of 1877, Justice West of the Bombay High Court observed:

In Section 17 "declare" is placed along with "create", "assign", "limit", or "extinguish" a "right, title or interest", and these words imply a definite change of legal relation to the property by an expression of will, embodied in the document referred to. I think this is equally the case with the word "declare". It implies a declaration of will, not a mere statement of a fact, and thus a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not "declare a right within the meaning of the section. It does in one sense "declare" a right; that is, the existence of the right is directly or indirectly stated by the writing, but it is not the expression or declaration of will by which the right is constituted. Unless such a distinction as this were accepted, all correspondence would be excluded from which an admission might be gathered of a right or interest the instrument of which, if there were one, would need to be registered."

In terms it states that mere mention of an existing right does not declare a right and, therefore, the document is not required to be registered compulsorily.

8. That decision of the Bombay High Court is mentioned with approval in case of AIR 1932 55 (Privy Council) . After considering the various rulings and also (1881) ILR 5 Bom 232, it is observed:

"Their Lordships have no doubt that this track of decision is right. Though the word "declare" might be given a wider meaning they are satisfied that the view originally taken by West, J. (in (1881) ILR 5 Bom 232) is right. The distinction is between a mere recital of a fact and something which in itself creates a title."

Therefore, if there is a mere recital of a fact of having one-third share and not a creation of a right, then the document would not require compulsory registration.

9. In *Shyam Sunder and Others Vs. Siya Ram and Another*, , the Allahabad High Court also considered the requirement of registration. It is observed that a document merely recognizing title or defining a share on the basis of such recognition does not create, declare, etc. any right, title or interest in the immovable property and requires no registration. In the document before the Allahabad High Court, the appellants made a categorical admission that the respondent had a half share and, therefore, it was considered that it followed that what they did was that the appellant recognised the existing title of the respondent and said that their share was half. This was considered to be a

recognition of title or definition of a share on the basis of that recognition and it cannot be treated as creating, declaring, assigning, limiting or extinguishing any right, title or interest in Immovable property.

10. The most important judgment is the judgment of the Supreme Court in *Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another*, . In the deed before the Supreme Court the following aspects were there (at p. 1124):

"As per the partition effected by us from 27-5-1952 to 30-5-1952 of the lands, houses and house sites belonging to your joint family and in the possession and enjoyment of your joint family, the lands, etc. mentioned in Schedule B. (referred to have come to you) and each of you obtained individual and separate possession of the lands that came to his share and you were in enjoyment peacefully and without any disturbance or dispute".

This was the recital in the award given by the Arbitrators, and thereafter the Arbitrators directed as follows (at p. 1124):

" "We decided that for the amounts due to Venkataratnam, and Venkataswamy, Chelamayya and Narainamurthy should pay interest from 30-8-1955 till the date of award at 0.8.0 per cent. per mensem. It is decided that the amounts noted above have to be paid on the basis of the first charge on Immovable properties that came to both and on the basis of the personal liability." "

The Supreme Court observed (at p. 1125):

"Since the charge was not registered it will be correct to say that the document will not affect the Immovable properties of the appellants sought to be charged. It will not also be received as evidence of any transaction affecting such property that is to say, in this case, as evidence of the charge. It should be noted that the section does not say that the document cannot be received in evidence at all. All that it says is that the document cannot be received as evidence of any transaction affecting such property."

It is further observed therein:

"The direction to pay a sum of money which has been held due and payable by the appellants to the respondents is a direction giving effect to a liability which already existed. It does not create the liability for the first time, but merely works out the liability."

Therefore, the Supreme Court considered that because the charge was created for the first time, if any claim was based on immovable property on the strength of that document " then it cannot be considered. But if the claim was made on the amount or sum or sum of money, which was directed to be paid on the strength of that document, then it could be received in evidence and would not require compulsory registration so far as that aspect is concerned.

11. Considering all these decisions, it can well be said that the *Kabulat* in the

instant case does not declare or create any right, title or interest in the property, but it merely mentions the existing facts, and thereafter if the document as a whole is read, it clearly shows that the parties have only a right on a particular sum and that is one-third to each of them from the entire amount received after deducting the expenses etc., as mentioned therein. Therefore, reliance placed by the petitioner on this document is merely for sum of money to which he is entitled and not any share in the property and, therefore, mere declaration of the fact that the petitioner had one-third share in the Wadi would not make the document compulsorily registerable, because it is merely a statement of existing facts.

12. In view of the discussion made above, the revision petition is allowed, and the impugned order passed by the learned trial Judge is set aside. It is ordered that the document shall be received in evidence and matter be proceeded further. Rule is made absolute with no order as to costs. Interim stay granted, is vacated.

13. Revision allowed.