

(1970) 07 MAD CK 0042

In the Madras High Court

Case No : Second Appeal No's. 218 and 219 of 1963

M. Pappu Reddiar (Died) and Others

APPELLANT

Vs

Amaravathi Ammal and Others

RESPONDENT

Date of Decision : 08-07-1970

Acts Referred:

Registration Act, 1908 — Section 17(2)
Transfer of Property Act, 1882 — Section 53

Citation : AIR 1971 Mad 182

Hon'ble Judges : K. Veeraswami, C.J.;Gokulakrishnan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The plaintiff, who has failed in both the Courts below, is the common appellant. He is now dead and is represented by his legal representatives. On a claim that the properties described in the plaint in O. S. 69 of 1960 and in the first schedule to the plaint in O. S. 70 of 1960, from out of which the second appeals arise, were not the subject-matter of O. S. 76 of 1948, and the compromise decree passed therein, though covered those properties, was not registered, he sought in the two suits to recover their possession. The suits were resisted on the ground that the properties did form part of the subject-matter of O. S. 76 of 1948, that therefore, no registration was required, and that, in any case, the plaintiff would not be entitled to recover them, because of the doctrine of part performance. The Courts below concurrently found that although the properties were not in the plaint in O. S. 76 of 1948, they constituted the subject-matter of the suit and that, in any event, the defence based on part performance was well founded.

2. The same grounds of the plaintiff are reiterated before us, in addition to a contention that the compromise decree in O. S. 76 of 1948 was a family settlement to which Section 53-A of the Transfer of Property Act would not be applicable.

3. On the death of one Pappu Reddiar in October 1936, his two widows and his

sister, Chinnammal, purported to surrender their interest in his estate in favour of Chinnammal's son, Muthuswami Reddiar. The plaintiff is the son of Muthuswami Reddiar by adoption. Pappu Reddiar's elder brother, Venkatasubba Reddiar, had died in 1917, leaving his two widows and two daughters by one of them. The first defendant in the present suits was claimed to be the adopted son of one of these two widows. One of the daughters, by name, Amaravathi, of Venkatasubba Reddiar, had been married to Muthuswami Reddiar. The widows and daughters of Venkatasubba Reddiar instituted O. S. 76 of 1948 and laid claim to the estate of Pappu Reddiar, contending that Venkatasubba Reddiar and his brother having hailed from Travancore, when they came to settle in Tirunelveli District, they continued to be governed by their personal law from there, according to which, on the death of Pappu Reddiar, his estate devolved on the widows of his brother, Venkatasubba Reddiar. Muthuswami Reddiar and his adopted son, the present plaintiff, Pappu Reddiar, were parties to that suit. The suit was eventually settled and it ended in a compromise decree which the plaintiff as well as his father subscribed to. By that compromise, in consideration of the widows and the daughters of Venkatasubba Reddiar giving up their claim in certain particulars, certain properties were allotted to them including Ayyadurai, the first defendant, and of those properties, some were admittedly the present properties of Muthuswami Reddiar, which are now in question, but as we said, were not in the plaint schedule in O. S. No. 76 of 1948.

4. In the above circumstances, the appellant contends that inasmuch as the compromise decree was not registered, it would be ineffective to convey the properties now in dispute. At the same time, to counter the ground based on part performance, the theory of the compromise decree being a family settlement is for the first time mooted in the second appeals.

5. *Hemanthakumari Debi v. Midnapur Zamindari Co. Ltd.*, 46 Ind App 240 = AIR 1919 PC 79 held that consent decrees did not require registration even if they included immovable property not the subject-matter of the suit. Section 17(2) (vi) of the Indian Registration Act was, therefore, amended in 1929, so as to confine the exemption from registration to consent decrees restricted to the subject-matter of the suit. After the amendment, a consent decree comprising of immovable property not the subject-matter of the suit or proceeding requires registration. But the Courts below were of the view, and we think rightly, that in the instant case, although the properties in dispute were not mentioned in the plaint schedule in O. S. No. 76 of 1948, nevertheless, they should be regarded as the subject-matter of that suit, inasmuch as their allotment to one or the other of the plaintiffs in the suit was inseparable from the other provisions of the compromise decree and constituted part of the consideration for the compromise. We think that this is a correct view to take. The words "the subject-matter of the suit" in Section 17(2)(vi) cannot be read as subject-matter of the plaint nor even as subject-matter in dispute in the suit or proceeding. If the consent decree or order in the suit or proceeding covered the property, although it was not in the plaint or in dispute, such property constituting, as it does, an

inseparable part of the consideration for the compromise, may well, in our view, be regarded as the subject-matter of the suit. This is because of the decree passed on the basis of the compromise cannot stand without that property. If by the amendment it was intended that if the property was not in the plaint schedule, the consent decree should not be exempted from registration, we are afraid the phraseology actually employed by Section 17(2)(vi) has failed to achieve the objective. We are aware that the extended scope we have given to the expression "subject-matter of the suit" may narrow down the scope of the exclusion from exemption from registration under that provision. In *Govindaswami Mudaliar Vs. Rasu Mudaliar*, there was an attachment before judgment in a suit to recover money. When the relative application came up for final disposal, there was a compromise on the basis of which a decree followed. It provided for payment of the amount claimed in the suit on certain terms and the decree-debt was made charge over the properties which had been earlier attached. *Venkatasubba Rao J.* held that the property was the subject-matter of the proceeding within the meaning of Section 17(2)(vi). We are in respectful agreement with this view of the scope of the expression "subject-matter of the suit or proceeding" in that section. This view is also justified by the approach in *Ramdas Sah and Another Vs. Jagarnath Prasad and Others*. On that view, it follows that the plaintiff's claim based on want of registration of the compromise decree, fails.

6. Even on the assumption, that the compromise decree in O. S. 76 of 1948 required registration, the facts would clearly attract the doctrine of part performance. The compromise decree constituted a contract between the parties for consideration and it was in writing. The courts below have found, and it is not disputed before us, that the first defendant had taken possession pursuant to the compromise decree, that he has since continued to be in possession and that patta also had been transferred to his name. We think that the compromise decree cannot be viewed as a family settlement. In a family settlement, as pointed out in *Mt. Mahadei Kunwar Vs. Padarath Chaube and Another*, there is no transfer of property or any right thereto. It merely embodies a settlement between the parties in which the title of the one is acknowledged and recognised by the other. To such a transaction, Section 53-A of the transfer of Property Act has no application. In this case, the compromise decree was not merely one recognising pre-existing titles but it operated to transfer some of the properties which exclusively belonged to Muthuswami Reddiar, to the first defendant, who had no pre-existing title or claim thereto. It was apparently for this reason the compromise decree was not contended in the courts below to be a family settlement.

7. The second appeals are dismissed with costs payable by the fifth appellant.

8. Appeals dismissed.