
(1916) 03 AHC CK 0016
In the Allahabad High Court

Musammat Jagrani Misrain

APPELLANT

Vs

Bisheshar Dube and Others

RESPONDENT

Date of Decision : 24-03-1916

Acts Referred:

Registration Act, 1908 — Section 17

Citation : AIR 1916 All 1 : 35 Ind. Cas. 701

Hon'ble Judges : Henry Richards, C.J.;Tudball, J;Rafique, J

Bench : Full Bench

Judgement

Henry Richards, C.J.—This appeal arises out of a suit for possession of Immovable property brought by one Musammat Jagrani Misrain. The Court of first instance dismissed the plaintiff's suit. The Court of first appeal confirmed this decree and a learned Judge of this Court dismissed the second appeal.

2. Nirban Dube had three sons, Gulab Dube, Chandrika Dube and Ramphal Dube. Chandrika Dube left him surviving his widow and his daughter (the present plaintiff). On the death of Chandrika Dube the name of the widow was recorded and continued to be recorded up to the time of her death. Ramphal Dube had a son, Mulai Dube. The defendants are the sons of Mulai Dube. On the death of the widow of Chandrika Dube disputes arose between Jagrani on the one side and Mulai Dube on the other as to whose name should be recorded. Apparently Jagrani was claiming that the sons of Nirban Dube were separate, that on the death of her father Chandrika Dube his widow was not only recorded but she was entitled to the property, and that upon the death of the widow the plaintiff became entitled to the property for the estate of a Hindu female. Mulai Dube, on the other hand, was apparently claiming that Chandrika Dube and Ramphal Dube were joint and that the name of the widow of Chandrika was recorded merely for consolation. It has been definitely found by the Court below that Chandrika Dube and Ramphal Dube were separate. On this finding it is clear that the plaintiff is entitled to possession of the property, unless the defendants can show that she transferred her interest or that they have some other legal or equitable defence.

3. I now propose shortly to state what actually happened according to the findings of the Court, apart altogether from legal questions such as the admissibility of evidence. I have mentioned the dispute which occurred on the death of the widow of Chandrika, The dispute was in mutation proceedings. This matter ended by an application filed on behalf of the plaintiff in which she stated that the matter had been compromised, that she gave up her rights to the property and that the name of Mulai might be recorded. The order which the mutation officer made on this petition was, "mutation according to the compromise." The name of Mulai was accordingly recorded. It appears that the full arrangement (which does not appear in the petition) between the parties was that certain debts, due by the plaintiff's father and mother should be paid off, including a debt incurred for the marriage expenses of the plaintiff's daughter. Mulai executed two simple money-bonds in favour nominally of a third party but really for the benefit of the plaintiff. Mulai managed to get back these bonds. The plaintiff never got the amount nor did Mulai discharge them. They are long since barred by limitation. The plaintiff alleged that this compromise was brought about by fraud and that she know nothing about it. The Courts have found that fraud was not proved, that the plaintiff knew what she was doing, although the consideration was inadequate.

4. The petition to the Revenue Court was not registered. Save this document and the order of the mutation officer the defendants were unable to adduce any evidence showing that the plaintiff had transferred her interest in the property in dispute. The learned District Judge was of opinion that the mutation proceedings" were " judicial proceedings" and that the mutation- officer, by his order "mutation according to compromise", had " incorporated the compromise into his decree, and applying the ruling of their Lordships of the Privy Council in *Bindesri Naik v. Ganga Saran Sahu* 20 A. 171 : 25 I.A. 9 : 2 C.W.N. 129 : 7 Sar. P.C.J. 273 the learned Judge held that the interest of the plaintiff had been transferred as the result of the compromise and the decree in mutation proceedings.

5. It seems to me that this view is wrong. The mutation proceedings were not judicial proceedings nor was there any decree which could possibly have the effect of transferring the interest of the plaintiff. All that the mutation officer had to do or had jurisdiction to do was to order whose name should be recorded. The parties consented that the name of Mulai Dube should be recorded but this conferred no title upon him. In my opinion (if we disregard the petition) the interest of the plaintiff is not proved to have been transferred and on the findings of the Court below she is entitled to possession, subject to paying off the usufructuary mortgages which are mentioned in^ the judgment of the learned Subordinate Judge. Having regard to the fact that Mulai never paid up the account of the bonds I think that this would meet the justice of the case and I would modify the decree accordingly. This case was referred to a Bench of three Judges on account of the conflict, or supposed conflict, of authorities on the subject of the admissibility of compromise proceedings in" the Revenue Court. And many cases have been cited by each side.

6. Section 17 of the Registration Act provides that certain documents must be registered and amongst others "non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of Rs. 100 and upwards to or in Immovable property." The words are very-wide and comprehensive. Section 49 provides that no document required by Section 17 to be registered shall (a) affect any Immovable property comprised therein or ***** (c) shall be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. It " seems to me that if the petition to the Revenue Court in the present case was such a document as is referred to in Section 17, it was clearly inadmissible in evidence to prove that the interest of the plaintiff had been transferred. If the petition was not such a document as is referred to in Section 17, then it could not, of course, be rejected as inadmissible on this ground and the document was admissible provided it "was otherwise relevant to the case. It must be remembered that a document cannot be received in evidence on the ground that it does not purport or operate" as an assignment or relinquishment of rights in the property and then be used by the Court for the very purpose of showing that the right was relinquished or assigned. It is said that the transaction in the present case was a family arrangement" and it is urged that documents connected with family arrangements need never be registered. I think that there is no justification for such a proposition. Documents which disclose family arrangements" and which at the same time purport or operate" to create, declare, assign, limit, or extinguish, etc., must be registered, just as much as any other documents not connected with family arrangements." Nor do I think that any of the cases in which their Lordships of the Privy Council have considered family arrangements" can be used as authorities for the proposition that such documents are exempt from the provisions of the Registration Act. Documents which cannot be objected to for want of registration are, of course, admissible provided they are relevant to some issue in the case and unobjectionable on any other valid ground. It is needless to add that it is quite impossible to lay down any definite rule as to the admissibility of applications and orders in mutation proceedings. Each case must be dealt with according to law. I would like to point out that the proper time to object to the admissibility, of a document in evidence is when the document is tendered. It is obviously as a general rule unfair and improper that parties should be allowed to raise objections as to the admissibility of evidence, documentary or otherwise, for the first time in appeal. When a document tendered as evidence, or a question to a witness, is objected to as inadmissible, it is the duty of the Judge to " rule on the objection and if he admits the document or allows the question to be asked notwithstanding the objection, the Judge should note that the objection has been made. This elementary rule of procedure is very frequently altogether lost sight of both by the Court and by Pleaders.

Tudball, J.

7. The facts as found may be briefly stated as follows:--A separated Hindu

created two usufructuary mortgages on portions of his estate, and then died leaving a widow and a daughter. The widow held possession for her lifetime and created a third usufructuary mortgage. She died. Her daughter laid claim to the estate and applied for entry of her name in the Revenue Records. One Mulai, one of the reversioners, contested her application urging that her father was joint with him and not separate. The parties came to terms, orally. The daughter agreed to give up her claim. Mulai in return agreed to take the estate, pay off the mortgages and to pay a certain sum of money to the daughter (who is the present plaintiff).

8. They two then filed a joint petition in which it was stated that the parties had come to terms. This statement was followed in the petition by another on behalf of the plaintiff that as she had given up her claim to the estate, she had no objection to mutation being made in favour of Mulai. To this was added a statement by Mulai that as the plaintiff had given up her claim he did not press for costs. The Revenue Court's order was that mutation was to be made according to that compromise. Mulai, to secure to the plaintiff the payment of money he had promised to pay, executed two bonds (simple ones) in favour of the husband of the plaintiff's sister. Instead, however, of paying the money he took back those bonds and made it impossible for any one to sue for them.

9. The plaintiff has now come, some 11 years after her mother's death, into Court and sues for possession of the estate. Her claim has been dismissed on the ground that there was a bona fide compromise with consideration and that, therefore, she has lost her rights which she relinquished under the compromise in the Revenue Court. She in her plaint sued to have the mutation order set aside on the ground of fraud. But the Courts have held that though the consideration was very inadequate she had fully understood the transaction and there had been no fraud. It seems to me difficult to hold that the petition, filed in the Revenue Court, wherein the parties expressed their willingness to have the name of Mulai recorded in the revenue registers, is a document which purported or operated to extinguish the right, title and interest of the plaintiff. If the parties had executed and registered a document setting forth the terms of the agreement and the plaintiff had therein recorded that she thereby gave up all such right as she might have, even then they would have had to file this same petition before the Revenue Officer* Nowhere in this document did the plaintiff say: I hereby relinquish all such right, title and interest as I may have in the estate of my father." She merely stated that as she had given up her claim to the estate, she agreed to the entry of Mulai's name. The document does not purport to be a deed of relinquishment. It did not even contain all the terms of the agreement.

10. It does not appear to be such a document as is contemplated by Section 17 of the Registration Act, and required no registration. It is worthy of note that it was let into evidence in the trial Court without objection of any sort and it was too late to object to its admissibility when the case went on appeal to the lower

Appellate Court.

11. Though perhaps it may be only obiter dictum to express an opinion on the point, still, as it has been argued before us, I think it well to say that if this document were one which purported or operated to extinguish the plaintiff's title registration thereof would, in my opinion, be compulsory. The Revenue Court is one of very restricted jurisdiction and in the present instance was concerned only with the change of names in the Revenue Records. It had no power to decide the question of title at all as between the parties, or to make any declaration in regard thereto. It could pass no decree embodying a compromise, such that Mulai could have put into execution and thereby obtained possession. As far as it was concerned, it had to do only with so much of the compromise as allowed the name of Mulai to be recorded in the village khewat. Over matters outside the scope of its jurisdiction it had no power. As regards the plea that there was a family settlement and the Court ought not to go behind it, it hardly lies in the mouth of the defendants to raise it. Where a family settlement, bona fide and free of fraud, is made and acted upon by all the parties, even though a full and proper document be not duly executed and registered, the Courts have refused to go behind it. But in the present case Mulai did not act fully upon it. He took the property and paid off the mortgage, , but failed to pay to the plaintiff the amount which he had promised to pay. He dishonestly got back the two bonds he executed and left the plaintiff with nothing. In these circumstances as the plaintiff has not transferred her title by a document duly executed and registered, I think we are entitled to go behind this so-called family settlement (to which by the way the other reversioners were no parties).

12. I would, therefore, reverse the decisions of the Courts below and decree possession to the plaintiff subject to her making good to the defendants the sums of money, if any, spent in the redemption of the three usufructuary mortgages.

Rafique, J.

13. This is a Letters Patent Appeal and the point for consideration is, whether an unregistered compromise affecting Immovable property of the value of more than Rs. 100 filed in a Revenue Court, upon the basis of which mutation of names has been effected, is admissible in evidence in a subsequent civil suit between the parties disputing the right to the said property. The case has been referred to a Full Bench because of the alleged conflict of case-law in this Court. The relevant facts of the case are these:--One Chandrika Dube died some years ago possessed of the property in- suit and leaving him surviving a widow and a daughter. The latter is the plaintiff-appellant in the present case. On the death of Chandrika his widow, Musammat Anurani, entered on possession and the mutation of names was made in her name. She died in 1900. On her death, her daughter applied for mutation of names in her favour and Mulai, a nephew of Chandrika, objected and claimed to have his name entered. On the 12th February 1901, a petition of compromise was presented to the Assistant Collector

in which it was stated on behalf of Musammat Jagrani, the daughter, that she withdrew and relinquished her claim to the inheritance in the property of Musammat Anurani, her mother, and that the name of Mulai should be entered in the Revenue Records, and on behalf of Mulai the statement was that as Musammat Jagrani had- relinquished her claim he did not press for costs. The Assistant Collector ordered Let mutation be made according to compromise." On the 24th of November 1911, Musammat Jagrani brought the suit out of which this appeal has arisen, for the recovery of possession of the property which had been in the possession of Mulai and after his death of his sons, the defendants in the present case, by virtue of the compromise of 1901. She * challenged the compromise, on the ground that she had not entered into it knowing its full effect and that a fraud had been practised on her and that it was without consideration. She further alleged that her father, Chandrika Dube, was separate from his brothers one of whom was Mulai's father. The claim was resisted on various pleas. The validity of the compromise was set up and it was urged that it was entered into by Musammat Jagrani with full knowledge of its contents and of its effect upon her interests and that it was for consideration. It was further alleged "that Chandrika was joint with his brothers and their sons and that Mulai had paid off mortgages of Chandrika and his widow Musammat Anurani. The Court of first instance found that Chandrika was separate from his brothers and their sons and that the compromise in question was made by Musammat Jagrani with full knowledge of its contents and its effect upon her interests and that no fraud had been practised on her. The claim was accordingly dismissed. On appeal the decree of the first Court was affirmed. On second appeal a learned Judge of this Court remanded the case for trial of certain issues, one of which related to consideration. The findings on the remanded issues were against the plaintiff-appellant, except on the question of consideration, it was found that consideration had passed but it was inadequate. The appeal was accordingly dismissed.

14. On behalf of the plaintiff-appellant the contention before us is that the compromise presented to the Revenue Court on the 12th February 1901 on the basis of which mutation of names was made in favour of Mauli, is inadmissible in evidence and does not operate as the relinquishment of her right in the property in suit by the plaintiff-appellant, because the compromise" affected property of the value of more than Rs. 100 and was not registered. For the respondents the reply is twofold. It is contended on their behalf that the petition presented to the Revenue Court on 12th February 1901 was not a compromise but merely a report or information to the Revenue Court of a compromise that had been orally made outside Court; and a compromise need not be in writing or registered. If a compromise has been validly made and acted upon it must be given effect to. In support of this contention reliance is placed on the following cases: Nur Ali v. Imaman A.W.N. (1884) 40; Pearey Lall v. Musammat Kokla Kunwar 18 Ind. Cas. 766 : 11 A.L.J. 457; Musammat Kokla v. Pearey Lal 21 Ind. Cas. 29 : 35 A. 502 : 11 A.L.J. 765. The last two cases are really one case. The case of Musammat

Kokla v. Pearey Lal 21 Ind. Cas. 29 : 35 A. 502 : 11 A.L.J. 765 was decided in Letters Patent Appeal from the judgment of a single Judge of this Court between the same parties. The case of Musammat Kokla v. Pearey Lal 21 Ind. Cas. 29 : 35 A. 502 : 11 A.L.J. 765 is distinguishable from the present case. In that case the compromise was acted upon and on the faith of that compromise third parties had dealt with one of the parties to the compromise by purchasing the property from him. The rights of third parties had to be considered. The case of Nur Ali v. Imaman A.W.N. (1884) 40 is certainly in favour of the respondents. But with due deference to the learned Judges who decided that case I am unable to agree with them. They say that the compromise presented to the Revenue Court in that case was not in its essence "a compromise by deed but a statement in a petition to the Revenue Officer, informing him of the arrangement the parties had agreed upon and praying for mutation of names. And such a petition was clearly not such an instrument as is contemplated by Section IV of the Registration Act, but a document informing the Revenue Authority of the fact of such a compromise having been made." If the compromise filed before a Revenue Court is merely an intimation of the fact of a compromise already made and nothing more, then the question of the admissibility of the document is irrelevant. The document is then to be taken not as a compromise or an agreement between the parties that has settled their respective rights in the property in dispute, and the real compromise is that which was made before the presentation of the petition to the Revenue Officer. And if the real compromise was something else, other than the document presented to the Revenue Court, then the compromise, if relating to Immovable property of the value of more than Rs. 100, must be registered or it would not affect the property. In the present case the property is admittedly worth more than Rs. 100, and if the document of 12th February 1901 was not the compromise but an intimation of one that had already been entered into, the latter should have been in writing and registered. It is not pretended that any such document was executed by Musammat Jagrani and Mulai. I need hardly say that a compromise, oral or written, made in a civil suit which is embodied in the decree, stands on a different footing. The rights of the parties are determined in that case by the Civil Court decree. An order by a Revenue Court in the mutation proceedings has no such effect. The jurisdiction of a Revenue Court is limited and the Court decides in a mutation case summarily the question as to which of the two contending parties should be brought on the revenue papers for revenue purposes.

15. The second contention for the respondents is that the compromise, the mention of which is made in the document of 12th February 1901, was a family arrangement, and such a document did not require registration, for a family arrangement does not necessarily imply alienation of property. It simply recognises the antecedent title of one or of both the parties. I would first observe that the plea of family arrangement was not taken in the written statement. In the latter it was distinctly stated, that Musammat Jagrani had relinquished her claim to and right in the property in dispute (vide paragraph 10

of the written statement). Secondly, all the members of the family, on the plea in defence that Chandrika died joint with his brothers and their issue, were not parties to the arrangement. Thirdly, part of the consideration agreed upon was to be paid to Musammat Jagrani which was never paid. Fourthly, in the present case the arrangement did have the effect of alienation, in the sense that Musammat Jagrani relinquished her right to the property in favour of Mulai. The learned Counsel for the respondents has relied on the case of Khunni Lal v. Kunwar Gobind Krishna Narain 10 Ind. Cas. 477 : 33 A. 356 : 15 C.W.N. 545 : 8 A.L.J. 552 : 13 Bom. L.R. 427 : 13 Cri.L.J. 575 : 10 M.L.T. 28 : 21 M.L.J. 645 : (1911) 1 M.W.N. 432 but that case is no authority for the proposition that a document evidencing a family settlement does not require registration. I am, therefore, of opinion that the petition of compromise dated 12th February 1901 is inadmissible in evidence for want of registration for the purpose of proving the relinquishment of her right to the property in suit by the plaintiff-appellant.

16. I would allow the appeal subject to the payment of usufructuary mortgages of Chandrika and Musammat Anurani, which have been found to have been paid off by the respondents or their father.

17. The order of the Court is that the plaintiff will have a decree for possession conditional upon her paying the sum of Rs. 157-5-3, being the amount of the usufructuary mortgages dated 8th Sawan Sudi 1307, 1st Jeth Sudi 1303 and 10th Asadh Sudi 1297. This amount must be paid within six months from this date. If the amount is not paid the suit will be dismissed with costs in all Courts. If the amount is paid within the time the plaintiff will have her costs in all Courts. Costs in this Court will include fees on the higher scale.