

(1965) 12 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Revision No. 359 of 1964

Radha Kishan and Another

APPELLANT

Vs

Firm Jwala Prasad Shiv Prasad and Others

RESPONDENT

Date of Decision : 15-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63, 115
Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 2(17)
Transfer of Property Act, 1882 — Section 58, 59

Citation : (1965) 12 RAJ CK 0001

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : H.C. Jain, for the Appellant; M.L. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—This is a revision application by the objectors against an order of the Senior Civil Judge, Sikar, holding that a document on which they rely is inadmissible in evidence for want of registration and for want of being stamped. The revision application has been contested on behalf of the decree-holders.

2. In execution of a decree of the decree-holders against Kishan Lal respondent No. 6 an undivided half share of a Haveli situated at Fatehpur in Sikar District was attached on 21-8-60. On 1-10-60 the applicants filed an objection claiming that the undivided half share of Kishan Lal in the Haveli in question was mortgaged in their favour on 4-5-56 by the deposit of title-deeds. In support of this allegation they filed a document which runs as follows:--

"No. 7, Banstalla Gulli, Calcutta.

Dated 4th May 19-56.

Messrs, Ghanshyamdas Radhakishan,

89, Cross Street, Calcutta.

Dear Sirs,

This is to place on record that I have on 4th day of May 1956, deposited with you at No. 89, Cross Street, Calcutta, the documents of title mentioned hereunder relating to undivided one half share belonging to me in a Haveli (Dwelling House) situated at Fatehpur in the District of Sikar in the State of Rajasthan (particulars whereof are written in the schedule hereunder written) by way of security for due repayment of a loan of Rs. 15,000 advanced by you under a promissory note executed by me in your favour.

Particulars of the documents deposited:

1. Original Patta No. 247, dated Magh Badi 13, S. Y. 1955.

The schedule above referred to:

All that undivided half share belonging to me in a Haveli (Dwelling house) situated at Fatehpur in the District of Sikar in Rajasthan butted and bounded as follows:--

On the North by a public passage leading to canal.

On the South by the land of Jankidas Brij Mohan Sharaff.

On the West by public passage.

On the East by canal of the Fort.

Explained by me to the signatory, Kishanlal Sharaff

Yours faithfully,

S/- Kishanlal Sharaff.

Sd/- Ram Prasad Dass,

Advocate,

4-5-56."

The trial Court held on the basis of the authority of their Lordships of the Privy Council in AIR 1939 167 (Privy Council) that the document created a mortgage and required registration. I have heard the learned counsel for the parties and I am satisfied that the above document does not require registration. The following decisions were referred to by the learned counsel for the parties:--

AIR 1931 36 (Privy Council) , AIR 1939 167 (Privy Council) Rachpal v. Bhagwandas, AIR 1950 SC 273, United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others,

A perusal of these decisions goes to show that a document would only require registration if independently of the provisions of Section 58(f) of the Transfer of

Property Act it creates a mortgage. Applying this test in the present case I find that if the provisions of Section 58(f) are ignored then the document does not create a mortgage. In AIR 1939 167 (Privy Council) the document created a mortgage independently of Section 58(f). The memorandum there did not merely evidence a transaction already completed. Its language was operative. It was contractual in form and had embodied an agreement that if the money was not paid the mortgagee would sell the properties the title-deeds of which had been deposited. That case is distinguishable.

3. The trial Court also held that the document required to be stamped under Article 6 (1) of the Indian Stamp Act. This article runs as follows:--

"6. Agreement relating to deposit of title-deeds, pawn or pledge, that is to say, any instrument evidencing an agreement relating to-

(1) the deposit of title-deeds, or instruments constituting or being evidence of the title to any property whatever (other than a marketable security).

(4) On behalf of the petitioner reliance was placed on the decision in Tyabali v. Parpatibai AIR 1932 Sind 73. It was observed in that case-

"The doubts, if any, which existed with regard to the question of stamp and registration of such confirmatory letters have been amply removed by the decision of their Lordships of the Privy Council in the case of AIR 1931 36 (Privy Council)

4. In the Privy Council case a promissory note was given by a person in Madras and on the same date he gave a memorandum which consisted of a list of the title-deeds with the introductory words "as agreed upon in person I have delivered to you the undermentioned documents as security". It was held that this did not amount to an agreement. In the English and Empire Digest, Vol. 39, p. 270, Col. 1, Item 548 runs as follows:--

"Memorandum stating purpose of deposit of title-deeds.--Where title-deeds are deposited by way of equitable mortgage, a memorandum merely stating the purpose for which they are deposited is not an agreement for a mortgage and need not be stamped, Meek v. Bayliss (1862) 31 LJ Ch 448."

5. The original report is not available in the High Court Library, but the above case is cited in several commentaries on the Stamp Act.

6. Having heard the learned counsel for the parties I am of the opinion that the above document in the present case does not amount to an agreement.

7. Lastly it was contended by the learned counsel for the decree-holders that the objection under Order 21, Rule 58, C. P. C. having been dismissed the objectors should be left to their alternative remedy of bringing a suit under Order 21, Rule 63, C. P. C. and this Court should not interfere in the exercise of its revisional jurisdiction. As the evidence in the case has already been recorded after framing issues and the trial Court has refused to go into evidence on the ground that the

document on which the objectors rely is inadmissible in evidence I consider it proper to interfere in the peculiar circumstances of this case.

8. I accordingly allow the revision application, set aside the order of the executing Court and remand the case to it for decision in accordance with law after hearing the arguments of the parties.