
(1925) 07 BOM CK 0022
In the Bombay High Court
Case No : First Appeal No. 22 of 1923

Rupchand Balmukund Aharwala

APPELLANT

Vs

Jankibai Kanhyalal

RESPONDENT

Date of Decision : 28-07-1925

Acts Referred:

Registration Act, 1908 — Section 17(1)(ft)

Citation : AIR 1926 Bom 24 : (1925) 27 BOMLR 1441

Hon'ble Judges : Norman Macleod, J; Madgavkar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued to have it declared that he had got one-fifth share in the properties left by one Balmukund, and that he was not liable for more than one-fifth, of the debts due, Further he sued for an equitable partition of the properties and for separation of his one-fifth share therein, and for mesne profits before suit and future profits.

2. Balmukund died in 1904 leaving two widows. The plaintiff was adopted by the senior widow, while the junior widow also adopted one Hanumandas. When the widows died the reversioners disputed the adoptions. Two separate suits were filed against the two adopted sons, asking for a declaration that the adoptions were invalid. Both the adoptions have been held to be invalid, and the reversioners have been declared to be the real owners of the property. The suits were not finally concluded until 1918.

3. In April 1918 while the appeal was pending in the High Court, an application was made on behalf of the present plaintiff to file an alleged agreement of compromise under Order XXIII, Rule 3. The defendants objected. The Court was of opinion that the suit had not been adjusted by this agreement, that the condition of the agreement was, not that the pending suit should be settled or abandoned, but that it should continue to its normal end, and that thereupon

whatever decree the Court should ultimately make should be replaced by the private arrangement between the parties.

4. The defendants are the natural father of Rupchand and his three brothers. The second defendant contested the plaintiff's claim. He admitted that the document on which the plaintiff sued had been passed, but he contended the same was unregistered and had not been properly stamped and could not be relied upon in proof of the plaintiff's claim. The Judge decided 4 that these two documents, which were passed by the plaintiff and his opponents respectively, being counterparts of each other required registration. As he thought the defendants were resiling from the settlement on a technical ground and were in a way taking an unfair advantage of the plaintiff's position, though he felt himself bound to dismiss the plaintiff's suit on that ground, he did not allow the defendants their costs. He considered mainly on the construction of the plaint that the documents referred to created and declared the interest of the parties in the properties mentioned therein.

5. It is quite true that the form of the plaint and the prayers annexed thereto were not as correct as they should have been if they had been drafted by a skilled lawyer. But the form in which the plaint was framed cannot possibly affect the question whether these particular documents required registration or not. The Judge thought that the creation or declaration of rights was completed at once by the deeds themselves, and was not to depend on the execution of regular registered deeds. He accepted that construction placed on the documents by the defendants as quite reasonable.

6. We must, therefore, turn to the documents to see whether they were compulsory registrable u/s 17 (1) (f) of the Indian Registration Act. Each document recites the facts which gave rise to their execution, and the operative words in the agreement signed by Rupchand are as follows :-

Even if I succeed fully in the Court or privately out of Court in the suit brought by me and even if I become full owner, I will keep in my possession 1/5th of the property, and will give in your possession the property of the remaining 4/5th out of Balmukund's properties, moveable and Immovable now included in the above suits as also in the other properties not included in the above suits, but that may subsequently be found belonging to Balmukund. We shall first discharge out of the removable and immoveable property the debts now existing on the estate as also all the debts that I may have incurred up to the present day, and the expenses that may be required for your and my suits up to the decision of the final Court, and then we shall divide the property in proportion to above shares between ourselves At present there are various disputes, and therefore I cannot properly realise the profits of the estate and the Guraastas do not work properly and in this manner the estate is being wasted. For all these reasons I have given in your Vabivat all the properties that were in my possession. You should give me the profits of 1/6th of share out of the profits that may be realised from the properties and you should take in equal shares the remaining 4/5th share's

profits for your expense and spend the same as you like. In this manner we have come to an agreement of compromise and I will file the proper legal documents as regards this compromise whenever you will ask me to do so or will pass to you privately a registered document.

7. Now let us see whether it can be said that that document creates, declares, assigns, limits or extinguishes any right, whether in present or in future to Immovable property of the value of over Rs. 100. These parties were fighting for the succession to the property of Balmukund which fell in on the death of his widows, and while the litigation was still going on the contestants came to an agreement. The effect of that agreement was that the litigation should pursue its full course, and whatever the result might be the contestants would at the end of the litigation divide the property. That was, therefore, an agreement to divide the property at the expiration of the litigation, and could not create any interest in the property under the provisions of "54 of the Transfer of Property Act

8. It was suggested that because there was an arrangement with regard to the profits pending the litigation, therefore there was an interest in the property declared or created. That was merely a temporary arrangement for the management of the property during the litigation, and the mere fact that the plaintiff gave up the management of the property, because he said that the gumastas did not work properly, into the hands of the defendants agreeing that they should pay him one-fifth, would not possibly bring the document within the provisions of Sec. 17 (1) (6) of the Indian Registration Act.

9. It was not suggested, when the plaintiff attempted to have this document filed in the High Court under Order XXIII, Rule 3, that it was anything more than an agreement to compromise disputes which were pending between the parties at that time. It was never suggested by virtue of those documents that any interest passed or any rights in the property were declared, It seems to me, then, that the plaintiff cannot be penalised because he has prayed in the plaint that it may be declared that he is the owner of the one-fifth property of Balmukund. What he really sued for appears in the second prayer of the plaint namely specific performance of the agreement by partition of the property.

10. We are not concerned in this appeal whether the question regarding mesne profits should be decided in the plaintiff's favour.

11. It certainly would appear that a claim for mesne profits would be based on a present interest resting in the plaintiff, but if he obtained no present interest in the property under the agreement, then the question as regards the mesne profits will no doubt be correctly dealt with by the Court below. We are not concerned with that question in this appeal. 1

12. We may refer to the decision of the Privy Council in *Rajangam Ayyar v. Rajangam Ayyar* ILR (1922) Mad. 373 where it was held that a document which was a memorandum regarding the cessation of jointness of the parties which amounted to a declaration that from that time forth the parties became entitled

to the possession and enjoyment of their properties in separate shares, and provided for the execution of a further deed effectuating the partition, was not a document which by itself created, or declared, or assigned, or limited or extinguished any right or interest in the Immovable property.

13. That is a stronger case than the present, because the document even went so far as to declare that the parties who ceased to be joint should be entitled to their shares in the family property.

14. We think, therefore, that the appeal must be allowed on the ground that these documents do not require registration, and are, therefore, admissible in evidence. The case will have, therefore, to go back to the trial Court for disposal on the merits. We make it clear that we have only decided the question whether these documents are admissible in evidence or not. All other questions remain to be decided by the Judge in the trial Court. Some of these points he has already decided, and after deciding the remaining issues, he will pass final judgment. Then on the whole case, except on the point of registration, an appeal will be open.

15. Appellants to get their costs of the appeal.