

(1961) 07 PAT CK 0009

In the Patna High Court

Case No : Compensation Appeal No. 1 of 1960

Sm. Kamal Mukhi Devi

APPELLANT

Vs

Siya Raman Prasad Sharma Singh and Another

RESPONDENT

Date of Decision : 28-07-1961

Acts Referred:

Evidence Act, 1872 — Section 92

Registration Act, 1908 — Section 17(2)

Citation : AIR 1962 Patna 215

Hon'ble Judges : S.C. Misra, J

Bench : Single Bench

Advocate : Baidyanath Jha, Satrudaman Prasad Narain Sharma, Brij Kishore Narain Singh and Kamleshwar Prasad Sinha, for the Appellant; Lal Narain Sinha and Krishnanandan Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Misra, J.—The appellant, Shrimati Kamal Mukhi Devi, is the mother of the three respondents, Siyaramcm Prasad Nftrain Sharma, Shatrudaman Prasad Narain Sharma and Dalastambhan Prasad Narain Sharma. The father of these respondents and husband of the appellant, Shri Harivansh Prasad Naidu Sharma died some time in the year 1943 leaving behind Immovable properties, situate both in the United Provinces, as it then was, and Bihar. These properties included Zamindari interest belonging to the family. In 1944, the names of the appellant as also those of the respondents were duly mutated in all the properties belonging to the family. On the 29th September, 1951, a family arrangement was arrived at between the mother and her three sons settling domestic disputes among them. A registered document came into existence duly executed by the parties by which the properties were divided into three equal shares and allotted to the three respondents, but a fourth share was carved out of the three shares allotted to the three sons consisting of the properties taken proportionately from the three shares of the sons and allotted to the mother to be possessed and enjoyed by her during her life time and after her death the properties were to

revert to the share of the three sons in the manner in which they were taken out of their shares.

2. After the passing of legislations both in Utter Pradesh and in Bihar for abolition of Zamindari, the Zamindari properties of this family in Utter Pradesh were taken over by the Government of that State under the Utter Pradesh Zamindari Abolition and Land Reforms Act (1 of 1951). A suit was filed by respondent No. 1 Siyaraman Prasad Narain Sharma for payment of compensation in respect of his share in Utter Pradesh. That suit, however, comprehended only the properties lying in Utter Pradesh without any reference whatsoever to the properties lying in the State of Bihar. That suit, however, was compromised between the mother and the sons and the compromise was duly recorded by the court in seisin of the suit on the 30th of July, 1957. Under the terms of the petition of compromise a fresh arrangement was agreed to by the parties apparently modifying the terms of the family arrangement of 1951 by which the mother, namely, Shrimati Kamal Mukhi Devi was entitled to get 14 maunds of grain being 7 maunds of paddy, 5 maunds of wheat, one maund of Gram, one maund of Gur and Rs. 140/- in cash per annum from each one of her sons and in lieu of it she agreed to forgo her interest in the family properties, and consequently in the compensation money payable by the "State of Utter Pradesh to the landlords who were dispossessed by virtue of the State enforcing the right to take over Zamindari properties. It may be stated that the petition of compromise related not only to the properties lying in Utter Pradesh, although the suit was confined to those properties but it covered the properties lying in the State of Bihar as well.

3. After the estate of this family was taken over in Bihar as well under the Bihar Land REforms Act, 1950, a dispute arose between the mother and her sons also with regard to the right of the former to receive compensation in respect of the Zamindari properties of the family. It may be stated that of the three sons, Siyaraman Prasad Narain Sharma alone contested the claim of the appellant to get any share in the compensation money payable in respect of the estate of the family which came to vest in the State of Bihar, "but the remaining two sons, respondents 2 and 3 did not challenge the right of their mother to get her share of the compensation.

4. The learned compensation Officer of Siwan, who disposed of the proceeding, has held against the appellant as in his opinion she lost her right to get any compensation which might be available to her under the family arrangement dated the 29th of September, 1951, on account of the petition of compromise which was filed on behalf of the Parties in the Court in Utter Pradesh on the 30th July, 1957, referred to above. The [earned Compensation Officer has held that owing to the compromise entered into in the suit in the court of the Munsif at Deoria, Utter Pradesh, the mother lost her right to get any compensation inasmuch as the petition of compromise included properties not only in Uttar Pradesh but also those in Bihar. A new contract accordingly came into existence which took the place of the contract embodied in the deed of family arrangement

dated the 29th September, 1951, and whatever rights might have accrued to the appellant under the family arrangement therefore, gave place to the right which she acquired under the petition of compromise filed in the Court of the Munsif at Deoria, Uttar Pradesh. The appellant has come up to this court from the decision of the learned Compensation Officer.

5. Mr. Baidyanath Jha, appearing for the appellant, has urged a question of law against the view of the learned Compensation Officer, and that is this. The family arrangement dated 29-9-1951, relating to the properties of the family being registered document, and the suit in the Court of the Munsif at Deoria being confined to properties lying in Uttar Pradesh, a compromise decree-drawn up in the court of the learned Munsif could not be operative beyond the properties which were the subject-matter of the suit even if the suit was terminated by virtue of the petition of compromise. This however, would be subject to the well settled law on the point that properties not forming the subject-matter of the suit also may be made the subject-matter of the petition of compromise and the approval of the court in seisin of the suit may be superadded to it, but it is no more (than a private contract between the parties, and as such, it will be liable to all the disabilities which would attach to a private agreement between the parties. It would not make the least difference that the command of the Court has been superadded to it so long as that part of the compromise which relates to the properties other than the Subject-matter of the suit cannot be shown in any manner to fall within the ambit of the suit.

The technical disability in the present case could be that the family arrangement of the 29th September, 1951, is incorporated in a deed duly registered according to the terms of which the mother was entitled to a certain property which constituted her own share of the entire joint family properties. If, therefore, the mother was to give up her life interest in those properties it could only be done by another registered document. It is true no doubt that this principle will not apply to the subject-matter of the suit in as much as that is within the jurisdiction of the Court and a decree of the court terminating the suit in terms of the compromise between the parties, no doubt, would make it unnecessary that it would be registered. That principle however, will not apply to those properties which were not the subject-matter of the suit.

Mr. Baipyanath Jha has relied upon the relief in the plaint of the compensation suit in the Court of the Munsiff at Deoria and Mr. Lalnarain Sinha, for the respondent has not challenged the correctness of the contention that the suit in the Court of the Munsif at Dcoria in fact did not relate to any Bihar Property. That being so Mr. Jha has contended that in terms proviso (4) to Section 92 of the evidence Act lays down, inter alia, that where any contract, grant, or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of the documents, no subsequent oral agreement or for the matter of that no subsequent agreement which is not incorporated in a document duly registered can be put in evidence to

modify the term of any contract, grant or disposition of property which in this case is drawn up in a document and was duly registered. That being the well settled position that the terms of a registered document can only be varied by a subsequent document which is duly registered, and the same not having been the case, here, the compromise petition filed in the court of Munsif at Deoria cannot be put in evidence as against the terms of the deed containing the family arrangement between the parties which came into existence in 1951.

6. Mr. Lalnarain Sinha, appearing for the respondent Siyaraman Prasad Narain Sharma has however, drawn my attention to a decision of the Judicial Committee in AIR 1920 33 (Privy Council) . That was a case in which a dispute arose between two mortgagees, being the prior and subsequent mortgagees, between whom an agreement was arrived at under which they were to divide the money to be realised out of the sale of the mortgaged properties to the extent of half and half. A further dispute, however, arose between them in as much as the prior mortgagees, who were appellants in the Privy Council, contended, that they were not bound by the terms of the agreement which was not a registered document in as much as they were prior mortgagees under a registered instrument held by them, and as such the agreement in question which was not evidenced by a registered instrument could not be put in evidence as against them. The Privy Council upheld the decision of the Madras High Court which took the view that the case was not covered by the principle that the terms of a registered instrument could not be varied without another registered instrument, in as much as what was done in that case was that the agreement related to the division of realised money and not to the variation of the rights of the parties to the properties. Lord Buckmaster, who delivered that opinion of the Court, made the following pronouncement:

""Whichever interpretation is taken there is no objection to the lack of registration in such proceedings as those out of which this appeal has arisen, for if the whole effect of the agreement is to provide merely that the realised money is to be divided in equal shares, then there is nothing in this agreement which requires to be registered, and if, on the other hand, there are two distinct provisions, the one relating to the rights of the property and the other with regard to the division of the realisation moneys then, as these proceedings relate merely to the question of the realized money, it need not be registered for the purpose of being given in evidence in this suit, although it may be that it would require to be registered for the purpose of being given in evidence a suit relating to the regulation of the right against the estate itself."

Mr. Lalnarain Sinha has contended that the Privy Council did not accede to the contention on behalf of the prior mortgagees with regard to the lack, of registration of the agreement between them and the subsequent mortgagees because although the mortgage deeds in favour of both the parties were registered documents but the immovable property had changed its character and came to be moveable as realized money. It was accordingly laid down by the

Privy Council that such a Case did not come within the mischief of the law of registration, and as such, the agreement was not vitiated because it was not duly registered. In the present case also the Zamindari property in which the parties claim to be interested under the family arrangement of 1951 is no longer in existence and compensation money alone is payable for the Zamindari property, and accordingly the agreement between them which formed part of the petition of compromise and related to the Zamindari property in Bihar is not bad because it was not contained in a document duly registered.

In my opinion, however, it is difficult to accede to this argument. The crux of the decision in the above mentioned case of the Privy Council was that when the moneys were realised out of the sale of the mortgaged properties, the mortgage deeds in fact ceased to be operative and were no longer in existence. The agreement arrived at, therefore, between the parties had nothing to do with the variation of the terms of the documents but was an agreement simpliciter only relating to moveable property in the form of the money realised out of the sale of the mortgaged properties. In my opinion, therefore, their Lordships held that an agreement relating to the distribution of the money did not amount to a variation of the term of the mortgage deeds held by the appellants as well as by the respondents. In the present case, however, although the claim with regard to money was payable by the Government as compensation, but Siyaraman Prasad Narain Sharma resisted the claim of the mother to the money in supersession of the rights conferred upon her under the deed of family arrangement on account of the agreement which was incorporated in the petition of compromise filed in the Court of the Munsif at Deoria. The effect, therefore, of the subsequent agreement is to displace the right of the mother altogether which she acquired under the registered document. In my opinion, therefore, the decision of the Privy Council is clearly distinguishable and does not apply to the facts of this case.

6a. In my opinion, therefore, the learned Compensation Officer, was in error in holding that the appellant Shrimati Kamal Mukhi Devi was not entitled to any portion of the compensation money in respect of the Zamindari properties of the family vesting in the State of Bihar.

7. The appeal is accordingly allowed, the decision of the learned Compensation Officer is set aside and the application of the appellant, Shrimati Kamal Mukhi Devi for being adjudged as entitled to her share under the family arrangement of 1951 must be allowed. It is conceded that she held the properties of the family as a limited owner, and accordingly, she will be entitled to receive the amount which would be payable to her under the terms of Section 32 Sub-section (4) of the Bihar Land Reforms Act