
(1934) 08 CAL CK 0045
In the Calcutta High Court

Sm. Nurannessa Khatoon and Others

APPELLANT

Vs

Osman Gani and Others

RESPONDENT

Date of Decision : 02-08-1934

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 21

Citation : AIR 1935 Cal 203 : 155 Ind. Cas. 926

Judgement

1. In this appeal the question which arises for our consideration is whether a sale-deed was invalid by reason of its being registered at a place at which it could not be registered under the law. The facts necessary to be stated are the following. The suit was instituted by the plaintiffs for partition of certain properties, six in number, described in the schedule attached to the plaint. The plaintiffs claimed certain specified properties corresponding to a share which they alleged had belonged to defendants 8 and 9. Their case was that there was a family arrangement under which the said defendants had got those properties in lieu of their undivided share in all the six properties mentioned in the plaint and that in 1926 there was a deed of sale executed by the said defendants in their favour under which they became entitled to the said specified properties. Their case further was that there was a stipulation in the said document that in case there was any difficulty in obtaining possession of the said plots on account of the fact that the family arrangement was not established then they would be entitled to the shares of their vendors in the whole lot of properties mentioned in the plaint. The trial Court made a preliminary decree for partition in the plaintiffs' favour in respect of all the properties and that decree has been reversed by the lower appellate Court on the ground that the sale-deed was invalid by reason of the fact that it had been registered at a place at which it could not under the law be registered. The lower appellate Court in dismissing the suit has observed thus:

I would therefore if the bar of invalid registration did not arise, confirm the lower Court's decree in respect of properties other than property No. 5 only, that property being left to be shared by the legal heirs of Ahmad AH Shah. But owing to the bar of invalid registration, the appeal succeeds and the suit must fail.

2. The question which requires consideration in this case is whether a particular item of property described in the sale deed, namely Item 3, can be held to have passed under it. This item concerned a plot of land on which stood a tin shed, according to the description as given in the document. The other two items of property, mentioned in the sale-deed are properties situate in the province of Assam. So far as the Item 3 is concerned it is a property which is situate in the district of Dacca. The document was presented for registration at a Sub-Registry office in the district of Dacca. The learned Judge has found that the tin-shed mentioned in Item 3 had no existence and he has referred to certain evidence in his judgment in support of this finding. This finding has not been challenged before us on behalf of the appellants. The learned Judge has also held that upon a proper reading of the description of Item 3 as contained in the document it should be held that there was no intention that any title to the land itself should pass under it; and being of opinion that the only property which was intended to be conveyed by Item 3 was the tin-shed which had no existence he held that the document was not registrable at any registration office in the district of Dacca.

3. The appellants' first endeavour before us was to make out that the "interpretation which the learned Judge has put upon the description given in the document as regards Item 3 was not correct and that on a proper reading of the said description it should be held that the intention of the parties was that the land on which the tin-shed stood should also pass under it. We have considered the arguments that have been put forward in support of this contention, but we are unable to say that the view which the learned Judge has taken is wrong. The learned Judge has referred to the fact that if the description given of Item 3 be read in the light of what has been said in connexion with the other two items of property there can be no doubt that Item 3 which was to pass under the deed was not land but only the tin-shed standing on it. The learned Judge has also relied on certain other evidence for the purpose of showing that the land as described in Item. 3 would include not merely the share of the vendors but also the share of their co-sharers and that it could never have been the intention of the parties, that the share of persons other than that of the vendors would pass. We are clearly of opinion that the learned Judge was right in the view which he has taken as regards the interpretation to be put on the description contained in the document as regards Item 3. The appellants have next drawn our attention to the fact that there is a clause in the sale-deed which runs in these words:

Be it known that if in future owing to any dispute about the above mentioned family arrangement and amicable partition it be found or become divulged that we the executants have not the entire 16 annas right in the properties sold then of the immovable properties left by our father in the district of Dacca and Goalpara and in the Garo hills including the properties given in the schedule below, the total 6 annas 4 gandas 9 kaks 2 tils inherited by us the executants from our father, will be counted as sold to you the recipients of the deed. On the strength of this Kobala being owner and possessed of our 6 annas 4 gandas, 9 kaks 2 tils share in the immovable properties left by our father including the

properties given in the schedule below, you either jointly or on partition, will enjoy and possess the same in whatever way you like down to your sons, grandsons and other heirs and legal representatives.

4. Now this clause in the document, it has been pointed out, satisfies the requirements of Section 17, Sub-section 1, Clause (b), Registration Act, inasmuch as the document by reason of this clause would be a non-testamentary instrument which purported to create or declare, though in future, a right vested or contingent in favour of the appellants. It has been argued that being the position the document would be registrable in the district of Dacca even though as a kabala transferring the three items of property mentioned in the document it would not be so registrable. We are of opinion that this contention is well-founded. It is quite true that treated as a kobala the document could not be registered in any registration office in the district of Dacca in view of the fact that the only property which purported to have been covered by it as lying within the district of Dacca was the tin-shed which had no existence whatever and inasmuch as the introduction of a fictitious item of property in the sale deed for the purpose of getting it registered at a particular place would make the registration of the document invalid. But there is yet the other contention of the appellants to which we have just referred and according to which the document regarded as a non-testamentary instrument falling within Clause (b), Sub-section 1, Section 17 would be registrable at a registration office in the district of Dacca. There is no question, as far as we can make out, that the value of the right such as it was over Rs. 100. We are of opinion therefore that the learned Judge was not right in holding that the document was invalid. Inasmuch as the other findings of the learned Judge have not been challenged before us and there is no dispute whatsoever as regards the facts, we think we would be right in giving effect to the observations which the learned Judge made and to which we have already referred at the commencement of this judgment. Our attention has been drawn on behalf of the respondents to Section 21, Registration Act, which enjoins that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

5. That section merely lays down certain particulars which have got to be complied with before a document can be accepted for registration. If the properties are sufficiently identifiable there is no reason why the document, if registered, would not be operative in respect of such properties as would be found to answer the description contained in the document. Our order therefore is that the appeal should be allowed, the decrees of the Courts below should be set aside and a preliminary decree for partition be entered in favour of the appellants in respect of properties other than property No. 5 only and that the other directions contained in the preliminary decree which the Court of first instance had made should form part of the decree of this Court. The appellants will be entitled to their costs in all the Courts, hearing fee in this Court being assessed at two gold mohurs.