
(1953) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Misc. Appeal No. 72/3 of 1952-53

Sosa Bai

APPELLANT

Vs

Murari Lal

RESPONDENT

Date of Decision : 22-10-1953

Acts Referred:

Hyderabad Civil Procedure Code, 1323 — Section 559, 605(1)
Registration Act, 1908 — Section 17

Citation : (1953) 10 AP CK 0001

Hon'ble Judges : Srinivasachari, J;Qamar Hasan, J

Bench : Division Bench

Advocate : Bishambar Dayal, for the Appellant; Laxminarayan Somani, for the Respondent

Judgement

Qamar Hasan, J.—This is a miscellaneous appeal under Clause 27 of Sub-section (1) of Section 605, Hyderabad CPC from the judgment of the Second Judge, City Civil Court, dated 16-7-1951, refusing to file the arbitrators' award for want of registration.

2. The house bearing municipal number 2219 to 2224 situated in Mohalla Urdu Shareef, Hyderabad, admittedly belonged to one Ajudhia Prasad who, on his death, left him surviving his widow, Sunder Bai, and a son Madan Lal. Madan Lal in his turn left Susa Bai, the Appellant, as his heir. The Respondent, Murari Lal, claimed title to the above house on the basis of a registered sale-deed of 6th Mehir 1356 P. alleged to have been executed by one Shayamlal s/o Ramanand. In order to establish the vendor's competency to sell, the Respondent placed reliance on an entry in Ramanand's private diary. As per this entry Madanlal is purported to have created a mortgage of a certain portion of an unspecified house to Ramanand to secure payment of a preexisting debt amounting to Rs. 3,000/-.

3. The Appellant was not prepared to accept the validity of the alleged sale and the competency of the vendor to effect the sale. The dispute was referred to the

arbitration of Messrs. Lachmi Narain and Suraj Bhan, who after an inquiry embodied their findings in the impugned award to the effect that the mortgage and subsequent sale by the so called mortgagee were ineffective in law and that the title to the property and the right to its possession still remained with the Appellant. On these findings, they gave a decision for possession of these portions of the house, which were in the Respondent's possession and for mesne profits at the rate of Rs. 10/- per mensem from 6th Mehri 1336P., to the date of the recovery of possession by the Appellant.

4. The Appellant filed the award u/s 559, Hyderabad CPC before the First Judge, City Civil Court, for being made a rule of Court. The First Judge, however, sent the case to the Third Judge of the same Court. There the Respondent took objection to the valuation of the subject-matter of the suit. After taking evidence as regards the market value of the disputed house, the learned Third Judge found that having regard to the market value, the case was beyond his pecuniary jurisdiction; consequently, he returned the application to be presented to the Court of competent jurisdiction. The Appellant preferred an appeal to the First Judge against this order, but with no better result. The Appellant then presented the application again to the First Judge, who sent it to the Second Judge for disposal.

5. Before the Second Judge the Respondent raised various pleas objecting to the maintainability of the application. The main and strong objection was that as the award affected Immovable property of the value of more than one hundred rupees, it was compulsorily registrable and being unregistered, was inadmissible in evidence. The learned Second Judge accepted the plea and dismissed the application, against which the present appeal has been presented by the unsuccessful Applicant.

6. Shri Bishambar Dayal, who argued the appeal on behalf of the Appellant, contended that what the arbitrators decided was, that the disputed property formed the heritable asset of the deceased, Madanlal, to which the Appellant was entitled as an heir and that the claim set up by the Respondent could not be supported either in fact or in law. This finding, he urged, amounted to no more than a statement of a pre-existing state of affairs and as such no question of registration arose as no right was created or extinguished by the award. In support of this contention, reliance was placed upon "Mohammad Shareef v. Mukhammad Hasan Shareef 23 Deccan LR 212 (A), Sakham Krishnaji v. Madan Krishnaji 5 Bom 232 at p. 236 (B), AIR 1932 55 (Privy Council) , anganayaki M. Ranganayaki Ammal Vs. M. Virupakshee Rao Naidu, minor by guardian M. Rukmani Ammal and Another, and Lahore Central Co-operative Bank v. Qadir Baksh AIR 1947 PC 117 (E).

(a) In--Muhammad Shareef v. Hasan Shareef (A) a Division Bench of this Court in dealing with a deed by a person declaring that certain purchases made by him were benami for his son, who was the real purchaser and owner, held that the deed was admissible without registration to prove the benami nature of the

transaction.

(b) In the "Bombay case (B)" the question was whether a document containing an acknowledgment or admission of a prior partition between the parties required registration. West, J. observed as follows:

There (Section 17 (b), Indian Registration Act corresponding to Section 10 (b) of the Hyderabad Act) "declare" is placed along with "create, assign", "limit" or "distinguish" a "right", "title" or "interest" and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. I think that this is equally the case with the word "declare". It implies a declaration of will, not a mere statement of a fact and thus a deed of partition, which causes a change of relation to the property divided amongst all the parties to it, is a declaration in the intended sense, but a letter containing an admission, direct or inferential, that a partition once took place, does not "declare" a right, within the meaning of the section. It does in one sense "declare" a right; that is, the existence of the right is directly or indirectly stated by the writing but it is not the expression or declaration of will by which the right is constituted. Unless such a distinction as this were accepted, all correspondence would be excluded from which an admission might be gathered of a right or interest, the instrument of which, if there was one, would need to be registered.

This view of the law was approved by their Lordships of the Privy Council in *Bhageshwari Charan Singh v. Jacarnath (C)*, with the remark that the distinction is between a mere recital of a fact and something which in itself creates a right.

(c) In the Madras case cited by the learned Advocate for the Appellant, it was held that a deed of compromise, which recites that a house belonging to a person and in his possession and enjoyment shall be enjoyed by him with power to make a gift or sale of the same, does not purport to create or modify title to Immovable property since it contains only a statement of fact, as such, the document did not require registration u/s 17, Registration Act and was admissible in evidence either as a contract to acknowledge an existing right or as evidence in the nature of an admission.

(d) In the "Lahore Central Co-operative Bank's case (E)" an award in respect of a claim on a mortgage after fixing the amount due and making provisions for payment by instalments proceeded to state that in default of payment of any of the instalments, the whole amount shall become payable and that "the amount may then be realised through a civil court either by the sale of all the property" of the principal or sureties concerned. On a question as to the nature and effect of the above provision and as to whether the award required registration Lord Uthwatt, who delivered the judgment of the Board held that the provisions regarding realisation must be construed as stating an existing fact, the general consequences which by law were attached to non-payment of secured debts. It has no operative effect in creating any interest in any immovable property. The

statement is little less than a warning. Hence it cannot be held that Section 17(1) (b), Registration Act has any application to such an award.

7. The learned Advocate for the Respondent does not contest the statement of the law as laid down in the cases cited on behalf of the Appellant but he argues that when a dispute is referred to arbitrators and arbitrators decide that the right, title or interest lies with one of the parties and he is entitled to possession and mesne profits, it would not be a declaration of an existing fact, such as that Jhonson's house is Johnson's house but a solemn declaration of will in disposing of the lis as mooted by the parties, thus bringing about a change of legal relation to the disputed property.

8. In our opinion, the argument advanced by the learned Advocate for the Respondent is sound. It would be observed that in none of the cases cited on behalf of the Appellants the facts were on all fours with the present case. Here, we have a dispute in which the contestants claim exclusive ownership of the disputed property. The arbitrators by their award declared the Appellant to be the owner and negated the claim set up by the Respondent.

9. In our opinion, no doubt a mere statement of fact by a party to an instrument would obviously have no effect upon the legal relation but a similar statement in an award by arbitrators relating to a point in dispute between the parties does affect the legal relationship. In the former case, it would amount to a mere admission of a fact. In the latter case, it would be regarded as a decision given and a finding arrived at with regard to a fact which was in dispute. The statement in the award that the disputed house belonged to the Appellant may in future constitute a title deed for the Appellant. In the case of *Badri Chaudhuri Vs. Mt. Ghamoia Ghaudhrain*, a dispute arose between the Plaintiff and Badri as to who should succeed to the estate of one Murat, and both the parties agreed to refer their dispute to certain persons who were appointed by them as arbitrators. The arbitrators were empowered to give their award upon taking oral and documentary evidence regarding the Immovable and moveable properties appertaining to the estate of Babu Murat Chaudhari. The arbitrators gave their award according to which the Plaintiff was to continue as usual to be in possession and occupation as Malik of the house in place of Babu Murat Chaudhari, and Badri Chaudhari was to continue to work according to the instructions of the said Mussamat just in the same way as he used to do in his uncle's time.

It was held on these facts by a Bench of the Patna High Court that the declaration as to the right of the parties having been made in an award could not be held to amount to a mere-recital of facts but that it constituted the basis of the title of the parties in the sense that what ever the previous rights of the parties might have been, if the award is valid and can be enforced in a Court of law, the rights of the parties as declared by the award can also be enforced. This being so, the award required registration, and was inadmissible in evidence.

10. We, with respect, associate ourselves with the view expressed by the learned Judges of the Patna High Court. We heed not refer to the authorities cited by the learned Advocate for the Respondent, because they more or less lay down the same rule of law on the point under discussion as enunciated by the Patna High Court in the above case.

11. The result is that the appeal fails and is hereby dismissed. Having regard to the circumstances of this case, we order that the parties do bear their respective costs in this Court and the Court below.