
(1924) 10 MAD CK 0067
In the Madras High Court

Sriramsubba Rao and Another

APPELLANT

Vs

Chitturi Venkatratnam and Others

RESPONDENT

Date of Decision : 02-10-1924

Acts Referred:

Evidence Act, 1872 — Section 91

Citation : AIR 1925 Mad 945 : (1925) 22 LW 109

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point raised by Mr. Ramadoss in the two connected appeals (Second Appeals Nos. 848 and 849 of 1922) is that the lower Courts have gone wrong with regard to the finding that the property was purchased benami for the partnership in the name of the plaintiff in Suit No. 206 of 1917 (Second Appeal No. 848). This is a question of fact and the lower Courts have found that the plaint property was purchased in the name of Subba Rao plaintiff-appellant in Second Appeal No. 848, for the benefit of partnership. There is nothing in this contention.

2. The second contention is that Exhibit III which is an unregistered deed of release should not have been received in evidence and that no parol evidence should have been admitted to prove the transaction evidenced by Exhibit III. The contention of Mr. Ramadoss is that u/s 91 of the Evidence Act, parol evidence is not admissible to prove the terms of an agreement reduced to writing, Section 91 is "When the terms of ft contract; or of a grant, or of any disposition of property have been reduced to the form of a document etc., no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained." Subba Rao, the appellant in Second Appeal No. 848 was a partner along with two others and the partnership carried on business in timber. Owing to disagreement between the partners, Subba Rao

retired in 1906. He executed Exhibit III releasing his rights in the partnership in favour of J. V. Subbarao. The first respondent in both the appeals purchased the plaint property from this J. V. Subbarao in 1910. Sri Ram Subba Rao has brought Suit No. 206 of 1917 for possession of the property on the ground that he is solely entitled to it. The appellant in Second Appeal No. 849 is a decree-holder who attached the plaint property as if it belonged to Sri Ram Subba Rao. The first respondent in that appeal filed a claim petition which was ordered in his favour. Thereupon the appellant in Second Appeal No. 849 of 1922 brought the suit (Original Suit No. 65 of 1917). Both the Courts have found that the plaint property was purchased for the benefit of partnership in the name of Sri Rama Subba Rao. The question is whether the District Munaif and Subordinate Judge were right in allowing parol evidence to prove the relinquishment of the right of Sri Ram Subba Rao to J. V. Subba Rao. Seeing that the arrangement was reduced to writing, it is contended that the document ought to have been registered as it affected immovable property which the partnership possessed, namely, the plaint house, and under the release Sri Ram Subba Rao purported to release his right in the immovable property and, therefore, it ought to be registered, and not being registered, it is not admissible in evidence. The first respondent in the appeals claims under the sale-deed Exhibit 16 which makes specific mention of the document as giving a right to the vendors to sell the whole property to the respondent. It was attempted to be argued on behalf of the respondent in Second Appeal No. 848 of 1922 and the first respondent in Second Appeal No. 849 of 1922 that the release deed did not cover the immovable property belonging to the partnership. But from Exhibit 16 it is quite dear that Exhibit III was intended to cover the immovable property belonging to the partnership. That being so, that question is whether the lower Courts were right in allowing parol evidence to be adduced to prove the transaction. Where an agreement or any other transaction is reduced to writing and under which, right to immovable property is affected, such writing ought to be registered. Section 17 of the Registration Act requires all non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property to be registered. Sri Ram Subba Rao's share in the suit property was worth more than Rs. 100. Both the lower Courts have held that inasmuch as Subba Rao was a partner and as he retired from the partnership it was not necessary that there should be a document to evidence dissolution of property. No doubt under the partnership law it is open to a partner to retire from the partnership by getting his share of the partnership assets, and rest of the assets of the partnership whether they consist of movable or immovable property would become the property of the remaining member or members of the partnership. But in this case instead of Subba Rao being paid his share of the assets of the partnership, the partners entered into an arrangement by which he purported to release his right in the partnership. Exhibit III is treated as releasing Subba Rao's share in the partnership. In more than one place the executant states, "I have hereby relinquished my share, title and

interest (in the said business) in your favour." Lower down there is this clause "This is the release deed of share executed and given with my consent. Though it was not necessary to have a written document to evidence dissolution of partnership yet when the parties have entered into an arrangement like this which they reduced to writing, the question is whether that writing requires registration or not. Seeing that interest in immovable property has been released under the document, I think it does require registration, In *Bisheshar Lal v. Bkuri* (1920) 1 Lah. 436 it was held that though it was unnecessary for a Widow to execute a document relinquishing her right to the property of her husband on the ground of unchastity yet inasmuch as she did execute a document for the purpose of relinquishing her right in the property, it was held that that document required registration, and in the absence of registration the learned Judge held that the document was inadmissible in evidence and that Section 91 of the Evidence Act rendered inadmissible parol evidence to prove that there was an oral agreement of relinquishment preceding the written document. See also *Jairam Das v. Raj Narain* AIR 1922 All. 493. It is unnecessary to discuss the their cases quoted by Mr. Bamadoss on this point. I am quite satisfied that Exhibit Til is a document which requires registration and the document not having been registered, is admissible in evidence and parol evidence cannot be admitted to prove the arrangement embodied in Exhibit III.

3. The next question is what is the decree to which the plaintiff in Second Appeal No. 848 of 1922 is entitled. His contention that it was his property has been negatived. His suit is for possession of the whole property on the ground that he is solely entitled to it. Seeing that it is the property of the partnership he can only claim his share in the property. Seeing that he is entitled to a share in the property he is entitled to joint possession with the respondents. Considering all the circumstances of the case I am not prepared to give him costs in the suit. He waited so long to enforce his right if any, and I do not think the Court would be justified in giving him costs. He will have a decree for a joint possession but he will not be entitled to any mesne profits.

4. As regards Second Appeal No. 849, the appellant who is the decree-holder is entitled to execute the decree against the share of Sriram Subba Rao in the plaint property. The appellant can only attach the share of Subba Rao. As he wanted to attach the whole property as that of Subba Rao as he seems to have made common cause with Subba Rao, I think in the circumstances he should be allowed his costs. There will be a decree to the effect that he will be entitled to attach only the share of Subba Rao in the house. Each party will bear his own costs throughout in both the appeals.