
(1958) 08 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 29 (H) of 1957

Tek Bahadur Bhujil

APPELLANT

Vs

Debi Singh Bhujil

RESPONDENT

Date of Decision : 07-08-1958

Acts Referred:

Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 5

Citation : AIR 1959 Guw 109

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.M. Lahiri, A.G., N.M. Lahiri and N.M. Dam, for the Appellant; K.K. Chakravarty and K.P. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, J.—This is an application under Rule 38 of the rules for the Administration of Justice and Police in the Khasi and Jaintia Hills. Debi Singh Bhujil,—opposite party No. 1 brought a suit claiming partition and separate possession of the disputed properties. The trial court ordered partition of the half share of the landed and other Immovable properties of the Gurkha Dairy Firm as described in schedule of the plaint and also decreed the suit of the plaintiff for declaration of his half share of the income and profits of the business known as Gurkha Dairy from January, 1943 to the date of its closure.

2. According to the plaintiffs case, applicant Tek Bahadur Bhujil and Dhanbir Bhujil were brothers and the opposite party Beli Bhujelini was their mother. The Gurkha Dairy at Mawprem was acquired by the joint family in the name of the defendant No. 1 as he was the eldest son. Some other business was also started by the family such as Indian Sweetmeat House and Delkhosh Cabin at Police Bazar in the name of pro forma defendant No. 2. On 31st December, 1942, all the three brothers, with the consent of their mother, entered into an agreement under which the land and houses and business at Mawprem was to be enjoyed by

the plaintiff-respondent No. 1 and the applicant jointly half and half and the business at Police Bazar was given to defendant No. 2.

The mother was also given the right to enjoy the house property in Shillong Cantonment No. 5 Jhalupara Bazar. That was the first property purchased by the family in the name of the mother.

After this deed, the plaintiff-respondent's case was that the present applicant started to grudge the plaintiff-respondents interference in the management of the business. The plaintiff then asked him to partition the half share of the suit property and business and to render account to him, but he failed to do so and thus the suit had to be filed.

The defendant-appellant denied the claim of the plaintiff. His contention was that he and Dhanbir Bhujil were inhabitants of West Nepal. Their father died in 1916. Thereafter, the applicant with his mother, sister and the pro forma defendant, his brother came to Shillong in 1920. He sold away all the properties belonging to himself and his brother and with the sale proceeds thereof started one small "pan" shop.

The appellant then joined the Gurkha Rifles as Sepoy and went to Malakand. The pay of the appellant was drawn by the mother at Shillong. In September, 1922 he returned to Shillong and found his mother living with one Rabilal. This man had already his married wife in Nepal and out of the said wed-lock, the plaintiff-respondent was born. When the married wife of Rabilal came back, he left for Nepal with her and the mother of the appellant was left alone.

The appellant then left the service, married at Shillong, and started the dairy business at Police Bazar with his own money. With the earning of the business, he purchased properties in Shillong. He removed his dairy business in the year 1937 from Police Bazar and named it as Shillong Gurkha Dairy which he has been all along managing as his own personal business and has been paying Income Tax.

3. The applicant in substance denied the claim of the plaintiff and asserted that the business was his personal property and that there was no family property which could be partitioned. The deed relied upon by the plaintiff was denied by him. The trial court--the Assistant to the Deputy Commissioner Shillong, decreed the suit. On appeal the decision of the trial court was affirmed by Sri Lyngdoh, exercising the powers of the Deputy Commissioner, United Khasi and Jaintia Hills, Shillong. Against this order of Sri Lyngdoh, the present application has been filed and the decision is challenged on various grounds of law and facts.

4. The first contention raised is that Sri Lyngdoh had no jurisdiction to hear and decide the appeal inasmuch as he cannot be invested with the powers of the Deputy Commissioner under the rules Framed for administration of justice and police in the Khasi and Jaintia Hills--hereinafter called as the rules. Secondly, it was contended that the document of 1942 was not a family settlement and thus

cannot create any interest in the property in favour of the plaintiff.

It was further contended with regard to this document that it was neither a family arrangement nor was it binding and admissible in evidence as it was not registered. It was also lastly contended that there was no joint family and that there was no coparceners consisting of the appellant, his brother and the plaintiff-respondent and thus the plaintiff had no right to ask for partition.

5. The courts below after consideration of the evidence came to the conclusion that although the sale deed and the patta of the property in suit was in the name of the appellant, there was no evidence to prove the source of the consideration money; nor has it been established that the consideration was paid by the appellant. The document had been produced from the custody of the mother. The courts below came to the conclusion that the story of the defendant appellant that the property was purchased with his own earning and that the "Pan" shop was started with his money was not true.

That is a finding of fact and no sufficient grounds have been shown to us to differ from that finding. The main question argued by the counsel for the appellant is that the deed of 1942 under which the plaintiff claimed the right to the suit property is not a family arrangement inasmuch as there was no bona fide dispute to settle which the arrangement was arrived at. It was also contended that the family arrangement necessarily implies the arrangement among all the members of the family and admittedly the sister and the mother of the plaintiff were no party to this arrangement.

The arrangement, therefore, cannot constitute a family arrangement. It was also urged that the document was not admissible as it was not registered. The family arrangement is only a recognition of the existing rights of the members of the family and if it is intended to create any interest in favour of any of the parties to the arrangement by means of a document such a document cannot be considered a family arrangement.

6. In Vol 17 of Halsbury's Laws of England at p. 215 the law as to the meaning of the family arrangement has been summarised thus :

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family (a) either by compromising doubtful or disputed rights or by preserving the family property (b) or the peace and security of the family by avoiding litigation (c) or by saving its honour."

The word "family" has been given extensive meaning. Any member of the family may be a party to a family arrangement and thus arrangement between parent and children--both illegitimate and legitimate, uncles and nephews have all been supported as family arrangements,

7. In the case of Sahu Madho Das and Others Vs. Mukand Ram and Another, it was held that a compromise or family arrangement is based on the assumption

that there is on antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. It is due to this fundamental aspect of the family arrangement that no conveyance is required to create title in favour of the members of the family.

But it was further held by the Supreme Court that this principle can be carried further and that the courts lean so much in favour of the family arrangements which brings about harmony in a family, does justice to its various members and avoids in anticipation future disputes which might ruin them all that they have no hesitation in taking the next step and upholding an arrangement under which one set of members abandon all claim to all title and interest in all the properties in dispute and acknowledge that the sole and absolute title to all the properties resides in only one of their number and arc content to take such properties as are assigned to their shares as gifts pure and simple from him or as a conveyance for consideration when consideration is present.

8. Applying the principle laid down in this case, it is clear that the document of 1942 embodied a family arrangement. The appellant was claiming right to the entire property which he is still doing. The pro forma defendant was also claiming the other set of properties as his own. Under these circumstances, if all the members of the family together, to avoid future litigation and the ruin of the family arrive, at some family arrangement by which it is agreed that certain properties will be held jointly between some of them, it cannot be said that such an arrangement is not a family arrangement as there was no subsisting title in the plaintiff-respondent which could be recognized by the parties to the arrangement.

9. The next ground of attack by the counsel for the appellant as to the validity of the arrangement was that it was not signed by all the members of the family. The argument is that the mother who was also entitled to the property was no party to the deed. Besides, the mother admitted the appellant had a sister who was also no party to the deed. In the present case it was urged that it was necessary to constitute a valid family arrangement to obtain the signature and consent of the mother and the sister of the appellant as the property, according to the plaintiff-respondent had been purchased from the earnings of the shop started by the mother.

10. Reliance was placed on the following passage in Halsbury's Laws of England--3rd Edition Vol. 17 at p. 221 :

"A family arrangement come to by persons who have executed the instrument embodying the arrangement without the knowledge or in the absence of one member of the family intended to be affected thereby, is regarded, subject to any provision to the contrary express or implied, as having been entered into on the assumption that the absentee will in due time join in the transaction. His

concurrence, therefore, either by execution of the document or by adoptive acts is an implied condition of the validity of the arrangement, and if such concurrence is not obtained, the arrangement is not binding even on those parties who executed the document."

In our opinion, this passage does not support the contention of the appellant and does not apply to the facts of the present case. If the members of the family sit together, try to embody an arrangement in a document effecting the interest of all the members, then it is essential that the members whose interest have been affected by the arrangement should give his consent later to the arrangement.

But, where the members of the family do not consider any person as constituting a member of the family who is interested in the property, it cannot be said that the members when they arrive at the arrangement, intended to affect the interest of the other member who is no party to the arrangement. In such a circumstance, it cannot be said that the family arrangement is not binding and enforceable even as against the consenting parties and cannot be regarded as a family arrangement. It was then urged that there was no consideration for the interest of the appellant which he is alleged to have parted with under the deed in favour of the plaintiff-respondent.

11. Reliance was placed on the following observation in the case of *Mt. Dasodia Vs. Gaya Pd. minor through Sadho Ram*,

"An antecedent title is not essential for the validity of a family arrangement; such arrangement may bind the parties to it if it is for the benefit of the family or for the maintenance of peace and harmony and the avoidance of future discord or for the preservation of the property.

But there must be some kind of consideration before an agreement in respect to the division of family property can be held to be a valid family arrangement." Another learned Judge had observed at p. 106 of the report as follows :

"The plaintiff was a party to the agreement and as between the parties to the agreement the position is clear. The agreement cannot be said to be without consideration, nor need the quantum of consideration in such cases be scrutinised with meticulous nicety, and estoppel or equitable bar applies against the plaintiff."

In this case, the principle laid down in the case of *Williams v. Williams*, reported in 1867-2 Ch A. 294 was approved. In the Chancery case, Lord Chelmsford observed as follows :

"So far as the motives which led the appellant to admit his brother to an equal share of their father's property are concerned, this case differs from those cases of family arrangement which have formerly been the subject of decision. There was here no doubtful right to be compromised, no dispute between the brothers which was to be set at rest, no honour of the family involved; the appellant was merely prompted by respect for his father's intentions and by his affection for

his brother, both most excellent and praiseworthy motives, but scarcely sufficient to constitute such a consideration as would convert an act of kindness into a binding engagement. If therefore there had been no consideration for the appellant's brother, I should have been disposed to hold that he could not be bound by it. But it appears to me that there is quite sufficient consideration to prevent its being a mere voluntary agreement, and that the court will not be disposed to scan with much nicety the amount of the consideration."

12. In the present case, as we have already pointed out there was some property which was exclusively claimed by Dhanbir Bhujil. There were other properties which were exclusively claimed by the appellant and under these circumstances all the brothers entered into an arrangement by which some properties were given jointly to the plaintiff-respondent and the appellant and the other to Dhanbir Bhujil; and therefore, it cannot be said that there was no consideration in the present case and that the arrangement was not binding on the parties to the document.

13. The next point urged was that the family (arrangement was not admissible in evidence as it was not registered. The Registration Act was in force in this area in 1942 and u/s 17 of the said Act, as the document declared the right of the plaintiff it had to be registered. The court below found that the Registration Act was not in force in that area. According to the lower appellate court, the Registration Act came into force in this area in 1953 and the Stamp Act in 1954.

Thus strictly the provisions of the Registration Act were not applicable. The finding of the court below that the Registration Act was not in force is challenged. Reliance is placed on the two notifications. In the year 1934, the notification No. 224 LS G issued by the Government of India, in the Foreign and Political Department was published on 20-1-1934 for public information. The preamble of this notification is as follows :

"Whereas the Stem of Milliem in the Khasi and Jaintia Hills has ceded to the British Government the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923 of the villages of Mawkhar, Laetumkhra, Mission compound and Jajaw, South East Mawkhar, and Garighana Mawpram and Jhalupara, Laban, Lumparing-cum-Madan Laban and Malki, situate within the boundaries described in the Schedule annexed hereto, subject to the maintenance of all other his rights and powers as Siem of Myllem therein and with the reservation that the rivers Umshiri and Umkhra, so far as they are within the aforesaid villages, shall remain the property of the Myllem State."

14. In the Assam Gazatte dated 16-7-1941. Notification No. 207-B dated 19-6-1941 was published. This notification was issued by the Crown Representative in the exercise of his powers conferred by the India (Foreign Jurisdiction). Order in Council, 1937. By this notification, the Indian Registration Act was made applicable to the villages specified in the preamble to the notification, of 16-1-1934 referred to earlier.

The preamble of the earlier notification which we have quoted, mentions the area in which the property in dispute was situated and in which the document is said to have been executed. On the strength of these two notifications, it is urged that the Registration Act was in force in the year 1942 in this area. These two notifications were not brought to the notice of the lower appellate court, and the court below has relied upon another notification of 1953. It is urged by the respondent that this notification should not be considered at this stage.

The argument in the court below and which was re-iterated before us was that as the document under which the land was acquired in the name of the defendant was registered, that establishes that the Registration Act was in force in that area. This argument, by itself, will not establish the fact that the Registration Act was in force in that area and was rightly repelled by the court below.

As the two documents now relied upon by the appellant were not before the court below, in the normal course, we would have sent back the case for a further investigation into the matter whether the Registration Act was in force in that area or not. But as on the interpretation of the document, we are of the opinion that it does not come within Section 17 of the Registration Act and does not require registration, it is not necessary to send back the case.

Really the document only settles the dispute between the appellant Tek Bahadur who was claiming the entire property and the pro forma defendant Dhanbir Bhujil. Some of the properties were stated to exclusively belong to Dhanbir and the other properties were stated to be held jointly by the plaintiff and the appellant Tek Bahadur.

The title of the plaintiff in the property was not declared by this document. Section 17 of the Registration Act provides that any other non-testamentary instrument when such a document purports or operates to create, declare, assign, limit or extinguish, whether in present or in contingent, of the value of one hundred rupees and upwards to or in immovable property is compulsorily registrable.

15. The contention is that the family arrangement of 1942 was not only a recognition of antecedent title of the plaintiff, but it is this document itself which declares or creates the title of the plaintiff in the disputed land. The plaintiff was only the step-brother of Tek Bahadur. The property, even assuming the plaintiffs case to be correct, was acquired by the mother and therefore the plaintiff had no interest in the property in his own right and consequently the title is thus claimed through this document; Section 17 therefore applied to the case.

It is not necessary to refer to the large number of authorities cited by the parties. It is sufficient to say that a document called a family arrangement as such is not immune from registration. But it will be a question of fact to be determined in each case primarily on the interpretation of the document and the surrounding circumstances whether the document in question itself creates title or it only acknowledges the antecedent title to the property.

All the three brothers, although the plaintiff of the present suit was a step-brother, regarded the property as their co-parcenary property and in order to settle the claims of the two brothers each of whom was exclusively claiming the property, the document was executed in which the antecedent claim of the plaintiff was also recognized inasmuch as certain property was held by Tek Bahadur and the plaintiff jointly. This document therefore itself neither creates any title in the plaintiff nor declares his title and does not require registration.

16. The last point urged was that Sri Lyngdoh was not competent to hear the appeal as no power of the Deputy Commissioner could be conferred on him. Under paragraph 25 of the rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, the power was conferred on Sri Lyngdoh to exercise the powers of the Deputy Commissioner. Paragraph 25 provides that the administration of civil justice in the Khasi and Jaintia Hills is entrusted to the Deputy Commissioner, his Assistants, Sardars and Dolois and other chief village authorities.

Paragraph 33 provides for an appeal from the decision of the Assistant to the Deputy Commissioner to the Deputy Commissioner. It was urged that paragraph 25 gives no power to confer the powers exercisable by the Deputy Commissioner on any other authority. It is not necessary to elaborately deal with that question. Even if no appeal lay to Sri Lyngdoh, this Court, under paragraph 36 of the rules, has ample powers to interfere with the orders of courts below and even to examine the order of the trial Court on its merits. If the argument of the appellant is accepted, the result will be that the case will have to be sent back for decision of the appeal by a competent authority.

In the circumstances of the case, we do not think that such a procedure need be followed and we can examine the order of the original court on its own merits. On consideration of all the arguments advanced and the merits of the case; we are of the opinion that there is no substance in the appeal. In this view of the matter the orders of the trial Court as well as of the appellate court is perfectly valid.

17. There is, therefore, no force in the petition and it is accordingly rejected with costs. Hearing fee we fix to be Rs. 100/-.

H. Deka, J.

18. I agree.