
(2008) 02 RAJ CK 0045
In the Rajasthan High Court

Vishnu Swaroop

APPELLANT

Vs

Civil Judge (JD) and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Partnership Act, 1932 — Section 48, 49
Registration Act, 1908 — Section 17, 49

Citation : (2008) 105 RD 537 : (2008) 2 RLW 1777

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Munishwar Nath Bhandari, J.—By this writ petition, petitioner challenge the order dated 14.5.2007, whereby the application moved by non-petitioner Hari Ram was accepted. Facts relevant to the present case are that the petitioner filed a suit for declaration and permanent injunction before the Civil Court and therein, a reference of a document executed on 30.12.1964 as well as a partnership deed dated 17th February, 1993 was made and those documents were also submitted. The respondent-Hari Ram, who is defendant in the suit, raised objection regarding admissibility of those documents, being unregistered documents. The objection, so raised by way of an application was duly replied by the petitioner showing that the document dated 30.12.1964 was nothing, but a settlement of partnership of properties between the partners and the said document was otherwise produced for collateral purposes.

2. The learned Court below considered the application moved by the respondent-Hari Ram and, thereupon, after referring the document and taking note of the nature of the suit, came to the conclusion that the document dated 30.12.1964 is nothing but a sale effected pursuant to the auction of the property and thus, cannot be said to be document prepared between the brothers to show the settlement of the property. It was, therefore, held that in absence of registration of the document, being a sale-deed, the document cannot be made admissible in

evidence. Same way, even the partnership deed was not accepted, being unregistered and unstamped, thus, finding it not to be admissible in evidence as per the provisions of Section 49 of the Act and thereby the application of the respondent-Hari Ram was accepted.

3. Learned Counsel for the petitioner submits that the document dated 30.12.1964 is not a sale-deed but a settlement between the brothers and otherwise between the partners regarding the property of the partnership. When the distribution of the partnership property is made to the partners, the document created for that purpose, is not required to be registered. The learned Counsel for the petitioner made reference of judgments of the Supreme Court as well as this Court in that regard. In the case of Gangadhar Madhavrao Bidwai (Dead) by Lrs. Vs. Hanmantrao Vyankatrao Mungale, , the Hon''ble Apex Court held that even an unregistered deed of dissolution of partnership can be considered in evidence.

4. The fact of the case was that a land belonged to the respondents alone, was utilized by the partners treating it to be the partnership property. On dissolution of partnership, a deed was prepared and it being a property belonging to the partner, deed was not registered. It was held by the Hon''ble Apex Court that deed of dissolution was not required to be registered and the recital therein was made admissible in evidence. The same way, in other case of S.V. Chandra Pandian and Others Vs. S.V. Sivalinga Nadar and Others, the Hon''ble Apex Court held that on dissolution of partnership distribution of residue among partners after settlement of accounts in terms of Section 48 of the Partnership Act is to be treated as distribution of movable property and not a partition, therefore, the provisions of Section 17 of the Registration Act do not apply. Same way, the learned Counsel for the petitioner submitted a reported judgment in the case of Radhomal Alumal v. K.B. Aollah Baksh Khan Haji Muhammad Umar and Anr. (AIR 1942 Sind 27, wherein, after considering Section 49 of the Registration Act, an unregistered partnership deed was made admissible for collateral transactions. In view of the judgment, referred to above, learned Counsel for the petitioner prayed for setting aside the order impugned.

5. Learned Counsel for the respondents, on the other hand, submitted that the document in question cannot be made admissible, even if it is produced for collateral purposes, being not the registered document which otherwise required to be registered as per the provisions of the Registration Act. Referring to the contention of the plaintiff, learned Counsel for the respondents submits that the claim made by the plaintiff-petitioner therein was mainly on the basis of the document dated 30.12.1964, hence the said document cannot be said to be produced for collateral purposes.

6. Therefore, emphasizing on the aforesaid document, it was submitted that in absence of registration, being a sale-deed pursuant to the auction, it was rightly denied for consideration in evidence by the Court below. Same way, it is submitted that the partnership deed is required to be prepared on a stamp paper,

hence the partnership deed exists on the plain paper cannot be accepted in evidence. Hence, it was prayed (sic) the writ petition, preferred by the petitioner, deserves to be dismissed. Learned Counsel for the respondents referred to the judgments in *Javer Chand and Others Vs. Pukhraj Surana*, ; *Smt. Jamna Bai Vs. Tulsi Ram*, and *Harshvardhan Singh Vs. Ranveer Singh and Others*, in support of his contentions.

I have considered the rival submissions of the learned Counsel for the parties and interim order as well as the judgments cited.

7. The perusal of the contents of the plaint shows that the plaintiff has made his claim on the basis of document dated 30.12.1964, stating therein that pursuant to the aforesaid document, the property came in the share of the plaintiff as well as defendants No. 2 and 3 and, thereafter, being the brothers, the property was used by metes and bounds and the injunction was sought due to the fact that the entire property remained undivided and the defendants were trying to encroach upon the entire property, therefore, the suit for declaration and injunction was filed. This, the contents of the suit show that the document dated 30.12.1964 cannot be said to be document produced for collateral purposes.

8. However, it is necessary to look into the fact that what is the nature of the document dated 30.12.1964. Perusal of document shows that it is nothing but a settlement between the partner regarding the partnership property itself and by virtue of the aforesaid document, partners were to get their shares in the terms indicated in the document and the said document is 30 years old. Learned Court below has considered the aforesaid document to be a document of sale of the property by way of auction, therefore, the application moved by the respondent-Hari Ram was accepted. The perusal of document dated 30.12.1964 (Annex. 1) cannot be said to be a sale-deed, merely for the reason that pursuant to the arrangement made therein, property of Krishna Mill was to come to the share of one partner who held the property on a highest bid amount. In fact, the nature of arrangement made in the document is nothing but is a mode of settlement of partners' share and thereby the Court, without going into the substance of the document, wrongly treated it to be sale-deed. The legal position in that regard is otherwise supported by the two judgments of the Hon'ble Apex Court referred to above (*Supra*) and if the document at Annex. 1 dated 30.12.64 is looked into, it is otherwise to be considered as dissolution of the partnership, because the document provides receipt of the highest amount for the partner's property, but then it was further provided to distribute the said amount between the partners, if it found to be surplus, after clearing the dues.

9. Therefore, merely for the reason that there was a further arrangement of registration of Mill by the highest bidder, it cannot be said to be a sale deed as has been held by the Court below. It being an arrangement between the partners in regard to the partnership property on dissolution or otherwise, the document was not required to be registered. Therefore, the Court below wrongly refused to accept the said document dated 30.12.1964 in evidence.

10. So far as the partnership deed is concerned, though it is required to be on the stamp paper, but perusal of the contents of the suit and the prayer made therein does not show that the relief is claimed on the basis of the said document, rather it is only for collateral purpose that the document was produced. Hence, the said document could not have been denied for consideration in evidence, for collateral purpose, therefore, the impugned order of the Court below is not sustainable in regard to the said document also.

In view of the discussion made above, the writ petition is allowed, the order impugned is set aside with a direction to the Court below to consider both the documents in evidence.