

## Mt. Thekura And Ors. vs Sukhraj Singh on 4 November, 1952

**Equivalent citations: AIR1953ALL350, AIR 1953 ALLAHABAD 350**

### JUDGMENT

Agarwala, J.

1. This is a defendants' appeal arising out of a suit for possession of a portion of plot no. 278B in Mahal Chitta Singh and demolition of a building erected on it by the defendant-appellant. The plaintiff and one Jagannath were co-sharers in Mahal Chitta Singh. Jagannath gave permission to the defendant-appellant in construct a building on the plot in suit. In pursuance of the permission, the defendant-appellant raised a construction on the plot. The plaintiff-respondent filed a suit, which has given rise to this appeal, for demolition of this construction and for possession of the plot on the ground that one co-sharer had no right to give permission to make constructions on a pint piece of land.

2. In defence, it was urged that there was a private partition between the cosharers in the mahal and the plot in suit had fallen to the lot of Jagannath's predecessor-in-title. In support of this plea a partition chithi showing the plots which had been allotted to Jagannath's predecessor-in-title was produced by the defendant-appellant. Relying on this document, as also on other documents, the trial Court held in favour of the defendants and dismissed the suit. The lower appellate Court, however, held that the chittha was an instrument which required stamp and also registration and that not being stamped nor registered it was not admissible in evidence even for a collateral purpose, namely, for the purpose of showing the nature of possession of Jagannath or his predecessor-in-title. The lower appellate Court, therefore, decreed the suit for possession and demolition.

3. In this second appeal it has been urged on behalf of the defendant-appellant that the parti-tion chitthi was admissible in evidence, that neither stamp duty was payable on it nor did it require registration and that, in any case, even if it required registration but no stamp duty, it was admissible in evidence for the collateral purpose of showing the nature of Jagannath's possession.

4. Unfortunately, the respondent is not represented before me--his counsel having intimated to this Court that he had no instructions in the case.

5. The partition chittha, EX. A-4/DWI is in the following terms :

"Chitthi (that is, memorandum) of private partition, mahal Chatta Singh, ten annas pukhtaadri, mauza Mandoli, pargaua Mahona, tahsil Malihabad, zila Lucknow, relating to the lot of Sheomangal Singh wa Jadunath Singh wa Rameshwar Bux Bingham, corresponding to 1336 Fasli."

Then follow the numbers of the plots with their description and at the end there is a total of the area and the revenue of the whole lot. The document is signed by Shoo Mangal Singh and Bhag-wan Bux Singh. Bhagwau Bus Singh was the other cosharer. The questions are whether this document required to be stamped under the Stamp Act and to be registered under the Registration Act. The Stamp Act defines an "instrument" as follows :

" 'Instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

Ex. A4/DWI is certainly a document which records the fact that certain property was allotted to the lot of certain persons at a private partition. It is signed by two of the co-sharers. It is, therefore, clearly a document by which a right or liability is purported to be "recorded". But every instrument is not required to be stamped under the Stamp Act. The Stamp Act requires only certain kinds of instruments to be stamped. Unless EX. A4/DWI is an instrument of partition, it does not seem to fall under the category of any other instrument liable to be stamped under Schedule I, Stamp Act. Can it be called "an instrument of partition"? An "instrument of partition" has been defined as meaning "any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any civil Court and an award by an arbitrator directing a partition."

For an instrument to be an "Instrument of partition" it is necessary that there should be more than one owner of the property, that they should divide the property or agree to divide the property in severalty. The document must, on the face of it, show that the co-owners of a particular property have agreed to divide that property or have actually divided that property in a particular manner.

6. The document in question does not exhibit an agreement between the parties to divide the property. It does not also exhibit a division of property. In order that there may be a division of property within the meaning of the expression "Instrument of partition", the deed of partition must mention the entire property which is divided and its division must be shown in separate lots between the co-owners. Nothing of the sort has been done in EX. A-4/DWI. It merely records that certain property was allotted to certain cosharers. This falls short of what the definition of the expression "Instrument of partition" requires. In my opinion the chittha in question EX. A-4/DWI is not an "Instrument of partition." As such, it did not require to be stamped.

7. The lower appellate Court has relied on a decision of the Privy Council in Ram Rattan v. Parma Nand, 1946 oudh W. N. 216 (P. C.) In that case it was held by the Judicial Committee that certain documents which were marked C and D and which were stated to be "Partition Chitthas" required to be stamped under the Stamp Act and that not being so stamped, were not admissible in evidence for any purpose whatsoever--even for a collateral purpose. The terms of the documents C and D are not mentioned in the judgment. It is quite possible that the two documents in that case taken together amounted, in substance, to "an instrument of partition", as denned in the Stamp Act, The same, in my opinion, cannot be said about Ex. A4/DWI in the present case.

8. The next question is whether the document EX. A4/DWI requires registration. In my opinion it is an instrument which required registration. Section 17, Registration Act, states what documents must be registered. The relevant Clause (h) runs as follows :

"Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in the present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property."

In my judgment, the document EX. A4/DWI does purport to "declare" the right, title or interest of certain cosharers in certain property. It says that certain persons named therein have been allotted the property described therein at a private partition. If the matter were *res integra*, I would have held that this chittha, EX. A4/DWI, fell within the purview of Clause (b) of Section 17, Registration Act, and required registration. As against this view, however, learned counsel for the appellant has invited my attention to the case of *Abdul Haq v. Mohammad Hashim*, A. I. R. 1946 ALL. 200. In that case certain Chitthas of partition were held not to require registration. It was observed :

"The question whether partition Chitthas require registration under Section 17(1)(b) must be decided with reference to the contents and nature of the document and the surrounding circumstances in each particular case."

The terms of the chitthas in that particular case have not been set out. The question whether the document required registration was considered on the footing whether the document was a deed of partition or not. Apparently, it was not brought to their Lordships' notice that even though the document is not a deed of partition, it may require registration. Section 17, Clause (b) lays down that a document must be registered if it declares "any right, title or interest in immoveable property of the value of one hundred rupees or more. It is not necessary, therefore, that under the Registration Act partition chitthas must amount to partition deeds. It is enough that they merely declare a particular cosharer's right in a particular lot allotted to him at a particular partition. Their Lordships further held that even if the document required registration, it could be used for the collateral purposes of showing the nature and character of possession of the party concerned. This follows from Section 49, Registration Act. I respectfully agree with this view and hold that even if EX. A4/DWI required registration it could be used for the collateral purpose stated above. The distinction between Section 49, Registration Act, and Section 35, Stamp Act, may here be noted. If a document is not stamped, Section 35, Stamp Act, makes it inadmissible for any purpose whatsoever i. e., it cannot be used even for a collateral purpose. But if the document is either properly stamped or is not required to be stamped but is required to be registered, Section 49 declares it to be inadmissible for the purpose of effecting any right in immoveable property, comprised therein, or be received as evidence of any transaction affecting such property, but it permits such document to be used as evidence of any collateral transaction not required to be effected by a registered instrument.

9. The learned Judge of the Court below was in error in excluding the document from consideration. In view of the above, the appeal must be allowed, the order of the Court below set aside and that of the trial Court restored. As the respondent is not represented I make no order as to costs of this

appeal. The appellant will have his costs in both the Courts below.