Sita Ram Bhama vs Ramvatar Bhama on 23 March, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3057, 2018 (15) SCC 130, (2018) 141 REVDEC 250, (2018) 2 PAT LJR 279, AIR 2018 SC (CIV) 2479, (2018) 3 PUN LR 662, (2018) 2 RECCIVR 741, (2018) 4 MAD LJ 454, (2018) 3 MAD LW 623, (2018) 5 SCALE 122, (2018) 1 ALL RENTCAS 794, (2018) 5 ANDHLD 40, (2018) 6 ALLMR 488 (SC), (2018) 187 ALLINDCAS 23 (SC), (2018) 129 ALL LR 313, (2018) 2 CIVILCOURTC 806, (2018) 2 CURCC 216, (2018) 3 JCR 142 (SC), (2018) 2 GUJ LH 412, 2018 (4) KCCR SN 456 (SC), AIRONLINE 2018 SC 1313

Author: Ashok Bhushan

Bench: Ashok Bhushan, A.K. Sikri

1

REPO

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2018
(ARISING OUT OF SLP(C)NO.11067 OF 2017)

SITA RAM BHAMA … PETITIONER

VERSUS

RAMVATAR BHAMA … RESPONDENT

J U D G M E N T

ASHOK BHUSHAN, J.

The appellant, who was plaintiff in Civil Suit No.4 of 2011, has filed this appeal questioning the judgment of the High Court of Judicature for Rajasthan at Jodhpur dated 23.01.2017 by which writ petition filed by the appellant against the order dated 03.03.2015 of the Additional District Judge has been dismissed.

2. Brief facts of the case which are necessary to be noted for deciding this appeal are:

We shall refer the parties as described in the plaint.

Plaintiff and respondent are real brothers being sons of late Devi Dutt Ji Verma. Plaintiff's case is that his father Devi Dutt Verma on 25.10.1992 decided to divide his self□acquired movable and immovable properties between plaintiff and defendant. The late father, however, did not execute any settlement deed. Devi Dutt Verma died on 10.09.1993 and thereafter on 09.09.1994 plaintiff and defendant recorded a memorandum of settlement as decided by their father regarding his self□ acquired properties. The memorandum of settlement was signed by mother of the parties as well two sisters had signed as witnesses. According to memorandum of settlement both residential house as well as shop in the Aguna Bazar were distributed as decided by their late father.

3. A Civil Suit No.5 of 2010 was filed by the plaintiff praying for partition of the residential house as well as the shop. In the suit an application under Order VII Rule 11 of the Civil Procedure Code was filed by the defendant, Ramvatar Bhama taking the plea that on 25.10.1992 during the life time of Shri Devi Dutt Verma, the father of the plaintiff and defendant, had partitioned the house and the shop. Southern portion of the house came in the share of the plaintiff and northern part came in the share of the defendant. In confirmation of the earlier partition dated 25.10.1992 the family settlement dated 09.09.1994 was executed which was signed by the plaintiff and defendant along with both the sisters as well as mother. It was pleaded by the defendant, in view of the aforesaid, that there was no cause of action for the plaintiff to file a partition suit. Defendant prayed that suit of the plaintiff is liable to be dismissed.

4. The trial court vide its order dated 19.01.2011 allowed the application filed by the defendant under Order VII Rule 11 CPC and dismissed the suit for want of cause of action in favour of the plaintiff. The civil court accepted the case of the defendant that the parties which were in joint family have been divided, there being nothing joint between the parties, there is no cause of action for the plaintiff for filing the suit for partition. The relief for permanent injunction was also held to be related to the partition.

5. Another Civil Suit No.4 of 2011 was filed by the plaintiff claiming that after dismissal of the earlier suit of the plaintiff on 19.01.2011, defendant broke open the lock of the house and took possession of the house. Plaintiff prayed for decree of possession against the defendant as well as decree of permanent injunction. Plaintiff also sought for mesne profit and expenses.

6. In the suit, plaintiff has filed the document dated 09.09.1994 evidencing family settlement which was claimed by the plaintiff as memorandum of settlement. An application under Order XIII Rule 3 CPC and Article 45 and Section 35 of the

Indian Stamp Act and Sections 17 and 49 of the Indian Registration Act, was filed by the defendant claiming that document dated 09.09.1994 being not a registered document and being not properly stamped is not admissible in evidence, same may be rejected. The application was replied by the plaintiff. The trial court vide its order dated 03.03.2015 allowed the application of the defendant holding that the document dated 09.09.1994 is a family settlement deed and a relinquishment document which is not admissible as evidence being inadequately stamped and not being registered. Against the said order dated 03.03.2015 writ petition was filed by the plaintiff which was dismissed by the High Court upholding the order of the trial court. The High Court also took the view that so called family settlement takes away the share of the sisters and mother, therefore, the same was compulsorily registrable. Aggrieved by the said order, the plaintiff has come up in this appeal.

7. Shri Ajit Kumar Sinha, learned senior counsel, appearing for the appellant submits that document dated 09.09.1994 is only a memorandum of partition which took place on 25.10.1992 when father of the parties had partitioned the house and the shop. The memorandum of family settlement is not compulsorily registrable. The document itself being not a family settlement rather only a memorandum ought to have been accepted by the trial court. He further submits that in the earlier suit filed by the plaintiff being Suit No.5 of 2010, the suit was dismissed under Order VII Rule 11 CPC on the plea of the defendant that the partition has already taken place between the parties as claimed by the plaintiff, hence, no cause of action has arisen for filing a suit for partition. He submits that partition effected by the father of the parties on 25.10.1992 which was subsequently recorded on 09.09.1994 having already been accepted, it is not open for trial court to reject the document dated 09.09.1994 for being taken in evidence. It is submitted that by order of the court below the plaintiff has become remedy□less.

8. Learned counsel for the respondent refuting the submission of the learned counsel for the appellant contends that the trial court as well as the High Court has rightly come to the conclusion that document dated 09.09.1994 was compulsorily registrable. It being neither registered nor duly stamped has rightly been rejected by the trial court from being taken in evidence. He submits that the High Court has rightly dismissed the writ petition filed by the plaintiff.

9. We have considered the submissions of the parties and perused the records.

10. The only question which needs to be considered in the present case is as to whether document dated 09.09.1994 could have been accepted by the trial court in evidence or trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 09.09.1994 as memorandum of family settlement. Plaintiff's case is that earlier partition took place in the life time of the father of the

parties on 25.10.1992 which was recorded as memorandum of family settlement on 09.09.1994. There are more than one reasons due to which we are of the view that the document dated 09.09.1994 was not mere memorandum of family settlement rather a family settlement itself. Firstly, on 25.10.1992, the father of the parties was himself owner of both, the residence and shop being self□acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a Will, so that father could have made Will in favour of his two sons, plaintiff and defendant. Neither the plaintiff nor defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10.09.1993. After his death plaintiff, defendant and their mother as well as sisters become the legal heirs under Hindu Succession Act, 1955 inheriting the property being a class I heir. The document dated 09.09.1994 divided the entire property between plaintiff and defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, courts below are right in their conclusion that there being relinquishment, the document dated 09.09.1994 was compulsorily registrable under Section 17 of the Registration Act.

11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119. The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:

> "10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:
>
> (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
>
> (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
>
> (3) The family arrangement may be even oral in which case no registration is necessary;
>
> (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.

Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document

and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently."

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application under Order XII Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

13. There is only one aspect of the matter which needs consideration, i.e., whether the document dated 09.09.1994 which was inadmissible in evidence could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. A two-Judge Bench judgment of this Court in Yellapu Uma Maheswari and another vs. Buddha Jagadheeswararao and others, (2015) 16 SCC 787, is appropriate. In the above case also admissibility of documents Ext. B-21 dated 05.06.1975 a deed of memorandum and Ext. B-22 dated 04.06.1975 being an agreement between one late Mahalakshamma, respondent No.1-plaintiff and appellant No.1-defendant came for consideration. Objection was taken regarding admissibility which was upheld both by the High Court and trial court. Matter was taken up by this Court. In the above case, this Court held that the nomenclature given to the document is not decisive

factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents. This Court after considering both the documents, B-21 and B-22 held that they require registration. In paragraph 15 following was held:

> "15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition."

14. After holding the said documents as inadmissible, this Court further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paragraphs 16 and 17 following has been laid down:

> "16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy(AIR 1969 AP 242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to

mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy."

15. Following the law laid down by this Court in the above case, we are of the opinion that document dated 09.09.1994 may be admissible in evidence for collateral purpose provided the appellant get the document impounded and to pay the stamp duty together with penalty as has been directed in the above case.

16. In the result, this appeal is partly allowed in the following manner:

The order of the trial court as well as the High Court holding that the document dated 09.09.1994 required compulsory registration is upheld. Following the aforesaid view of this Court in Yellapu Uma Maheswari (supra), this appeal is partly allowed holding that deed dated 09.09.1994 is admissible in evidence for collateral purpose subject to payment of stamp duty and penalty.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI, MARCH 23, 2018.