

Allahabad High Court

Ram Gati Chaube vs Ran Adhar Chaube on 17 May, 1961

Equivalent citations: AIR 1961 All 537

Author: Dwivedi

Bench: M Desai, B Mukerji, S Dwivedi

JUDGMENT Dwivedi, J.

1. Gurtu, J. has referred to us the entire appeal with the following question for specific opinion :

"Whether the order of the mutation court embodying a petition of compromise affecting immovable property worth more than Rs. 100/- which purports to regulate the future rights of the parties in that property is conclusive and binding upon them in respect of the property, even though it is not registered?"

2. It seems to me that the question assumes three things firstly, that in the instant case the order of the mutation court embodies the petition of compromise affecting immovable property worth more than Rs. 100 which purports to regulate the future rights of the parties in that property; secondly, that the petition of compromise, having been embodied in the order, becomes admissible; and, thirdly, the compromise evidenced by the order is conclusive and binding upon the parties. I have, therefore thought it proper to split up and reformulate the question in my own language in this manner :

1. Whether the order of the mutation court embodies the petition of compromise filed by the parties before us in the court of the mutation officer?

2. Whether the said compromise application-declares rights to immovable property worth more than Rs. 100/-, and is inadmissible in evidence for want of registration?

3. If the answer to the first question is in the affirmative, whether the order of the mutation-court is an order within the meaning of Clause (vi) of Sub-section (2) of sec. 17 of the Registration Act?

4. If the answer to the third question is in the affirmative, whether the said order is admissible in evidence?

5. If the answer to the 4th question is in the affirmative, whether the compromise embodied in the order also becomes admissible in evidence?

6. Whether the compromise as evidenced by the order is binding and conclusive on the parties, even though it is not registered as required by law?

3. Facts no longer in dispute are these: In 1942. on the death of Mst. Gaugi, the widow of the last male owner, Sheo Shankar Chaube, the-appellant, a son of the daughter of his predeceased son, and the respondent, his nephew, claimed mutation of their names over the deceased's estate, which also comprised the suit property, but by an application, dated January 13, 1943. they requested the Sub

Divisional Officer, seized of the mutation case', to mutate their names over the property in accordance with the mutual settlement embodied in the application.

Accordingly the appellant's name was mutated, in respect of the suit property, and the respondent's name over the remainder. Respondent, however, instituted a suit for recovery of the suit-property; the suit was decreed on appeal by the Civil judge, who held that the application, dated January 13, 1943 which formed the basis of mutation, could not confer any right to suit property on the appellant and was inadmissible in evidence for want of registration.

4. I shall now narrate the material contents of the compromise application. It comprises three parts, the preamble, the prayer and the terms of compromise, and the list of property. The preamble recites the claim of each party to the estate, and then declares that with a view to avoid ruinous litigation they have settled their differences and have arrived at a compromise through good counsel of their relations. There is then a prayer that the case should be decided and the names of the parties should be mutated in accordance with the compromise. Then there follow two clauses; (i) the name of the appellant should be mutated over the suit property. In the sentence following it is declared that over that property he would remain in possession as absolute owner and that the respondent would have no concern with it; (ii) the name of the respondent should be mutated over the remaining property. In the next sentence it is then declared that he would possess it as absolute owner, and that the appellant would have no concern with it, either in praesenti or in future. The list of property dealt with is then mentioned in the application.

5. It is common ground that the property falling to the share of the appellant was worth more than Rs. 100/-. It is not disputed on behalf of the appellant and I think rightly that the compromise application required registration under Clause (b) of Sub-section (1) of Section 17 of the Registration Act, for it declared the parties to be absolute owners of their shares (See *Mt. Jagrani v. Bisheshar Dube*, 14 All LJ 449 : (AIR 1916 All 1) (FB); *Ramgopal v. Tulsi Ram*, 26 All LJ 952 : (AIR 1928 All 641) (FB); *Mt. Mahadei Kunwar v. Padarath Chaube*, 1937 All LJ 627 : (AIR 1937 All 578) (FB). Not being registered it is ineffective and inadmissible in evidence.

6. The Sub Divisional Officer, to whom the application was presented, passed a monomial order, 'approved', and thereafter the names of the parties were mutated in village records. The primary question is whether that order embodies the entire terms of the compromise application. An order, which explicitly records the entire compromise application, poses no problem (See *Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd.* 46 Ind App 240 : (AIR 1919 PC 70)) but an ambiguous order needs judicial exposition as to what it does and what it omits to do (See *Pranal Ann v. Lakshmi Anni*, ILR 22 Mad 508 (PC)).

In *Pranal Anni's* case, ILR 22 Mad 508 the Privy Council said that the objection based on non-registration of the compromise did not 'apply to its stipulations and provisions in so far as these were incorporated with, and given effect to, by the order made upon it by the Subordinate Judge'. On a close scrutiny of the compromise and the order it was, however found that the order did not 'refer to or narrate' those terms of the compromise which related to property outside the suit.

The word 'approved' suggests that the Sub-Divisional Officer only granted the prayer expressly asked for in the compromise application, the express prayer being that the names of the parties should be mutated over specified properties. The order should therefore be deemed to refer to and embody only those provisions of the compromise which specified the properties; it cannot be made to refer to and embody those provisions of the compromise which declared the parties to be absolute owners.

Neither was a request made to embody them in the order, nor can it be assumed that the Sub-Divisional Officer, who had no power to decide property rights, gratuitously incorporated them in his order. Since the order is ambiguous. It must be presumed that it directed what he was asked to do and what he could lawfully do. I am, therefore, of opinion that his order did not embody that part of the compromise application which declared the parties to be absolute owners.

7. I, therefore, answer the first question formulated by me in the negative.

8. In view of my opinion on the first and second questions the other questions become moot and it is not necessary to express opinion on them in this case.

9. The appeal accordingly fails and I dismiss it with costs.

Desai, C.J.

10. I agree.

Mukerji, J.

11. I also agree.