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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.02.2021
Pronounced on	29.03.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.472 of 2010
and
M.P.No.1 of 2010

1.V.Nagammal
2.K.Rajammal
3.G.Parvathi

... Appellants/Plaintiffs

Vs.

Palanisamy @ Kannaraisu

... Respondent/Defendant

PRAYER : The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree dated 30.12.2009 in A.S.No.123 of 2008 on the file of the Principal District Judge's Court, Coimbatore, modifying the judgement and the decree dated 24.04.2008 in O.S.No.423 of 2006 on the file of the II Additional Subordinate Court, Coimbatore.

For Appellants : Mr.C.R.Prasanan
For Respondent : Mr.S.Parthasarathy
(Senior Counsel)
for Mr.J.Ramakrishnan

JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree dated 30.12.2009 in A.S.No.123 of 2008 on the file of the Principal District Judge's Court, Coimbatore, modifying the judgement and the decree dated 24.04.2008 in O.S.No.423 of 2006 on the file of the II Additional Subordinate Court, Coimbatore and set aside the same.

2. Plaintiffs and defendant are the sisters and brother. The suit property is a self-acquired property of their father. He executed his last Will on 30.11.1981. As per the Will, he bequeathed life estate to his wife and vested remainders to his children (who are plaintiffs and defendant herein). The



plaintiffs' mother Ramathal predeceased their father. The father also died on 30.06.1999. Subsequent to the death of their father, the Will came into effect and plaintiffs and defendant have inherited the same and they are in joint enjoyment. The defendant is physically cultivating the property on behalf of the other sharers. But he did not cooperate with the plaintiffs for an amicable division of the suit property and hence, the plaintiffs have filed this suit for partition and division of their 3/4th share in the suit property. The suit property is not the self-acquired property of Perumal Gowder but it is the ancestral property of Perumal Gowder and the respondent/defendant. The property described under the said Survey No.597/B2 does not belong to the family of the respondent/defendant. When Perumal Gowder was alive, the defendant filed a suit for partition in O.S.No.3318 of 1981 and the suit ended in a compromise and the compromise decree was passed on 23.04.1985. As per the compromise decree, the suit property which is described as the first item of 'A' Schedule, has been allotted to the share of the defendant and property described as 'B' Schedule in the compromise decree, has been allotted to the share of the plaintiffs' father and hence, the plaintiffs cannot claim any share in the suit property which is shown as first item in Schedule 'A' of Ex.B2 (final decree in O.S.3318/1981). The Will dated 30.11.1981 was superseded by the compromise decree passed on 23.04.1985 in O.S.No.3318 of 1981. The plaintiffs are not in joint enjoyment of the property and they are not entitled to any share in the suit property and hence, the suit was dismissed.

3. On the side of the plaintiffs, 3 witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A4 were marked. On the side of the defendant, 1 witness was examined as D.W.1 and Exs.D1 to D14 were marked.

4. After concluding the trial, the learned Trial Judge has decreed the suit as prayed for and passed a preliminary decree for 3/4th shares of the plaintiffs in the suit property. Aggrieved over that, the defendant filed the first appeal. The First Appellate Judge misguided himself by construing that all the properties that have been shown in Ex.B2 (final decree) were the suit properties of the suit. The First Appellate Court has accepted the validity of Ex.B2 (compromise decree) and held that the plaintiffs have got 3/4th share only in the first part of the suit property (92 cents in Survey No.597/B2). So the First Appellate Court modified the judgement and decree of the Trial Court to the effect that the appellants/plaintiffs are entitled to 3/4th share only in respect of the 92 cents in Survey No.597/B2. That means other part of the suit property (i.e) 2.40 acres in Survey No.48/24 is accepted to be the exclusive



property of the respondent/defendant by virtue of the earlier compromise decree Ex.B2. Aggrieved over that the appellants have filed this Second Appeal.

5. The second appeal has been admitted on the following questions of law:-

1. Whether in law the lower appellate court erred in holding that the suit A schedule properties are joint family properties based on the theory of blending in the absence of any pleading and evidence to that effect?

2. Whether in law the appellate Court erred in holding that the compromise decree in O.S.No.3318 of 1981 does not require registration under Section 17 of Registration Act overlooking that if the compromise decree was to create for the first time or title or interest in immovable property would require registration as held in Judgement reported in 1996 AIR 196?

3. Whether in law the Court below erred in holding that the defendant has pre-existing right in the suit properties which are self acquired properties of the father Perumal Gowder acquired from his mother?

6. The relationship between the appellants and the respondent is not denied. The appellants and respondent are the children of one Perumal Gowder for whom the suit property belonged. The father of the appellants had executed a Will on 30.11.1981 in respect of the suit properties and he died on 30.06.1999. The said fact was not denied. However, during the lifetime of Perumal Gowder, the respondent filed a suit for partition in O.S.No.3318 of 1981 and a compromise decree was passed. As per the compromise, suit 'A' schedule properties of O.S.No.3318 of 1981 was allotted to the share of the respondent and suit 'B' schedule properties was allotted to the share of Perumal Gowder. A part of the suit property which measures 2.40 acres in Survey No.48/24 forms part of 'A' schedule in O.S.No.3318 of 1981 and hence it fell to the share of the respondent/defendant.

7. The contention of the appellants is that the above said property of 2.40 acres was not the ancestral property of Perumal Gowder and hence, the respondent/defendant's claim in the said property in the earlier suit in O.S.No.3318 of 1981 is not correct and for the very same reason, the respondent/defendant could not have had any pre-existing right in the same. Hence, it is submitted by the appellants that the compromise decree



passed in the earlier suit ought to have been registered. So, it is claimed by the appellants that the said compromise decree being an unregistered one is not admissible in evidence. The certified copy of the compromise decree has been marked as Ex.B2.

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8. The learned Trial Judge has observed that the said 2.40 acres in Survey No.48/24 was originally belonged to one Anjammal who was the mother of Perumal Gowder, after the demise of Anjammal, Perumal Gowder inherited the same as her legal heir; since Perumal Gowder inherited the above said property as her son, the said property cannot be classified as the ancestral property but it could only be considered as the self-acquired property of Perumal Gowder; since the respondent/defendant did not have any pre-existing right in 2.40 acres in Survey No.48/24 (part of the suit property), the compromise decree ought to have been registered as per Section 17(2) (vi) of the Registration Act.

9. The Trial Court has observed that the compromise decree being an unregistered document, it would not pass title to the respondent/defendant and hence the said 2.40 acres in Survey No.48/24 should be considered as the self-acquired property of Perumal Gowder and the appellants/plaintiffs and the respondent/defendant are entitled to equal share in the same. Hence the Trial Court has decreed the suit by holding that the plaintiffs are entitled to 3/4th share in both 92 cents in Survey No.597/B2 and 2.40 acres in Survey No.48/24.

10. In view of the earlier suit filed by the respondent/defendant in O.S.No.3318 of 1981 and the subsequent compromise decree, the Will dated 30.11.1981 executed by Perumal Gowder did not come into operation. The First Appellate Court has accepted the validity of Ex.B2 (compromise decree) and held that the plaintiffs have got 3/4th share only in the first part of the suit property (92 cents in Survey No.597/B2). So the decree passed by the Trial Court was modified to the effect that the appellants/plaintiffs are entitled to 3/4th share only in respect of the above said 92 cents. That means other part of the suit property that is 2.40 acres in Survey No.48/24 is considered to be the exclusive property of the respondent/defendant by virtue of the earlier compromise decree Ex.B2. While passing the said judgement, the First Appellate Judge has made an observation that even though, 2.40 acres in Survey No.48/24 was not the ancestral property of Perumal Gowder that has been treated as a joint family property and got blended in the joint family assets.



11. The learned counsel for the appellants has vehemently argued that the observation of the First Appellate Court with regard to blending was in excess of what had been pleaded by the parties themselves and hence it can not be accepted. So what needs to be considered now in this appeal is the validity of the compromise decree through which the respondent/defendant claims that he has got exclusive title over 2.40 acres in Survey No.48/24. According to the learned counsel for the appellants, only if the said property is an ancestral property, the plaintiffs could have had a pre-existing right and the compromise decree which was not unregistered could pass title to him.

12. The respondent/defendant did not deny that the said 2.40 acres in Survey No.48/24 was originally the property of his grandmother. The fact remains that the said property was the subject matter of the partition suit filed by the respondent/defendant in O.S.No.3318 of 1981. So, the learned senior counsel for the respondent/defendant submitted that if a compromise decree comprises the subject matter of the suit that need not be registered. It is further submitted by the learned senior counsel for the respondent that the Hon'ble Supreme Court has held recently that for the purpose of family arrangement and consequential compromise, wider meaning should be given to the word family.

13. The learned counsel for the appellants relied on the judgement in 1995 SCC (5) 709 - equivalent to (1996 AIR 196) (Bhoop Singh Vs. Ram Singh Major & Ors) in support of his argument that a part of the suit property (2.40 acres in Survey No.48/24) being the self-acquired property of Perumal Gounder the unregistered compromise decree Ex.B2 cannot pass title to the defendant. In the said judgement, the hon'ble Supreme Court has held as follows:-

....."16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.



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17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in presenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below : (1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration. (3) If the decree were not to attract any of the clauses of sub-section (1) of section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration. (4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

14. To canvass the same point, the learned counsel for the appellants also relied on the citations reported in 2003 (10) SCC 310 (D.S.Lakshmaiah & another Vs. L.Balasubramanyam & another) and 2008 (13) SCC 102 K.Raghunandan & Ors. Vs. Ali Hussain Sabir & Ors.

15. The learned senior counsel for the respondent cited the decision of the Supreme Court reported in 2006 (10) SCC 788 in the case of Som Dev & Ors Vs. Rati Ram & Ors. and submitted that



the objection of the appellants to the validity of the compromise decree is not sustainable for the reason that the decree recognised only a pre-existing right under a family arrangement and it did not by itself locate any right or interest in any immovable property and further, the property comprised in the compromise decree is the subject matter of the suit. In the said judgement, it is held as follows:-

"13.....In the face of the decree in Civil Suit No. 398 of 1980, it is not permissible to search in the cause of action put in suit therein for any infirmity based on want of registration. The title acquired earlier had been pleaded by the plaintiff and his brother and upheld by the decree. It is only permissible to look at the evidentiary value of that decree at least as a case of assertion and recognition of the right by the court. In the case on hand, the family arrangement set up, which suffered no defect on the ground of want of registration, had been accepted by the Court in Civil Suit No. 398 of 1980 and relief granted. That grant of relief cannot be ignored as not admissible.

14. Learned counsel for the plaintiff-contesting respondent raised a contention that the ratio of the decision in Bhoop Singh (supra) requires reconsideration since the said decision has not properly understood the scope of clause (vi) of Section 17(2) of the Registration Act. For the purposes of this case we do not think that it is necessary to examine this argument. We are satisfied that the said decision is distinguishable.

15. We also feel that the tendency, if any, to defeat the law of registration has to be curtailed by the legislature by appropriate legislation. In this instance, we wonder why the Transfer of Property Act is not being extended to the concerned States even now. Its extension would ensure that no transfer is effected without satisfying the requirements of that Act and of the Stamp and Registration Acts."

16. In the case of K.Raghunandan & Ors. Vs. Ali Hussain Sabir & Ors. reported in 2008 (13) SCC 102 it is held that Som Dev's case did not lay down any law contrary or inconsistent with the law laid down in Bhoop Singh's case but it only distinguished it on facts.

17. The learned senior counsel for the respondent argued that the parties to the earlier suit in O.S.No.3318 of 1981 were father and son and they belonged to same family and the dispute with regard to the suit properties and a consequential



compromise decree is nothing but a family arrangement which settled the rights of parties to the suit.

18. The learned senior counsel for the respondent invited the attention of this Court to the judgement reported in 2020 (10) SCC 250 and 2020 (10) SCC 264 wherein it is held that if a compromise decree comprises an immovable property which is the subject matter of the proceeding, it does not require registration. He cited the decisions reported in 2020 (10) SCC 250 and 2020 (10) SCC 264. To canvas his point that family arrangement does not require arrangement, he cited the judgement reported in 2018 (14) SCC 814. The attention of the Court was also invited to the recent decision of the Supreme Court in Civil Appeal No.5167 of 2010 in the case of Khushi Ram & Ors. Vs. Nawal Singh & Ors. in which the hon'ble Supreme Court has followed full bench judgement in Ram Charan Das Vs. Girjanandini Devi & Ors., 1965 (3) SCR 841. It is held in those judgements that in order to give benefit to a party under the family settlement, it is sufficient if the party is related to one another in some way and have a possible claim to the property or even a semblance of a claim. A further reference is made to the case of Kale & Ors. Vs. Deputy Director of Consolidation & Ors., 1976 (3) SCC 119, in which an another full bench of the hon'ble Supreme Court has held that the term 'family' should be understood in a wider sense so as to include even those persons who may have some semblance of antecedent title. While dealing with the impact of registration under Section 17(2) of the Registration Act, in Khushi Ram's case, the Hon'ble Supreme Court considered various judgements in respect of family arrangement and reiterated the observations made in para 10 of Kale and Ors Vs Deputy Director of Consolidation and Ors. For the purpose of convenience it is extracted as under:

"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



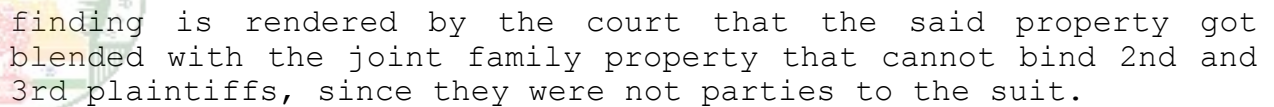
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arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already 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."

19. By citing the above judgements, the learned senior counsel submitted that since the respondent/defendant being the son had a semblance of right of title in his father's property and there was a family arrangement between the parties to the suit and that had culminated into the compromise decree and hence it has to be accepted to be valid even without registration. It is not known on what ground 2 acres and 40 cents in Survey No.48/24, which was the self-acquired property of Perumal Gowder had been listed in the suit schedule of earlier partition suit. Even if the respondent who was the plaintiff therein had raised a contention in that suit that the said property was thrown into the common stock of the joint family properties and got blended, that contention ought to have made in the presence of 2nd and 3rd plaintiffs who are also children of Perumal Gowder and interested parties. Even if a



20. If the respondent/defendant intends to get the advantage of broader meaning of 'family' and claims that the compromise decree is the result of family arrangement, all the children of Perumal Gowder should have been arrayed as parties in the earlier partition suit. Because the daughters are also eligible to be covered under the broad folder of 'family'.

22. It can be argued by the respondent that the daughters were not co-parceners and hence they are not necessary parties to the earlier suit. But given the nature of the title acquired by Perumal Gowder with regard to the 2.40 acres, the daughters will also become necessary parties. Because even before calling the daughters as non-coparceners, the defendant had the duty to prove before the Court that even though the said 2.40 acres in Survey No.48/24 was the self-acquired property of the Perumal Gowder, that had acquired the character of joint family property through 'blending'. But to decide that point, all the daughters of Perumal Gowder are also interested and essential parties. Or in other words, if the said issue is decided, in the absence of all the daughters of Perumal Gowder that will not bind the daughters who were not parties to the suit.

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absence of such an exercise, it is difficult to accept that the compromise decree passed in the earlier partition suit preceded a family arrangement and that is done in all fairness in order to settle the claims of all the members of the family. In fact, had the alleged family arrangement included these plaintiffs, the necessity to file this suit would not have arisen at all.

24. It is true that the father Perumal Gowder has got every right to alienate his self acquired property to any of his children during his lifetime. Had the said 2.40 acres in Survey No.48/24 was conveyed in favour of the respondent by virtue of any other conveyance other than an unregistered compromise, that would have passed a valid title in favour of the respondent. The compromise decree passed in the earlier suit ought to have been registered for two reasons. One, the daughters in whose presence the fact of throwing into the joint family stock should have been decided in order to deny them a share, were not impleaded. Second, to call the compromise decree as an off-shoot of fair family arrangement, it should have been done in the presence of and with the participation of all the family members, which would also include daughters.

25. In view of the above reasons, I hold that the respondent/defendant has not fulfilled the first proposition laid down in Kale and Ors in order to take advantage of the findings rendered in Khushi Ram. So he can not claim that he has got an exclusive title over 2.40 acres in S.No.48/24 thorough the unregistered compromise decree passed in the earlier partition suit in O.S.No.3318 of 1981. Hence, the substantial questions of law are answered in favour of the Appellants.

26. In the result, the Second Appeal is allowed and the judgement and decree of the First Appellate Court is modified to the effect of restoring the judgement and preliminary decree of the Trial Court which allotted 3/4th shares to the plaintiffs. No costs. Connected miscellaneous petition in M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar



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To

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- 1.The Principal District Judge's Court,
Coimbatore.
- 2.The II Additional Subordinate Court,
Coimbatore.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.20432
+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.20484

S.A.No.472 of 2010

RLD(CO)
CB(08/09/2021)