ALLAHABAD HIGH COURT

Bakhtawar

Vs

Sunder Lal

(Sulaiman, J.)

21.07.1925

ORDER

Sulaiman, J.

1. I think this is a fit case to be referred to a Bench of two Judges. The learned Judge begins his judgment by saying that this is rather a difficult case and he had to look up numerous rulings which were cited before him.

2. The main question in the case was whether the compromise arrived at in 1909 between Mt. Kamli, the mother of the plaintiffs, and Bakhtawar, the defendant, was in the nature of a family settlement or not. The learned Judge has to my mind unnecessarily gone into the question whether the defendant has or has not proved in this case the validity of his adoption. There was no issue framed in the first Court and the defendant was not called upon to lead evidence on that point. The question of adoption was irrelevant, the main question being whether in 1909 there was a bona fide dispute about the alleged adoption and whether Mt. Kamli believed that she had a rival claimant to meet and thought it desirable to settle the dispute with him rather than to carry on a long-continued litigation. Having found that the oral evidence adduced by the defendant to prove his adoption was not satisfactory and having come to the conclusion that the application mentioning the compromise filed in the revenue Court was inadmissible for want of registration, ha has been forced to record a finding that it was not reasonable for Mt, Kamli to have given away the rights of her children to an outsider. He has not considered whether, even if for want of registration the application were inadmissible, the recital in it is not admissible for purposes of proving her admission of the adoption. At one place he has also remarked: "I have already held that there is not sufficient oral evidence to prove that the compromise was a bona fide transaction;" but in the previous portion of his judgment he nowhere recorded any such express finding. If the Bench is of opinion that the case is concluded by findings of fact the question of law would not arise, otherwise the question which has to be considered is whether the application made to the revenue Court which refers to a compromise between the parties is inadmissible in evidence because it is an unregistered document.

3. There can be no doubt that there are conflicting rulings on this point some of which are not easily reconcilable. If the matter were wholly res integra I would have no hesitation in holding: (1) that division of property by way of family settlement does not amount to a transfer by one party to the other, nor does any party to such settlement derive title through the other. The settlement merely recognizes the right of the other party and accepts it in part. Not being a transfer, gift or exchange from one party to the other the transaction does not fall under any of the sections of the T.P. Act which require registration; (2) that even in the absence of a registered document it is open to either party to the family settlement to prove that there had been a family settlement which was acted upon; (3) that if the compromise is reduced to writing, then, if that document is used as a document of title purporting to create or declare rights in immovable property worth more than Rule 100, the deed would require registration; but (4) that if the document does not purport to be a document of title creating or declaring such right, but contains a mere recital of a previous settlement arrived at between the parties the document may be used in evidence in proof of that previous settlement, even though not registered.

4. I feel, however, that I would not be justified in acting on these propositions in face of considerable conflict of opinion which exists on the subject. That there is such a conflict admits of do doubt.

5. Leaving aside cases which were decided prior to March 11, 1916, which are referred to in the Full Bench case of *Jagrani v. Bisheshar Dube*[1] the learned Judges who formed the Full Bench themselves were not unanimous on the rules of law which should be adopted. Richards, C.J., at page 373(38 All.) remarked: It is said that the transaction in the present case was a family arrangement' and it is urged that documents connected with family arrangements' need never be registered. I think that there is no justification for such a proposition. Documents which disclosed 'family arrangements' and which at the same time purport or operate' to create, declare, assign, limit, or extinguish, etc. must be registered, just as much as any other documents unconnected with family arrangements." He took the view that none of the cases in which their Lordships of the Privy Council had considered the family arrangement could be used as authorities for the proposition that such documents were exempted from the provisions of the Registration Act. Tudball, J., at page 375(38 All.), also remarked: "If this document were one which purported or operated to extinguish the plaintiff's title, registration thereof would, in my opinion, be compulsory." And at page 376(of 38 All.) he further remarked: "Where a family settlement, bona fide and free of fraud, is made and acted upon by all the parties, even though a full and proper document be not duly executed and registered, the Court have refused to go behind it." Rafique, J., at p.378 of-38 All.) held: "If a compromise has been validly made and acted upon it must be given effect to." He was of opinion that if the compromise filed before a revenue Court was merely an intimation of the fact of a compromise already made and nothing more than the question of the admissibility of the document was irrelevant, but that the previous compromise itself "should have been in writing and registered" (p. 379 of 38 All). The matter has come up

recently before a Bench consisting of Piggott and Kanhaiya Lal, JJ., in the case of *Baldeo Singh v. Udal Singh*[2] where also the learned Judges did not take exactly the same view. Kanhaiya Lal, J., was of opinion that the petition which contained nothing more than a recital of the oral settlement effected out of Court and did not by itself purport to create, assign or declare any rights in immovable property, did not require to be registered. Piggott, J., held that if the entire settlement was reduced to writing the provisions of the Registration Act and possibly also those of Section 91 of the Indian Evidence Act would come into force. He, however, held that in that particular case the settlement had not been reduced to writing in its entirety.

6. I accordingly refer this case to a Bench of two Judges.

JUDGMENT

Lindsay, J.

7. After hearing arguments in this case, I am of opinion that the appellant is entitled to succeed. The whole question turns on the document dated 9th January 1909, which was presented in the revenue Court. It appears that this document was presented after the death of one Mt. Surjaiti who was the widow of Dungar. When Mt. Surjaiti died Bakhtawar, who is the grandnephew of Dungar, seems to have applied to the revenue Court claiming to be the heir and to be entitled to have mutation of all property which had belonged to Dungar, and it further appears that he was putting forward a, title by saying that Mt. Surjaiti had adopted him to her husband Dungar. The claim in the revenue Court was opposed by Dungar's daughter Mt. Kamli and on the date above mentioned we find that a petition was presented to the Court which is described as darkhast razinama. This document recited that the two parties, namely Bakhtawar and Mt. Kamli, had already composed their differences regarding the property and had come to an arrangement between themselves by which Mt. Kamli's name was to be entered in respect of 7 bighas 12 biswas odd whilst Bakhtawar's name was to be entered in respect of the rest of the property amounting to 7 bighas 2 biswas odd. The petition describes Bakhtawar as the adopted son of Mt. Surjaiti. It is not disputed that the entries have remained in this way ever since the mutation Court made an order upon this petition. I am of opinion that this petition is evidence of a previously arranged family settlement arrived at between Bakhtawar and Mt. Kamli, and the true view of the transaction appears to ma to be that there was no transfer by one party to the other, nor was there any creation of a fresh title, Bakhtawar was setting himself up as the adopted son, whilst Mt. Kamli was opposing him in her character as daughter and heir of the deceased Dungar. It is reasonable to assume that there was a bona fide dispute between the parties which was eventually composed, each party recognizing an antecedent title in the other. In this view of the circumstances I am of opinion that there was no necessity to have this petition registered. It does not in my opinion purport to create, assign, limit, extinguish or declare within the meaning of these expressions as used in Section 17(1)(b), Registration Act. It is merely a recital of fact by which the Court is informed that the parties have come to an arrangement. The whole question raised here has been discussed by me in a ruling which will be found in Satrohan Lal v. Nageshar

Prasad (1916) 19 OC 75. I have nothing to add to or subtract from what I said on that occasion. I need only say further that this ruling was cited in a Bench decision reported as Baldeo Singh v. Udal Singh AIR 1921 All 248. I would, therefore, allow this appeal, and setting aside the decrees of both the Courts below dismiss the plaintiff's suit with costs in all Courts including in this Court fees on the higher scale.

Sulaiman, J.

8. I agree, and adhere to the four propositions laid down by me its my referring order which I was inclined to accept if the matter were wholly res integra.

Cases Referred.
1(1916) 38 A11. 336
2AIR 1921 All 248