

BOMBAY HIGH COURT

Sumintabai

Vs.

Rakhmabai

First Appeal No. 555 of 1971

(Sharad Manohar, J.)

17.07.1980

JUDGEMENT

Sharad Manohar, J.

1. This is plaintiff's appeal dismissing her suit for possession of the suit property. The plaintiff's claim in the suit pertaining to the lands in question was based on the following facts:

2. The property in dispute consists of S. No. 219 an S. Nos. 420 to 423 in village Nandur-Ghat, Taluka Kaij, District Bhir. For the purpose of understanding the rights of the parties, it would be useful setting out the admitted genealogy which is as follows :-

3. As shown in the genealogy, Limbaji had + share in the property after the death of Kushaba. Limbaji died in the year 1943 leaving behind his widow Sonabai (defendant No. 1 in the present suit) and three daughters. Subhadrabai, Lochanabai and Mathurabai (defendants Nos. 3, 4 and 6 respectively) and two sons Ramkrishna and Vishnu. There is a finding recorded by the lower Court, and there is no dispute about the correctness of the same before me now, that Ramkrishna died in the year 1944 and Vishnu died issueless in the year 1947. Ramkrishna died leaving behind Rakhmabai (defendant No. 2 in the suit). The present plaintiff is the daughter of Ramkrishna and Rakhmabai. The contention of the plaintiff is that Yesu brother of Limbaji, died in the year 1956 and at about that time dispute started between Sonabai on the one hand and Rakhmabai on the other. The exact nature of the dispute is not on the record; but it is admitted before me that Hindu Women's Rights to Property Act was made applicable to the Hyderabad State and consequently to the suit lands in the year 1954. The legal position flowing from these facts is also not in dispute. Mrs.Kanade appearing for the appellant-plaintiff has frankly stated that as per the law that prevailed in the State of Hyderabad at that time, the property that had come to the share of Ramkrishna as well as Vishnu devolved exclusively upon Sonabai as their mother. The fact, however, remains that it created some kind of dispute between Sonabai on the

one hand and Rakhamabai on the other sometime in the year 1956, as a result of which Civil Suit No. 94/1 of 1958 was filed by Sonabai against Rakhamabai in the Court of the Civil Judge, J.D. Kaij.

4. In that suit not only Rakhamabai but even the present defendant No. 5 who is the main contesting defendant in the present litigation was impleaded. Rakhamabai was defendant No. 1 in the said suit and present defendant No. 5, Kisan was defendant No. 2 in that suit. There were two more defendants Dhondiba and Shamrao, defendants Nos. 3 and 4 respectively in that suit. But the dispute was essentially between Sonabai on the one hand and Rakhamabai on the other, but it may be that the remaining defendants Nos. 2 to 4 in that suit were claiming some kind of right through Rakhamabai.

5. On 18-2-1959 an application was filed by Sonabai withdrawing her suit against defendants Nos. 2 to 4 in that suit. This means that the contentions against present defendant No. 5 in that suit were withdrawn.

6. It further appears that thereafter the present plaintiff Sumantabai and present defendants Nos. 3 and 4 Subhadrabai and Lochnabai were impleaded by Sonabai in that suit as plaintiffs Nos. 2 to 4. Rakhamabai continued to be shown as defendant or rather as the sole defendant, and immediately thereafter on 8-8-1959 a compromise decree was obtained by the plaintiffs from the Court.

7. The compromise decree is at Ex.10 in the present suit. It is the contention of the present plaintiff that as per the compromise contained in the compromise decree + share was given to the present plaintiff; whereas the remaining + share was given to present defendants Nos. 3 and 4. It is the plaintiff's case that she executed the compromise decree and upon the execution she recovered possession of + share in S. No. 219 and 2 annas share in S. Nos. 420 to 423. It is her case that a panchnama to that effect was made. It is her further contention that thereafter present defendant No. 5, who was defendant No. 2 in the earlier suit, started dispossessing the plaintiff gradually and ultimately dispossessed her wholly of the suit lands. The present suit is, therefore, filed by her for possession of the said portion of the suit land.

8. Initially the plaintiff had not impleaded Mathurabai, who is admittedly the third daughter of Sonabai. Defendant No. 5 raised an objection in that behalf in his written statement and hence, thereafter, the plaintiff made an application for amending the plaint and that is how said Mathurabai is now added as defendant No. 6 in this suit.

9. Defendant No. 1 Sonabai died pending the suit. I am told that since all the heirs were already on record no further order was passed in that behalf.

10. Defendant No. 2 did not file any written statement at all. Defendants Nos. 3 and 4 admitted

the fact that there was a compromise decree passed on 18-3-1959, but they contended that the plaintiff did not have + share in the suit property but had only 1/3rd share. They, therefore, contended that the plaintiff would be entitled to 1/3rd share in the suit property.

11. Mathurabai, defendant No. 6, filed a written statement and contended that the compromise decree, Ex.10, in the suit was not binding upon her. She contended that she had also a share in the suit property. Mrs. Kanade, appearing for the appellant-plaintiff, has informed me that Mathurabai has also filed a separate independent suit for partition and possession of her share in the suit lands.

12. The real contesting defendant was defendant No. 5. He contended that originally he was the tenant of Sonabai and Rakhamabai, that Rakhamabai had entered into an agreement with him for the purchase of the suit lands for a sum of Rs. 5000/- that he had paid the entire consideration and that in pursuance of the agreement he was also put in possession of the land meaning thereby that his previous possession as a tenant continued even thereafter as an owner. He further contended that he filed a suit against Rakhamabai for specific performance of the agreement for sale and a decree for specific performance was passed by the Court. The same was under execution. He denied the validity of the compromise decree dated 18-8-1959 and contended that the plaintiff had no title to the suit property. Alternatively he contended that Rakhamabai was in possession of the suit property as owner and he had purchased the same from her. He contended that he was a *bona fide* purchaser for value without notice. He, therefore, contended that the plaintiff could not recover possession of the suit property from him.

13. On these pleadings issues were framed by the learned Judge. The questions reflected in most of the issues are practically of no relevance so far as the present appeal is concerned, because the findings recorded in that behalf are not disputed by either of the learned Advocates appearing for the parties. The only issues that are relevant for the purpose of this appeal are issues Nos. 5, 5(a), 5(b), 6, 7, 7(a) and 7(b). The correctness of the finding on some of the earlier issues would perhaps be relevant in case I was to differ from the view taken by the learned trial Judge on the abovementioned issues. As will be presently pointed out I see no reason to differ from the view taken by the learned Judge with regard to the present plaintiff's title to the suit properties and as regards her right to possession of the same. Hence, I did not think it necessary to call upon the learned Advocates appearing before me for the respective parties to advance their arguments on any other issues.

14. After examining the entire evidence, oral and documentary, the learned Judge has arrived at the conclusion that the entire claim of the plaintiff was based upon the compromise decree, Ex.10, dated 18-3-1959. He has held that the compromise decree was nothing but a transfer of title by Sonabai to her two daughters, defendants Nos. 2 and 3, and to her grand daughter defendant No. 4. He has held that there was no dispute much less a *bona fide* dispute amongst the parties to the compromise at all. He has, therefore, held that the compromise decree could not be looked at by the Court for finding the correctness of the plaintiff's title in view of the fact that the

decree was not a registered document. According to the learned Judge, the compromise decree was a document of title and was brought into being in such a manner that the title which did not originally vest in the present plaintiff was sought to be transferred to her by the said document. Such a document, he held, was not valid unless it was duly registered. The plaintiff's suit which was based upon such a document, as a document of title, was, according to the learned Judge, therefore, not maintainable. In this view of the matter, the learned Judge found it unnecessary to go into the question as to whether defendant No. 5 was a tenant on the land before he entered into agreement with Rakhamabai for purchase of the same. He held that the plaintiff has miserably failed to prove her title at all and to prove her right for possession of the suit lands. It is in these circumstances that he has dismissed the plaintiff's suit with costs.

15. Mrs. Kanade appearing before me for the plaintiff has contended that the learned Judge was in error in assuming that the plaintiff's suit was based on the compromise decree as a document of title. She contended that the suit was based on possessory title meaning thereby that it was the plaintiff's case that she was in possession of the suit lands, that she was dispossessed of the same by defendant No. 5 who had no right to be in possession of the same and, hence, she was entitled to the possession of the same back. Next Mrs. Kanade contended that even if the suit was not on possessory title, still the compromise decree dated 18-3-1959 was a perfectly valid decree. She contended that the decree did not require registration under Section 17(2)(vi) of the Indian Registration Act, 1908. Her contention is that the suit property was the subject-matter of the previous Civil Suit No. 94/1/58. She, therefore, contends that under the said Section 17(2)(vi) the compromise decree is not required to be registered.

16. I am afraid, both the contentions of Mrs. Kanade are devoid of any substance. So far as the first contention regarding the basis of the plaintiff's suit is concerned, it is no doubt casually contended by the plaintiff that she was dispossessed by the defendant No. 5 and hence she had filed a suit for possession. But on her own showing she has been dispossessed in the year 1962, whereas in the plaint she has stated that the cause of action has accrued to her in the year 1969. It cannot be said that the suit as framed is one on possessory title at all, if the plaintiff is closely examined. But assuming that the suit is based on possessory title, the difficulty for Mrs. Kanade is that the plaintiff has miserably failed to prove that she was ever in possession of the suit property. For proving the execution of the compromise decree, the plaintiff has relied upon a panchnama purporting to have been made by the bailiff. The said panchnama is Ex.85 in these proceedings. The said panchnama makes an interesting reading. This is what is stated in the relevant portion of the panchnama.

"At his instance, we presented ourselves as panchas. The decree holders Lochanabai and Subhadrabai as well as the defendant Rakhmabai are present. All of us the panchas and the Bailiff went to the four places of land viz. S. Nos. 219 and 420 to 423. We moved around everywhere therein and had a look. Out of the said lands, the eight anna share shaded in red colour in S. No. 219 is previously in the possession of Lochanabai and

Subhadrabai, and the portion represented by a share of two annas eight pies is in the possession of Kisan Eknath who has sown the crop in the same. Hence possession of the share of two annas eight pies could not be handed over. As regards lands of S. Nos. 421 420, 422 and 423 a share of two annas eight pies in each was sought to be delivered into possession. However, portions representing two annas share in each of them and shown in red colour were previously in the possession (of Lochanabai and Subhadrabai). Only the portion representing a share of eight pies in each of the lands were in the possession of Eknath and he has sown the crops of 'mug' and 'sendri'. For this reason possession of the shares of eight pies each in the said lands could not be given. Rakhmabai is not in possession at the moment. There is no reply received about possession having been given to the plaintiff, Lochanabai and Subhadrabai, as mentioned above. Enquiries were made about the whereabouts of the said Kisan Eknath. It was learnt that he is not present in the village and is gone to Kaij. A receipt has been obtained from the plaintiffs that their previous possession has been restored".

What makes the panchnama an interesting document for reading is that it was nobody's case that Lochanabai and Subhadrabai were ever in possession of any portion of the suit lands. All the same the panchnama states that they were previously in possession of the same. The panchnama further states that the present defendant No. 5 was in possession of the suit lands. But it states that he was not present on the occasion. The most interesting statement in the panchnama is the following :-

"A receipt has been obtained from the plaintiffs at their previous possession as been restored."

But what is more important is that even under the panchnama it is nowhere stated that the possession of the suit lands was taken from present defendant No. 5 or from any one also on his behalf and was handed over to the present plaintiffs.

17. Now it is to be noted that this panchnama is the sole document or sole piece of evidence relied upon by the plaintiff for proving her previous possession of the suit lands. It is evident that she has led no evidence whatsoever to show that she was ever in possession of the suit lands. I have gone through her entire oral evidence but even there she has nowhere stated that the possession of the suit lands was taken from any particular person and was handed over to her while effecting the panchnama. Moreover it is significant to note that on her own contention she got only + share in the suit property. It is not her case that it was a particular piece of the property. Her case is that undivided + share as per the compromise was given in her possession, but she has led no evidence whatsoever about the partition of the lands and about the delivery of separate possession to her. Having regard to all these facts, it must be held that the plaintiff's plea regarding her previous possession of the suit lands has no basis whatsoever and, hence, the same has got to be rejected.

18. Coming to the second contention of Mrs. Kanade that the compromise decree did not require registration, having regard to the provisions of Section 17(2)(vi) of the Registration Act what she has lost sight of is that Clause (vi) of sub-section(2) of Section 17 postulates and contemplates a *bona fide* family settlement or *bona fide* compromise between the parties. In this connection what we have to note is that on the plaintiffs own showing she herself had not made any claim to the suit property at all in the previous suit. She has led no evidence whatsoever that there existed a dispute between herself on the one hand and any of the other contesting defendants Nos. 1 to 4 on the other hand concerning the suit property. A strange picture we have before us in this case. Mrs. Kanade has rightly conceded, having regard to the position of law as it then stood, that Sonabai was the sole heir of the property left by Ramkrishna and Vishnu: she may be also right in contending that there might have existed a dispute between Sonabai on the one hand and Rakhmabai on the other and it was on account of that dispute that Sonabai filed the previous suit against Rakhmabai. It appears to be a suit for declaration and possession against Rakhmabai. But it was nobody's case that the plaintiff and defendants Nos. 3 and 4 had any share in the suit property. What is conceivable is that these two widows could have settled their claim and by virtue of the said settlement Sonabai could have taken + share and Rakhmabai could have taken the other + share of the property. I must say that if these two widows had recorded a compromise to this effect, the compromise could not be described as anything but a normal compromise and a decree passed in terms of the same, it could be legitimately contended, would have needed no registration. But what these two widows have done at the time of getting the decree is something remarkable. Evidently and presumably they wanted to gift these properties to their own daughters. Rakhmabai, defendant No. 2, wanted to gift her share in the property to her daughter, the present plaintiff: whereas Sonabai wanted to gift her share to her daughters, present defts. 3 and 4. But this position could not be brought about except by a gift being executed by each one of the widows in favour of her daughters. They sought to bring about this gift by a compromise decree. In other words a transfer of the property sought to be brought about by document was camouflaged as compromise and title was thus sought to be transferred by this ingenious device. The compromise contemplated by Section 17(2)(vi) of the Registration Act must be a *bona fide* compromise and it must be real compromise in respect of the genuine dispute between the parties to the compromise. In the instant case, we find that far from there being any *bona fide* dispute, there existed no dispute whatsoever at least amongst the plaintiff and defendants Nos. 2 and 3. By the compromise what has been done is that Sonabai who had entire title in the suit property gets nothing under the compromise while the present plaintiff and defendants Nos. 2 and 3 who admittedly had not a tittle of suit property get the entire property. Such a compromise cannot be described, except as a sham compromise brought about for the purpose of practicing fraud upon the law relating to stamp duty and law relating to registration. Presumably it was a fraud upon defendant No. 6 who also would be having some share in the suit property after the death of Sonabai. We actually do not know the exact circumstances in which Sonabai thought it fit to disinherit defendant No. 6 and to gift the entire property to her two daughters only. Whatever that may be, it is impossible to hold that the document, Ex.10, purporting to be a compromise decree is a document such as the one contemplated by Section

17(2)(vi) of the Registration Act. I am prepared to assume that the document was executed by Sonabai with her own free will. I am further prepared to assume that if the document was duly registered it would have been an enforceable document. But in the absence of its registration, the document has no evidentiary value whatsoever and it cannot be relied upon by the plaintiff as a document of title.

19. Mrs. Kanade sought to place reliance upon the judgment of the Supreme Court in *Kale v. Deputy Director of Consolidation*¹, to contend that the fact that the plaintiff had no pre-existing title was of no legal consequence when the decree was passed in terms of compromise. I am afraid the judgment sought to be relied upon by Mrs. Kanade, far from supporting the proposition enunciated by her, supports the conclusion arrived at by the learned trial judge. I may only refer to the following observations of the Supreme Court which would make this position clear:

"The family settlement must be *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." This observation makes it clear that the family settlement must be a *bona fide* settlement. I have pointed out that there was no settlement at all because there had existed no dispute so far as the rights of the present plaintiff and defendants Nos. 2, 3 and 4 were concerned. It can, therefore, be said that there existed no *bona fide* dispute at all.

¹ AIR 1976 SC 807

20. The further observation of the Supreme Court is equally significant:

"The family arrangement may be even oral in which case no registration is necessary. The 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 is, therefore, not compulsorily registrable."

Relying upon these observations Mrs. Kanade contended that the compromise decree was only a memorandum and that it did not constitute a document of title as such. The facts which are averred by the plaintiff herself cry hoarse against such contention. It is the plaintiff's own contention that she executed the compromise decree and got possession in execution of that decree. She has made this avornment in her plaint, she has made statement to that effect in her deposition. Now, if the document, Ex.10, was only a memorandum it is difficult to see how she could have got possession on the basis of the memorandum by executing the decree. Moreover, the plain reading of the said decree militates against such contention. The decree says that the

rights of the plaintiff and present defendants Nos. 2 and 3 (plaintiffs Nos. 2 to 4 in the previous suit) were created from the decree and they flowed from the decree. This being the statement of things, the observations of the Supreme Court that the registration would be necessary only, if the terms of the family arrangements are reduced to writing assumed great relevance against the contention of Mrs. Kanade. In fact this is the most relevant part of the law declared by the Supreme Court so far as this aspect of the litigation is concerned. Such a document is devoid of any value unless the same is registered. Hence, the authority cited by Mrs. Kanade is of no avail to her.

21. Mrs. Kanade also tried to place reliance upon a judgment of the Allahabad High Court in *Hari Shankar v. Durga Devi*², Mrs. Kanade relied upon the following observations of the High Court in that case :-

"To see whether any document is saved from the provisions of Section 17 of the Act. Under Section 17(2)(vi) the only thing that is to be seen is whether there is a compromise decree which deals with immovable property. Once that is ascertained, the other matters such as, how the property is sought to be disposed of by the parties or what was the nature of the suit in which compromise in respect of immovable property was arrived at or what was the relief prayed for in the suit or the manner in which the said property is being dealt with, are all irrelevant. In 'other words, the nature, scope and contents of, compromise between the parties 'are extraneous considerations while deciding as to whether there was a decree or order of a Court made on a compromise between the parties comprising immovable properties and whether the same should be registered or not. We have only to see whether immovable property is the subject-matter of the suit or not." Now, the above mentioned statement of law is unexceptionable. Question is

² AIR 1977 All 455

whether it has got any relevance to the question arising for my determination. The Allahabad High Court was not called upon to consider as to whether the compromise which is not a *bona fide* compromise or a compromise which does not aim to resolve a *bona fide* dispute between the parties is still something which has got a legal validity for construing title in parties. The Court in that case was not concerned with that question. The only question that the Court was required to decide was as to whether the contents or terms of the compromise had any relation to the question whether it was required to be registered or not. The Court held that the terms and the contents of the compromise were of no relevance for the purpose of question of registration. The only question relevant, according to the Court, was whether the property which was dealt with by the compromise was the subject-matter of the suit or not.

22. In the instant case before me, if the compromise was a *bona fide* one or if in fact there was any compromise as such at all of a real *bona fide* dispute between the relevant parties, the compromise decree would not have required registration, because the property in question was

the subject-matter of the dispute. If it was contended that even such a compromise required registration, the Allahabad ruling would have no doubt been an answer to such a plea. But what I am required to decide is an entirely different question. Hence, such a ruling relied upon by Mrs. Kanade is likewise of no avail to her.

22A. Since the plaintiff has failed to establish her title to the suit property no other question remains to be considered and, hence, it is not necessary for me to consider the correctness of the finding recorded by the learned Judge regarding the other issues.

23. The appeal, therefore, fails and the same is dismissed with costs.
Appeal dismissed.