PATNA HIGH COURT

Awadh Narain Singh

Vs

Narain Mishra

A.F.A.D. No. 1236 of 1958

(Kamla Sahai, J.)

22.03.1961

JUDGMENT

Sahai, J.

1. This appeal by the plaintiffs arises out of a suit for declaration of title to, and recovery of possession over, 3 bighas and odd dhurs of land appertaining to tauzi No.3796 and 3806 in village Nariyan, district Saharsa.

2. In order to appreciate the points which have been raised on behalf of the appellants, it is necessary to give some facts, Bitan Missir and Kanhaiya Missir, father of Narayan Missia (defendant No.1), were brothers. Bitan died in about the year 1344 Fasli, leaving him surviving three daughters named Gulobati, defendant No.9 (defendan-third-party) and Fulobati, defendant No.13, and Keshobati, defendant No.14, both of whom are defendants-fifth-party. The three sisters filed seventeen applications before the Land Registration Officer for mutation of their names in Register D in place of their father, Bitan. Narayan Missir, nephew of Bitan, filed objection petitions in all those seventeen cases on the allegation that he was entitled to one-fourth share in the properties left by Bitan Missir, who had adopted him as Karta-putra, and he also prayed for mutation of his own name in respect of four annas share. On the 25th June, 1945, the three sisters and Narayan Missir filed a petition before the Land Registration Officer, stating that the disputes between them had been settled, and that the case might be adjourned as it was necessary for them to execute a document regarding the arrangement which they had arrived at. A deed of family settlement was actually executed on the 14th July, 1945. Fulobati and Keshobati joined with Narayan Missir in executing it. Although Gulobati's name was mentioned in the deed as one of the parties, she did not join in executing it. It is alleged that she could not join because she was ill, and was under treatment at Darbhanga. On the 27th July, 1945, a joint petition for adjournment was filed before the Land Registration Officer stating that a deed of family settlement had been executed by two of the applicacants and that the third had been unable to join till then because she was ill and had gone to Darbhanga. The case was then adjourned to the 22nd August, 1945, when another petition was filed jointly by all the three sisters and Narayan Missir. It was stated therein that Gulobati had entered into a family arrangement with Narayan Missir and had accepted the terms mentioned in the deed of family

settlement dated the 25th July, 1945, which is a mistake for the 14th July, 1945. On these facts, a prayer was made that the name of Narayan Missir be mutated in respect of one-fourth share out of Bitan Missir's share in tauzi No.3796 and 3806. It was also mentioned that it was understood that Narayan Missir would get his name mutated in the landlord's sherista in respect of an area of 3 bighas 13 kathas 17 dhurs of nakdi jote lands which had been allotted to him. There were some defects in the petition, and, after those defects were removed, the Land Registration Officer allowed mutation in terms of the compromise by an order dated the 5th November, 1945.

3. The plaintiff's claim to the lands in suit is based upon a registered sale deed dated the 2nd October, 1953, executed by Musammat Gulobati. The plaintiff's case is that the family arrangement arrived at between Gulobati's sisters and Narayan Missir is not binding upon Gulobati, and hence she has conveyed a good title to the plaintiffs by the sale deed which she has executed in their favor.

4. The case of the principal defendants, who are defendants Nos.1 to 6, on the other hand, is that the family arrangement between the parties were binding upon Gulobati, and hence she could not convey a good title to the plaintiffs in respect of the lands in suit, which were allotted, under the family arrangement, to Narayan Missir.

5. The learned Munsif who tried the suit passed a modified decree in favor of the plaintiffs. The learned Subordinate Judge of Madhipura, who heard the appeal, has allowed it and dismissed the suit. Hence this appeal by the plaintiffs.

6. Mr. P.R. Das, who has appeared on behalf of the plaintiffs-appellants, has submitted that a family arrangement can unquestionably be made by means of an oral agreement; but, if it is made by means of a document, that document has to be registered. In support of this submission, he has drawn my attention to a Full Bench decision of the Allahabad High Court in *Ram Gopal v. Tulsi Ram*[1] Their Lordships have laid down in that case that a binding family arrangement can be made orally. Mr. Das has, however, referred further to an observation of their Lordships after they held an oral family arrangement to be binding, which is as follows:

> "While, however, this is the law, the extreme undesirability, except in the most simple cases, of leaving such an arrangement to be founded on an oral agreement is manifest. Cogent evidence of such an oral agreement would obviously be necessary and any party who is interested in such an agreement being upheld and yet does not insist upon a written instrument, duly registered where the value is Rs.100 or upwards, clearly omits to do so at his peril".

7. Mr. Das has contended that it is clear from the observation quoted above that it is safer for the parties, relying upon a family arrangement to have it reduced to the form of a document and to get it registered if the value of the properties affected by it is Rs.100/- or more. He has submitted that it is obvious that the parties did not consider it safe to have an oral family arrangement because they expressed an intention in their joint petition of the 25th June, 1945, that they would execute a deed of family arrangement. That may be so. It is, however, difficult to accept the argument which hehas advanced on this basis that, having once arrived at an agreement that they would execute a document, they could not later change their mind and have an oral family

arrangement. A deed was executed and registered by both the two sisters of Gulobati and Narayan Missir on the 14th July, 1945. For some reason or the other - the principal defendants say that it was due to illness - Gulobati could not join in executing that deed. The circumstances had thus changed, and a document was already in existence, although it was not binding on Gulobati as she was not a party to it. Narayan Missir and Gulobati could, in view of this change on the circumstances, agree orally to a family arrangement on the terms already mentioned in that deed.
Mr. Das has urged that there could be no novation of contract or change in the agreement between Narayan Missir and Gulobati unless Gulobati's sister also agreed to the change. I am unable to accept this contention. The agreement between Narayan Missir and Gulobati's sisters to execute a document in respect of the family arrangement arrived at between them had already been executed. Gulobati alone remained. There is no reason why she alone could not enter into an agreement with Narayan Missir in super session of the previous agreement that no other document need be executed as between them in order to evidence the family arrangement which they had made. There was no risk as mentioned in the Allahabad case because of the fact that the deed of family arrangement executed between Narayan Missir and Gulohati's sisters had already come into existence, and Narayan Missir and Gulobati merely agreed orally to abide by the terms mentioned in that deed.

8. Learned Counsel has next contended that there was really no oral agreement between Gulobati and Narayan Missir, and that the terms of the agreement between them were incorporated in the compromise petition filed on the 22nd August, 1945. The fact that the terms have not been mentioned in that petition but reference for the terms has been made to the registered deed of the 14th July, does not, according to him, make any difference. On this basis, he has contended that the compromise petition of the 22nd August required registration, and, as it is not registered, it should not have been admitted in evidence. In my opinion, the law on this point is well settled. The principle is that, if a petition of the kind which was filed on the 22nd August merely conveys information to the Court that an arrangement has already been arrived at between the parties, it does not require registration. On the other hand, it does require registration if it evidences the agreement between the parties itself. In *Mt Jileba v. parmesra*[2], Desai, J., who delivered the judgment of the Bench, has stated: If family arrangement is arrived at orally and information of its terms is given in writing to a Court, that writing would not be deemed to be a deed of family arrangement and could not require to be registered". As he was of the view in that ease that

> "the writing was intended to be a document of compromise or family arrangement, that is, a document to have the legal effect of binding both the parties and not merely conveying information to the Court of the terms of a previously completed oral compromise or family arrangement", he held that the document ought to have been registered.

In the Full Bench decision in Ram Gopal's case also, their Lordships said that the question in each case of the present kind is whether the terms of the arrangement have
been

> "formally recorded in a document with the purpose that they should be evidenced by that document".

If they have been, the document requires registration under Section 17 of the Registration Act, and, under Section 49 of the same Act, is inadmissible in evidence in the absence of registration. If the terms have not been set down in the document with the purpose just mentioned, the document, though it concerns property valued at Rs.100/- or more, does not require registration. Such a document cannot be used as a document of title but only "as a piece of evidence for whatever it may be worth", It is, therefore, manifest that, in their Lordships' view also, a document which merely contained information relating to a previously completed oral agreement as to a family arrangement does not require registration.

9. Mr. Das has referred to the decision of Raj Kishore Prasad, J. in *Brahmanath Singh v. Chandrakali Kuer*[3]. That case is distinguishable because his Lordship held, firstly, that the promise in question in that case created a right in the plaintiffs, and was the foundation of their title; and, secondly, that the compromise petition was not in the nature of a family arrangement. With reference to the Full Bench decision in Ram Gopal's case, which I have already referred to, his Lordship has said:

> "In that case, it was held that if an oral family arrangement is followed immediately or after an interval (shorter or longer) by a petition in Court containing a reference to the arrangement (either a mere reference to the fact of there having been an arrangement for a partial or complete setting out of the terms, with or without a declaration of an acceptance of and intention to be bound by those terms), the question whether the reference was merely for the purpose of informing the Court or was dictated by a desire to make formal record of the arrangement to be evidenced by the document, will have to be determined on the facts of each case.
> In the former case registration is unnecessary. But in the latter case, if the value of the property involved is Rs.100 or upwards, absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement indicated in the document."

10. The principle, therefore, does not admit of any doubt. The only question is whether the language used in the compromise petition of the 22nd August shows that it embodies the terms of the family arrangement between Gulobati and Narayan Missir so that they may be binding upon them or it merely conveys information to the Land Registration Officer of an already completed oral agreement between the two. In this connection, it will be useful to read paragraphs 2 and 3 of the compromise petition. They may be translated as follows:

> "2. Applicant Gulobati Missirain has agreed to all the terms of the family settlement, and she has also made a family settlement with Narayan Missir.
> 3. Narayan Missir is already in possession of properties allotted to him under the deed of family settlement. Hence, it is prayed that the petition be recorded, and that names may be mutated as given below."

These two paragraphs make it clear that, although Gulobati was not a party to the deed of family settlement, she had, previous to the filing of the compromise petition, agreed to the terms

embodied therein, and, in fact, Narayan Missir had already come into possession of the lands allotted to him under that deed. It is, therefore, manifest that the compromise, petition does not affect any right or title, and it does not embody the terms of any agreement as to family arrangement arrived at between Gulobati and Narayan Missir: it merely conveys information to the Court that an agreement had already been entered into by the, two, and that they had made a family settlement in accordance with the deed already executed by Gulobati's sisters and Narayan Missir. Hence, I hold that the petition did not require registration.

11. The last argument which Mr. Das has put forward is that the deed of family settlement dated the 14th July is not admissible in evidence against Gulobati, and that, unless that document is looked into, it is not possible to ascertain the terms of the family arrangement which she and Narayan Missir had arrived at. In my opinion, there is no substance in this argument also. It is true that the deed of family settlement is not binding upon Gulobati because she is not a party to it; but there is no reason why it should not be looked into for the purpose of ascertaining the terms of the family arrangement which, as between Narayan Missir and Gulobati, was made orally. The agreement being that the same terms as are mentioned in the deed of family settlement would apply in their case also, I do not see how the deed of settlement can be held to be inadmissible against Gulobati.

12. As I am unable to find any good reason to interfere with the judgment and decree passed by the lower appellate Court, this appeal is dismissed with costs.
Appeal dismissed.

Cases Referred.

[1] ILR 51 All 79
[2] AIR 1950 All 700
[3] Second Appeal No.1024 of 1958, disposed of on the 30-8-1960