

RAJASTHAN HIGH COURT

Parmanand Setia

Vs.

Somlal

S.B. Civil Misc. Appeal No. 190/87

(B. Prasad, J.)

23.09.2002

JUDGMENT

B. Prasad, J.

1. The present appeal has been filed against the order of Addl. District Judge No. 2, Sri Ganganagar in civil original suit No. 13/85 by which learned Judge rejected the application under Order 23 Rule 3 Civil Procedure Code.

2. The suit was filed by the plaintiff claiming that defendant No. 1 is tenant. The relationship of landlord and tenant is denied by respondent No. 1 and he claimed that he is living as owner in the property. The respondent No. 1 filed an application on 27.11.1984 under Order 23 Rule 3 Civil Procedure Code that parties have compromised and in terms of this compromise, an agricultural land situated at Abohar was the bone of contention. It has been stated that defendant will not interfere into the land and the plaintiff has accepted that defendant No. 1 is occupying House No. 33A, Block Public Park as a owner in terms of mutual partnership as agreed by the parties. It was prayed in the application that suit should be decided in terms of the agreement.

3. The plaintiff opposed the application of defendant No. 1 and has denied the compromise. It was contended on behalf of plaintiff that document relied upon by the document does not come within the definition of family arrangement.

4. Issues were settled and out of these issues, issue No. 3 was decided as a preliminary issue. After hearing the parties, the trial Court came to the conclusion that every document which has in itself a tendency to create and extinguish the right of the parties, the same have to be registered compulsorily in terms of Section 17 of the

Registration Act. The learned trial Court has quoted terms of the compromise wherein it has been recorded that the parties have now compromised that defendant who has got the house will continue to be the owner of it and the plaintiff has no right or title in the house. It has been observed by the trial Court that this recorded writing has in itself a tendency to create rights in favor of respondent No.1 and extinguish the rights of the plaintiff, therefore, it is compulsorily registrable. It has also been found that this agreement is in violation of Section 23 of the Contract Act because the same has an object of defeating the provisions of Indian Registration Act and therefore the agreement is against the public policy. As such, the compromise being forbidden by law, the same cannot be entered into. It has been declared by the trial Court that compromise is against Section 23 of the Contract Act, therefore, the same cannot be recorded.

5. Learned counsel for the appellant has urged that law regarding registrability of a document is well settled. It has been stated by the learned counsel for the appellant that as and when, a party creates a right by an agreement between the family and it is family arrangement, then it is required to be registered for being admissible in evidence. Only such documents are required to be registered which create or extinguish the rights. The appellant has relied on a decision of the Hon'ble Supreme Court in the case of *Kale and others v. Deputy Director of Consolidation and others*,¹ wherein it has been observed as under :

"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."

6. Learned counsel for the appellant has further relied on the decision in the case of *Roshan Singh and others v. Zile Singh and others*² wherein it has been observed as under :

"Admittedly there was a partition by metes and bounds of the agricultural lands

and the shares allotted to the two branches were separately mutated in the revenue records. There was thus a disruption of joint status. All that remained was the partition of the ancestral residential house. The document does not effect a partition but merely records the nature of the arrangement arrived at as regards the division of the remaining property. A mere agreement to divide does not require registration. But if the writing itself effects a division, it must be registered.

"Section 17(1)(b) lays down that a document for which registration is compulsorily should, but its own force, operate or purport to operate to create or declare some right in immovable property."

7. Learned counsel for the appellant has further relied on the decision in the case of *Mythili Nalini v. Kowari and others*,³ wherein Kerala High Court has held that agreement by way of family settlement settling all disputes between the parties is required to be registered. The appellant has further relied on the decision in the case of *Deb Dutt Seal v. Raman Lal*,⁴ wherein the Hon'ble Supreme Court has held that it is on the construction of the document wherein it requires registration or not. The Hon'ble Supreme Court observed that in order to require registration, document must contain all the essentials of transaction and one essential is that the title deeds contain all essential of transaction. According to the Hon'ble Supreme Court it is a document which is registrable under the Registration Act and not a transaction.

8. Per contra, learned counsel for the respondents urged that had it been a mere family settlement entered into in between the parties in past, the registration might not have been necessary, but from the document in question, it is stated that plaintiff will have no right in the house and defendant No.1 will enjoy the house. Thus, there is a positive creation of right in defendant No. 1 and extinction of rights of plaintiff. This document creates a right in one party and extinguishes right of another, which according to the case law relied upon by the learned counsel for the appellant is registrable. That being the position, the document was required to be registered and the trial Court has rightly held so.

9. Learned counsel for the respondent has further stressed that it was in that view of the matter, the parties have tried to defeat provisions of Registration Act wherein registration of a document is required and fees is required to be paid. The parties to the document have tried to evade fee which was payable. Thus, there was an intent of

the parties to defeat the law which is a contract opposed to Section 23 of the Contract Act. This has rightly been held to be inadmissible.

10. I have considered the rival submissions and have gone through the record and given my thoughtful consideration.

11. From the law quoted hereinabove, it is clear that mere recording of a memorandum of family arrangement is not required to be registered because it only records what has happened in the past. But the law pronounced by the Hon'ble Supreme Court in Roshan Singh's case (supra) is express and clear that as and when, a document records the creation of a right in a party and extinction of right to other party, such document is required to be registered. In the instant case, reading of the document shows creation of right in favor of respondent No. 1 an extinction of right of plaintiff. That being the position, the document has rightly been held to be registrable. Non-registration is the consequence of defeating the payment of fees to the State for registration. Thus also, the document has been held to be inadmissible in law being contrary to Section 23 of the Contract Act: Findings of the trial Court are thus in conformity with the law.

12. No interference is called for. The misc. appeal having no force is dismissed. Appeal dismissed.

Cases Referred.

1. AIR 1976 SC 807
2. AIR 1988 SC 881
3. AIR 1991 Ker 266
4. AIR 1970 SC 659