

Mangal Prasad Vs. Vth Additional District Judge, Basti and Others

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Court : Allahabad

Decided On : Jan-09-1992

Reported in : AIR1992All235

Judge : R.B. Mehrotra, J.

Acts : [Registration Act, 1908](#) - Sections 17, 17(1) and 49; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Order 13, Rule 8; [Evidence Act, 1872](#) - Sections 91

Appeal No. : Civil Misc. Writ Petn. No. 25043 of 1988

Appellant : Mangal Prasad

Respondent : Vth Additional District Judge, Basti and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : P.P. Chaudhary, Adv.

Judgement :

ORDER

1. Sri Satyadeo Lal, who is arrayed as respondent No. 3 in the writ petition filed, Suit No. 32 of 1985 in the court of the Civil Judge, Basti for partition of the disputed house and sehan inter alia on the ground that the plaintiff and the defendant are the real brothers, they have inherited the disputed property after the

death of their father and purchased the land jointly shown by letters d] [k] x] ?k] N- Since there is a dispute between the two brothers regarding their shares, it has become necessary to get the property divided by metes and bounds. The suit was contested by Mangal Prasad, who filed a written statement and, inter alia, contended that the property has already been partitioned by metes and bounds in the year 1978 and a memo of partition has also been executed between the parties on 27-3-78. This alleged memo of partition embodying the factum of partition was filed on behalf of defendant Mangal Prasad in the suit. The plaintiff filed an application on 5-3-1986 saying that the said document which is alleged to be memo of partition is actually a deed of partition which is unregistered as well as insufficiently stamped, hence the document is liable to be impounded under O. 13 Rule 8 of the Code of Civil Procedure. The defendant Mangal Prasad objected to the said application and contended that the document is simply a memorandum of partition and not the partition deed and as such no stamp is required on the same nor the document required any registration. After hearing both, the parties, the Addl. Civil Judge allowed the application of the plaintiff-respondent, vide his order, dated 20-12-1986 impounded the document and held that the document actually partitions the property between the two brothers, as such is a document of partition itself and requires registration.

2. Aggrieved by the said order, the defendant filed a revision. The revisional court upheld the order of the trial court and dismissed the revision by its order, dated 29-9-1988-

3. Aggrieved by the aforesaid orders the defendant has filed the present writ petition under Art. 226 of the [Constitution of India](#).

4. The only question involves for consideration in the present matter is as to whether the document dated 27-3-1978 filed by the defendant in the suit claiming to be a memo of partition is a document which records partition done at any earlier point of time or the document itself partitions the property amongst the two brothers, namely, the plaintiff and the defendant.

5. Before setting out the contents of the document, it is necessary to mention that a true copy of the document was filed as Annexure '1' to the writ petition. In the

copy, the document is titled with the words 'Copy of the Memorandum of Partition, Dated 27th of March 1978 between Mangal Prasad and Satya Deo Lal.' On notice being issued to respondent Satya Deo Lal, the respondents counsel has filed a certified copy of the said document which does not show that the document is titled as Memorandum of Document. The certified copy only shows copy of the original document, dated 27th of March, 1978. The words 'Memo of partition' noted in Annexure '1' which is alleged to be a true copy of the document, dated 27th of March, 1978 are missing in the certified copy of the document. The relevant extracts of the document as translated in English read as under :--

'Since between Mangal Prasad and Satya Deo Lal, son of Surya Narain Lal, resident of village Belwa Dandi, Tappa Deoral, pergana Basti east tahsil and district Basti, dispute in respect of house and connected matters often arise today on Monday the 27th of March, 1978, such dispute has again arisen. Relations having strained, both the parties have agreed that respectable persons may be called and the matter may be solved.

Accordingly with their consent Sri Harish Chand Land son of Jeet Bahadur Lal, Ram Bharose Lal, son of Hazari Lal, Ayodhya Prasad, son of Hari Prasad Lal Krishna Chandra Lal alias Azad Lal son of Sri Basdeo Lal, Shyam Behari Lal son of Ram Prasad Lal and Babu Basant Lal son of Bhawani Lakshan Lal, residents of Belwa Dandi and Prem Chandra Gupta, Advocate resident of Bishun Purwa were invited to resolve this dispute. Both the sides first party Mangal Prasad, second party Satya Deo Lal in their full senses have given their consent to the arbitrators, that whatever mutual partition they will make. it will be acceptable to both the sides. On this the arbitrators partitioned the house and the court yard, in the annexed site map. Thereafter the arbitrators gave sufficient time for considering the matter. Both the sides did not object to the partition made by the arbitrators and this mutual partition made by the arbitrators was accepted to be final in their presence. The details of the partition are as under, which is being shown in the site plan.

The sitting room of Mangal Prasad d] [k] x] ?k has been constructed by his own expenses. The house which is shown by words p] N] t] > in an ancestral house of

both the parties. But since mutual partition is being given final shape therefore, Mangal Prasad's sitting room shown by letters d] [k] x] ?k and land attached to it on south side 16**~ 6** [k] V has been curtailed. Accordingly from ?k to B 21 'x 5' is being given to Mangal Prasad. Accordingly the land towards south of d] V] B] x] in the length of east and west has been given to Satya Deo Lal, Old house (ancestral house) is shown as p] N] .k] >- Between Sri Mangal Prasad's sitting room and ancestral house, there is a vacant land which is being partitioned as under : On the south side of Azad's house, in 63' long court yard the words u] Fk up to 17* r] /k, accordingly on the spot map up to the words p] i] /k] r] ?k] V] and [k] x] ?k land is given to Mangal Prasad as court yard which has been shown in the spot map with a dotted line. Some land is vacant towards south side of the ancestral house shown as p] N] t] >-. Accordingly towards its north side, there is a land which was purchased by both of them, vide document dated 29th of May, 1970 which is a registered document. As Mangal Prasad's ancestral house towards north has been shown as p] i] Q] > the land attached to it is being given to him for his convenience. Accordingly the land towards south shown as i] N] t] is being given in the share of Satya Deo Lal..... The document, dated 29th of May, 1970 since has been executed in the names of both the parties and since the said portion is coming only in the share of Mangal Prasad. In future Satya Deo Lal is prohibited from claiming any right with the said property by virtue of this document. In the south west of the ancestral house p] N] .k] isome land is being given to Mangal Prasad, Satya Deo Lal will have no connection with it. The verandah 15'-- 1' in length is being given to Satya Deo Lal.' The document further divides the trees etc. standing in the disputed property.

6. A bare reading of the document demonstrates that by the document itself the partition was effected between the two real brothers, namely, the plaintiff and the defendant. Both the courts below have taken this view that the document itself is a deed of partition and is not a memo and have accordingly held that the document was in-sufficiently stamped and required registration. The document has accordingly been impounded by the trial court.

7. The counsel for the petitioner has contended that the document is not a deed of partition but records a memo of partition orally arrived at between the parties at the

intervention of the arbitrators. The contention of the petitioner's counsel is that it is not necessary that an understanding of partition between the parties should have been arrived at some days earlier and the memo is written subsequent thereto. It is possible that the understanding of partition is arrived at few minutes earlier and later on a memorandum of the said partition is recorded in the present case.

8. In the case of Mohd. Zakir v. Amir Ahmad, reported in 1983 (1) Lucknow Civil Decisions, 94, a Division Bench of this Court held;

'In order to determine whether the document is a deed of partition or is a memorandum of partition, it is to be seen whether partition has been made by the document itself or the document contains the terms and conditions of a mutual partition arrived at in a family arrangement. In the latter case, the document itself does not create or extinguish any right or title in an immovable property and it is not compulsorily registered. The document falling in the former category would require registration, the value of the immovable property exceeds 100/-. It is not where mutual partition in a family settlement should have been taken place before the execution of the document evidencing such partition so as it is a memorandum of partition. Sometimes it may so happen that the properties are divided mutually in a family settlement between the parties just then and there, on the spot, documents are written, evidencing as to which of the properties have fallen in the share of which party in the mutual partition, for the purpose of record or for information to concerned mutation authorities, in order to make mutation respectively in their names over the properties which have fallen in their shares in mutual partition. Such a document cannot be said to be a document of partition and would not require registration.'

9. In Roshan Singh v. Zilay Singh reported in AIR 1988 SC 881, the court held as under (para 9) :

'It is well settled that while an instrument of partition which operates or is intended to 'operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under S. 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement

of fact, and it does not requires registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. S. 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow : (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, S. 49 of the Act will prevent its being admitted in evidence. Secondly evidence of the factum of partition will not be admissible by reason of S. 91 of the [Evidence Act, 1872](#). (2) partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to provide the fact of partition.'

10. The only question which requires consideration in the present matter is as to whether the document in question operates or intended to operate as a declared volitionconstituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it or merely recites that there has in time past been a partition.

11. A bare reading of the document shows that by the document itself the property has been divided by metes and bounds. It is not that it recites that a partition has already been taken place and the document records only a memorandum of the said petition. By the impugned document, the ancestral property was divided by metes and bounds between the two real brothers and by the said document the property which was jointly purchased by the two real brothers was given exclusively in the share of one brother and the other was deprived of the said property. This clearly amounts to creating a fresh right in the property and extinguishing the existing right in the said property.

12. If the document is a recognition of pre-existing right then it can be called the memo of partition but if the rights are created or extinguished by the said document, the document requires registration. In the present case for the first time by the document itself the entire property was divided by metes and bounds and the property jointly purchased by the two brothers was given in favour of one brother depriving the other brother of his share in the said property. This resulted in a situation that document created an exclusive right in respect of joint property in favour of one brother and the right of other brother was extinguished. Such a document clearly required registration and was insufficiently stamped. The trial court has rightly impounded the document. The submission of the petitioner's counsel that the document is only a memorandum of partition is not correct and the submission is belied by the language of the document itself. I am clearly of the opinion that by the impugned document itself the property was divided between the two real brothers and a joint property was given in favour of one brother resulting in a situation where the rights in respect of a joint property were created in favour of one brother and the rights of the other brother extinguished in the said property. This is clearly a case where in the rights in respect of a property were created and extinguished. Such a document clearly requires registration (See AIR 1976 SC 807).

13. The writ petition accordingly fails and is dismissed with costs.

14. Petition dismissed.