

Nirban Singh Vs. Bari Bitta and anr.

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Court : Allahabad

Decided On : Apr-19-1927

Reported in : AIR1927All484

Appellant : Nirban Singh

Respondent : Bari Bitta and anr.

Judgement :

Sulaiman, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that the plaintiff was by right of survivorship and according to a mutual settlement, the exclusive and absolute owner in possession of certain zamindari properties consisting of six items set forth in the plaint, and that the principal defendant, Mt. Bari Bitta, had no right of ownership or partition thereto except to get Rs. 500 a year as maintenance allowance. The case put forward in the plaint was that the plaintiff was a member of a joint Hindu family with the principal defendant's, deceased husband, Gobardhan Singh, and that when he died Mt. Bari Bitta did not succeed to his estate as a Hindu widow. It was mentioned that she applied to the revenue Court for partition of some villages and the plaintiff objected, with the result that the revenue Court referred the plaintiff to the civil Court for a declaration of his ownership. The plaintiff, however, alleged that before he could file a suit there was a mutual compromise under which it was settled that the defendant would give up

all claim to the villages in dispute in the revenue Court, as well as other properties which were the subject of dispute in the civil suit, and receive Rs. 500 as maintenance allowance. The contesting defendant pleaded that her husband was separate from the plaintiff and that she had succeeded to his estate as a Hindu widow. She denied that any complete compromise was arrived at between the parties which determined their proprietary title. It was also pleaded that the claim was barred under Sections 111 and 233(K) of the Land Revenue Act. The learned Subordinate Judge has not allowed the plaintiff an opportunity to produce oral evidence to prove the alleged compromise. His opinion was that such a compromise had to be reduced to writing and duly registered, and without such formality it was not enforceable in law. He accordingly excluded all evidence offered by the plaintiff to prove the terms of the compromise. Nevertheless, for purposes of limitation, he has recorded a finding that on the evidence he is inclined to hold that there was a compromise from which the defendant subsequently backed out. In his opinion the claim was not barred by limitation inasmuch as there was something tantamount to a fraud practised by the defendant. The plaintiff's suit failed merely on the ground that there was no registered document.

2. We are unable to agree with the Court below on either of the two main points decided by it.

3. The question really was not strictly one of limitation coming under the Limitation Act. Even if it were, Section 18 of the Limitation Act would hardly be applicable as that can apply only when the plaintiff has by, the fraud of the opposite party, been kept from the knowledge of his right or title. That obviously was not the case here. The question, however, is not one of limitation in the strict sense of the word. Under Section 111 of the Land Revenue Act, the partition Court has power either to decide the question of title itself or direct any party in the case to institute a suit within three months in the civil Court for the determination of the question raised. If the party ordered to file a suit within three months fails, to do so, under sub-C1. 2 of that section the Collector must decide the question against him. If the suit is instituted, the partition Court acts in accordance with the decision of the civil Court. It is an admitted fact that the present civil suit was not filed within three months of the order passed by the partition Court. On the 30th of April 1923, it held that the

objector had failed to file a civil suit and that the partition proceedings should accordingly proceed.

4. That, no doubt, was a decision against him on the question raised by him. When the objector went up in appeal the appellate Court came to the same conclusion and held that no civil suit having been filed within the three months allowed the procedure of the revenue Court in proceeding with the partition was correct. The appeal was accordingly rejected. In our opinion the jurisdiction of the civil Court to enquire into a claim of title as regards properties which are the subject-matter of a partition in the revenue Court, arises only under Section 111. When no suit within the time allowed by the section and in compliance with it has been instituted, the civil Court cannot go on with the enquiry. If such a thing were allowed the result may be that the revenue Court may ignore the civil Court's decree which would be altogether ineffectual and futile. Under these circumstances, it is obvious that. Section 111 is a bar to the plaintiff's claim as regards the villages which were sought to be partitioned or to which the order referring the objector to the civil Court expressly or by necessary implication applied.

5. Assuming that there was a complete compromise between the parties subsequent to the order of reference to the civil. Court and the institution of the civil suit, such a compromise could be brought to the notice of the revenue Court itself. Under Sub-clause (3) of Section 111 that Court could have taken into account such a compromise and decided the suit in accordance with it. As a matter of fact, the matter was brought to the notice of the appellate Court which came to the conclusion that the compromise did not relate to the question of title, but merely to a settlement of the question of attachment. Having regard to these circumstances, we are of opinion that the present suit, so far as it relates to the properties in dispute in the revenue Court, cannot be entertained.

6. It may follow further that the decision of the partition Court on the question whether the family was joint or separate, must now operate as *res judicata* and that it is no longer open to the plaintiff to contend that the family was joint in respect of the properties in dispute in the revenue Court. Such a position would be untenable. It is in view of these circumstances that the learned Advocate for the

appellant has not pressed grounds Nos. 1, 2 and 7 of the memorandum of appeal.

7. We, however, do not think that the Court below was right in rejecting the oral evidence tendered by the plaintiff. Under no law is a compromise or a mutual settlement between parties required to be reduced to writing. When no writing is absolutely necessary, it is difficult to see how registration would be compulsory. A compromise of this kind does not necessarily amount to a transfer of property. It is more an acknowledgment of the right of a claimant than of actual transfer to him. We, therefore, think that the Court below was not right in excluding oral evidence that was offered by the plaintiff to prove the terms of the alleged compromise. It is only after the whole evidence has come on the record that it can be decided whether the alleged compromise had passed the stage of a mere negotiation and whether it had been completed. It is also only then that it can be decided whether it was a necessary part of the compromise that it should be reduced to writing and filed in any Court. (His Lordships then remitted issues to the lower Court for findings.)

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