

Hari Shankar Vs. Durga Devi and anr.

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Court : Allahabad

Decided On : Mar-31-1977

Reported in : AIR1977All455

Judge : M.P. Mehrotra, J.

Acts : [Registration Act, 1908](#) - Sections 17 and 17(2)

Appeal No. : Second Appeal No. 187 of 1966

Appellant : Hari Shankar

Respondent : Durga Devi and anr.

Advocate for Def. : V.D. Singh, Adv.

Advocate for Pet/Ap. : K.C. Saxena, Adv.

Disposition : Appeal dismissed

Judgement :

M.P. Mehrotra, J.

1. This is the defendant's second appeal. They have lost in both the courts below and have come up in the instant appeal.

2. The brief facts are these:--The deity sued as the plaintiff for a declaration that the deity was the owner of house No. 211, Faithful Ganj, Kanpur. One Pitamber Lal was the original owner of many properties including the one in dispute in the suit. He died some time in 1932 and on his death, dispute arose between various parties. One Raghbir Prasad claimed to be the adopted son of the said Pitamber Lal. Smt. Rukmani Kunwar was the widow and Newaji Lal was the brother of the said Pitamber Lal-Raghbir Prasad filed suit No. 28 of 1933 in the court of the Civil Judge, Kanpur, wherein Newaji Lal and Smt. Rukmani Kunwar were made defendants. There were certain other defendants also in the said suit. The prayer in the suit was that a declaration be granted that in terms of the will dated 17th September, 1932 of the said Pitamber Lal, the plaintiff Raghbir Prasad was the trustee in valid possession and management of the properties detailed at the foot of the plaint. In the alternative, the relief sought was that in case the aforesaid relief could not be granted to the plaintiff, then the latter was entitled to the said property as the validly adopted son of the said Pitamber Lal and that he was in possession of the said properties in the said capacity. Admittedly the property in dispute before me was one of the items of the properties detailed at the foot of the plaint. The said Suit No. 28 of 1933 was ultimately compromised and the said compromise was made the rule of the court. A certified copy of the compromise decree is Ext. 10 in the suit. Under the terms of the compromise, it was settled that house No. 87/167, Bhannapurwa would be the property of the plaintiff deity and the temple of the deity would be constructed therein and the deity would be installed in the temple and it was also agreed that certain amounts in deposit with the Punjab National Bank Limited belonging to Pitamber Lal were to be utilised for the said purpose. It was further stipulated that house No. 211, which is the subject-matter of dispute before us, was to be given to Smt. Rukmani Kunwar to remain in her possession during her life-time but she was not given any power of alienation and on her death the property was to stand dedicated to the deity Durga Devi who was to be its owner. Certain trustees of the deity were appointed in terms of the compromise decree. The plaintiff deity alleged that the said compromise decree passed in suit No. 28 of 1933 was fully acted upon and the deity was installed with full religious ceremony in the aforesaid Bhannapurwa house after the temple had been constructed therein as stipulated in the compromise decree. It was stated

that on 9th January, 1959, Smt. Rukmani Kunwar died and on her death, the deity became entitled to the possession of the said house which had been declared to be a Wakf property vesting in the deity after the death of Smt. Rukmani Kunwar by the aforesaid compromise decree passed in suit No, 28 of 1933. It was alleged that the defendants were questioning the plaintiffs title which they had no right to do and, therefore, it had become necessary for the plaintiff deity to seek a declaration of her title. The property happens to be in possession of the tenants who were sought to be pressurised by the defendants so that they did not pay the rent to the plaintiff deity.

3. The defendants contested the suit, inter alia, the defence was that Raghubir Prasad was not the adopted son of Pitamber Lal and the entire property of the latter was his self-acquired and on his death his widow Smt. Rukmani Kunwar succeeded to the properties of her husband. It was denied that there was any valid compromise arrived at in suit No. 28 of 1933 and the suit itself was alleged to be vexatious, frivolous and collusive. The compromise said to have been arrived at in suit No. 28 of 1933 was alleged to be brought about by fraud and collusion. The decree, in any case, was alleged to be not binding on the defendants. Smt. Rukmani Kunwar as the full owner of the house in dispute sold the same by a sale deed in favour of defendant No. 2 and the defendant No. 2 in his turn sold the same to defendant No. 1 by means of a registered sale deed dated 5th May, 1960. It was claimed that the defendants were bona fide purchasers for value without notice and, therefore, they were entitled to the benefit of Section 41 of the Transfer of Property Act. The bar of Section 42 of the Specific Relief Act was also pleaded and a plea of limitation was also raised. Smt. Rukmani Kunwar was said to have acquired absolute title by adverse possession and lastly it was contended that the compromise between the parties arrived at in suit No. 28 of 1933 was inadmissible in evidence because it was not a registered document.

4. The trial court framed the necessary issues and tried that suit. The defence pleas were negatived and the suit was decreed. The decree of the trial court was affirmed by the lower appellate court.

5. In the second appeal before me, Shri K.C. Saxena learned Counsel for the appellant, has contended that the compromise decree was not admissible in evidence for want of registration. He has relied on Section 17(1)(b) of the [Registration Act, 1908](#) and has contended that the exception laid down in Clause (vi) of Sub-section (2) of Section 17 of the said Act will not save the compromise decree in the instant case because the scope of the suit in the earlier litigation was such that no dedication could be made in favour of the deity in respect of the property in dispute and further, no scheme of the management could be laid down in the compromise decree looking to the nature of the suit and the reliefs claimed therein. Learned counsel has also placed reliance on *Ram Gati Chaube v. Ram Adhar Chaube* : AIR1961 All537 , which is a Full Bench decision of this Court. In my opinion, this contention is not tenable. So far as the Full Bench case is concerned, it is obviously distinguishable. In the said decision., the court was called upon to consider the effect of an ambiguous one word order passed by the mutation court. The one word order was 'approved'. Looking to the nature of the prayer made in the application, the Full Bench held that the mutation court by its order directed the names of the parties to be mutated over the properties which were so specified in the compromise application. The Full Bench has clearly observed as follows :--

'The Sub-Divisional Officer, to whom the application was presented, passed a monomial order, 'approved', and thereafter the names of the parties were mutated in village records. The primary question is whether that order embodies the entire terms of the compromise application. An order, which explicitly records the entire compromise application, poses no problem (see *Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd.*, 46 Ind App 240 : (AIR 1919 PC 79), but an ambiguous order needs judicial exposition as to what it does and what it omits to do (see *Pranal Anni v. Lakshmi Anni.* (1899) ILR 22 Mad 508 (PC).)

6. In the instant case, the entire compromise application was made the rule of the court. The prayer of the parties was that a decree be passed in terms, of the compromise between the parties as set out in the application and the court made the entire compromise application a part of the decree. In this view of the matter, the Full Bench decision has no relevance to the present controversy. I do not think

the learned counsel for the appellant is right in his attempt to emphasise the nature of the suit and the relief sought while seeking to contend that Clause (vi) of Sub-section (2) of Section 17 would not be applicable to the compromise decree in the instant case. Section 17(1)(b) lays down as under:--

'17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian Registration Act, 1870, or this Act came or comes into force, namely:--

(a)

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property."

Sub-section (2) (vi) of Section 17 lays down as under:--

'Any decree or order of a Court (except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding.'

7. It is obvious that the criterion which has been laid down in Clause (vi) is whether the immoveable property in respect of which the compromise is being made is the subject-matter of the suit or not. If an immoveable property is the subject-matter of the suit then it is not relevant as to how the property is sought to be disposed by the compromise between the parties. It is also not relevant as to what was the nature of the suit in which the compromise was entered into or as to what was the nature of the relief sought in the said suit, It is also wholly irrelevant as to the manner, in which the property is being dealt with in the compromise application -- such as whether it is being dedicated to a deity or it is to be owned during lifetime or a full ownership is being conferred. In my opinion, these aspects of the matter really do not fall for any scrutiny. In other words, the nature, scope and content of

the compromise between the parties are extraneous considerations when we have to decide whether a decree or order of a court made on a compromise between the parties and comprising immoveable properties needs registration or not. We have only to see whether the immoveable property is the subject-matter of the suit or not. In this view of the matter, I reject the contention raised on behalf of the defendant-appellants and hold that the compromise decree passed in suit No. 28 of 1933 did not require registration.

8. It was next contended by Shri K. C. Saxena that there was no dedication by the aforesaid compromise decree and that after the death of Smt. Rukmani Kimwar a fresh document was to be executed to enable the property to be vested in the deity. I again do not find any merit in this contention. The clear recital in the compromise decree is that after the death of Smt. Rukmani Kunwar, the property shall be a property dedicated to the deity Sri Durga Devi. This term in the compromise clearly created a vested right in the deity and only the enjoyment for her lifetime was given to Smt. Rukmani Kunwar. In other words, even though the deity got an immediate vested right by the compromise decree, still, the enjoyment and management of the property was postponed till the death of Smt. Rukmani Kunwar. I do not think that any further document was, therefore, needed after the death of Smt. Rukmani Kunwar to vest the property in the deity. Learned counsel for the appellant contended that if there was dedication by a deed, then such a document needed to be registered. This contention has also no force because it is the repetition of the earlier contention which was raised by the learned counsel which I have already rejected. If the dedication is made as a result of the compromise between the parties concerning immoveable property and if such a compromise is made the rule of the court, then unless the immoveable property is not subject-matter of the suit in which the compromise is arrived at, the same shall be saved from the necessity of registration in view of the aforesaid Clause (vi) of Sub-section (2) of Section 17 of the Registration Act.

9. The appeal, therefore, fails and is dismissed with costs.