

MukarramuddIn Vs. RahimuddIn and ors.

MukarramuddIn Vs. RahimuddIn and ors.

SooperKanoon Citation : sooperkanoon.com/696680

Court : Delhi

Decided On : Feb-03-1989

Reported in : 1990(18)DRJ11

Judge : Y.K. Sabharwal, J.

Acts : [Stamp Act, 1899](#) - Sections 2(11)

Appeal No. : Interim Application No. 3054 of 1988 and Suit No. 116A of 1987

Appellant : Mukarramuddin

Respondent : RahimuddIn and ors.

Advocate for Pet/Ap. : M. Ahmed,; Maehswar Dayal and; P.R. Monga, Advs

Judgement :

Y.K. Sabharwal, J.

(1) The short question for determination in this case is: Whether the award dated 6th May, 1987 directs partition? The award was made by Sheikh Mukarramuddin. It was filed in Court and by orders made on 8th Sept., 1987 in the suit, the award was made a rule of the Court With a direction that decree be drawn in terms thereof.

(2) The award made by the arbitrator on 6th May, 1987 was in respect of disputes and differences between Sheikh Rahimuddin husband of Mst. Zobra Begam, his two sons Sheikh Abidis & Javed Kamal and two daughters Talat Jamal & Nahid Jamal. Mst. Zohra Begam according to the award died in Delhi on 6th July, 1986 and had orally devised and bequeathed her properties in favor of her sons and daughters Hi shares which they would have inherited according to Muslim Law of Succession. The award, also states that her husband Sheikh Rahimuddin had accepted the will of Mst. Zohra Begam by his. Release deed dated 4th March, 1987. By the award the arbitrator held that according to the will of Mst. Zohra Begam. Badrul Alidin, Javed Kamal, Talat Jamal and Nahid Jamal became owners of certain immovable properties, details of which have been given in the award in shares which they would have inherited according to Muslim Law of Succession. The arbitrator also held that according to will of Mst. Zohra Begam, her son Javed Kamal and daughter Nahid Jamal each got one set of gold of 20 tolas each, and her sons Badrul Abidin and Javed Kamal got Rs. 25,000.00 each and her daughters Talat Jamal and Nahid Jamal had got Rs. 10,000.00 each and that Sheikh Rahimuddin is bound by his release deed dated 4th March, 1987 and has no right title or interest in the properties left behind by his deceased wife. After the passing of the order making the award a rule of the Court with a direction that decree be drawn in terms of the award, the Registry of this Court raised an objection that decree can be drawn up only on the furnishing of non-judicial stamp papers as the award is for partition of the properties. In view of this objection, petitioner has filed the present application contending that arbitrator or by his award has accepted the Will of late Mst. Zohra Begam who by her will devised and bequeathed her properties in favor of her sons and daughters, in shares which they would have inherited according to Muslim Law of Succession. The contention of the petitioner is that award is not for partition of properties and, therefore, no judicial stamp papers are required to be filed for drawing up the decree sheet. Notice of the application was issued to Standing Counsel of Delhi Administration and I have heard learned counsel for the parties and Mr. Maheshwar Dayal, learned standing Counsel of Delhi Administration.

(3) Under the provisions of Section 2(11) of [Stamp Act, 1899](#) an award by an arbitrator directing a partition, is also an instrument of partition Section 2(15) reads

as under:- 'Instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition.

(4) Learned Standing Counsel has placed reliance on Syed Mohammed Hameed v. Syed Manzur Hasan Air 1922 All 283(2) holding that as 'instrument of partition' includes in its definition an award by an arbitrator directing a partition; if it is not sufficiently stamped as an instrument of partition, it is inadmissible in evidence. Learned counsel has also relied upon Abdul Hassain Khan v. Mst. Mahmudi Begam Air 1935 Lah 364 for the proposition that a decree passed in an award directing partition is an instrument of partition, there is no difficulty in accepting the proposition that if the award directs partition of properties and a decree is passed in terms of the award, it will be required to be drawn up on payment of the stamp duty in accordance with the provisions of Schedule I of the [Stamp Act, 1899](#). The question, however, is, whether the award in question directs partition of properties or that it only determines the disputes about inheritance of the estate of Mst. Zohra Begam.

(5) A perusal of the award shows that the arbitrator accepted the factum and validity of the oral will of late Mst. Zohra Begam, for the reasons given in the award and made the award on the basis of the said will. If Mst. Zohra Begam had not bequeathed her properties by will, her husband Sheikh Rahimuddin would have also got a share in her properties according to Muslim Law of Succession. The effect of will is that Sheikh Rahimuddin has been deprived of a share in the estate of Mst. Zohra Begam. Her estate has been bequeathed to her sons and daughters in shares which they would have inherited according to Muslim Law of Succession and the said Will has been accepted by the arbitrator. For the purposes of determining whether the award directs partition on its own force or merely states about an already existing fact. I have gone through the award. A perusal of it shows that it does not create or on its own force declare any interest in the properties. It only accepts the Will of Mst. Zohra Begam. Sons and daughters of Mst. Zohra Begam have got shares in the properties not because of the award as such but on account of the acceptance of Will which had been made by their

mother. In *Nawab Usmanali Khan v. Sagar Mal* Air 4965 Sc 1798 while considering the question whether an award requires registration or not under the provisions of Registration Act, it was held that the award stated merely an existing fact, it did not create or of its own force declare any interest in any immovable property and consequently the document did not come within the purview of Section 17 of the Registration Act, 1908 and was not required to be registered. In *Mattapalli Chelamayya v. Mattapalli Venkataratnam*, : AIR 1972 SC1121 , it was held that 'the recital in the award is no more than a reference to an existing fact and does not purport to create or declare, by virtue of the award itself, right title or interest in immovable property.'

(6) Mr Ahmed, learned counsel for the petitioner, to my mind, rightly relies upon judgment of this Court in *Laxmi Kant Mukht v. Jitender Kumar Aggarwal*. : 18(1980)DLT40 holding that the award recognising the oral partition between members of the family, which had earlier taken place, and the decree making it a rule of the Court, does not require execution on a stamp paper or to be compulsorily registered.

(7) The award has been accepted by the Court No illegality or infirmity has been found and by orders made, on 8th Sept., 1987 it has been made a rule of the Court with a direction that decree be drawn in terms thereof. It does not by its own force or on its own create any rights but is accepts the legality and validity or the Will of Mst. Zohra Begam. It does not effect partition. Thus it cannot be said that the award is an instrument of partition. Consequently there is no requirement of the decree being drawn on payment of the stamp duty.

(8) For reasons aforesaid, I allow the application and overrule the objection raised by the Registry and direct that decree in terms of the award be drawn up, 1.A. 3054/88 stands disposed of accordingly.