

Uma Devi Yadav and anr. Vs. Lt. Col. Gaj Singh Yadav (Retd.) and ors.

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SooperKanoon Citation : sooperkanoon.com/697439

Court : Delhi

Decided On : May-26-2000

Reported in : AIR2000Delhi424; 2000(56)DRJ734

Judge : Anil Dev Singh and; B.A. Khan, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3; [Delhi High Court Act, 1966](#) - Sections 10; Registration Act - Sections 17 and 49

Appeal No. : F.A.O. (OS) No. 315 of 1999

Appellant : Uma Devi Yadav and anr.

Respondent : Lt. Col. Gaj Singh Yadav (Retd.) and ors.

Advocate for Def. : Mr. Ravinder Sethi, Senior Adv., ; Mr. Kuljit Rawal, ; Mr.

Advocate for Pet/Ap. : Mr. Jugal Kishore Seth, Senior Advocate and; Ms. Shalini Kapoor, Adv

Judgement :

ORDER

Anil Dev Singh, J.

1. This is an appeal under section 10 of the [Delhi High Court Act, 1966](#) against the order of the learned Single Judge dated September 17, 1999 whereby the

application of the appellants being I.A.No. 1328/97 in Suit No. 562/75, under Order 23 Rule 3 read with section 151 of the Code of Civil Procedure for redetermination of the shares of the appellants in property No. 727-737, Church Mission Road, Fatehpuri, Delhi, filed after passing of the Preliminary consent decree dated April 19, 1989, was dismissed. The facts giving rise to the appeal are as follows :-

2. Late Shib Sahai, the ancestor of the parties, had three sons, namely, Surat Singh, Nawal Singh and Narain Singh. Shib Sahai died in the year 1938. Naval Singh predeceased him in the 1937. Shib Sahai had only one son Jaswant Singh who married Kamla Devi Yadav. They had a son Tarun Yadav. Jaswant Singh is also not alive and died in the year 1965. Narain Singh died on December 18, 1961. He had four daughters - Rajni Yadav, Uma Devi Yadav, Bina Kumari Yadav and Usha Rani. Surat Singh, the only remaining son of Shib Sahai, died on August 22, 1963. Surat Singh, who had married twice, was survived by a son, Lt. Col. Gaj Singh Yadav, from the first wife and four children from the second wife - three daughters and a son. At this stage it will be convenient to set out the genealogical table of the family :-

Sh. Shib Sahai

Ch. Surat=Sham Ch. Naval Ch. Narain Singh=Umrao Kaur

Singh Bhai Singh -----

(2nd wife)

Rajni Uma Devi Bina Usha

Yadav Yadav Kumari Rani

Jaswant = Kamla Devi

Singh Yadav

Tarun Yadav

Lt. Col. Surinder= Smt. Nirmala Satish Sushila Saroj

Gaj Singh Kumar Yadav Chand Yadav Yadav

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wife who 2nd wife) (from wife) 2nd

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to marriage

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Bai).

Anuradha Hemangini Mrinalini Atul

Chaudhary Chaudhary Chaudhary Chaudhary

3. Lt. Col. Gaj Singh filed a suit (Suit No. 562/75) on August 20, 1975 in this Court for partition claiming that the properties forming subject matter of the suit listed in Schedules A and B to the plaint belonged to Shib Sahai. Consequently it was claimed that the properties were ancestral properties. The appellants Uma Devi and Usha Devi and their mother Umrao Kaur, widow of Ch. Narain Singh, executed a registered General Power of Attorney on August 16, 1984 in favor of Wg. Cdr. M.P. Yadav (Retd), who was married to Rajni Yadav, eldest daughter of Ch. Narain Singh, authorising him to act and plead on their behalf in any civil, criminal and taxation matters in India. By virtue of this Power of Attorney, Wg.Cdr. M.P.

Yadav was also empowered to settle the disputes pertaining to ancestral properties situated at Delhi and Kasoli.

4. On April 19, 1989, a preliminary decree was passed by the learned Single Judge of this Court on the basis of settlement arrived at between the parties. It is significant to note that before the passing of the preliminary decree the parties were asked to adduce evidence by way of affidavits. Wg.Cdr. M.P. Yadav, attorney of the appellants, filed an affidavit dated February 9, 1988 in which it was admitted that the properties forming subject-matter of the suit belonged to Shib Sahai and were ancestral properties. It was also admitted that Shib Sahai died intestate and his sons inherited 1/3 undivided share each in the properties.

5. Earlier to the passing of the preliminary decree, on April 4, 1989 Wg. Cdr. M.P. Yadav made a statement on behalf of the appellants and Smt. Umrao Kaur that out of the share to which the appellants and Umrao Kaur are entitled to, 1/60th may be given to the first respondent herein, Lt. Col. Gaj Singh Yadav. On the same day Lt. Col. Gaj Singh made the following statement before the learned Single Judge:-

'A preliminary decree declaring that the plaintiff is entitled to 300/3600th share in and that Satish Chandra Yadav, defendant No.2 - 432/3600, Km. Sushila Yadav, defendant No.3 - 48/3600, Km. Saroj Nalini Yadav, defendant No.4 - 48/3600, Smt. Nirmala Yadav, defendant No.5 - 72/3600, Smt. Anuradha Chaudhary, defendant No.6 - 16/3600, Smt. Hemangini Dar, defendant No.7 - 16/3600, Smt. Mirnalini Chaudhary, defendant No. 8 - 16/3600, Major Atul Chaudhary, defendant No.9 - 312/3600, Smt. Kamla Yadav, defendant No. 10 - 600/3600, Ms. Taruna Yadav, defendant No.11 - 600/3600, Smt. Rajni Yadav, defendant No.13 - 285/3600, Smt. Uma Devi Yadav, defendant No. 14 - 285/3600, Miss Bina Kumari, defendant No.15 - 285/3600, Smt. Usha Rani Yadav, defendant No.16 - 285/3600 of the properties mentioned in Schedules A and B, may be passed. I give up my 1/9 share which comes to me out of the share of my father.'

6. Learned counsel for all the parties including Shri N.N. Aggarwal, ounsel for the appellants and respondents 12 and 13 herein (defendants 13 to 16 in the suit) accepted his statement and made statements consenting to the passing of the

preliminary decree in terms thereof. The statements of the learned counsel for the parties recorded by the trial Court are as under :-

'Statement of Mr. Ishwar Sahai, counsel for defendants 2, 3 and 4 :

I have heard the statement of the plain-tiff. I accept the same and a decree in terms thereof be passed.

Sd/- Ishwar Sahai. RO&AC; Sd/-April 4, 1989. (GC JAIN)Judge. Statement of Mr. Arun Kumar, counsel for defendants 5, 6, 7 & 8:

I have heard the statement of the plain-tiff. I accept the same and a decree in terms thereof be passed.

Sd/- Arun Kumar. RO&AC; Sd/-April 4, 1989 G.C. Jain, J. Statement of Miss Poonam Chaudhary, counsel for defendant No.9.

I have heard the statement of the plain-tiff. I accept the same and a decree in terms thereof be passed.

Sd/- Poonam Chaudhary RO&AC; Sd/-April 4, 1989 G.C. Jain, J. Statement of Mr. N.N. Aggarwal, counsel for defendants 13 to 16.

I have heard the statement of the plain-tiff. I accept the same and a decree in terms thereof be passed. Sd/- N.N. Aggarwal RO&AC; Sd/-April 4,1989 G.C. Jain, J. '

7. After recording the statements of Wg. Cdr. M.P. Yadav and Lt. Col. Gaj Singh Yadav and the learned counsel for the parties, G.C. Jain, J. passed a preliminary decree in the suit on April 19, 1989 declaring that the parties to the suit were entitled to the following shares in the properties mentioned in Schedules A and B to the plaint :-

Lt.Col.Gaj Singh Yadav (Retd), plaintiff- 300/3600

Sh. Satish Chandra Yadav, defendant No.2- 432/3600

Km. Sushila Yadav, defendant No.3 - 48/3600

Km. Saroj Nalini Yadav, defendant No.4 - 48/3600

Smt. Nirmala Yadav, defendant No.5 - 72/3600

Smt. Anuradha Chaudhary, defendant No.6 - 16/3600

Smt. Hemangini Dar, defendant No.7 - 16/3600

Smt. Mirnalini Chaudhary, defendant No.8- 16/3600

Major Atul Chaudhary, defendant No.9 - 312/3600

Mrs. Kamla Yadav, defendant No.10 - 600/3600

Ms. Taruna Yadav, defendant No.11 - 600/3600

Smt. Rajni Yadav, defendant No.13 - 285/3600

Smt. Uma Devi Yadav, defendant No.14 - 285/3600

Ms. Bina Kumari, defendant No.15 - 285/3600

Smt. Usha Rani Yadav, defendant No.16 - 285/3600

8. After the passing of the preliminary decree, the four daughters of Ch. Narain Singh including the appellants, again executed a registered power of attorney dated October 18, 1989 in favor of Wg. Cdr. M.P. Yadav wherein it was, inter alia, stated as follows :-

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'AND WHEREAS family litigation for partition and separate possession of our interest in the ancestral properties partly came to an end to the extent of passing of a Preliminary Consent Decree by Hon'ble Mr. Justice G.C. Jain of the High Court of Delhi in Suit No. 562/1975, determining our share in all the said properties forming subject-matter of the said suit, equally to the extent of 285/3600 each, i.e. 1140/3600 in all, and we succeeded as the absolute owners to that extent;

AND WHEREAS family litigation for partition by metes and bounds and separate possession of our interest and all incidental matters, including rendition of accounts, is continuing at Delhi;

NOW KNOW ALL MEN BY THESE PRESENTS that we, Rajni Yadav, Uma Devi Yadav, Bina Yadav and Usha Yadav, of our own free will HEREBY NOMI-NATE, CONSTITUTE AND APPOINT Wing commander Mahender Pal Yadav (retired), son of Late Chaudhary Daya Ram Yadav, presently residing at House No. B-17, Sector No.21, Jalvayu Vihar, NOIDA- 201301, District Ghaziabad (U.P) as our GENERAL ATTORNEY, to do all or any of the acts, deeds and things for and on our behalf in terms of this Irrevocable Power of Attorney executed by us, that is to say :-

1. To act, appear and plead for us in any Civil, Criminal, Taxation Court and any other Court in India.
2. To file and defend action on our behalf, to sign pleadings, to appoint and discharge Advocates, to sign and file affidavits, to make applications, appeals/revisions/review petitions up to the highest Court, to file execution petitions, to settle and compound matters, disputes and actions, and to take all legal steps that may be deemed necessary by the said Attorney for prosecution, with regard to the conduct of the cases pertaining to our ancestral property situate at Delhi and Kosli in the revenue jurisdiction of District Rohtak in Haryana State.'

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9. Subsequently Smt. Usha Rani Yadav, appellant No.2, cancelled the power of attorneys executed in favor of Wg. Cdr. M.P. Yadav vide cancellation deeds dated August 12, 1993 and August 31, 1994. Similarly, appellant No.1, Smt. Uma Devi Yadav, cancelled the power of attorneys executed in favor of Wg. Cdr. M.P. Yadav vide cancellation deeds dated August 16, 1994 and October 17, 1994. After cancellation of the power of attorneys executed earlier in favor of Wg. Cdr. M.P. Yadav, the appellants appointed Dr. R.S. Yadav as their attorney.

10. On May 6, 1983, the learned Single Judge appointed Mr. Justice D.R. Khanna, a retired Judge of this Court, as Commissioner to suggest the mode of partition of the suit properties mentioned as Annexure I to the decree sheet. About twenty-six hearings took place before the Commissioner and on several hearings the second appellant was present. On February 10, 1994 the Commissioner submitted his report suggesting the mode of partition with respect to the properties located at Delhi. He also submitted another report dated April 4, 1994 with respect to the properties situate in Kaso-li, Haryana. After the submission of the report, the learned Single Judge invited objections of the parties to the report of the Commissioner. Both the appellants filed objections to the reports of the Commissioner on November 17, 1994. In the objections the appellants did not raise any controversy with regard to the declaration of the shares of the parties in the ancestral properties including their shares and that of the first respondent under the preliminary decree passed with their consent. They, however, wanted that their portions in the ancestral properties should be separately demarcated in the block of 40% allotted to respondent No.1 herein and the appellants and their sisters by the Commissioner. At this stage it will be convenient to extract the main objections of the appellants to the report of the Commissioner :-

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7. That before the Lt. Commissioner it was not disputed that the objectors may be included in the block of 40% allotted to the plaintiff and defendants No. 13 to 16, but an application was moved before the Lt. Commissioner by defendant No.16, the present objector and the oral request was made before the Ld. Local Commissioner by Objector No. 14 to the effect that their portions should be separately demarcated in the block of 40% as mentioned above.

8. That the Ld. Local Commissioner ignored the same and did not demarcate the separate portions of the applicants in the report as well as in the plan annexed with the report.

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11. On July 25, 1995, after about six years of the passing of the preliminary decree and after about eight months of the filing of the objections to the report of the Commissioner, the appellants filed an application seeking redetermination of their shares in the property with a view to securing 300/3600th share each in the property instead of 285/3600th share each therein. That means they were claiming 1/40th share more in the property than what had been declared qua them under the preliminary decree. This application was dismissed by the learned Single Judge by a detailed order dated September 17, 1999. The appellants being aggrieved of this order of the learned Single Judge have preferred the instant appeal.

12. We have heard learned counsel for the parties. Learned counsel for the appellants contended that the preliminary decree based on the concession of Wg. Cdr. M.P. Yadav, needs to be reopened as he had no authority to make the statement which he made on their behalf on April 4, 1989 before the learned Single Judge. According to him, Wg. Cdr. M.P. Yadav colluded with the first respondent. We have given our anxious consideration to the submission of the learned counsel for the appellant, but we do not find any substance in the same. It needs to be noted that Wg. Cdr. M.P. Yadav (Retd) is the husband of respondent No.13, Smt. Rajni Yadav, who is the elder sister of the appellants. Obviously, Wg. Cdr. M.P. Yadav is more closely related to the appellants than the first respondent. therefore, he will be interested in the appellants rather than the first respondent. There is nothing on record to show that Wg. Cdr. M.P. Yadav exceeded his brief in making the following statement before the learned Single Judge on April 4, 1989 :-

'Out of the free will and instructions from defendants 13 to 16, I make this statement that out of the share to which defendants 13 to 16 are entitled, 1/60 may be given to the plaintiff Lt. Col. Gaj Singh Yadav (Retd).'

13. The aforesaid statement shows that the same was made on instructions of defendants 13 to 16 (the appellants and respondents No.12 & 13 herein), all daughters of Ch. Narain Singh. In any event the statement draws its sustenance from the General Power of attorney executed by the appellants on August 16, 1984. According to clause 1(b) of the General Power of Attorney, Wg. Cdr. M.P. Yadav had the authority to settle and compound matters and to take such legal

steps that may be necessary by him with regard to the conduct of the cases pertaining to the ancestral property situate at Delhi and Kasoli. According to clause 1(c) of the aforesaid General Power of Attorney, he even had the authority to withdraw or compromise the matter. The subsequent power of attorney dated October 18, 1989, which they executed after the passing of the preliminary decree, clearly reflects that the statement made by Wg. Cdr. M.P. Yadav on April 4, 1989 before the learned Single Judge was on the instructions of the appellants. The Power of Attorney dated October 18, 1989 contains a recital to the effect that family litigation for partition and separate possession of the interests of the appellants in the ancestral properties partly came to an end by passing of the preliminary consent decree by Hon'ble Mr. Justice G.C. Jain in Suit No. 562/75 whereby the share of the appellants in the ancestral properties was determined to the extent of 285/3600 each, i.e., 1140/3600 in all. If the appellants had not given the authority to Wg. Cdr. M.P. Yadav to make the statement which he made on April 4, 1989 before the learned Single Judge, there would not have been any recital to the aforesaid effect in the subsequent power of attorney executed by them in favor of Wg. Cdr. M.P. Yadav. That apart, Shri N.N. Aggarwal, who was appearing for the appellants and their sisters, respondents 12 and 13, by his statement dated April 4, 1989 accepted the statement of the first respondent plaintiff in the suit, and agreed to the decree being passed in terms thereof. In case the appellants had not consented to take 285/3600 share each in the ancestral properties, the learned counsel would not have accepted the statement of the first respondent Lt. Col. Gaj Singh Yadav dated April 4, 1989. A perusal of record shows that about 26 sittings were held by the Commissioner. On several dates appellant No.2, Smt. Usha, was present before the Commissioner. Neither the counsel for the appellants nor Smt. Usha expressed any misgivings about the preliminary consent decree passed by the learned Single Judge. Even in the objections which were filed to the report of the Commissioner no dispute was raised with regard to the share of the appellants. The only grievance of the appellants appeared to be that the Commissioner had not proposed a separate portion in the ancestral properties for the said appellants. The appellants remained satisfied with the preliminary decree for a period of about six years & did not accuse Wg. Cdr. M.P. Yadav of having colluded with the first respondent. In case

Wg. Cdr. M.P. Yadav did not have the authority under the power of attorney dated August 16, 1984 or under the instructions of the appellants to make the aforesaid statement before the learned Single Judge in favor of the first respondent the appellants would have challenged the preliminary decree immediately without wasting any time and would not have waited for five years to mount an attack against the same. The conduct of the appellants reflects that the challenge to the preliminary decree is an after thought. The only controversy which seems to have hurt the appellants is that instead of 300/3600th share each in the ancestral properties, they have been given 285/3600th share each in the same. The difference is negligible. On this ground a twenty-one years old litigation cannot be allowed to be prolonged as it must acquire quietus at some point of time. The plea of the appellants therefore, must fail and is hereby rejected.

Mr. J.K. Seth, learned Senior Advocate for the appellants, contended that the first respondent Lt. Col. Gaj Singh Yadav did not have any existing right in the immovable properties in question on April 4, 1989 when the preliminary decree with the consent of Wg. Cdr. M.P. Yadav was passed by the learned Single Judge. According to him, the preliminary decree for the first time purported to create a share to the extent of 300/3600 in the immovable properties of the value of more than Rs.100/- in favor of the first respondent. Learned counsel submitted that in such a situation the preliminary decree required registration under section 17 of the Registration Act, 1908 and it cannot affect immovable property comprised therein, or be received of in evidence of any transaction affecting such property under section 49 of the Registration Act, 1908. Learned counsel for the appellants in support of his submission mainly relied on Bhoop Singh Vs . Ram Singh Major and Others, : AIR 1996 SC196 . We have considered the submission of the learned counsel, but we have not been able to persuade ourselves to accept the same. The learned counsel for the appellants is not justified in urging that the right in the immovable properties in question in favor of the first respondent was created for the first time by means of the compromise decree. It appears to us that the properties were ancestral properties and the first respondent acquired a share in the same by virtue of his birth. An attempt was made by the appellants to contest this position on the ground that Ch. Narain Singh had made a Will under which the first respondent was not given any share in the properties. It is interesting to note

that in the power of attorneys executed by the appellants in favor of Wg. Cdr. M.P. Yadav, the properties have been referred as ancestral properties. Even in the objections filed to the report of the Commissioner, the properties have been alluded to as 'suit properties'. Obviously, these properties in the suit have been described as ancestral properties. In the written statement filed by the appellants the properties have been admitted to be HUF properties and coming from their ancestor Shib Singh. therefore, the learned Single Judge while passing the preliminary decree rightly proceeded on the basis that the properties listed in Schedules A and B to the plaint were ancestral properties. The statement dated April 4, 1989 of the first respondent which was heard and accepted by Shri N.N. Aggarwal, learned counsel for the appellants and respondents 12 and 13, referred to the properties as ancestral properties. Since the properties were HUF properties, respondent No.1 had undoubtedly an undivided share in them. By virtue of the statement of the first respondent and the acceptance of the same by the other parties, the first respondent gave up 1/90th share in the properties thereby acting to his detriment. We have no manner of doubt that the consent decree was a bona fide one. It is well settled that a compromise decree, if found to be bona fide in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. It seems to us that the preliminary decree has genesis in the unwritten family arrangement or understanding between the parties. It also appears to us that the preliminary decree passed with the consent of the parties has the effect of recognising the antecedent rights of the parties in the immovable property and therefore it would not attract any of the clauses of sub-section (1) of section 17 of the Registration Act, 1908. In Bhoop Singh v. Ram Singh (supra) the Supreme Court held that if the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upward in favor of any party to the suit, the decree or order would require registration. The Supreme Court observed that it was the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property or whether under the order or decree of the Court one party having right, title or interest agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favor of other party for

the first time, either by compromise or pretended sort. If latter be the position the document, according to the Supreme Court, is compulsorily registrable. In view of the principle laid down by the Supreme Court in Bhoop Singh v. Ram Singh (supra) since the parties had pre-existing rights in the immovable properties in question, being the ancestral properties, consent decree by declaring such rights will not attract the provisions of Section 17(1) of the Registration Act, 1908.

14. Before parting with the matter another aspect needs to be noticed. A compromise decree or a decree based on family [settlement operates as an estoppel. Such a decree is binding on the parties and must be given effect to unless it is proved that the same was obtained by fraud, misrepresentation, coercion, or undue influence (see V.N. Sreedharan Vs . Bhaskaran, : AIR1986 Ker49 , and Kale and Others Vs . Deputy Director of Consolidation and others, : [1976]3SCR202). The appellants have not been able to show that the arrangement between the family members, which is the basis of preliminary decree, was induced by fraud misrepresentation, coercion or undue influence. thereforee, their request for redetermination of shares in the properties was rightly rejected by the learned Single Judge.

15. In view of the aforesaid discussion, we endorse the views of the learned Single Judge. The appeal, thereforee, fails and is hereby dismissed.