

Syed Abdullah Sahib Vs. Syed Rahmatulla Sahib Alias

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Court : Chennai

Decided On : Jul-17-1959

Reported in : AIR1960Mad274

Judge : Rajagopalan and ;Ramachandra Iyer, JJ.

Acts : Registration Act - Sections 17(1) and 49; [Transfer of Property Act, 1882](#) - Sections 17

Appeal No. : Appeal No. 258 of 1955

Appellant : Syed Abdullah Sahib

Respondent : Syed Rahmatulla Sahib Alias ;baji Sahib and ors.

Judgement :

Ramachandra Iyer, J.

(1) This appeal arises from the decree in O. S. No. 39 of 1952 on the file of the Sub Court, Vellore. The first plaintiff is the appellant. The suit, out of which this appeal has arisen, was instituted by five persons, claiming as heirs of one Syed Akbar Sahib, who died on 25-7-1940, for partition and separate possession of their share of properties. Syed Akbar Sahib left behind him his widow, Bajju Bi, the 4th plaintiff, four sons and two daughters. Of them, one son, Syed Ahamad Sahib, and a daughter, Syadana Bibi, are now dead. The interest of the deceased daughter,

Syadana Bi, has devolved upon the other heirs by virtue of a compromise arrangement with her husband, one of her heirs. Syed Ahamad Sahib died on 3-10-1951, leaving behind him defendants 1 to 5 to the suit, as heirs.

According to the plaintiffs, the late Syed Akbar Sahib left behind him the properties mentioned in Schedules A to C, that after his lifetime, his eldest son, Syed Ahamad Sahib, who was a Circle Inspector of Police, managed the properties by virtue of power of attorney executed by other members of the family, and that in the course of his management he acquired D Schedule properties. The plaintiffs further claimed that after the death of Syed Ahamad Sahib, his heirs, defendants to the action, acquired E schedule properties out of the income from the estate of the deceased Syed Akbar Sahib. The plaintiffs, therefore, claimed administration of the estate of the deceased Syed Akbar Sahib and allotment of their shares in the properties

(2) The heirs of Syed Ahamad Sahib contested the suit. They contended that the estate of the deceased, Syed Akbar Sahib, had been completely administered, a partition effected between all the heirs, and what each possessed thereafter was his or her own property. According to them, the heirs of Syed Akbar met in July 1943, agreed to auction the properties between themselves, and divide the proceeds.

In support of their case, they relied upon Ex. B. 11, an unregistered deed of partition between the heirs, and also Exs. B. 12 to B. 16, the receipts granted by the heirs for having received their aliquot share of the total realisation from the estate. They also raised a contention relating to the extent of the properties, which formed part of the estate of the deceased.

(3) The learned Subordinate Judge held that Syed Akbar Sahib left only the properties set out in plaint schedule A and the outstandings, except item No. 2, that were mentioned in schedule B. He accepted the case of the defendants that there was a partition of the properties left by the deceased Syed Akbar Sahib on 12-10-1943, and held that the plaintiffs would not be entitled to sue for partition again or claim the properties subsequently acquired, namely, D and E schedule properties. On those findings, the suit was dismissed. The first plaintiff has

preferred this appeal against the judgment and decree of the lower Court.

(4) There is no controversy before us as to the properties that belonged to the estate of the deceased. It must, therefore, be taken that item 2 of Schedule B and those covered by schedules C, D and E did not belong to the estate of the deceased, Syed Akbar Sahib. The claim in the appeal was pressed with reference to the other properties alone. To entitle the appellant to a share in those properties it is necessary to consider whether Syed Akbar Sahib's estate still remains to be administered. To decide that question it is necessary to find whether the alleged partition arrangement of 12-10-1943 is valid and true. The case for the contesting defendants is that about three years after the death of Syed Akbar, his heirs met on 10-7-1943, and agreed that a partition should be effected in respect of the assets left by the deceased. Ex. B. 8 is a record of proceedings of the meeting of four sons and the widow of Syed Akbar Sahib. That is dated 10-7-1943.

The document has been signed by Syed Ahamad and his brothers, namely, plaintiffs 1 to 3. In Ex. B. 8 it is recorded that the parties agreed that all the properties including the outstandings, should be auctioned between the parties, and that the highest bidder among the sharers should take them. As the daughters were not present at the meeting it was resolved that notice should be issued to them. Exs. B. 9 and B. 10 show that notices were actually sent to the daughters. It is admitted that the parties met on 19-7-1943 at Vellore, and an auction took place. But, as the daughters of the deceased did not attend the auction, no final agreement was possible. So much has been admitted by the plaintiffs themselves. On behalf of the defendants, it was stated that on 12-10-1943 all the heirs of Syed Akbar Sahib met at Polur in the family house effected certain transactions in accordance with their previous agreement and partitioned the estate.

According to them, Syed Ahamad Sahib purchased A schedule properties and items 8, 12, 13 of B schedule properties for a sum of Rs. 3,110. His brother, the 2nd plaintiff, purchased items 9 and 10 of B schedule, Sakina Bi, the 5th plaintiff, purchasing item 11 of B schedule, and the other sister, Sydani Bi, purchased items 4 to 7 of B schedule. No formal conveyance was, however, executed in favour of the purchasers. It was their further case that accounts relating to the management

of the estate of the deceased Syed Akbar under the power of attorney were looked into, and there was a complete adjustment of the rights of the parties under which realisations of the auction sale were divided between them. Ex. B. 11 purports to be an agreement entered into between all the heirs of the deceased in regard to the partition effected. That is dated 12-10-1943. Exs. B. 12 to B. 16 are relied upon as receipts by the various heirs of Syed Akbar for the moneys received by them under the partition agreement.

(5) The case for the appellant, who contests the truth of the alleged partition, is two-fold. The first is that Ex. B. 11 is not genuine, that there was no partition on 12-10-1943 or on any later date, and that the parties continued to own the properties as tenants in common, the eldest son, Syed Ahamad, being in possession of the same as agent of the rest.

(6) The second is that Ex. B. 11, even if it were found to be genuine, would be inadmissible in evidence, as it had not been registered, and that it could not be relied upon to support the case of partition.

(7) In the memorandum of appeal, however no objection has been taken in regard to genuineness of Ex. B. 11. but it must be noticed that the substantial point urged in the lower Court was about the genuineness of Ex. B. 11, and we, therefore, permitted the learned advocate for the appellant to argue that point in order to satisfy ourselves that no injustice was done to the appellant by reason of his omission to raise the necessary grounds in the appeal memorandum.

(8) Ex. B. 11 is an agreement, dated 12-10-1943, between the parties. That document states that the parties decided to conduct an auction amongst themselves and to divide the proceeds as per the previous arrangement. The previous arrangement referred to was evidently Ex. B. 8. The document is signed by the sons and daughters of Syed Akbar. Ex. B. 11 is the partition agreement between the parties. That recites as to how the auctions were conducted and the amounts realised therein and then proceeds to state as follows:

'Accordingly (1) Syadani Bi Ammal, (2) Syed Ibrahim Sahib, (3) Sakina Bi Ammal, and (4) Syed Ahamad Sahib only bid in the auction, got the properties and

became the sole owners thereof. The entire proceeds of the auction is Rs. 5,133. By virtue of the management of the family affairs by No. 3 the balance is Rs. 1,064-9-6. He having accounted for the balance and having accepted the amount, there is a sum of Rs. 6,197-9-6. Out of this, after paying Rs. 1,200 as and for the debt due by our father to Syed Ibrahim Sahib, Rs. 200 as and for the marriage expenses of Zerura, the daughter of Syed Ibrahim Sahib, Rs. 200 as and for the maintenance of the grandfather, Kaja Hussain Sahib, Rs. 300 as and for the mehar dues due to Bijibi Ammal by No. 1, Rs. 300 as and for Stridhana arrears due to Sakina Bi and Rs. 110 as and for Stridhana arrears due to Syadana Bi Ammal, in all Rs. 2,210 the balance is Rs. 3,987-9-6, and we accept the same. We received the amount as per the details below.'

The share amounts of the various sharers are then set out in the document which proceeds to state.

'..... Further there are no moveable or immoveable properties to be partitioned between us. Hereafter there would be blood relationship between ourselves and nothing else. In future all the properties earned by an individual belong to him and for the debt incurred by him he will be liable and none other have right over them..... The bidders in the auction can make use of the conditions set forth and realise the amounts due to them, and others have no objection for such realisation, and if there is any obstruction they can realise the amount through the help of power of attorney executed by us in favour of No. 3 of us, Syed Ahamad Sahib.'

(9) The document purported to be signed by the sons and daughters of the deceased, and there is also a thumb impression said to be that of Bijibi. The learned Advocate for the appellant impugned the genuineness of the document on three grounds.

(After discussing evidence, His Lordships concluded):

These circumstances, in our opinion, show that Ex. B. 11 is a genuine document, and that there was a partition on 12-10-1943, of the assets of the family, which, by virtue of the previous arrangement between the sharers, consisted only of cash.

(10) The learned advocate for the appellant, next contended that Ex. B. 11 should be held to be inadmissible in evidence, as it was not registered. We have referred already to the relevant portions of the document. By virtue of the arrangement entered into between the parties, all the properties of the family had been auctioned between the sharers and purchased by them. What really represented the property of the co-heirs was only the money realised in the auctions. That was not immoveable property, and the document which effected a partition thereof would not require registration. But the learned advocate for the appellant contended that Ex. B. 11, on its terms, purported to effect a transfer of the immoveable properties belonging to the sharers, and that, therefore, it would require registration under S. 17(1)(b) of the Registration Act.

In this connection he relied upon a sentence in Ex. B. 11 which states, 'Accordingly Syadani Bi Ammal etc. only bid in the auction, purchased the properties and became owners thereof.' It was contended that this amounted to a declaration of title to immoveable properties, and that therefore, the document would require registration. We cannot agree with that contention. The portion of the document to which a reference has been made has got to be read along with the rest of the document. If it is so read, it becomes clear that it amounts only to a statement of a completed transaction, namely, the auction sale of the properties, under which various sharers got the immoveable properties, in lieu of certain sums of money paid by them. From Ex. B. 11 it is seen that the entire proceeds of the sales was Rs. 5,133, and, this along with what resulted after taking accounts between the parties, was divided.

The sum of Rs. 5,133, thus, represented the proceeds of the properties that originally belonged to the co-sharers, and, when that money came in, it cannot be said that the co-tenants had any subsisting right to the properties that had been sold; the sum of Rs. 5,133 took the place of those properties. In no sense, therefore, could it be said that when Ex. B. 11 attempted to divide the sum of Rs. 5,133, it impliedly effected a partition of the immoveable properties. The recitals of the fact relating to the sales were only recitals of a past transaction, and they do not purport to transfer title to the properties sold already. In considering the fact whether Ex. B. 11 purports to divide immoveable property, it is not relevant to

consider whether the auction sales had the effect of creating title in the purchasers in the absence of a registered instrument.

That point does not arise for determination in this case, if the auction sales were true, the respective purchasers, who have been proved to have been in possession since then in accordance with the sales would have perfected their title by adverse possession. That apart, we are of opinion that the various sales effected between the co-sharers amounted to releases by the other co-sharers and could be validly made orally. If a property is owned by a number of persons as co-owners, each co-owner would be entitled to enjoy the entire property, and a transaction by which one co-owner purported to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of a release. In *Board of Revenue v. Murugesu Mudaliar* : AIR1955 Mad641 a question arose as to whether a document by which one co-owner relinquished his claim in favour of the others would amount to a release of conveyance. In delivering the judgment, the learned Chief Justice observed,

' In such a case there need be no conveyance as such by one of the co-owners in favour of other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner.'

Neither a partition with respect to nor a release of a co-owner's right in immoveable properties need be in writing. If, however, parties reduce it to a writing it would require registration under the Registration Act as it could affect immoveable properties. In the present case Ex. B. 11 does not purport to be a release in regard to the immoveable properties. It only recites an arrangements entered into between the co-heirs and affirms the auction sales and purports to divide only the proceeds. The recitals evidence a completed transaction consisting of releases in favour of the purchasing co-sharers by the others.

(11) The admissibility of a document has to be decided by reference to S. 49 of the Registration Act. Section 49 in so far as it is relevant for this case, states.

'No document required by S. 17 or by any provision of the [Transfer of Property Act, 1882](#), to be registered shall

(a) affect any immoveable property comprised therein,

.....

(c) be received as evidence of any transaction affecting such property..... unless it has been registered.'

(12) For the application of S. 49 it must first be ascertained as to whether a particular document is required to be registered under S. 17. Section 17(1) (excluding the unnecessary portion) says:

'The following documents shall be registered..... (b) other 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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.'

(13) It is well settled that in order to come within the ambit of S. 17(1)(b) the document should purport or operate to create, declare etc. some right, title or interest in immoveable property of value of Rs. 100 or above. Section 49 has been held to enact both a rule of substantive law and a rule of evidence. It declares that an unregistered document cannot affect any immoveable property comprised therein. Ex. B. 11 does not refer to any immoveable property and S. 49(a) will not, therefore, apply to the present case. Section 49(c) prohibits receipt of unregistered document in evidence of a transaction affecting immoveable property comprised in it. In *Muruga Mudaliar v. Subba Reddiar* : AIR1951 Mad12 , it was held that S.

49(c) of the Registration Act prohibited the use of an unregistered instrument in any legal proceeding in which such a document was sought to be relied on in support of a claim to enforce or maintain any right, title or interest to or in immoveable property. No such right has been created by Ex. B. 11, which only purports to divide the amounts realised in the auction sale of the properties between the various sharers. The document, in so far as it refers to the antecedent auction sales purports to make a recital of the factum and the result of the sales and does not purport to vest title in any immoveable property in the purchasers.

(14) It was next contended that Ex. B. 11 was a part of the single transaction, namely, the agreement to sell the immoveable properties followed up by sale thereof and by division of the proceeds, as a result of which title to the immoveable properties vested in the respective sharers and that for the purpose of ascertaining whether registration was necessary, the result and not the purport of the transaction should be considered. We cannot agree with that contention. The Transfer of Property Act requires that certain transactions should be effectuated only by registered instruments. Apart from the provisions contained in that enactment, the obligation to register arises only under the Registration Act. Under the latter Act registration is made obligatory in respect of certain specified class of documents, but there is nothing to require a transaction to be effected by a registered instrument. Section 17 of the Registration Act enumerates the documents which require registration.

The necessity for registration under that act would depend upon what a document is or what it purports to be. A bargain or an arrangement between the parties may comprise several transactions. The question whether there should be a writing or registration would depend on each of the transactions and not on their cumulative result. In *Veerasami v. Narayya*, there was a transaction of sale of lands with an agreement to reconvey the same within the prescribed period. A question arose as to whether the agreement to reconvey which was a part of the bargain between the parties at the time of the sale could be proved without infringing the provisions of S. 92 of the Transfer of Property Act. The Privy Council observed at p. 493 (of ILR Mad): (at p. 34 of AIR):

'The agreements to sell and to reconvey may therefore be taken as contemporaneous. Such an arrangement, may, on occasion, amount to but a single transaction of the entire nature of a mortgage. On the other hand, it may contemplate two distinct transactions, as absolute sale followed by a resale in certain events..... In their Lordships' opinion, the correct way of stating the position is to say that the agreement reached covered several matters but that the intention was that each of these should be effected as a separate and independent transaction. There was to be an outright sale and that, upon the happening of a certain event, was to be followed by a reconveyance of what had been sold. The second transaction by its very nature, premised the previous completion of the first. Both, it is true, may be taken as arranged at the same time and agreement upon one part of the bargain may well have promoted agreement as to the rest, but such considerations do not necessarily affect the final result of the bargaining. The determining factor lies in the ultimate shape of the agreement rather than in the process by which it is reached. An oral stipulation may be purely collateral to the written agreement which it has induced, and that though both touch on a common subject-matter.'

(15) In the present case the agreement between the parties, no doubt, comprised several transactions, namely, the auction sale of the properties to the various sharers, which, as we have pointed out, would amount to a release the division of the proceeds of the auction sale would be an independent transaction, depending on the completion of the vesting of title under the auction sale. Ex. B. 11 would therefore be an independent transaction and not a part of the transaction of sale or release though it might be said to be part of an arrangement between the co-sharers. Registerability would depend only on the terms of that document.

(16) The learned advocate for the appellant next contended that Exs. B. 12 to B. 16 would not be admissible under S. 17(c) of the Registration Act. It is unnecessary to consider that question as Ex. B. 11 would be sufficient to prove the factum of partition in 1943. Even apart from that circumstance, we are of opinion that Exs. B. 12 to B. 16 do not require registration, as the amounts for which the receipts given were not stated to be on account of the creation of any interest in immoveable properties. We agree with the learned Subordinate Judge that Exs. B.

11 to B. 16 would be admissible in evidence to prove that there was a previous completed partition between the parties. They show that there had been a due administration of the estate of the deceased Syed Akbar Sahib and an allotment of the properties to the sharers in accordance with their shares. It follows that the plaintiffs would not be entitled to sue for repartition of the properties. Their suit has been rightly dismissed by the learned Subordinate Judge.

(17) This appeal fails and is dismissed with costs.

(18) Appeal dismissed.

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