2024 INSC 492

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1957 OF 2011

NASEEM KAHNAM AND OTHERS … APPELLANT(S)

VERSUS

ZAHEDA BEGUM (DEAD) BY LR. AND OTHERS … RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

I. FACTUAL MATRIX

1. Respondent Nos. 1 and 2 in Civil Appeal have filed O.S. No. 13/2000 before the Court of Principal District Judge at Vishakhapatnam. The suit is for partition and possession of plaint schedule property. The prayer reads thus:

> *"a) for partition of plaint schedule property and allot Western half portion of the house with the Western adjoining vacant site to the 2nd plaintiff and the remaining Eastern portion building with vacant site on Eastern side has to be partitioned into four equal shares and allot one such share i.e. 1/4th of the plaint*

schedule on Eastern side to the 1st plaintiff and for delivery of the same;"

2. The plaint schedule consists of a residential house bearing door no. 6.18.7 in East Point Layout, Plot No.10, LIG, T.S. No. 379, Block Nos. 22 and 23 of Waltair Ward, Vishakhapatnam Municipal Corporation (hereinafter referred to as "the plaint schedule").

3. Late Ghouse Khan S/o late Assudula Khan entered into a lease-cum-sale agreement concerning the plaint schedule with the Vishakhapatnam Urban Development Authority. Late Ghouse Khan, through a registered Sale Deed, after completing the agreed obligations, purchased the plaint schedule. Late Ghouse Khan, admittedly, remained unmarried and died on 18.02.1988, leaving behind Plaintiff No. 1 - his sister and Defendant Nos. 1 to 3 - his brothers as successors to the plaint schedule. Plaintiff No. 2 is the daughter of the late Mallika Begum who died in 1964.

3.1 On 07.02.1992, Exhibit-A6, an agreement for the settlement of family property was entered into between the parties to the suit. Defendant No. 2 is contesting the execution and enforceability of Exhibit-A6. Exhibit-A6, by tenor and text, divides the Plaint Schedule into two half shares, and the western half share agreed to be allotted to Plaintiff No. 2 and the eastern half to Plaintiff No. 1 and Defendant Nos. 1 to 3. The plaintiffs, in substance,

pray for working out allotment of the shares accepted in the agreement dated 07.02.1992/Exhibit-A6 among the members of the family.

II. PLAINT AVERMENTS

4. The admitted relationship between the parties is set out, and for succession or inheritance to the estate of late Ghouse Khan, parties are governed by the Mohammedan Law. The successors in interest of late Ghouse Khan, together with Plaintiff no.2, who happens to be the niece of all the parties, arrived at an agreement (Exhibit-A6), whereunder, half portion of the plaint schedule on the western side is agreed to be given to Plaintiff No. 2 and the remaining half share on the eastern side is partitioned by one-fourth share among Plaintiff No. 1 and Defendants. As part of the agreement, Plaintiff No. 2 was allowed to reside, and the other half on the eastern side agreed to be partitioned among the brothers and lone surviving sister of the late Ghouse Khan at a later point in time. Plaintiff No. 2 claims to be in possession of the western side house together with the vacant site on the western side. The plaint averred that the Defendants tried to alienate the plaint schedule and to protect the share agreed to be given to plaintiffs through Exhibit-A6 dated 07.02.1992, the plaintiffs issued legal notice dated 06.11.1999 to all the Defendants, and Defendant No. 3 alone sent the reply notice dated 20.12.1999. The Plaintiffs issued a paper publication in

Eenadu Daily on 03.01.2000, asserting their share in the plaint schedule property. In view of the resistance to partition by Defendant No. 2, the suit for partition was filed by Plaintiff Nos. 1 and 2.

5. Defendant Nos. 1 and 3 remained ex-parte, and Defendant No. 2 contested the Suit.

III. AVERMENTS IN THE WRITTEN STATEMENT FILED BY DEFENDANT NO. 2-AMANULLA KHAN

6. The relationship between the parties is admitted, and the first noteworthy objection in the written statement is that under the law of succession in Mohammedan law, Plaintiff No. 2 is not one of the heirs to the estate of the late Ghouse Khan. Plaintiff No. 2 is not in the same line of succession as the brothers and the surviving sister of the late Ghouse Khan. Without prejudice to the above, Defendant No. 2 introduced an independent plea by referring to the will dated 25.02.1985, said to have been executed by the late Ghouse Khan. The will, if is proved or established by Defendant No. 2, the said proof excludes intestate succession to the plaint schedule property and the apportionment or allotment of shares as said to have been agreed in the alleged agreement dated 07.02.1992 (Exhibit-A6). The plea on the will dated 25.02.1985 is not seriously contested and further narrative hence is unnecessary. Defendant No. 2

denies the allegation in the plaint that the parties, though governed by the Mohammedan law, have entered into an agreement on 07.02.1992 on the succession to the plaint schedule property. Defendant No. 2, having denied the execution of the agreement dated 07.02.1992, has set up the plea that the Plaintiffs and Defendant Nos. 1 and 3 have fabricated Exhibit-A6 to unlawfully gain from Defendant No. 2 who has got exclusive interest through the will dated 25.02.1985. Plaintiff No. 2, it is alleged, was suffering from a psychological disorder, and she had come to Vishakhapatnam for treatment. Defendant No. 2, keeping in perspective the close relationship between them on humanitarian grounds, allowed Plaintiff No. 2 to stay in a portion of the plaint schedule. The permission to occupy was subject to the occupants paying the electricity and water consumption charges to local authorities. Defendant No. 2 contends the claim for partition in all fours. The Trial Court, on the above pleadings, framed seven issues and, in the present consideration, we are of the view that the first two issues are relevant and read thus:

> *"1. whether the plaintiffs and the defendants entered into agreement on 07.02.1992 as alleged by the plaintiffs?*
>
> *2. whether the said alleged agreement dated 07.02.1992 is valid?"*

7. The Trial Court has considered issue nos. 1 and 2 independently and, in the final analysis, held issue no.1 in favour of the plaintiffs and issue no.2 against the plaintiffs. The Trial Court, having regard to the views taken on these two issues, decreed the suit, firstly, by denying any share to Plaintiff No. 2 and, secondly, by passing a preliminary decree dividing the plaint schedule into seven shares and allotting 1/7th share to Plaintiff No. 1 and 2/7th share to each of the Defendants. The gist of consideration and findings on issue nos. 1 and 2 is summed up as follows:

> *"(i) When Ghouse Khan died unmarried and issueless, his nearest relations were his brothers and sisters. When the first plaintiff and defendant Nos 1 to 3 became co-sharers of the plaint schedule property, they collectively entered into a transaction described as an "agreement for the settlement of family property". (Exhibit A.6).*
>
> *(ii) Ex. A.6 is a typewritten document bearing the signatures of the First plaintiff and defendants. The second defendant during his cross-examination as D.W. 1, refuted the authenticity of both his signature in Vakalat and the affidavit supporting his petition. When such is the manner of denial, it is impossible to place much weight on his rejection of the signature in Ex. A.6.*
>
> *(iii) The Hindu Joint family's settlement concept is not applicable to the parties in this case, but legal heirs' settlements can only be treated or related to the adjustment of shares in the Mathruka property. So, plaintiffs 1 and 2 and defendants 1 to 3 could not enter into a settlement relating to a Mathruka property in which the second plaintiff is not a sharer. The transaction in Exhibit-A6 must be considered a gift by all co-sharers in favor of the second plaintiff with regards to half a portion of the suit property.*
>
> *(iv) The restriction as regards the gift of an undivided share may not be applicable to the facts of the present case. Merely because the nature of the suit is one of the partitions, it cannot be said that an undivided share was given to the second plaintiff by the other parties to the suit. The trial court has categorically*

held that all the five executants of the document resolved to give the western half portion of the house to the second Plaintiff. Exhibit A.6 further reserved or postponed the division to a convenient date. Therefore, the gift cannot be considered mushaa, and the gift is pure and simple.

(v) The second plaintiff came to Visakhapatnam in the year 1980 whereas the first plaintiff came to Visakhapatnam in the year - 1985. Ghouse Khan died in the year 1988. From the material available it can be informed that by the date of Ex. A.6, plaintiffs were in occupation of the plaint schedule property. This prior occupation negates the delivery of the property as per Hiba, thus establishing the element of delivery of possession pursuant to alleged gift.

(vi) Section 129 of the Transfer of Property Act exempts the application of Chapter VII on Mohammedan Law. Gift of property under Mohammedan law by Hiba need not necessarily be through a registered document. While the saving provision u/s 129 of the Transfer of Property Act would save the validity of a gift other than under a registered deed, it does not exempt a document from registration and from levy of requisite stamp duty if there is the creation of interest in the immovable property in favour of the done. The non-registration of the document would make Exhibit-A6 inadmissible. Though the contents of an unregistered deed can be considered for collateral purposes, it cannot prove the transaction covered by it from the terms mentioned in the document.

(vii) Exhibit-A6 is not executed on the requisite stamp paper so the contents even for collateral purposes cannot be looked into. Therefore, reliance on Exhibit- A6 to prove an earlier transaction of a gift cannot be accepted.

(viii) With regard to the subsequent conduct, including enjoyment of the property concerned, it is to be noted that by the date of presenting the plaint, the second plaintiff was not residing in the suit schedule property. Plaintiffs have failed to place any material except presenting themselves as witnesses. There is no further corroboration to the evidence of PW1 P.W. 2. In fine it is recorded that the Trial Court has recorded that Exhibit-A6 was duly executed, and the plea of forgery and fabrication is not accepted. However, on the nature and scope of Exhibit-A6, the Trial court firstly examined Exhibit-A6, as a family settlement and secondly, held that Exhibit- A6 cannot be treated as a valid gift in favor of Second Defendant."

8. Hence, the Plaintiffs were in appeal in A.S. No. 22 of 2007. The High Court, through the impugned judgment, allowed A.S. No. 22 of 2007 and passed a preliminary decree in terms of the agreement said to have been agreed between parties under Exhibit-A6. The High Court, *inter alia*, noted that:

> *"(i) Section 24(2) of the Indian Stamps Act specifies that the settlement, particularly within a family need not be restricted to the members of the family up to a particular degree but includes persons outside the purview of succession.*
>
> *(ii) Any objection as to the admissibility of a document must be raised before the court takes it on record. Relevancy can be decided at a later stage, but not admissibility. If the trial takes place on the assumption that the document is admissible and if, at the end of the trial, the document is inadmissible, the whole trial receives a serious setback. The present record does not disclose that any objection was raised to the admissibility of Ex. A.6. Therefore, negating that receipt of the settlement deed in evidence does not amount to admission.*
>
> *(iii) Second appellant did not have any pre-existing right de hors Ex. A.6. She has specifically based her claim on that document. Ex. A.6 did not only have the effect of creating a right in the second appellant but also of re-defining shares or entitlement of the first appellant and respondents 1 to 3 vis-a-vis the property left by Ghouse Khan. A specific issue was framed as to the truth and validity of the document. Even while denying the relief to the appellants, the trial Court held the document to be true and valid. Being a party to the document, the second respondent cannot extricate himself from the consequences that flow out of it. In the absence of Ex. A.6, there would not have been any occasion for the appellants to claim rights, as they did, in relation to the property. Ex. A.6 has created a legal right in the parties and, in particular, the second appellant, and she is certainly entitled to seek partition on the strength of it."*

Hence, the Civil Appeal at the instance of legal representatives of Defendant No. 2.

IV. SUBMISSIONS

9. Mrs. Prabha Swami, Learned Counsel appearing for the legal representatives of Defendant No. 2, argues that the plaint schedule, upon the demise of late Ghouse Khan, as per the Rules of Succession under Mohammedan Law, was inherited by three brothers and one sister. During the subsistence of succession of nearest heirs, Plaintiff No. 2, the niece of the deceased, a distant heir, does not have interest, much less an interest is succeeded in the plaint schedule property. Therefore, Exhibit-A6, family agreement, even in the face of findings by both the Courts *viz.,* Exhibit-A6 was validly executed, cannot operate in law because Exhibit-A6 is not entered into among the individuals having a share or right in the plaint schedule. It is contended that Plaintiff No. 2 cannot and could not claim a share under an oral gift/*Hiba* in the plaint schedule as well. The oral evidence of PWs 1 to 3 is absent on the crucial aspect. Plaintiff No. 2, since does not have antecedent or inherited title, cannot seek enforcement of a family settlement. Exhibit-A6 since professes to confer or create a right in favour of Plaintiff No. 2 and the valuation of the plaint schedule is more than a hundred rupees, the want of registration of Exhibit-A6 and the non-

payment of stamp duty under the Indian Stamp Act, 1899 would render Exhibit-A6 illegal and unenforceable. The claim for partition based on Exhibit-A6 is misconceived in law, and even assuming without admitting that Defendant No. 2 or his heirs allowed the finding on issue no. 1 to become final, despite such conduct, Defendant No. 2 /his legal representatives are not precluded from canvassing on the enforceability of Exhibit-A6.

10. Mr. Tapesh Kumar Singh, Learned Senior Counsel appearing for Respondent Nos. 1 and 2, argues that Defendant No. 2 introduced two pleas in opposition to the relief for partition as per Exhibit-A6. *Firstly*, Defendant No. 2 averred that Exhibit-A6 is fabricated and had been brought into existence by the concerted efforts of Plaintiffs, Defendant No. 1 and Defendant No. 3. *Secondly*, to efface the effect of obligation under Exhibit-A6, Defendant No. 2 introduced a will dated 25.02.1985 of late Ghouse Khan. Both the objections have been overruled or disbelieved. Once the Will is not proved, and Exhibit-A6 is believed by both the Trial Court and the High Court, the arguments now canvassed are unavailable under Article 136 of the Constitution of India. Therefore, the controversy is narrowed down to the enforceability of Exhibit-A6 as an agreement for settlement of family property by the parties to the suit. It is vehemently argued that on

18.02.1988, Ghouse Khan died. Assuming that by the Principle of Succession under Mohammedan Law, Plaintiff No. 1 and Defendant Nos. 1 to 3 have succeeded to the plaint schedule property, still, Plaintiff No. 2, who is a member of the larger family, going by the common intention and wisdom of the parties, Exhibit-A6 was brought into existence and western side portion was agreed to be given to Plaintiff No. 2. The agreement Exhibit-A6 was enforced by filing the suit, and any objection, as a matter of fact, is incorrect. The interpretation and construction of Exhibit-A6 would decide the correctness of the findings recorded by the High Court. Exhibit A-6 in nomenclature and content cannot be treated as a concluded act of partition between the sharers and/or a distant residuary sharer. Exhibit-A6 is captioned as an agreement for the settlement of the family property. Therefore, the requirement that the executants of the document must have a subsisting interest is completely beside the point. The brothers and sister, being the elders of the family, can agree and settle the property in such a way that would otherwise take place as per Mohammedan law. The brothers and sister, by the time of execution of Exhibit-A6, are the sharers, and they can deal with the property the way the sharers agree. The underlying idea in the execution of Exhibit A6 was to deal with the plant schedule and have peace in the larger definition of family members. The

Courts lean in favor of giving effect to arrangements made by the members of a family, and the impugned judgment spoke the view of the majority shares of plaint schedule.

V. ANALYSIS

11. We have perused the record and taken note of the rival contentions. At the cost of repetition, we refer to a few concluded circumstances, both by pleading and findings of the Courts below. The suit for partition is based on Exhibit A6. The frame of suit is to enforce the obligations agreed upon by the signatories to Exhibit-A6. Plaintiff No. 1, as is discernible from the record and attending circumstances, appears to be taking care of or looking after Plaintiff No. 2. Going by the Rules of Succession under Mohammedan Law, only the brothers and surviving sister would come under the category of first entitled sharers to the estate of the late Ghouse Khan for he died unmarried and issueless. Plaintiff No. 2 comes as a residuary claimant. The sharers or siblings of the late Ghouse Khan have not settled the property through Exhibit-A6 among themselves. Plaintiff No. 2, who happens to be the niece of brothers and sister by blood relation, is one of the parties and executants to Exhibit-A6. Before we interpret Exhibit-A6, let us preface the following excerpt from Exhibit-A6.

"AGREEMENT FOR SETTLEMENT OF FAMILY PROPERTY

Executed this 7th day of February 1992 by:

1. *Lal Ahmed Khan, son of Late Assudulla Khan, 53, Mosque Street, Arakkonam, Tamilnadu.*
2. *XXX XXX XXX*

3. *XXX XXX XXX*
4. *XXX XXX XXX*
5. *XXX XXX XXX*

Jointly for the mutual settlement of the property of Late M.G. Khan."

12. The operative portion of the agreement refers to the property being left behind by the late Ghouse Khan. All the executants treat themselves as legal heirs of the deceased Ghouse Khan. The next important recital in Exhibit-A6 is on mutual consultation; the executants have resolved to give the western half portion of the house with the western adjoining vacant site to the fifth executant, i.e., Ms. Gousia Jasmine D/o late Mallika Khan. The agreement recites that Plaintiff No. 1 with absolute rights and, for the present, enjoys the eastern portion of the house along with the adjoining site surrounding it jointly retained by the first four parties and to divide it, i.e., eastern portion at a future date at the convenience.

13. It is a well-settled principle of interpretation that in the interpretation of a deed, the question is not what the parties to the deed may have intended to do by entering into that deed, but what is the meaning of the words used in the deed. The Court can understand the true intent of the

deed only by the words used in the deed. It does not matter what the parties, in their most state of mind, thought what the terms meant. They may have meant different things, but still the terms or the language used in the deed should bind them. It is for the court to interpret such terms or language used in the deed.

14. In ***Ram Gopal v. Nandlal and Ors.***[1], it is held that in construing a document, the fundamental rule is to ascertain the intention from the words of the deed; the surrounding circumstances are to be considered but that is only for the purposes of finding out the meaning of the words which have been actually employed in the deed. It would be apposite to refer to the following para: -

> *"**11.** In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered, but that is only for the purpose of finding out the intended meaning of the words which have actually been..."*

15. By applying the said rules of construction to the document, we notice that Exhibit-A6 is an agreement for the settlement. Exhibit-A6 does not create, transfer or confer a right in favour of Plaintiff No. 2. The understanding between parties from a plain reading is that the western portion is agreed to be given to Plaintiff No. 2, and brothers and sister of

[1] 1950 SCC 702.

the late Ghouse Khan retain the eastern portion. All the formalities to create exclusive rights are deferred to a future date for performance at the convenience of the parties. We hasten to add that in the peculiar facts and circumstances of the case, the agreement for settlement of family property is entered into to give a right to Plaintiff No. 2 and avoid what would otherwise take place by the normal entitlement of sharers under Mohammedan law. The agreement made a provision in favour of Plaintiff No. 2 for the reasons noticed by the courts below, *viz*., that Plaintiff No. 2 had a psychiatric problem and had taken treatment in Vishakhapatnam; Plaintiff No. 2 was in the care of Plaintiff No. 1 for whatever reason and to avoid acrimony in distributing the plaint schedule property. We record with approval that the Learned Judge in the impugned judgment has rightly found the just ground to carry forward the agreement arrived at in Exhibit-A6 into execution and to give effect to the peace desired by the family members. As a court, once we notice that Exhibit-A6 is proved as duly executed by all the parties, we lean in favour of settlement of the rights as agreed upon by the parties. A few objections available in law and fact, i.e., frame of suit, payment of court fee, etc., are not taken by Defendant No. 2. The contentions, which are bereft of pleadings, are not entertained at this stage of litigation. The question is not whether Plaintiff No. 2, a residuary

sharer, can be a party to an alleged family settlement or not. The question is how the parties have settled the dispute or shares *vis-a-vis* the property left behind by the late Ghouse Khan and have peace in the family. It is not the case of Defendant No. 2 that the personal law prohibits sharing by agreement with a distant heir. For the above reasons and discussion, the decisions relied on by the Appellants do not apply to the facts and circumstances of the case and are distinguishable in more than one sense. In our jurisdiction under Article 136 of the Constitution of India, we do not see any error of fact or an illegality warranting interference with the impugned judgment.

16. The consideration by the Trial Court on whether Exhibit-A6 can be viewed from the prospect of *Hiba,* or a Sale Deed is entirely out of context. The averments in the plaint are clear that the plaintiffs seek enforcement of an agreement among the family members. The consideration, in fact and law, would center around whether the agreement is proved and established and whether there is a legal impediment to giving effect to the agreement between the parties. Defendant No. 2 failed to prove the existence of Will and also that Exhibit-A6 is a fabricated document. The circumstances in the appeal are peculiar and the decision is confined to the established and admitted circumstances of the case. The effect of the above is that

agreement among the parties is given effect. Precisely, the judgment impugned has done so. In our jurisdiction, particularly, bearing in mind the circumstances of the case, we are convinced that no case is made out for interference.

17. Hence, the Civil Appeal fails and is dismissed. No order as to costs.

……..J.
[C. T. RAVIKUMAR]

…..……J.
[S.V.N. BHATTI]

New Delhi;
July 9, 2024.