

APPELLATE CIVIL.

*Before S. P. Goyal, J.*RIKHI RAM,—*Plaintiff-Appellant.**versus*SADA RAM and others,—*Defendants-Respondents.**Regular First Appeal No. 184 of 1964.*

September 6, 1976.

Registration Act (XVI of 1908)—Section 49—Evidence Act (1 of 1872)—Section 91—Partition deed inadmissible in evidence for want of registration—Whether can be read in evidence to prove the factum of partition and nature of possession—Oral or documentary evidence to prove such factum and possession—Whether barred by section 91.

Held, that the provisions of section 49 of the Registration Act 1908 do not bar the proving of unregistered instrument of partition for the purposes of ascertaining the nature of possession of any party to such an instrument. The factum of partition and the nature of possession of the parties to the instrument can be proved by oral and other documentary evidence and the same is not barred by section 91 of the Evidence Act 1872. (Paras 9 and 10).

Regular First Appeal from the decree of the Court of Shri Mewa Singh, Sub Judge, 1st Class, Bhatinda, dated the 25th day of May, 1964 dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

Cross-objections under Order 41 Rule 22 of the Code of Civil Procedure on behalf of Ram Kishan Dass, son of Genda Mal, respondent praying that the cross-objections be accepted, the appeal be dismissed with costs and the respondents be allowed the costs of the lower court and the cost of the cross-objections be also allowed.

M. R. Agnihotri, Advocate, for the appellant.

H. L. Sarin, Advocate with Shri M. L. Sarin, Advocate, for the respondents.

JUDGMENT

S. P. Goyal, J.

(1) This first appeal has been brought by the plaintiff against the judgment and decree of the learned Subordinate Judge, 1st Class, Bhatinda, dated May 25, 1964, dismissing his suit.

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(2) The plaintiff filed a suit for partition of his one-fourth share and separate possession in the properties in dispute situate at various places with the allegations that the parties formerly formed joint Hindu family and that the moveable properties consisting of clothes, cash and ornaments had already been partitioned long before but the immoveable properties continued to be joint and had not been partitioned by metes and bounds.

(3) The suit was contested by the defendants who pleaded that the partition of the suit properties had already taken place in the year 1992 Bk., during the life-time of their father Gainda Mal and that a memorandum of that partition containing the detailed list of the properties which fell to the share of each of the parties had also been prepared under the signatures of the parties on May 9, 1950. On the pleadings of the parties, following issues were framed:—

- (1) Whether the suit is within time ?
- (2) Whether the suit is properly framed for the purposes of Court fee ?
- (3) Whether Gian Wati is a necessary party to the suit ? If so, what is its effect ?
- (4) Whether a shop, a room situated in Lehra Bazar, Phul and land in the area of village Gill is not a joint Hindu family property ?
- (5) Whether the property in dispute was partitioned in the month of Poh, 1892 Bk., during the life time of Gainda Mal and the parties are in possession of their respective shares since then ?
- (6) Whether property mentioned in paragraph 5 of the plaint was sold by Sant Ram, father of defendants Nos. 3 and 4 as sole owner thereof, after the said partition ?
- (7) Whether the plaintiff is entitled to get the property in suit partitioned to the extent of 1/4th share therein ?
- (8) Relief.

(4) After recording evidence of the parties, the trial Court decided issues Nos. 1 to 4 in favour of the plaintiff and the remaining issues against him and dismissed the suit. Aggrieved by the judgment, the plaintiff has come up in this appeal.

(5) Mr. M. R. Agnihotri, the learned counsel for the appellant, has challenged the findings of the trial Court on issues 5 and 7 only. The findings of the trial court on the other issues are hereby

(6) The challenge against the finding on issue No. 5 raises some interesting questions of law—as to whether a partition deed found to be inadmissible in evidence for want of registration can be read in evidence to prove the factum of partition and the nature of possession of the defendants and whether section 91 of the Evidence Act bars the leading of other oral or documentary evidence to prove the factum of partition and nature of possession.

(7) As noticed above, the defendants sought to prove in evidence a document dated May 9, 1950, claimed to be a memorandum of partition. This document was held by the trial Court to be a partition deed and being unregistered inadmissible in evidence. However, relying on oral and other documentary evidence produced by the defendants, the trial Court held that complete partition of whole of the joint property of the parties had taken place in the year 1992 Bk., and they were in separate possession of their respective shares since then. The finding has been challenged by the learned counsel on the ground that the evidence oral and documentary relied upon by the trial Court was not admissible in evidence and was hit by the provisions of section 91 of the Evidence Act. The learned counsel has further argued that the said document being inadmissible for want of registration, could not be taken into consideration even to prove the factum of partition and the nature of possession of the parties of the property in dispute. In support of his contention, the learned counsel has relied on the following observations of the Division Bench of Saurashtra High Court in *Smt. Zaveri v. Jitu*, (1):—

“Section 91, Evidence Act, says that when the terms of a contract have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract except the document itself or secondary evidence of

(1) A.I.R. 1954 Saurashtra, 46.

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its contents in cases where secondary evidence is admissible under the Act. Therefore, the only evidence of partition which the defendant can rely upon is the deed of partition itself and as that document has not been registered, it is not admissible in evidence, nor is it open to the defendant to prove the terms of the partition. This position is not demurred to, but it is contended for the defendant that the fact of partition is independent of and is collateral to its actual terms and the document is admissible to show that a partition had been effected between the parties though it was not admissible to prove its terms.

In substance the contention is that the fact of the partition could be proved by the deed of partition and if that is done, no second partition can be effected and the suit will not lie. This line of reasoning is however, erroneous. The parties are tenants-in-common and the only way in which a partition can be effected between them is by a division of the property by metes and bounds and the plaintiff's suit can be defeated only if it is shown that such a division of the property by metes and bounds has taken place. The only evidence of this division is the partition itself because by a reference to its terms alone can we ascertain which portion was allotted to each party. Moreover, it is the defendant's case that she has been the exclusive owner and in possession of the portion which was allotted to her under the deed of partition. The partition by metes and bounds, which has been effected by this document, and which fact is being pleaded as an answer to the suit, is therefore, not a collateral transaction nor a collateral purpose. Rather it constitutes the very terms of the document and it cannot be proved for want of registration."

(8) The learned counsel for the respondent, in reply, has challenged the correctness of the proposition of law laid down in *Smt. Zaveri's* case (supra) and contended that the weight of the authority is on the other side for which he has referred to *C. S. Kumaraswami Gounder v. Aravagiri Gounder and another*, (2), *Tejraj and another v. Mohanlal and others*, (3),

(2) A.I.R. 1974 Madras 239.

(3) A.I.R. 1955 Rajasthan 157.

Permanand v. Laxminarain, (3-A) *Suleiman Tiqq and others v. Cyril Tiqq and others*, (4), *Punjab National Bank Ltd. and others* (6), *Sheo Karan and others v. Chiranji Lal and others*, (7), and *Hari Ram v. Sheo Karan*, (8). In all these cases, it was held that an unregistered instrument of partition could be read in evidence to prove the factum of partition and separate possession by the respective parties. The decisions of the Saurashtra High Court and the Allahabad High Court in *Bal Kishan v. Salig Ram*, (9), which was relied upon in *Smt. Zaveri's case* (supra) were dissented from in *Permanand's case* (supra) wherein it was held :—

“The combined effect of section 91, Evidence Act and section 49, Registration Act is only to shut out all evidence to prove the terms of the unregistered partition deed. These provisions do not bar evidence to prove separate status and separate possession by other independent evidence. Section 91, Evidence Act, excludes oral evidence only in proof of the terms and not of its existence as a fact of a contract, grant, or other disposition of property.

“Section 49(c), Registration Act, prohibits the use of unregistered documents in any legal proceeding in which such a document is sought to be relied upon in support of a claim to enforce or maintain any right, title or interest to or in immoveable property. So long as the document is not used as evidence of any right, title or interest to or in immoveable property, there is nothing to prevent the document being received in evidence for other purposes. The proviso to section 49, Registration Act, says that a document though unregistered deed of partition is no doubt not admissible to prove the terms of the partition but it can be referred to under section 49, Registration Act, for the purpose of proving the collateral fact of partition itself or severance of the joint status. Though not admissible to

(3-A) A.I.R. 1955 MB 129.

(4) A.I.R. 1938 Patna 603.

(5) A.I.R. 1933 Lahore 1944.

(6) A.I.R. 1933 Nagpur 270.

(7) 1927 P.L.R. 88.

(8) A.I.R. 1927 Lahore 842.

(9) A.I.R. 1946 All. 476.

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prove that properties fell to the share of a particular member in the partition, it can be relied upon to prove separate possession and separate dealings and enjoyment of the properties.”

(9) Respectfully following these observations, I am of the view that the provisions of section 49 of the Registration Act do not bar the proving of unregistered instrument of partition for the purposes of ascertaining the nature of possession of any party to such an instrument. Moreover, in the case before the Saurashtra High Court, this question was never debated as to whether the factum of partition or the nature of possession of the parties could be proved by oral or other documentary evidence or not. All that was held in this case was that the instrument of partition found to be inadmissible for want of registration could not be led in evidence to prove these matters.

(10) The view taken by me also finds support from the observations made in two decisions of this Court in *Gram Panchayat, Sidhbari, Tahsil Kangra v. Sukh Ram Dass*, (10), and *Nand Singh v. Sewa Singh and anothers*, (11). In the earlier case a Division Bench of this Court held that a document which is compulsorily registrable but is not registered, can be looked at in order to determine the nature of possession of the person in whose favour it had been executed. In the latter case, Grover, J., held:—

“.....that, if an instrument is not registered according to law other evidence in proof of the terms of a transaction is inadmissible. The effect of the combined operation of the provisions of section 49 of the Indian Registration Act and section 91 of the Indian Evidence Act is that if a document is not receivable as evidence of a particular matter for want of registration, other proof of the matter, oral or otherwise, will be excluded. At the same time it is well settled that if the evidence sought to be given does not relate to the terms of a transaction but relates merely to the factum or existence of a transaction, other evidence will be properly receivable.”

(10) 1963 P.L.R. 1043.

(11) 1958 P.L.R. 139.

Relying on the above noted authorities, I hold that the factum of partition and the nature of possession of the defendants of the properties in their possession could be proved by the oral and other documentary evidence relied upon by the trial Court.

(11) The finding on merits that the partition had taken place in the year 1992 Bk., and the parties had been in separate possession of their respective shares since then has not been challenged by the learned counsel for the appellant.

(12) Consequently, this appeal fails and the same is hereby dismissed, but without any order as to costs. The cross objections filed by the respondents have not been pressed and are accordingly dismissed.

N. K. S.

REVISIONAL CIVIL

Before S. S. Sandhawalia and Rajendra Nath Mittal, JJ.

JAG DUTTA,—*Petitioner.*

versus

SHRIMATI SAVITRI DEVI,—*Respondent.*

Civil Revision No. 728 of 1974.

September 21, 1976.

Cantonments (Extension of Rent Control Laws) Act (46 of 1957) —Section 3—East Punjab Urban Rent Restriction Act (III of 1949) —Sections 2(b) and 15(1) (a)—General Clauses Act (X of 1897)—Section 24—1949 Act extended to Cantonments in the States of Punjab and Haryana—Notifications issued thereunder—Whether deemed to be adopted—Appointment of Rent Controllers and Appellate Authorities—Powers of the Central Government—Whether can be delegated to a State Government—Fresh appointments after extension—Whether necessary.

Held, that when the Central Government extended the East Punjab Urban Rent Restriction Act, 1949 to the Cantonments in the States of Punjab and Haryana, the intention of the Central Government was clear that it wanted to apply the 1949 Act alongwith the