

PETITIONER:
GANGADHAR MADHAVRAO BIDWAI

Vs.

RESPONDENT:
HANMANTRAO VYANKATRAO MUNGALE

DATE OF JUDGMENT 07/12/1994

BENCH:
SAHAI, R.M. (J)
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VENKATACHALA N. (J)

CITATION:
1995 SCC (3) 205 JT 1995 (1) 118
1994 SCALE (5) 149

ACT:

HEADNOTE:

JUDGMENT:

R.M. SAHAI, J.:

1. The only question that arises for consideration is whether the recital in a Deed of Dissolution of partnership, Ext. 48, that Survey Plot No. 699 was a partnership property was admissible in evidence.

2. Both the plaintiff-appellant and defendant-respondent were partners in Messers Maharashtra Metal Manufacturing Company. The partnership was formed in 1952 and it lasted till 1959. In 1955 the plot in dispute was purchased by the defendant. At the time of dissolution a Partition Deed, Ext. 46, was executed. A Deed of Dissolution, Ext. 47, was executed on 1st August, 1961 and another Deed, Ext. 48, was executed on 1st September, 1961. In all these Deeds, this plot was mentioned. In the last Deed the recital read as under:-

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"We both have been carrying on the business of making and selling lotas (a) of copper in partnership for a long time in the name of "Messers Maharashtra Metal Manufacturing Company" Pune. We have duly recorded the deed of dissolution of partnership on the date 1-9-1961. There were factories running at two places and belonging to the our partnership. Similarly there is a plot bearing Survey No. 699 of the ownership of our parruership, situated near Saibaba Temple, Satam Poona Road, Swargate and we both reside there. The places of both the factories are taken on rent and the same were also (included) in our partnership."

In the schedule appended to the Partition Deed it was mentioned that the said property together with the structure standing thereon, the well and the motor fixed on the said well would be treated as joint or common property. Since in

the Deed of Dissolution of 1st August, 1961 it was mentioned,

"Survey No. 699 has been purchased in the name of No. 1 Mungale. No. 1 Mungale should execute a sale deed of half share in this land in favour of No. 2 Bidwai at Bidwai's expense."

the appellant issued notice for execution of the sale deed. But when the defendant neglected to do so the appellant filed the suit for partition by metes and bounds. The suit was dismissed by the trial court. The two Deeds of Dissolution of partnership were held inadmissible for want of registration. The order was upheld in appeal. It was held that the recital in Exts. 46 and 47 with regard to terms of dissolution of partnership did not require registration. But so far as it sought to effect the interest of defendant in the non-partnership immoveable property the document being unregistered was inadmissible. In respect of Ext.48 the High Court held that the recital in the document that it was partnership property did not appear to be correct.

3. Sri Ashok Sen, the learned senior counsel urged that the law is settled that no registration was required of the partnership property as it did not result in transfer of any interest. Reliance was placed on S.V. Chandra Pandian & Ors. v.S.V. Sivalinga Nadar & Ors., 1993 (1) SCC 589. The learned counsel urged that in any case Section 14 of the Partition Act indicated that any property acquired subsequently becomes partnership property. Sri Tarkunde, the learned senior counsel supported the findings recorded by the High Court. He submitted that the documents, Exts. 46, 47 and 48, did not establish that Plot No. 699 was partnership property. He urged that in Ext. 46 the mala (garden land) and the present suit property had been separately mentioned. Therefore, it was clear that it was not partnership property. Learned counsel urged that the High Court having found documentary evidence to be insufficient or inadmissible examined the oral evidence and held that the land was not partnership property as such it was not an appropriate case in which this Court should exercise its jurisdiction under Article 136 of the Constitution. The learned counsel argued that the respondent having proved that the land was purchased by him, it was for the appellant to prove that the property belonged to both.

4. The real question that arises for consideration is if the recital in the Deed of Dissolution dated 1.9.1961 showing that plot no. 699 was partnership property was inadmissible for want of registration. It

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was found by the High Court and could not be disputed by the respondent that if plot no. 699 was held to be a partnership property then it did not require registration. It is true that this plot was purchased in 1955 by the respondent alone, but he was not precluded in law from bringing it in the partnership. The circumstances and the three documents indicate that even though the land was purchased by the respondent, it appears both the parties have been treating this property as being in joint ownership of both. This may have been due to good relations which existed between them prior to 1959 but there appears no reason to discard the recital in these documents which unequivocally establish that the property at the time of dissolution was owned by the partnership. The recital in the Deed of Dissolution of partnership of September, 1961 that it was a partnership property, could not be ignored. Apart from it, the appellant had filed earlier suit in which the claim of the

appellant that these documents were obtained under duress was not accepted. Even though the suit was dismissed on ground of limitation, but the genuineness of the documents was not doubted. If that be so, then the recital in the Dissolution Deed could not be ignored. The High Court was in absence of any challenge to Ext. 48 not justified in recording the finding that recital in the Deed did not carry out intention of executants. Sri Sen was correct in submitting that once it was held that Plot No. 699 was partnership property then there was no need for registration and the appellant's suit was liable to be decreed.

5. In the result, this appeal succeeds and is allowed. The judgments of the two courts below dismissing the plaintiff's suit are set aside and the suit for partition is decreed. There shall be no order as to costs.

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