

Civil Revision
Present : The Hon'ble Mr. Justice Prasenjit Mandal
Judgement On: October 6, 2010
C.O. No. 2859 of 2010

Murari Mohan Patra.

Versus

Nilima Construction Co. Pvt. Ltd.

Point:

REGISTRATION: Partnership firm dissolved by a suit on compromise- Suit property was allotted to the petitioner- Property obtained as residue after payment of dues of the firm by partners whether require registration- Registration Act, 1908,S. 17

Facts:

A suit for partition of immovable property has been filed by the partnership firm. The petitioner filed an application for substitution of his name as plaintiff in place of the partnership firm. That application was allowed. Subsequently The petitioner filed an application for addition of parties under Order 22 Rule 10 of the C.P.C. stating, inter alia, that after dissolution of the partnership firm he got the property in suit by a compromise decree and so he is praying for addition of parties in the said title suit. That application was allowed by the learned Civil Judge (Senior Division), Alipore. Being aggrieved, a misc. appeal was preferred against the said order and the learned Additional District Judge, Fifth Court, Alipore has set aside the order dated March 16, 2004 passed by the learned Civil Judge (Senior Division). Being aggrieved, this application has been preferred.

Held:

Since the partnership firm has been dissolved by a suit on compromise and the suit property was allotted to the petitioner as per terms of compromise, the property obtained as residue after payment of dues of the firm by partners need not require any registration at all. Para 10

Cases Cited:

Bhoop Singh Vs. Ram Singh Major and ors. reported in AIR 1996 SC 196

S. V. Chandra Pandian and ors. vs. S. V. Sivalinga Nadar and ors. reported in (1993) 1 SCC 589,

N. Khadervali Saheb (dead) by Lrs. & anr. Vs. N. Gudu Sahib (dead) & ors. reported in (2003) 3 SCC 229

Brijmohanlal Rathi Vs. Gita Devi Rathi & ors. reported in 1992 (1) CLJ page 1

**For the petitioner: Mr. Debabrata Saha Roy,
Mr. Pingal bhattacharya.**

**For the opposite party: Mr. Sabyasachi Bhattacharya,
Mr. Uttiya Roy.**

The Court:

This application is at the instance of the respondent and is directed against the order dated May 25, 2010 passed by the learned Additional District Judge, Fifth Court, Alipore in Misc. Appeal No.144 of 2004 arising out of the order dated March 16, 2004 passed by the learned Civil Judge (Senior Division), Third Court at Alipore in Title Suit No.211 of 1975 on an application under Order 22 Rule 10 read with Section 151 of the C.P.C.

2. The said suit is for partition of immovable property as described in the schedule of the plaint. The petitioner filed an application for substitution of his name as plaintiff in place of the partnership firm. That application was allowed by the learned Trial Judge.

3. The short question involved in this application is whether the learned Additional District Judge, Fifth Court, Alipore was justified in setting aside the order dated March 16, 2004 passed by the learned Civil Judge (Senior Division), Alipore in allowing an application under Order 22 Rule 10 of the C.P.C. on dissolution of a partnership firm.

4. The petitioner filed an application for addition of parties under Order 22 Rule 10 of the C.P.C. stating, inter alia, that after dissolution of the partnership firm he got the property in suit by a compromise decree and so he is praying for addition of parties in the said title suit. That application was allowed by the learned Civil Judge (Senior Division), Alipore. Being aggrieved, a misc. appeal was preferred against the said order and the learned Additional District Judge, Fifth Court, Alipore has set aside the order dated March 16, 2004 passed by the learned Civil Judge (Senior Division). Being aggrieved, this application has been preferred.

5. Mr. Saha Roy, learned Advocate appearing on behalf of the petitioner, has referred to the decision of Bhoop Singh Vs. Ram Singh Major and ors. reported in AIR 1996 SC 196 and thus he has submitted that according to the paragraph 17, the court is to examine in each case and to decide whether the right, title and interest of any party created or extinguished in immovable property of the value of Rs.100/- and upwards should be registered or not. For proper appreciation, the said paragraph is quoted below:-

“17. It would, therefore, be 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 therein agreed or suffered to extinguish the same and created right, title and or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registerable.”

6. He has also referred to the decision of S. V. Chandra Pandian and ors. vs. S. V. Sivalinga Nadar and ors. reported in (1993) 1 SCC 589, particularly paragraph 18 and thus, he has submitted that on dissolution of a partnership firm, if the immovable property is allotted to a partner, registration is required or not. Upon dissolution of the partnership firm if the immovable property is allotted to a partner in respect of the residue as per award of the arbitrator, it does not require registration under Section 17(1) of the Registration Act. This is a decision of a Bench consisting of three Judges of the Hon'ble Apex Court.

7. Mr. Saha Roy has also referred to another decision of N. Khadervali Saheb (dead) by Lrs. & anr. Vs. N. Gudu Sahib (dead) & ors. reported in (2003) 3 SCC 229 and thus, he has submitted that on dissolution of a partnership firm, if the residue of the immovable property is given to a partner, it does not amount to transfer of assets of the firm. The firm name is only a compendious name given to the partnership and the partners are the real owners of its assets.

8. These three decisions, I think, are very much applicable in the instant situation to decide if the property obtained by a partition decree on compromise after dissolution of a partnership firm requires registration or not.

9. On the other hand, Mr. Sabyasachi Bhattacharya, learned Advocate appearing on behalf of the opposite party, has referred to the decision of Brijmohanlal Rathi Vs. Gita Devi Rathi & ors. reported in 1992 (1) CLJ page 1 and thus he has submitted that if the partnership property is exclusively allotted to a partner on

dissolution and the property is immovable property, it requires registration. This was a decision of a Division Bench of this Hon'ble Court.

10. In the instant case, since the partnership firm has been dissolved by a suit on compromise and the suit property was allotted to the petitioner as per terms of compromise in view of the decisions pronounced by the Hon'ble Apex Court as referred to above, I am of the view that the property obtained as residue after payment of dues of the firm by partners need not require any registration at all.

11. Therefore, the findings of the learned Additional District Judge, Fifth Court, Alipore cannot be supported. I am of the view that the learned Civil Judge (Senior Division), Alipore has correctly allowed the application under Order 22 Rule 10 of the C.P.C. The learned Additional District Judge has failed to exercise his jurisdiction properly. He has committed errors of law. Therefore, the impugned order cannot be sustained. It is, therefore, set aside.

12. The order dated March 16, 2004 passed by the learned Civil Judge (Senior Division), Alipore is hereby affirmed. The said title suit shall proceed thereafter in accordance with law.

13. The application is, therefore, allowed in the manner as indicated above.

Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

