Tarakanta Ghose Vs Rai Kishori Ghose

Court: Calcutta High Court

Date of Decision: April 26, 1910

Citation: 6 Ind. Cas. 361

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the appellant in an action for establishment of title to immovable property. The claim of the plaintiff is founded on a

partition made by an award of arbitrators in 1877. On behalf of the defendants it is contended that the award is not admissible in evidence because

it was not registered as required by Section 17, Clause (6), of the Registration Act. The Courts below have overruled this contention, and, in our

opinion, rightly. There is no dispute as to what actually took place. The joint owners agreed to effect a partition of their joint properties. They first

executed an abichalnamah, or irrevocable deed of agreement in which they set out elaborately the mode in which the partition was to be effected,

and appointed arbitrators to effect a division by metes and bounds, The arbitrators divided the properties accordingly, and recorded the

distribution they made in an award. Now it is clear that the abichalnamah merely embodied an agreement to effect a partition, and was, therefore,

clearly not compulsorily registrable. The award, on the other hand, though it created or declared title to immovable property and might, therefore,

have been compulsorily registrable, if Clause (b) of Section 17 of the Registration Act stood by itself, was excepted from registration by Clause (i),

of that section. The learned Vakil for the appellant has, however, contended that, as the combined effect of the abichalnamah and the award is

precisely the same as that of a partition deed, the award ought to be held compulsorily registrable. We are unable to give effect to this contention,

as we cannot possibly extend the operation of the provisions of the Registration /Vet relating to compulsory registration to classes of documents

clearly outside its scope. In the case before us, neither the one document nor the other required registration under the statute, not the first because

it was a mere agreement to partition, nor the second, because it was an award of arbitrators. It is, of course, immaterial that the award sets out in

full the terms of the abichalnamah. Both the documents, therefore, were properly received in evidence. The appeal consequently fails and is

dismissed with costs.