(1919) 10 BOM CK 0016

Bombay High Court

Case No: Second Appeal No. 724 of 1918

Chanbanmal Hambirmal Hundekari		APPELLANT
	Vs	
Bhaskak Waman Deshpande		RESPONDENT

Date of Decision: Oct. 14, 1919

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 74

Citation: (1920) 22 BOMLR 1079

Hon'ble Judges: Norman Macleod, J; Heaton, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

The property in suit in 1884 belonged to one Chinkabai. She mortgaged it to the plaintiff''s father in 1884, In 1894 she executed a Kajiuama in favour of her son Madhavrao giving notice u/s 74 of the Bombay Land Revenue Code of 1879) that she had relinquished the occupancy of certain Survey Numbers mentioned therein, and asked for the necessary mutations of names to be made in the records. At the same time Madhavrao executed a Kabulayat addressed to the Marnlatdar, and the properties were transferred in the Government records in the name of Madhavrao. in 1903 Madhavrao mortgaged to the 1st defendant. The plaintiff brought a suit on his mortgage in 1910 and got a decree for sale in 1911. He purchased in 1915. The 1st defendant got a consent decree against Madhavrao in 1908 and purchased under that decree in 1912. The evidence adduced at the trial convinced the trial Judge that the transfer of the property to the name of Madhavrao in 1894 was merely for the convenience of Chinkabai, and he found it was recognised between Madhavrao and Chinkabai that Madhavrao was merely managing the property for her. He finds on issue No. 3 as follows: "I have therefore to find that Madhavrao never professed to be in possession and Vahivat as owner and that Chiukabai did

not absolutely relinquish her proprietory right in favour of Madhavrao by the change of Khata to his name. The purpose of the change of Khata seems to be to facilitate the man agreement of the property by Madhavrao. Beyond this evidence there is absolutely no evidence for the defendant to prove that Madhavrao was the owner of the lands. My finding, therefore, on the 3rd issue is in the negative."

2. Now in second appeal it has been argued that the execution , of the Rajinama and Kabulayat in 1894 must necessarily by themselves amount to a transfer of the property by Chinkabai to Madhavrao. But none of the authorities cited is in favour of so unlimited an assertion. The question in issue was whether such documents required registration, and all that the cases cited can show is that it was decided that these documents did not require registration, and could amount to evidence of transfer of the property to which they related. But the Courts have never gone so far as to hold that the execution of these documents must necessarily amount to a transfer which could not be rebutted by any evidence regarding the manner in which the parties concerned dealt with the property. Each case must necessarily depend upon its own facts, and in one case the Court might be satisfied that the parties who executed a Rajinama and Kabulayat intended that the property should be transferred, and in another case, as in this, the Court might find from the evidence that the execution of these documents was merely for the convenience of the parties, especially, as in this case, where the party transferring the Khata was a woman. 1 think we must be bound by the findings of fact, in the trial Court that it was licit intended by these documents executed in 1894 to transfer the property from Chinkabai to Madhavrao. It follows, therefore, that the property stood in the name of Madhavrao, merely for the convenience of Chiukabai, and Chinkabai was well-acquainted with that fact. Therefore, Madhavrao had no title, and the plaintiff''s mortgage was the only mortgage of the property, so that the plaintiff who had purchased in execution is entitled to the property as against Madhavrao''s mortgagee. Therefore, the appeal in my opinion should be dismissed with costs.
Heaton, J.

3. In this case it is admitted that the appellants must fail, unless it is shown that in the year 1894 there was a transfer of ownership of the land in suit by Chinkabai, the then owner, to her son Madhavrao. It is found as a matter of fact by both the lower Courts that there was no transfer of ownership, and that finding must be accepted by us unless as a matter of law the existence in the year 1894 of a Rajinama and Kabulaya u/s 74 of the Bombay Land Revenue Code necessarily constitute a transfer of ownership. It is argued by the appellants that they do, The value of Rajinamas and Kabulayat is a matter which has often engaged my attention, and I see I have delivered several opinions on the point which appear in the Bombay Law Reporter. One of the latest, if not the latest, appears in Narso Bamaji Kulkarni Vs. Nagava Ishvarappa, . For many years it seems to have been the opinion in this Court that it was difficult to establish a transfer of the kind here asserted, without a sale-deed;

although even then there were indications that the existence of a Rajinama and Kabulayat might possibly be a substitute for sale-deed as documentary evidence of a transfer. In recent years it has, I think, become established that you can have a transfer of agricultural lands without a sale-deed and that a Rajinama and Kabulayat may, in certain cases, be, for substantial purposes, as good evidence of a transfer as a sale-deed itself. But of course before you can hold that a Rajinama and Kabulayat really do evidence a transfer of ownership, there must be either evidence or indications furnished by lapse of time and possession and so forth, that there was in fact an intention to transfer ownership. A Rajinama and Kabulayat do not by any means completely take the place of a sale-deed. They only serve as documentary evidence of transfer if that transfer can properly be inferred from the totality of facts proved; and these must usually at any rate comprise a good deal more than the Rajinama and Kabulayat themselves. In this case there is evidence from which both the lower Courts have drawn a conclusion that there was no intention to transfer ownership. It was quite within their powers to arrive at that conclusion. It seems to me, therefore, that their finding that there was no transfer of ownership in 1894 is conclusive, and that the argument urged by the appellants that a Rajinama and Kabulayat necessarily compel the inference as a matter of law that there was a transfer of ownership is without good foundation. I therefore agree that the appeal should be dismissed with costs.