(1931) 10 BOM CK 0005

Bombay High Court

Case No: First Appeal No. 339 of 1926

Bai Parsan		APPELLANT
	Vs	
Lallubhai Vandravandas Rani		RESPONDENT

Date of Decision: Oct. 7, 1931

Acts Referred:

- Registration Act, 1908 - Section 17(1)(b)

Citation: AIR 1932 Bom 217 : (1932) 34 BOMLR 459

Hon'ble Judges: Nanavati, J; John Beaumont, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Beaumont, Kt., C.J.
This is an appeal from the decision of the First Class Subordinate Judge at Ahmedabad.

2. It appears that in 1909 the plaintiff married defendant No. 1 and a document was executed on that occasion, which is Exhibit 19. By that document, to which I will refer in a moment, the plaintiff was given right to reside in a certain house and to enjoy her food from the rent of the house. Subsequently, defendant No. 1 executed a deed of gift of the house in favour of his grandsons defendants Nos. 2 and 3, and the question is whether he could do that in the face of the document of February 5, 1909. By that document defendant No. 1 recites that be has contracted a natra marriage with the plaintiff and certain ornaments of Rs. 150 have been agreed to be given to her. Then he says :

She may stay in the house and oat food. She may enjoy her food from the rent of the house at Pankor''s Naka. We admit to what is written above.

3. The learned Judge held that that document could not be looked at as it had not been registered.

4. Mr. Koyajee, who appears for the appellant, takes two points, In the first place he says that the document does not require registration because it does not create any right but merely declares an existing right. I think the answer to that is that that is not the effect of the document. It appears to me not to be a declaration of an existing right of the plaintiff in respect of the house, but to declare what her interest in the house is to be in future. That being so, prima facie it requires registration u/s 17(1)(b) of the Indian Registration Act.

5. Mr. Koyajee''s next point is that Section 17(1)(b) only applies to property of the value of Rs. 100 and upwards. The actual words of the section are that it applies to " instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in Immovable property." It seems to me clear on the language of that section that the value in question is the value of the right, title or interest. Mr. Koyajee says that it is the value of the consideration and for that he refers to two cases: Satra Kumaji v. Visram Hasgavda ILR (1877) 2 Bom. 97 and Nana bin Lakshman v. Anant Babaji ILR (1877) 2 Bom. 353.

6. In the case in Satra Kumaji v. Visram Hasgavda there was a mortgage for a sum of over Rs. 100 which was transferred by the document in question in consideration of a sum of less than Rs. 100, and the Court held that prima facie the value of the property transferred was the consideration given for it and not the amount secured on the mortgage, and therefore the document did not require registration. That is to say that the Court merely held that the consideration expressed in cash is prima facie to be taken as the value of the property.

7. The other case, Nanabin Lakshman v. Anant Babaji, also dealt with a mortgage. The question which the Court there decided was that the value must be based on the principal money secured and not the interest. But the Court did no doubt say (p. 354):-

When it is necessary to determine whether an instrument, other than a deed of gift, purports or operates to create, &c., any right, title, or interest, o the value of Rs. 100 or upwards, to or in Immovable property, the test of value which we adopt is the consideration stated in the instrument, whether it be one of sale or of mortgage, to be given to the grantor, and not either the minimum, or maximum, or other benefit which may result from the transaction to the grantee, whether he be vendee or mortgagee.

I think all that the Court meant was that prima facie the consideration for a sale or a mortgage must be taken to be the value of the property comprised in the sale or mortgage. But I do not think the Court intended to say that the consideration was necessarily to be taken as the value of the property. Any such decision would, in my opinion, be quite contrary to the plain meaning of the Act.

8. In the present case the consideration for the document was marriage, and though marriage is a valuable consideration, it is not a consideration the value of which can be accurately stated in cash. We have it in evidence here that the house brought in Rs. 90 a year. It is also in evidence that at the time of the agreement of February 1909 the plaintiff was a woman approximately thirty years of age, and it seems to me obvious that the value of a life interest for a woman thirty years of age in property producing Be. 90 a year is worth more than Rs. 100, I think, therefore, the learned Judge was quite right in holding that the document, Exhibit 19, required registration.

9. Mr. Koyajee''s only other point is that the deed of gift in favour of the two grandsons was bad because it deprived the plaintiff of her right under Hindu law to maintenance in respect of this house. She has not in the suit based her claim on Hindu law, and the learned Judge in his judgment says that "she is at liberty to fall back upon her ordinary right to get adequate maintenance and residence under Hindu law." In order to establish her right to maintenance in respect of this particular house, I think she should have given evidence as to what the position of her husband was and whether he had any other houses. It seems to me impossible to say, without any evidence of that nature, that she was necessarily entitled to maintenance out of this particular house.

10. I think, therefore, that on the merits the appeal fails and must be dismissed with costs.

Nanavati, J.

11. I agree.