

(1968) 07 BOM CK 0020

Bombay High Court

Case No: O.C.J. Short Cause Suit No. 265 of 1967

Leela Divekar

APPELLANT

Vs

E.C. Shinde and another

RESPONDENT

Date of Decision: July 23, 1968

Acts Referred:

- Bombay City Civil Court Act, 1948 - Section 3(c), 3(e)
- Civil Procedure Code, 1908 (CPC) - Section 15
- Registration Act, 1908 - Section 72, 77, 78
- Suits Valuation Act, 1887 - Section 8, 9

Citation: (1969) MhLj 487

Hon'ble Judges: J.R. Vimadalal, J

Bench: Single Bench

Advocate: B.R. Zaiwalla, for the Appellant; S.P. Bharucha, for the Respondent

Final Decision: Dismissed

Judgement

J.R. Vimadalal, J.

This is a suit filed by one of the executants of a document u/s 77 of the Indian Registration Act, 1905, for a decree directing the defendants, who are the appropriate registering authorities, to register the document in question within 30 days from the date of the passing of the decree in this suit.

2. The short facts necessary for the purpose of this suit are that the plaintiff is the administratrix of the estate of one Dhundiraj Balvant Divekar who died intestate in Bombay on October 10, 1962, leaving him surviving as his only heirs according to the Hindu Succession Act, 1956, his widow the plaintiff herself and two sons, one named Suresh, and the other a minor named Bakul. The plaintiff obtained a grant of Letters of Administration to the estate of the deceased Dhundiraj from this Court on May 21, 1964, and having completed the administration of the said estate, paid to the said Suresh a sum of Rs. 52,106, and paid to herself in her personal capacity as

the heir of the deceased Dhundiraj, and to herself as the mother and natural guardian of her minor son Bakul, a sum of Rs. 1,04,212 made up of Rs. 29,212 in cash and Rs. 75,000 being the value of a flat on Pedder Road in Bombay. By agreement between the parties, the share of the deceased in the business of United Sound Services was continued to be held in common between his heirs, the paid Suresh, the plaintiff and the said minor Bakul, and was not included in the distribution of the estate mentioned above. On August 10, 1966, an instrument which was called a deed of transfer was executed between the parties, a copy of which is annexed to the plaint and marked "A", and it is in respect of the said deed that the present suit has been filed. It is, therefore, necessary to set out, in some detail, the nature of the said deed.

3. After several recitals, the operative part of the said deed declares that the plaintiff, as administratrix, has made the payments mentioned above to the said Suresh, and to herself in the dual capacity which she holds as stated above, and states that the said Suresh as well as the plaintiff herself "acknowledge" that they have received the respective amounts due to them as well as the said flat "in full satisfaction" of their respective shares in the property and effects of the deceased Dhundiraj, except his share in the business of United Sound Services. The concluding portion of the said deed, which is very important for the purpose of this case, is in the following terms:

AND the said Suresh and the said Leela for herself and as the mother and natural guardian of the and Bakul do hereby discharge Leela the Administratrix from all their respective rights, claims and interest in the property and effects mentioned in the said Schedule I, hereunder written and from all actions, accounts, claims and demands in respect thereof.

It may be mentioned that Schedule I to the said deed contains an enumeration of all the property belonging to the estate of the deceased, other than the share of the deceased in the United Sound Services which is shown in Schedule II to the said deed,

4. In accordance with the adjudication by the Assistant Superintendent of Stamps, Bombay, the said deed was stamped with stamp of Rs. 10. After its execution the said deed was presented for registration to defendant No. 1 on October 24, 1966, and defendant No. 1 computed the registration fee payable thereon on an ad valorem basis at Rs. 679 which he demanded from the plaintiff. The plaintiff declined to pay the same, contending that a fixed registration fee of only Rs. 10 was leviable on the said deed. Defendant No. 1 having thereupon refused to register the said deed, the plaintiff filed an appeal against the order of defendant No. 1 before defendant No. 2 u/s 72 of the Registration Act. Defendant No. 2 by his order dated April 7, 1967, however, upheld the decision of defendant No. 1 in regard to the ad valorem registration fees payable on the said deed. The plaintiff has thereafter filed this suit u/s 77 of the Registration Act. It is the case of the plaintiff in para. 7 of the

plaint that the said deed falls within Article III of the Table of Fees prepared by the Government of Maharashtra in exercise of the powers conferred upon it u/s 78 of the Registration Act, as being a Release executed in pursuance of some other document on which full ad valorem fee under Article I has been paid, and a maximum registration fee of RS. 10 only is payable thereon. The alternative case of the plaintiff also set out in para. 7 of the plaint is that the said deed is a document which does not fall within any other Article of the Fee Table and is, therefore, governed by Article IV of the said Table of Fees, and a fixed registration fee of Rs. 10 only is leviable in respect of the same. It may, however, be mentioned that, at the very commencement of the hearing before me, Mr. Zaiwalla for the plaintiff gave up the main contention in para. 7 of the plaint that the deed in question falls under Article III of the Table of Fees, and made a statement that he would base his client's case only on the alternative ground stated in para. 7 of the plaint that the said document fell within Article IV of the Table of Fees as being one which did not fall under any other Article thereof.

5. Apart from certain technical defences, the case of the defendants in para. 10 of their written statement is that the said deed is a Release without consideration, and as such does not fall under Article I (2) of the Table of Fees, but is governed by an ad valorem registration fee as laid down in Article I (3) thereof. It may be mentioned that it has been stated by Mr. Bharucha before me that the words "Article I (2)" in line four of para. 10 of the written statement are a typing mistake for the words "Article I (3)". In view of these rival contentions of the parties, the following issues were framed by me:

(1) Whether this Hon"ble Court has jurisdiction to entertain and try this suit.

(2) Whether the Deed of Release in suit is chargeable in respect of registration fee under Article I (3) of the Table of Fees in force in the State of Maharashtra as alleged in para 10 of the Written Statement.

(3) Whether the Deed of Release in suit is chargeable in respect of registration fee under Article IV of the said Table of Fees as alleged in para. 7 of the plaint.

(4) Whether the plaintiff is entitled to any and, if so, what relief?

6. It may be mentioned that Mr. Bharucha for the defendants stated that he desired to give up the plea of limitation as well as the plea of non-maintainability of the suit which are to be found pleaded in paras. 1 and 2 of the written statement. No issues have, therefore, been framed by me in regard to the same. The questions which survive for determination in this suit are only two: (1) the question of jurisdiction, and (2) the question of the registration fee payable on the deed.

7. As far as the question of jurisdiction is concerned, it is the contention of Mr. Bharucha for the defendants that this suit should have been filed in the Bombay City Civil Court as being the civil Court of the lowest grade within the local limits of

whose original jurisdiction the registering office is situated. There is no substance whatsoever in that contention of Mr. Bharucha. In support of that contention, Mr. Bharucha relied upon the decision in the case of *Wishwambhar Pandit v. Prabkakar Bhat* (1884) I L R 8 Bom. 269, but it is unnecessary to deal with that case as it lays down nothing more on this point than what section 15 of the Code of Civil Procedure, 1908, enacts. There can be no dispute about the proposition that a suit must be instituted in the Court of the lowest grade competent to try it. The question that arises, however, is-Is the Bombay City Civil Court "competent" to try this suit? As Mr. Zaiwalla has rightly contended, this suit is not capable of monetary evaluation and the plaintiff is, therefore, entitled to put his own valuation thereon for the purpose of jurisdiction. In my opinion, such a suit would not be governed by section 8 of the Suits Valuation Act, 1887, and there being no Rules framed by the High Court u/s 9 of that Act, the plaintiff would be entitled to put his own valuation thereon. That, in substance, was the view taken in the case of [Golam Rahman Mondal Vs. Sm. Sabekjan Bibi](#), in which this very question arose and it was held by a Division Bench of the Calcutta High Court that the sole object of a suit u/s 77 of the Registration Act being to get a certain document registered, the plaintiff was entitled to put his own valuation thereon. As in *Golam Rahman's* case (2), the plaintiff in the present suit has, in para. 9 of the plaint, valued the suit at the value of the property comprised in the deed which is well over Rs. 25,000. This suit would, therefore, be beyond the pecuniary jurisdiction of the Bombay City Civil Court and has been properly filed in this Court.

8. Even if I am wrong in the view which I have taken above, viz., that the subject-matter of the suit is not capable of monetary evaluation, the same result would follow. The subject-matter of the suit would be none other than the property affected by the deed and even on the footing that the subject-matter of the suit is capable of monetary evaluation, the value thereof must be held to be well over Rs. 25,000 which is the pecuniary limit of the jurisdiction of the City Civil Court. That position is dear in view of the fact that the share of each of the heirs in the estate of the deceased Dhundiraj is Rs. 62,106 and the aggregate of the property in regard to which the deed operates to give a discharge is Rs. 1,56,318.

9. There is one more ground on which, in my opinion, the jurisdiction of the City Civil Court would be clearly barred in respect of the present suit. That ground is that the Registration Act is a "special law," and proceedings u/s 77 thereof are proceedings under a "special law" within the terms of section 3 (e) of the Bombay City Civil Court Act, 1948, which lays down that that Court is not to have jurisdiction in suits or proceedings which are cognizable by the High Court under any special law other than the Letters Patent. It has been held in the case of *Veeramma v. Abbiah* (1894) I L R 18 Mad. 99 (F B), at pp. 108-110 that the Registration Act is a Code complete in itself and is, therefore, a "special law" to which it would be incongruous to apply the general provisions of the Limitation Act. It was held in the said case that the said suit, which was also a suit u/s 77 of the Registration Act of 1877 which was materially

in the same terms as section 77 of the present Registration Act, was barred and that the provisions of section 7 of the Limitation Act, 1877, could not assist the plaintiff to maintain the suit by reason of his infancy. It may be mentioned that section 6 of the Limitation Act of 1877 laid down that when by any special or local law, a period of limitation was specially prescribed for any suit, nothing contained in the Limitation Act could affect or alter the period so prescribed. The question which arose before the Court, in that case, therefore, was whether section 77 of the Registration Act could be said to be a "special law" so that the provisions of section 7 of the Limitation Act of 1877 in regard to extension of the period of limitation by reason of the minority of the plaintiff would not be applicable. The Full Bench held that the Registration Act, 1877, being an Act complete in itself, the provisions of section 7 of the Limitation Act, 1877, did not apply. Support is to be found for the view taken by the Madras High Court in Veeram-ma's case (1) in the decision of a Full Bench of this Court in the case of Anjana-bai v. Yeskwantrao 1961 N L J 1 (F R)=(1960) 69 Bom. L R 98. Though the question which arose in the latter case was whether the delay on the part of the applicant in making an application u/s 417 (3) of the Criminal Procedure Code for the grant of special leave to appeal from the order of acquittal could be condoned under the provisions of section 5 of the Limitation Act, 1908, the learned Chief Justice in delivering the judgment of the Full Bench, has formulated in general terms what would be the meaning of the expression "special law". He has stated (p. 103):

In our opinion, the expression "special law" means a provision of law, which is act applicable generally, but which applies to a particular or specified subject or class of subjects.

The Full Bench then proceeded to hold that the provisions of section 417 of the Criminal Procedure Code which apply only to applications made by a private party for leave to appeal from orders of acquittal was a special law within the meaning of section 29 (2) of the Limitation Act, 1908, and section 5 of the latter Act was inapplicable to the same. I agree with the view taken by the Madras High Court in Veeramma's case (1) and am bound by the observations of the Full Bench of this Court in Anjanabai's case (2). The Registration Act is, in my opinion, a complete Code in itself and section 77 thereof is a provision which is not applicable generally, but which applies to a particular subject viz. the enforcement of a right to get a document registered by filing a civil suit which, but for the special provisions of that section, would not be maintainable. I hold that section 77 is a "special law" and the jurisdiction of the Bombay City Civil Court is excluded by reason of section 3 (c) of the Bombay City Civil Court Act, 1948. On any view of the matter, therefore, the issue of jurisdiction must be decided in favour of the plaintiff.

10. That brings me to issues Nos. 2 and 3 which embody the main question that arises in the present suit on merits. That question, in effect, is whether the deed in question can be said to be a Deed of Release. If it is a Deed of Release, there being

no dispute that there is no consideration for the deed, the contention of the registering authorities that it would be governed by Article I (3) of the Table of Fees would have to be upheld and there would be no occasion for invoking the applicability of the residuary provision in Article IV on which the plaintiff relies. The first point that must be noted in that connection is that the word "release" does not appear anywhere in the said deed. Even so, however, if the document is in effect a Deed of Release, neither the fact that is labeled as being a Deed of Transfer, nor the fact that the word "release" is not used in the body of it, can take it out of Article I (3) of the Table of Fees. What the Court has to determine is the substance of the document and not the label which it bears, and the Court cannot allow the ingenuity of the draftsman to affect the determination of the question before it which must be governed by the real nature of the document. The label of the document as the Deed of Transfer is an obvious misnomer for it does not operate to transfer any property. It is the contention of Mr. Bharucha that the deed in question is in effect a Deed of Release. Mr. Zaiwalla has, on the other hand, contended that since the word "release" is not used in the document, the Court should not read it into the deed and change its legal effect. I must, therefore, proceed to consider what is the true nature of the deed in respect of which the present suit has been filed.

11. A careful analysis of the deed shows that the operative part thereof acknowledges receipt of the sums specified therein and states that the same have been received in full satisfaction of the respective shares of the parties in the property and effects of the deceased Dhundiraj. In the concluding portion, the heirs of the deceased discharge the plaintiff as administratrix from all their respective rights, claims and interest in the property and effects of the deceased Dhundiraj and from all actions, accounts, claims and demands in respect thereof. It is true that there is a distinction between a mere "receipt" and a "release". That distinction has been brought out clearly in the decision in the English case of *Bowes v. Foster* (1888) 27 L J Ex. 262, at p. 266 where it is stated in these terms:

The distinction between a receipt and a release is, the release extinguishes the claim, and when given, in itself annihilates the debt; but a receipt is only evidence of payment, and if the proof be that no payment was made, it cannot operate as evidence of payment against such proof.

12. There can be no doubt that the deed which I am called upon to construe is not a mere receipt. Mr. Zaiwalla has, however, contended that it is also not a release for it does not annihilate the debt, but merely operates as a discharge of the administratrix as such. I am afraid I cannot accept that contention of Mr. Zaiwalla. In the case of [The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar](#), in construing the expression "discharged from all liability" in Clause 3 of Para. 6 of Article III in Schedule to Carriage of Goods by Sea Act, 1925, the Supreme Court has stated (para. 25) that the ordinary grammatical sense of that expression does not connote "free from the remedy as regards liability" but is more

apt to mean a total extinction of the liability following upon an extinction of the right. In the case of [Sarda Prasad and Others Vs. Lala Jumna Prasad and Others](#),, the Supreme Court was called upon to construe the expression "discharge" occurring in section 7 of the Limitation Act, 1908. Section 7 of that Act deals with the disability of one of the several plaintiffs or applicants in the matter of giving a discharge, and the Supreme Court defined the word "discharge" as meaning "to free from liability", whether the liability be in respect of monetary claims like debts, or in respect of possession of property, or in respect of taking some order as regards property, or in respect of any other matter. In both these cases, the Supreme Court has, therefore, given to the word "discharge" the connotation of total extinction of liability. The word "discharge" is ordinarily used only in the context of exonerating a person from liability or relieving him of his obligations, and is not used, in the sense of a giving up of rights. The appropriate word to be used in connection with the renouncing of rights would be the word "release", though no doubt the word "release" is also used, as a matter of plain language, both for extinguishing liability as well as for annihilating the right corresponding thereto. It is a wider term which include the concept of freeing a person from liability. When, therefore, in the concluding portion of the deed before me the heirs of the deceased purport to discharge the administratrix from their rights, claims and interest in the estate of the deceased, what they are really doing is to release in favour of the administratrix whatever rights they had in the estate of the deceased, in consideration of the payment received by them in full satisfaction thereof. The word "discharge" which is used in the concluding portion of the deed is also inappropriate in the context of actions, accounts, claims and demands. The draftsman of the deed has for some reason, which it is not difficult to fathom, scrupulously avoided using the word "release" in place of the word "discharge", though it would certainly have been the more appropriate word. As already stated by me above, ingenuity in drafting cannot, however, be permitted to affect the decision of the question which arises for my consideration in this suit. In my opinion, the concluding clause in the operative portion of the deed is neither a mere receipt evidencing payment, nor does it merely discharge the administratrix from all obligations, liabilities and claims, but it annihilates the debt due to the heirs, in the sense that it completely extinguishes all rights of the heirs of the deceased to share in his estate.

13. Mr. Zaiwalla has contended that the word "discharge" in the concluding portion of the operative part of the deed governs the words "Leela the administratrix" and that, therefore, the deed does not purport to annihilate any rights against any property, but merely seeks to free the administratrix from liability. There is no substance in that contention of Mr. Zaiwalla. That is not the true effect of the deed as already stated above. Moreover, even if that were the effect of the deed, it would, in my opinion, still be a Deed of Release. It has been held by this Court as far back as the case of *Chandrashankar v. Bai Magan* (1914) 16 Born. L R 236, at p. 248, which has been followed in the case of [In Re: Maneklal Manilal](#), that though the Stamp Act

and the Registration Act cannot, strictly speaking, be said to be enactments which are in pari materia, the two Acts may be read together and the definitions in the Stamp Act apply to the Registration Act. There is no definition of a "Release" in the Registration Act, but there is a definition of that term to be found incorporated in Article 55 of the Indian Stamp Act, 1899. That definition is that a "Release" is an instrument whereby a person renounces a claim upon another person, or against any specified property. Therefore, it makes no difference whether, under the deed in suit, the heirs of the deceased renounce their claims upon the administratrix or renounce their claims against the property comprised in the estate of the deceased, and the distinction which Mr. Zaiwalla has sought to draw cannot help him. I, therefore, hold that the deed in question is a Deed of Release because it is an instrument whereby the heirs of the deceased Dhundiraj renounce all their claims and demands upon the administratrix in her capacity as such, and also renounce all their rights as heirs against the property comprised in the estate of the deceased.

14. Even if I am wrong in the view which I have taken above and the deed in question is construed merely as freeing the administratrix of all liability, it would, in my opinion, still fall within the caption of a Deed of Release as known to the law of Conveyancing. Reference may be made in this connection to Butterworth's Encyclopedia of Forms and Precedents (3rd Edn.), Vol. 13, p. 594, Form No. 14, in which a document of precisely the same nature as the one before me is called a Deed of Release, though no doubt the operative portion thereof uses the more appropriate word "release" instead of the word "discharge" which is to be found in the deed in suit. In the 4th Edition of Butterworth's Encyclopedia of Forms and Precedents, Vol. I, at p. 31, there is to be found a form (Form No. 32) of a Receipt by a residuary legatee to the executors accepting the sum paid to him, receipt whereof is acknowledged. In the form of that Receipt, the residuary legatee states that he has received that amount in full satisfaction of all his claims against them and that he undertakes "on request to execute a formal Release to the said executors." A reference to other standard works on Conveyancing also shows that a document whereby the legatees give a full discharge to the executor on payment of their respective shares is called a Deed of Release. Prideaux's Forms and Precedents in Conveyancing (25th Edn.), Vol. 3, p. 564, Form No. IX Cl. 1 of the Operative Part, and Elphinstone on Conveyancing (1906 Edn.), p. 516 show that that is the position under the law of Conveyancing. In Halsbury (3rd Edn.), Vol 16, p. 319, para. 615, it is stated that an executor is entitled to a receipt on payment of a legacy, and that is sufficient discharge, so that he is only in exceptional circumstances entitled to a formal Deed of Release. That statement of the law in Halsbury shows clearly that whilst a receipt is sufficient discharge to an executor, if a formal discharge is required in exceptional circumstances, the document whereby it is given is called a Deed of Release. In Conveyancing, the words "release" and "discharge" are almost inseparable associates, but the document by which claims upon a person or against any property are renounced is invariably called a "Deed of Release". The Registration

Act deals primarily with the conveyance of property and interests in property, and words used in the Registration Act must therefore be given the meaning which they bear in the law of Conveyancing. Even if Mr. Zaiwalla's contention that the document merely purports to discharge the administratrix of her liability as such, but does not annihilate the rights of the heirs of the deceased in his estate be accepted, I would still hold that the deed in question is a Deed of Release. There being no dispute that there is no consideration for the deed in suit, I must hold that, in any view of the matter, the said deed falls within the expression "Release other than one falling under (2) above" in Article I (3) of the Table of Fees prepared by the Government of Maharashtra in exercise of the powers conferred upon it by section 78 of the Indian Registration Act, 1908. Issues Nos. 2 and 3 must be answered accordingly and the plaintiff's suit must fail.

15. I answer the issues as follows.

1. In the affirmative.
2. In the affirmative.
3. In the negative.
4. See order below.

ORDER

I dismiss the plaintiff's suit with costs.

Solicitors for plaintiff-Solomon & Co.

Solicitors for defendants-Little & Co.