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Unregistered relinquishment deed inadmissible in evidence

The Nagpur Division of the Bombay High Court recently ruled that surrendering of one's rights in an immoveable property will be recognised as evidence in law, only if the 'relinquishment deed' through which the surrender has been made, has been duly registered with the office of the Sub-Registrar of Assurances having jurisdiction over the immoveable property.

In the present case, the appellant and the respondent are sister and brother, respectively. Their father, who owned certain parcels of agricultural land ("**Land**"), passed away in 1977, leaving the two siblings as his legal heirs. The sister demanded partition of the Land, but the brother did not respond.

Taking advantage of sister's faith in him, the brother deceived the sister by obtaining her signature on a deed of relinquishment, misrepresenting that it was relating to partition and that he has given his sister her share in the Land. However, he did not handover physical possession of sister's share in the Land to her.

Basis the relinquishment deed, the brother approached the Tahsildar to establish himself as the exclusive owner of the Land. On receipt of Tahsildar's notice in 1990, the sister realised her brother's ill intentions and raised an objection before the Tahsildar. The sister also filed a suit for partition and possession of her share in the Land.

The brother claimed that the lands were father's self-acquired properties and that their father had given the lands to him exclusively under his will.

The Lower Court dismissed the suit on the grounds that (i) the sister had waived her right of partition by not filing a partition suit for more than 14 years since the father's demise; and (ii) the sister could not prove that the relinquishment deed was fraudulent since the brother neither produced nor claimed that the relinquishment deed was registered.

The sister filed an appeal against the order of the Lower Courts. The Appellate Court also rejected the sister's appeal without appreciating that the (i) land records reflected the brother and the sister as owners of the Land; and (ii) if the father had made a will, then the brother did not require the sister to execute a relinquishment deed.

After hearing arguments of both the Parties, Nagpur Division of The Bombay High Court ("**High Court**") overturned the earlier orders and allowed the sister's second appeal for partition suit (as the registered relinquishment deed was neither mentioned nor produced before the Court by the brother).

The High Court recognised that the sister has half share in the Land and directed the brother to hand over possession of sister's share in the Lands to her together with mesne profit from the date of filing of the suit till delivery of possession. (*Mesne profit refers to a claim of a lawful owner of a property against an unlawful possessor of that property*).

A relinquishment deed therefore requires being registered with the appropriate authority to be admissible as evidence for establishing the surrender of rights in an immovable property.

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