

## **Santosh Jayaswal And Another vs State Of M.P. And Others on 11 September, 1995**

**Equivalent citations: 1996 AIR 207, 1995 SCC (6) 520, AIR 1996 SUPREME COURT 207, 1995 (6) SCC 520, 1995 AIR SCW 3941, (1996) JAB LJ 152, 1998 ALL CJ 1 359, (1996) 1 LANDLR 87, (1996) 1 RENTLR 147, (1996) 1 ICC 320, (1996) 1 ANDH LT 26, (1995) 3 CURCC 477, (1996) 4 ANDHLD 608, (1997) 3 COMLJ 122, (1997) 1 BANKCLR 553**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, B.L Hansaria**

PETITIONER:

SANTOSH JAYASWAL AND ANOTHER

Vs.

RESPONDENT:

STATE OF M.P. AND OTHERS

DATE OF JUDGMENT 11/09/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1996 AIR 207

1995 SCC (6) 520

1995 SCALE (5) 535

ACT:

HEADNOTE:

JUDGMENT:

**O R D E R** Leave granted.

These appeals by special leave arise from the judgment dated 26.8.1994 of the Division Bench of the High Court of Madhya Pradesh in L.P.A. Nos.21 and 22 of 1994 titled State of M.P. and others Vs. Santosh Jaiswal and L.P.A. No. 21/94 titled State of M.P. and others vs. Surendra Shukla. The question canvassed before the Division Bench was whether the right to catch fish in the tank granted in favour of the appellants was in the nature of a lease or licence, an instrument compulsorily registerable under the Indian Registration Act and liable to stamp duty under the Indian Stamp Act. The Division Bench held that they were leases in respect of Santosh Jaiswal's case (L.P.A. No. 21/94) for a period of nine months and in Surendra Shukla's case (L.P.A. No.22/94) for more than one year. In the counter-affidavit filed in this Court, it was stated that the lease was for more than two year.

Shri Pramod Swarup, learned counsel for the appellants, contended that it is only a licence and that, therefore, it is neither an instrument compulsorily registerable under Section 17 of Registration Act nor liable to stamp duty under the Indian Stamp Act. We do not agree with the learned counsel. It is true that the learned Single Judge while disposing of the writ petition found that it was a licence but not a lease but before the Division Bench, controversy whether what was granted to the appellant is a licence or a lease was not put in issue. On the other hand, it proceeded on the premise that they were leases. The appellants were not even raised any contention in the SLP nor have they placed any document before us. Under these circumstances, we would proceed on the premise that they are leases. The contention raised in the High Court was that since profit a pendre is not an immovable property and that, therefore, it is not compulsorily registerable instrument. That contention was rejected by the High Court.

Section 3 of the Transfer of Property Act defines "immovable property". It does not include standing timber, growing crop or grass. Clause (26) of Section 3 of the General Clauses Act is equivalent to Section 2(18) of the M. P. General Clause Act which defines immovable property thus:

"2(18) "Immovable property" included land, benefits, to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

Section 17 (1) (d) of the Indian Registration Act provides that certain documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the specified date. By virtue of Section 17(1)(c) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is compulsorily registerable instrument. This Court considered the controversy in The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. vs. Sipahi Singh and others [(1977) 4 SCC 145] and held that if the profit a pendre is a tangible immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs. 100/-. If it is intangible, the sale is required by Section 54 of the Transfer of Property Act, 1882, to be effected by a registered instrument, whatever its value. Therefore, in either situation the grant of the profit a pendre has to be by means of a registered instrument.

Since the definition of "Immovable Property" in M. P. General Clause Act includes benefits to arise out of land and things attached to the earth, the question is whether the right to catch fish is a benefit to arise out of the land. It cannot be controverted that catching fish from the tank would be a benefit arising out of the land. Therefore, it is an immovable property. Even though it is profit a prendre, since it is a benefit to arise from the land, it is an immovable property. If its value is more than Rs. 100/- or the lease is on year to year basis, it is a compulsorily registerable instrument under Section 17(1)(c) of the Indian Registration Act. It is an instrument under Article 35(a) of Schedule 1-A Clauses (1) to (3) of the Stamp Act. Therefore, it requires to be engrossed with required stamp duty and registered under Section 17(1)(d) of the Indian Registration Act.

Though Shri Pramod Swarup, learned counsel for the appellant, sought reliance on the judgment of this Court in *Ananda Behari and Another vs. The State of Orissa and another* [(1955) 2 SCR 919], *The State of West Bengal vs. Shebait of Iswar Sri Saradia Thakurani and others* [(1972) 4 SCC 158], *Board of Revenue and others vs. A.M. Ansari and others* [(1976) 3 SCC 512] and *State of Orissa and others vs. Titaghur Paper Mills Co. Ltd. and another* [(1985) Supp. SCC 280] they render little assistance to the facts in these cases. Therein the question was whether the right to catch fish is a lease or a licence. In view of the language of documents in those cases, this Court considered that it would be a licence but not a lease. Since the document has not been placed before us, we cannot decipher whether it is a licence or a lease. Since the controversy was not put in issue before the Division Bench, we proceeded on the premise that it is a lease. Under these circumstances, we are of the considered view that the Division Bench of the High Court is right in its conclusion that it is a lease and being of the value of more than Rs. 100/-, and upwards, it is compulsorily registerable under Section 17(1)(d) of Indian Registration Act.

Under Section 17 of the Registration Act, read with Section 2(16) of the Indian Stamp Act, 'lease' means a lease of immovable property and includes a patta, a kabuliyat or other undertaking in writing, not being a counter-part of a lease to cultivate, occupy, or pay or deliver rent for, immovable property etc. Right to catch fish is profit a prendre and benefit to arise out of land is an immovable property for the purpose of stamp duty. It would, therefore, be clear that since it is a right given to the appellants to catch fish in the tank, it is a profit a prendre attached to or benefit to arise out of the land. Therefore, it is an instrument for the purpose of stamp duty. Since the duration of lease in L.P.A. No.21/94 is only nine months, it is not compulsorily registerable instrument by operation of Section 17(1)(c) of the Act. The Civil Appeal arising out of L.P.A.21/94 relating to Santosh Jaiswal is, therefore, partly allowed. It is an instrument which requires to bear the appropriate stamp duty but is not a compulsorily registerable instrument. In appeal arising out of L.P.A.22/94 of Surendra Shukla, since the duration of lease is more than a year, it is an instrument and compulsory registerable by operation of Section 17(1)(c) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and registered.

The appeals are accordingly disposed of. No costs.