Ripudaman Singh vs Tikka Maheshwar Chand on 6 July, 2021

Author: Sanjay Kishan Kaul

Bench: Hemant Gupta, Sanjay Kishan Kaul

R

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2336 OF 2021
(ARISING OUT OF SLP (CIVIL) No. 4035 OF 2017)

.....A

RIPUDAMAN SINGH

VERSUS

TIKKA MAHESHWAR CHAND

.....RESP

ORDER

Leave granted.

1. The plaintiff is in appeal before this Court challenging the judgment and decree passed by the High Court on 28.10.2006 whereby appeal filed by the defendant was allowed and the suit for declaration challenging the orders passed in mutation proceedings was dismissed.

2. The parties herein are the two sons of late Vijendra Singh. The appellant filed a suit for possession in the year 1978 disputing the Will dated 04.12.1958 executed in favour of the defendant. The appellant claimed half share of the land as described in the plaint. During the pendency of suit, a decree was passed on the basis of compromise arrived at between the parties. The terms of compromise read as under:

> "The plaintiff shall be delivered possession of Khasra No. 513/1 area measuring 8 Kanals 18 Marlas as per Tatima Ex.P-2 by the defendant and the plaintiff shall be exclusive owner thereof and the defendant shall continue to remain in physical possession as an owner of Khasra No.513/2 area measuring 143 Kanals and 16 Marlas.

> The plaintiff shall be owner of Khasra No. 516/1 area measuring 27 Kanals 11 Marlas and the defendant shall also pay to the plaintiff a sum of Rs.10,000/- within one month from today. The plaintiff shall also be owner in respect of the land recorded in the ownership of the defendant in Patwars Dhaneta, Nohngi, Choru and Saproh in respect of Ghair Mumkin Land."

3. In pursuance of the decree so passed, the plaintiff sought a mutation of the 1/2 share of the land vesting to him which was allowed by the Naib Tehsildar on 10.02.1983. However, an appeal against the said mutation was disposed of with a direction to Naib Tehsildar to decide the mutation afresh as the mutation was sanctioned without granting any opportunity of being heard to the respondent.

4. The appellant thereafter filed an appeal before the Divisional Commissioner. Such appeal was dismissed on the ground that the compromise decree in the absence of registration is against the provisions of the Registration Act, 1908. It was held as under:

> "From the perusal of the record, it is revealed that the decree passed by the Ld. Sub Judge in Civil Suit No. 45 of 1978 is a compromise decree concerning delivery of possession of Khasra No.513/1 measuring 8 Kanals 18 Marlas and owner of Kh. No.516/1 measuring 27 Kanals 11 Marlas situated in patwars Dhaneta, Nohang, Choru and Saproh in respect of Gair Mumkin Land. The present appeal is in respect of other land which was not the subject matter of suit in the civil court under section 17(2)(vi) of Indian Registration Act the compromise decree which related to the subject matter of the suit remained immune from registration. The compromise decree which incorporated matters beyond the scope of the suit, requires registration. Therefore, the land under dispute which is beyond the scope of the suit or compromise decree requires registration. The Assistant Collector, IInd Grade Nadaun vide his orders dated 24.6.89 has sanctioned the mutation without the registration of the compromise decree is against the provision of the act ibid and the Ld. Collector has rightly accepted the appeals of the respondent Tikka Maheshwar Chand. Hence, these appeals are dismissed and the order of the Collector dated 13.2.91 is upheld."

5. The appellant subsequently filed a suit for declaration challenging such order passed by the Commissioner. The suit was dismissed by the learned Sub Judge, Ist Class, Hamirpur on 20.11.2002. But the appeal preferred by the appellant was allowed by the learned District Judge, Hamirpur in 19.08.2004. The said order was under

> challenge in the second appeal before the High Court. The High Court set aside the judgment and decree passed by the first appellate court and the suit was dismissed on the ground that the land even though being subject-matter of compromise, was not the subject-matter of the suit and therefore the decree required registration under Section 17(2)(vi) of the Registration Act, 1908.

6. The only question in the present appeal is whether a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members requires compulsory registration in terms of Section 17(2)(vi) of the Registration Act, 1908. The relevant provision of clause (v) and clause (vi) of sub-clause (2) of Section 17 of the said Act reads as under:

> "17(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-
>
> xxx
>
> (v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare assign, limit or extinguish any such right, title or interest;
>
> (vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding];"

7. We find that the judgment and decree passed by the High Court is clearly erroneous and cannot be sustained in law. The parties are the sons of late Vijendra Singh. As an heir of deceased, the appellant had a right in the estate left by the deceased. Therefore, it was not a new right being created for the first time when the parties entered into a compromise before the civil court but rather an pre-existing right in the property was recognized by way of settlement in court proceedings.

8. Though, the Gair Mumkin Land (Non-cultivable land) was not subject-matter of the suit, but the compromise entered between the parties before the learned Trial Court leading to decree on 3.11.1981 included such non-cultivable land. It is to be noted that compromise decree can be passed even if the subject-matter of the agreement, compromise of satisfaction is not the same as the subject-matter of the suit in terms of the provisions of Order XXIII Rule 3 of the Code of Civil Procedure, 1908. Order XXIII Rule 3 of the Code of Civil Procedure, 1908 reads thus:

> "3. Compromise of Suit. - Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject- matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:
>
> xxx xxx."

9. Therefore, the compromise decree entered into between the parties in respect of land which was not the subject matter of the suit is valid and is thus a legal settlement. It would be relevant to notice that defendant-respondent has not disputed such settlement on any admissible grounds before any forum.

10. The question whether such settlement between the members of the family would require registration or not has come up for consideration before this Court in a judgment reported in Kale and Others v. Deputy Director of Consolidation and Others1 which reads as under:

"9.....The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various 1 (1976) 3 SCC 119 members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.

The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) xxx xxx (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore

does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

11. The said judgment has come up for consideration recently in a case reported as Ravinder Kaur Grewal and Others v. Manjit Kaur and Others2. It may be stated that this was not a case of compromise decree but of a family settlement which was sought to be enforced in a suit for declaration as one of the parties to the settlement wanted to resile from it. Such family settlement was held to be a document as per clause (v) of sub-section 2 of Section 17 of the Registration Act, 1908.

12. An aggrieved person can seek enforcement of family settlement in a suit for declaration wherein the family members have some 2 (2020) 9 SCC 706 semblance of right in property or any pre-existing right in the property. The family members could enter into settlement during the pendency of the proceedings before the Civil Court as well. Such settlement would be binding within the members of the family. If a document is sought to be enforced which is not recognized by a decree, the provision of clause (v) of sub-section 2 of Section 17 of the Registration Act, 1908 would be applicable. However, where the decree has been passed in respect of family property, clause (vi) of sub-section 2 of Section 17 of the Registration Act, 1908 would be applicable. The principle is based on the fact that family settlement only declares the rights which are already possessed by the parties.

13. In respect of a question whether the decree requires registration or not, this Court in Bhoop Singh v. Ram Singh Major and Others3 held that decree or order including compromise decree creating new right, title or interest in praesenti in immovable property of value of Rs.100/- or above is compulsory for registration. It was not the case any pre-existing right but right that has been created by the decree alone. This court explained both the situation, where a part has pre-existing right and where no such right exists. It was observed as under:

> "13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in 3 (1995) 5 SCC 709 praesenti in favour of the other, relating to immovable

property of the value of Rs.100 and upwards, the document or record or compromise memo shall be compulsorily registered.

xx xx xx

16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

xx xx xx

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarized as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-

section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the

decree not having been registered. According to us, it cannot for two reasons:

> (1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct".

Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.

(2) xxx xxx "

14. In K. Raghunandan and Others v. Ali Hussain Sabir and Others4, a decree was passed in respect of disputes between the two neighbours over passage. It was held that such decree would require registration.

"A statute must be construed having regard to the purpose and object thereof. Sub-section (1) of Section 17 of the Act makes registration of the documents compulsory. Sub- section (2) of Section 17 of the Act excludes only the applications of clauses (b) and (c) and not clause (e) of sub- section (1) of Section 17. If a right is created by a compromise decree or is extinguished, it must compulsorily be registered if the compromise decree comprises immovable property which was not the subject-matter of the suit or proceeding. Clause (vi) is an exception to the exception. If the latter part of clause (vi) of sub-section (2) of Section 17 of the Act applies, the first part thereof shall not 4 (2008) 13 SCC 102 apply. As in this case not only there exists a dispute with regard to the title of the parties over the passage and the passage, itself, having not found the part of the compromise, we do not find any infirmity in the impugned judgment."

15. The judgments of this Court in Bhoop Singh and K. Raghunandan was found to be inconsistent in an order reported in Phool Patti and Another v. Ram Singh (Dead) Through Lrs. and Another5 and the matter was thus referred to a larger Bench. The larger Bench in the judgment reported as Phool Patti and Another v. Ram Singh (Dead) Through Lrs. and Another 6 did not find inconsistencies between the two judgments.

16. Bhoop Singh was a case dealing with both the situations, decree between the parties where the decree holder does not have any pre-existing right in the property and also the situation where decree holder has a pre-existing right. It was the second situation where the decree holder has a pre-existing right in the property, it was found that decree does not require registration. In K. Raghunandan case, the dispute was not amongst the family members but between neighbours regarding right over passage. Obviously, none of them had any pre-existing right over the immovable property in question.

17. In view of enunciation of law in Bhoop Singh's case, we find that the judgment and decree of the High Court holding that the decree requires compulsory registration is erroneous in law. The 5 (2009) 13 SCC 22 6 (2015) 3 SCC 465 compromise was between the two brothers consequent to death of their father and no right was being created in praesenti for the first time, thus not requiring compulsory registration. Consequently, the appeal is allowed and the suit is decreed.

.....J. (SANJAY KISHAN KAUL) .....J. (HEMANT GUPTA) NEW DELHI;

JULY 6, 2021.