

MOHAMMADE YUSUF & ORS.

A

v.

RAJKUMAR & ORS.

(Civil Appeal No. 800 of 2020)

FEBRUARY 05, 2020

B

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

C

Registration Act, 1908 – s. 17 – Compromise decree – If requires registration – Suit filed in 1984, by appellant's father inter alia for declaration in respect of a 7 biswa area of survey no. 203 which was attached in east with their land bearing survey No. 223 – They were in possession of suit land, which was recorded in the names of defendant – Compromise decree dtd. 04.10.85 was passed declaring their right on 7 biswa area and it was declared that remaining land belonged to defendant – Suit filed in 1998 by respondent nos. 1 & 2 against the appellants for perpetual injunction in respect of two areas bearing survey no. 203 – Respondent nos. 1 & 2 sold the said areas to respondent nos. 4-7 and they were impleaded as plaintiffs – During evidence, one of the appellant tried to exhibit the decree dtd. 04.10.85 – Plaintiff's objection to the admissibility of decree was that decree being not registered cannot be accepted in evidence – Civil Judge held that decree was required to be registered, hence it was not admissible – High Court dismissed appellant's writ petition holding that decree was required to be registered – Held: By virtue of sub-sec.(2)(vi) of s.17, any decree or order of a Court does not require registration – In sub-clause (vi) of sub-sec.(2), one category is excepted from sub-clause(vi), i.e., 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 – By conjointly reading s. 17(1)(b) & s. 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of s. 17(2)(vi) – Decree dated 04.10.85 was with regard to property, which was subject matter of the suit, hence not covered by exclusionary clause of s.17(2)(vi) and present case is covered by the main exception u/s.17(2)(vi), i.e., "any decree or order of a

D

E

F

G

H

- A *Court” – Compromise decree dated 04.10.85 did not require registration – Order of the Civil Judge and the judgment of High Court is set aside – Compromise decree dtd. 04.10.85 be exhibited by trial court – Indian Stamp Act, 1899 – s. 2(14).*

Allowing the appeal, the Court

- B **HELD:** 1.1 Under Section 17(1)(b), non-testamentary 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
- C requires registration. The word “instrument” is not defined in Registration Act, but is defined in the Indian Stamp Act, 1899 by Section 2(14). A compromise decree passed by a Court would ordinarily be covered by Section 17(1)(b) but sub-section(2) of Section 17 provides for an exception for 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. Thus, by virtue of sub-section (2)(vi) of Section 17 any decree or order of a Court does not require registration. In sub-clause (vi) of sub-section (2), one category is excepted from sub-clause (vi), i.e., 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. Thus, by conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of Section 17(2)(vi). A copy of the decree passed in Suit No. 250-A of 1984 was brought on record as Annexure P-2, which indicates that decree dated 04.10.1985 was passed by the Court for the property, which was subject matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 04.10.1985 was not required to be registered on plain reading of Section 17(2)(vi). [Paras 5, 6][654 G-H; 655 A-E]
- 1.2 In facts of the present case, the decree dated 04.10.1985 H was with regard to property, which was subject matter of the suit,

hence not covered by exclusionary clause of Section 17(2)(vi) and present case is covered by the main exception crafted in Section 17(2)(vi), i.e., “any decree or order of a Court”. When registration of an instrument as required by Section 17(1)(b) is specifically excluded by Section 17(2)(vi) by providing that nothing in clause (b) and (c) of sub-section (1) applies to any decree or order of the Court, the compromise decree dated 04.10.1985 did not require registration and learned Civil Judge as well as the High Court erred in holding otherwise. The order of the Civil Judge as well as the judgment of the High Court is set aside. The compromise decree dated 04.10.1985 be exhibited by the trial court. [Para 14][660 C-E] A

Som Dev and Others v. Rati Ram and Another (2006)
10 SCC 788 : [2006] 5 Suppl. SCR 778 – relied on.

Bhoop Singh v. Ram Singh Major and Others (1995) 5
SCC 709 : [1995] 3 Suppl. SCR 466 – held inapplicable. B

Gurdwara Sahib v. Gram Panchayat Village Sirthala and Another (2014) 1 SCC 669; *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others (2019)* 8 SCC 729 – referred to. C

<u>Case Law Reference</u>		
(2014) 1 SCC 669	referred to	Para 2.3
[1995] 3 Suppl. SCR 466	held inapplicable	Para 6
(2019) 8 SCC 729	referred to	Para 9
[2006] 5 Suppl. SCR 778	relied on	Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 800 of 2020.

From the Judgment and Order dated 13.02.2017 of the High Court of Madhya Pradesh, Indore Bench in Writ Petition No. 2170 of 2015. G

Amit Wadhwa, Amit K. Srivastava, Raunak Parekh, Sanjay K. Hadala, Sanjay Yadav, Sunil K. Singh, Sanjeev Kumar, Gopi Chand, Dr. Vinod Kumar Tewari, Ms. Taruna Ardhendumauli Prasad, Ardhendumauli Kumar Prasad, Piyush Singh, Vaibhav Shrivastava, Mohnish Nirwan, Advs. for the appearing parties. H

- A The Judgment of the Court was delivered by
ASHOK BHUSHAN, J.
- B 1. This appeal has been filed against the judgment of High Court of Madhya Pradesh at Indore Bench dated 13.02.2017 dismissing the writ petition of the appellant challenging the order of the trial court dated 07.01.2015 whereby the trial court has held that the compromise decree sought to be filed by the appellant is not admissible in evidence for want of registration.
- C 2. The brief facts of the case are: -
- D 2.1 A Suit No. 250-A of 1984 was filed by one Habib Kha, the father of the appellant for declaration and injunction. The Suit was filed for 7 biswa area of survey No.203 situated at Village Kitvani, Kasba Mandsaur, which was attached in east with the land of plaintiff being survey No.223. The plaintiff was in possession of suit land, which was recorded in the names of defendant. A compromise decree was passed in the suit dated 04.10.1985 declaring the right of plaintiff on 7 biswa area and it was declared that remaining land belong to defendant.
- E 2.2 The appellants, who were son of Habib Kha claimed to be in possession, continued to be in possession of the aforesaid area. A Suit No.90-A of 2006 was filed on 16.09.1998 by respondent Nos. 1 and 2 against the appellants for perpetual injunction in respect of two areas admeasuring 825 sq. ft. and 1650 sq. ft. bearing survey No.203. The respondent Nos. 1 and 2 sold the above said two areas to respondent Nos. 4 to 7 and they were impleaded as plaintiffs in the above said suit. A written statement was filed by the appellants in Civil Suit No. 260A of 1998 pleading that respondents have forcefully took the possession of area admeasuring 1650 sq. ft. being the part of survey No. 203, which was in actual, peaceful and uninterrupted possession of the appellant and their ancestral since 1951. Alongwith the written statement, a counter claim was filed by the appellant for recovery of possession of the area.
- F 2.3 During evidence of Mohammade Hafiz, one of the appellants, he tried to exhibit the decree dated 04.10.1985 passed in Civil

Suit No. 250A of 1984, which was objected by the plaintiff. Plaintiff's objection to the admissibility of the decree was that decree being not registered cannot be accepted in evidence. Learned Civil Judge heard the parties and passed order dated 07.01.2015 on issue regarding admissibility of the above document. Civil Judge took the view that decree dated 04.10.1985 is required to be registered as per provision of Section 17(1)(e) of the Registration Act, hence it is not admissible in evidence. A Writ Petition No. 2170 of 2015 was filed by the appellant challenging the order dated 07.01.2015. The High Court by the impugned judgment has dismissed the writ petition taking the view that decree was required to be registered. The High Court held that the very fact that the suit was based on the plea of adverse possession reflects that plaintiff of Suit No. 250-A of 1994 had no pre-existing title in the suit property. Relying on the judgment of this Court in **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another, (2014) 1 SCC 669**, High Court held that it is settled that declaratory decree based on plea of adverse possession cannot be claimed and adverse possession can only be used as a shield by the defendant. Aggrieved with the judgment of High Court, this appeal has been filed.

3. The only question to be considered in this appeal is as to whether the above noted compromise decree dated 04.10.1985 was required to be registered under Section 17 of the Registration Act, 1908 or not?

4. Part III of the Registration Act contains a heading "of Registrable Documents" in which Section 17 finds place, which contains a heading "Documents of which registration is compulsory". Section 17(1) deals with documents of which registration is compulsory. Section 17(2) provides that nothing in clauses (b) and (c) of sub-Section (1) applies to various documents as enumerated therein. Sections 17(1) and 17(2)(vi), which are relevant for the present case are as follows: -

"17. Documents of which registration is compulsory.—(1)

The following 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 date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

- A (a) instruments of gift of immovable property;
- (b) other non-testamentary 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;
- B (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- C (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates 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:
- E Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.
- F (2) Nothing in clauses (b) and (c) of sub-section (1) applies to—
 XXXXXXXXXXXXXXX
 (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; or”
- G 5. Under Section 17(1)(b), non-testamentary 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
- H

immovable property requires registration. The word “instrument” is not defined in Registration Act, but is defined in the Indian Stamp Act, 1899 by Section 2(14). A

6. A compromise decree passed by a Court would ordinarily be covered by Section 17(1)(b) but sub-section (2) of Section 17 provides for an exception for 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. Thus, by virtue of sub-section (2)(vi) of Section 17 any decree or order of a Court does not require registration. In sub-clause(vi) of sub-section (2), one category is excepted from sub-clause(vi), i.e., 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. Thus, by conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of Section 17(2)(vi). A copy of the decree passed in Suit No. 250-A of 1984 has been brought on record as Annexure P-2, which indicates that decree dated 04.10.1985 was passed by the Court for the property, which was subject matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 04.10.1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to judgment of this Court in **Bhoop Singh Vs. Ram Singh Major and Others, (1995) 5 SCC 709**, in which case, the provision of Section 17(2)(vi) of Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down following in paragraphs 16, 17 and 18:- B

“**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. C

D

E

F

G

H

- A **17.** It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest *in praesenti* in immovable property of the value of Rs 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.
- B **18.** The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:
- C (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.
- D (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.
- E (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.
- F (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.
- G (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."
- H 7. In the facts of that case, this Court held 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”. Further, the earlier decree was held to be collusive. Two reasons for holding that the earlier decree in the above said case required registration have been mentioned in paragraph 19 of the judgment, which is to the following effect:-

“**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) A perusal of the impugned judgment shows that the first appellate court held the decree in question as ‘collusive’ as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same view.”

8. Following the above judgment of **Bhoop Singh (supra)**, the High Court held that since the compromise decree dated 04.10.1985 did not declare any pre-existing right of the plaintiff, hence it requires registration. The High Court relied on the judgment of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra)** and made following observations in paragraphs 11, 12 and 13: -

“**11.** In the present case, in the earlier suit CS No. 250-A/1984 the petitioner had claimed declaration of title on the plea of adverse possession and the compromise decree was passed in the suit. The very fact that the suit was based upon the plea of adverse possession reflects that the petitioner had no pre-existing title in the suit property. Till the suit was decreed, the petitioner was a mere encroacher, at the most denying the title of lawful owner.

- A **12.** The Supreme Court in the matter of **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala** reported in **2014 (3) MPLJ 36** has settled that declaratory decree based on plea of adverse possession cannot be claimed and adverse possession can be used only as shield in defence by the defendant. It has been held that:-
- B “7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”
- C **13.** The plea of the petitioner based upon Sec.27 of the Limitation Act is found to be devoid of any merit since it relates to the extinction of the right of the lawful owner after expiry of the Limitation Act, but in view of the judgment of the supreme court in the matter of **Gurudwara Sahib** (supra), the petitioner cannot claim himself to be the owner automatically after the expiry of the said limitation.”
- D 9. The judgment of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another** (supra) has now been expressly overruled by a Three Judge Bench judgment in **Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others, (2019) 8 SCC 729**. This Court held in the above case in paragraph 62 that once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner. In paragraph 62, following has been laid down:
- E “**62.** We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a
- F H

sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.”

A

B

C

D

10. In paragraph 61, this Court has expressly overruled the **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra)**.

11. In view of the pronouncement of this Court by Three Judge Bench judgment in **Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others (supra)**, the very basis of the High Court for holding that compromise deed dated 04.10.1985 requires registration is knocked out. The present is not a case where there is any allegation that the decree dated 04.10.1985 is a collusive decree. The decree dated 04.10.1985 was in favour of the plaintiff of 7 biswa land, survey No. 203 and for remaining land of survey No.203, it was held that it belonged to defendants.

E

F

12. In **Bhoop Singh (supra)**, this Court held that the earlier decree required registration for the reasons as mentioned in paragraph 19. The reasons given in paragraph 19 of the above case has no application in the facts of the present case.

G

13. This Court in **Som Dev and Others Vs. Rati Ram and Another, (2006) 10 SCC 788** while explaining Section 17(2)(vi) and Section 17(1)(b) and (c) held that all decree and orders of the Court including compromise decree subject to the exception as referred that

H

- A the properties that are outside the subject matter of the suit do not require registration. In paragraph 18, this Court laid down following: -
- “**18.**But with respect, it must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit.....”
14. In facts of the present case, the decree dated 04.10.1985 was
- C with regard to property, which was subject matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi) and present case is covered by the main exception crafted in Section 17(2)(vi), i.e., “any decree or order of a Court”. When registration of an instrument as required by Section 17(1)(b) is specifically excluded by Section 17(2)(vi) by providing that nothing in clause (b) and (c) of sub-section (1) applies to any decree or order of the Court, we are of the view that the compromise decree dated 04.10.1985 did not require registration and learned Civil Judge as well as the High Court erred in holding otherwise. We, thus, set aside the order of the Civil Judge dated 07.01.2015 as well as the judgment of the High Court dated 13.02.2017. The compromise decree dated
- E 04.10.1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly.

Divya Pandey

Appeal allowed.