

Shri Arun Kumar Jain & Anr vs 1. Shri Manish Jaina & Ors on 14 February, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 394/2022
SHRI ARUN KUMAR JAIN & ANR. Plaintiffs
Through: Appearance not given
versus
1. SHRI MANISH JAINA & ORS. Defendants
Through: Mr. Pulkit Aggarwal and Ms.
Uma Aggarwal, Advs.
CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 14.02.2023 I.A. 2930/2023(Exemption From Valuation & Stamp Duty)

1. This application has been moved for the plaintiff being exempted from the requirements of registration of a decree which came to be rendered on the basis of a settlement arrived at between the parties.

2. The settlement is dated 24 November 2022. In terms of the said settlement, the suit itself came to be decreed by the Court on 04 January 2023. The Registry, however, appears to have taken the position that the decree which related to partition would be liable to be registered in terms of Section 17(1)(b) of the Registration Act, 1908.

3. Learned counsel for the plaintiff has drawn the attention of the Court to the judgment rendered in *Mohammade Yusuf and Ors. vs. Rajkumar and Ors.*, [(2020) 10 SCC 264] as well as *Ripudaman Singh vs. Tikka Maheshwar Chand*, [(2021) 7 SCC 446] to contend that since the decree of partition came to be rendered on compromise and settlement between the parties, and relates to property which formed subject matter of the suit, it would clearly be exempt in terms of the provision made in Section 17(2)(vi).

4. While dealing with an identical question, the Supreme Court in *Mohammade Yusuf* had held as follows:-

"6. 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 requires registration. The word

"instrument" is not defined in the Registration Act, but is defined in the Stamp Act, 1899 by Section 2(14).

7. 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 4-10-1985 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 4-10-1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to the judgment of this Court in *Bhoop Singh v. Ram Singh* [*Bhoop Singh v. Ram Singh*, (1995) 5 SCC 709], in which case, the provision of Section 17(2)(vi) of the Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down the following in paras 16, 17 and 18: (SCC pp. 715-16) "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.

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 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.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised 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 [Ed.: The reference is to Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., 1919 SCC OnLine PC 41 : (1918-19) 46 IA 240] and this Court's cases [Ed.: The reference is to Mangan Lal Deoshi v. Mohd.

Moinul Haque, 1950 SCC 760: AIR 1951 SC 11; Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : AIR 1951 SC 280 and Shankar Sitaram Sontakkev. Balkrishna Sitaram Sontakke, AIR 1954 SC 352] , 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 [Fazal Rasul Khan v. Mohd-ul-Nisa, 1943 SCC OnLine Lah 128 :

AIR 1944 Lah 394] , 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."

5. Consequently, the instant application shall stand allowed. The parties are relieved from the obligation of seeking further registration of the compromise decree for reasons aforementioned.

YASHWANT VARMA, J.

FEBRUARY 14, 2023/neha