Bhoop Singh vs Ram Singh Major & Ors on 11 September, 1995

Equivalent citations: 1996 AIR 196, 1995 SCC (5) 709, AIR 1996 SUPREME COURT 196, 1995 (5) SCC 709, 1995 AIR SCW 3927, (1995) 6 JT 534 (SC), 1995 (6) JT 534, (1996) 1 PUN LR 559, 1995 ( ) HRR 585, 1996 ALL CJ 1 174.1, 1996 ( ) ALL CJ 174, (1996) ILR (KANT) 333, (1995) 2 LS 39, (1996) SC CR R 1, (1996) 1 CIVILCOURTC 210, (1995) 2 HINDULR 432, (1996) 4 LANDLR 496, (1996) 1 MAD LJ 38, (1996) 1 MAD LW 323, (1995) 2 MAH LJ 916, (1997) 1 BANKLJ 475, (1996) 2 BANKCAS 365, (1996) 1 ICC 275, (1995) 2 ALL RENTCAS 575, (1996) 1 CIVLJ 111

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
BHOOP SINGH

Vs.

RESPONDENT:
RAM SINGH MAJOR & ORS.

DATE OF JUDGMENT11/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 196 1995 SCC (5) 709
JT 1995 (6) 534 1995 SCALE (5)228

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA. J.

The petitioner is one of the defendants in the suit out of which the present special leave petition arises. The plaintiffs are heirs of one Nand Ram, who is one of the five sons of one Jeevan Ram. The petitioner belongs to the branch of Rakha Ram, another son of Jeevan Ram. Ganpat was a son of Nanha Ram, still another son of Jeevan Ram.

2. The petitioner filed, at one point of time, Suit No.215 of 1973 which came to be disposed of on 6.4.1973 as below :

> "It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owners in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant, in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct. Pleader's fee fixed Rs.16/-. It is further ordered that there is no order as to costs."

(Emphasis supplied) Thereafter nothing much happened, till the present suit was filed claiming one-third share in the suit land as heirs of Jeevan Ram. The petitioner contended that in view of the aforesaid order passed in Suit No.215 of 1973, the dispute does not survive and he alone is entitled to be in possession of the suit land. The trial court held that the aforesaid decree was against law and facts. The appeal of the petitioner was dismissed by the District Judge; so too, the second appeal by a learned Single Judge of the High Court, whose judgment has been impugned in this petition.

3. A perusal of the impugned judgment shows that among other reasons to decide the present proceeding against the petitioner, one was that the aforesaid decree not having been registered, the same could not have conferred any right on the petitioner. It is this view of the learned Judge which has been principally assailed in this petition.

4. Shri Sehgal appearing for the petitioner has strenuously contended that the aforesaid view is not tenable in law inasmuch as, according to learned counsel, the decree is not required to be registered in view of what has been stated in clause (vi) of sub-section (2) of section 17 of the Registration Act, 1908. The learned Judge of the High Court did not agree to this contention because, according to him, the decree has to be treated "to create a gift" which would take the case out of the purview of the aforesaid clause, because that is to apply only to clauses (b) and (c) of sub-section (1), whereas the present case would attract clause (a) of sub-section (1). Shri Sehgal contends that the view taken by learned Judge was not correct in law as, according to him, the present is really not a case attracting clause (a) of sub-section (1), but the case of the petitioner falls within clause (b), which would make clause (vi) of sub-section (2) operative.

5. In support of his submission, the learned counsel has referred us to number of decisions starting from that of the Privy Council in Rani Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., 1919 I.A. 240, whose ratio was relied upon by this Court in Mangan Lal Deoshi v. Mohammad Moinul Haque, 1950 SCR 833. In these two cases it was held that the decree in question was not required to be registered because, in the first case, the compromise was accepted to be "an agreement to lease",

whereas in the second case the facts disclosed that the agreement was contingent, and so, no lease came into existence. It was, therefore, held that the cases did not come within the fold of clause (d) of sub- section (1) of section 17, and so, the court's order was not required to be registered. These cases are thus of no assistance to the petitioner.

6. Shri Sehgal has then referred us to Bishundeo Narain v. Seoqeni Rai & Jagernath, 1951 SCR 548, and Shanker Sitaram Sontakke v. Balkrishna Sitaram Sontakke, 1955 (1) SCR 99. A perusal of these judgments show that they are not relevant having dealt with some other questions of law.

7. Among the decisions of the High Court to be relied on by Shri Sehgal, the first is one rendered in the case of Fazal Rasul Khan v. Mohd-ul-Nisa, AIR 1944 Lahore 394. The question for determination in that case was whether disposal of a suit by stating "Suit compromised and accordingly dismissed", could be said to embody the terms of the compromise. The Bench opined that it would not unless the terms of the compromise are in some way embodied in the decree or the order, which would be so where a suit is disposed of by saying "Suit decreed in the terms of the compromise or suit dismissed in terms of the compromise". This decision is thus on a different point.

8. Coming to the post-Independent decisions, the first to be pressed into service is that of High Court of Assam and Nagaland in Sudhir Chandra Guha v. Jogesh Chandra Das, AIR 1970 A & N 102. This decision does support the legal submission advanced by Shri Sehgal inasmuch as it has been held that the compromise decree in an earlier suit being relatable to immovable property which was subject matter of the suit, section 17 (2) (vi) of the Registration Act did exempt the decree from registration. It was, therefore, held that the compromise decree in question was not required to be registered for conferring title in respect of property in the decree as per its terms. AIR 1982 Calcutta 222 (Surjya Kumar Das v. Sm. Maya Dutta) also sustains the legal proposition advanced by the learned counsel to the extent that a compromise decree confined to the subject matter of suit does not require registration to confer title by its force.

9. The point in C. Muthuvel Pillai v. Hazarath Syed Shah Mian, AIR 1974 Madras 199, was relatable to the question as to what is the purport to the expression "subject matter of the suit or proceeding" finding place in clause (vi). This decision is thus is on a point not relevant for our purpose.

10. The decision of the Lucknow Bench in Luxmi Narain Kapoor v. Radhey Mohan Kapoor, AIR 1986 Allahabad 244, is also on different point as the bench was called upon to decide whether the compromise incorporating the terms of an earlier settlement and the decree based on it required to be registered. It was held after referring to some earlier decisions that a compromise representing a family settlement was in law not a transfer of property. It was also observed that compromise did not create any right or title in favour of the parties of its own force, but it operated to recognise pre-existing right. This decision would, in a way, go against the proposition advanced by Shri Sehgal, because, if what is stated therein be the correct position in law, then a compromise decree creating a right by its own force would require registration.

11. The sheet anchor of Shri Sehgal's submission is a Bench decision of the Punjab and Haryana High Court in Gurdev Kaur v. Mehar Singh, 1989 PLJ 182. Reference to that decision shows that the Bench opined that the view taken by learned Single Judges of High Court in some earlier cases that a decree based on compromise conferring title required registration, even though it related to the property in suit, was not correct. One such view had been taken in Ranbir Singh v. Shri Chand, 1984 PLJ 562, on the reasoning that a compromise is basically a contract and decree founded on it, if the same created right for the first time, would be treated as an instrument of gift and so would require registration. The Bench, however, held that a compromise decree creating right even for the first time would not require registration. This decision is thus rightly pressed into service by Shri Sehgal. Its perusal, however, shows that it distinguished the case of Sumintabai Ramkrishna v. Rakhmabai Ramkrishna Jadhav, AIR 1981 Bom. 52, because in that case the compromise itself was not regarded as bona fide by the court, as it was described as sham compromise brought about for the purposes of practising fraud upon the law relating to stamp duty and registration.

12. The aforesaid decisions do not cover the whole ground, according to us. They meet our approval as for as they go. But something more is required to be said to find out the real purport of clause (vi). It needs to be stated that sub- section (1) of section 17 mandates that the instrument enumerated in clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs.100/- or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. The Act does not define "instrument". Section 2(14) of the Indian Stamp Act, 1899, defines "instrument" to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Sub-section (2) of section 17 of the Act engrafts exceptions to the instruments covered only by clauses (b) and (c) of sub-section (1). We are concerned with clause

(vi) of sub-section (2). Clause (vi) relates to 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. Clause (v) is relevant which in contrast reads thus: "any document 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 instrument which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;". The Explanation amplifies that a contract for the sale of immovable property containing a recital of payment of any earnest money or of the whole or any part of the purchase price shall not be deemed to be required or ever to have required registration.

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 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.

14. In Tek Bahadur v. Debi Singh & Ors., AIR 1966 SC 292, the Constitution Bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered under section 17. This Court, while upholding oral family arrangement, held that registration would be necessary only if the terms of the family arrangements are reduced into writing. A distinction should be made between the document containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of 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. It was held that a memorandum of family arrangement made earlier which was filed in the court for its information was held not compulsorily registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in Maturi Pullaiah & Anr. v. Maturi Narasimham & Ors., AIR 1966 SC 1836, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by section 17 of the Act.

15. In Ratan Lal Sharma v. Purshottam Harit, 1974 (3) SCR 109, this Court held that the award had expressly made an exclusive allotment of partnership assets, including the factory and liabilities to the appellant, and made him absolutely entitled to the same, thereby purporting to create rights in immovable property worth above Rs.100/- in favour of the appellant. It was, therefore, held that it required registration under section 17 of the Act. It was also pointed that it is equally settled law that the share of a partner in the assets of the partnership which has immovable property is a movable property and that the assignment of the share does not require registration under section 17. Take the familiar cases of a decree in suit for specific performance of a contract. Though a contract of sale is not compulsorily registrable as it does not create title or right in immovable property; but on a decree for specific performance made by the court, the document executed in furtherance thereof requires registration though it has the imprint of the decree of the court.

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 or suffered to extinguish the same and created right, title or interest in preasenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.

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 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) 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.

20. The result is that the impugned judgment does not suffer from any legal infirmity and the petition is, therefore, dismissed.