# Smt. Manju Devi vs Bishan Sarup Gupta And Ors. on 11 July, 2005

## Equivalent citations: AIR2005P&H290, (2006)142PLR35, AIR 2005 PUNJAB AND HARYANA 290, (2005) 3 CIVILCOURTC 465, (2005) 3 LANDLR 497, (2005) 4 RECCIVR 144, (2005) 4 ICC 760, (2006) 1 CURCC 2

JUDGMENT

M.M. Kumar, J.

1. This is plaintiffs' appeal filed under Section 100 of the Code of Civil Procedure, 1908 challenging concurrent findings of fact, recorded, by both the Courts below holding that the consent decree dated 18-1-1995 (Annexure P-15) suffered by the plaintiff appellant Smt. Manjii Devi wife of Shri Dwarka Parshad did not suffer from any illegality nor it required registration as per the provisions of Section 17 of the Registration Act, 1908 (for brevity 'the Act.'). The question raised in the appeal is whether the consent decree suffered by the plaintiff-appellant recognised pre-existing rights or it extinguished or created new proprietary rights within the meaning of Section 17(1)(b) of the Act.

2. Facts which are necessary for disposal of the controversy raised in the instant appeal are that the plaintiff-appellant filed a suit for joint possession against defendant-respondent Nos. 3 to 5. Her simple case was that the suit land was purchased by her along with defendant-respondent. No. 2 Smt. Laxmi Devi jointly. The plaintiff-appellant and defendant respondent No. 2 are the wives of real brothers namely S/Shri Dwarka Parshad and Bishan Sarup Gupta respectively, She claimed that she had been under the influence of defendant-respondent No. 1, who is the elder brother of her husband and defendant-respondent No. 2, who is her sister-in-law (jethani). On the pretext of getting the land partitioned she was taken by defendant-respondent No. 1 to the Court where her signatures were obtained on the pretext of partition of property between her and defendant-respondent No. 2. However, she later realised that the defendant-respondent No. 1 had obtained a decree in his favour by using those papers on 18-1-1995, in respect of her share in the suit land. In pursuance to the decree, mutation No. 1330 has also been got sanctioned by defendant-respondent No. 1 in his favour on the ground that the aforementioned decree and mutation did not create any interest or title in favour of the defendant-respondents and the decree and mutation were liable to be declared as void. The additional ground taken was that the consent decree dated 18-1-1995 required registration under Section 17 of the Act as it created proprietary right for the first lime in favour of defendant-respondent No. 1. The subsequent sale deeds executed by defendant-respondent No. 1 in favour of defendant-respondent Nos. 3 to 5 have also been challenged because once defendant-respondent No. 1 is not the owner of the land which was the subject-matter of decree dated 18-11-1995 then he could not have passed any valid title to defendant-respondent Nos. 3 to 5.

3. Defendant-respondent No. 1 contested the suit and asserted that various properties were purchased in the name of plaintiff-appellant, her husband Dwarka Parshad and defendant-respondent Nos. 1, 2 and Manish Khandelwal jointly as well as severally, Some differences between the parties developed and the joint property purchased by the aforementioned parties was partitioned in order to avoid any future controversy. The aforementioned partition of the joint Hindu family properly has been acknowledged by virtue of Memorandum of Understanding dated 5-12-1994. According to that partition, defendant-respondent Nos. 1 and 2 became exclusive owners of the properties allocated to them and the plaintiff appellant along with her husband Dwarka Parshad became the exclusive owners of the other properties. It was claimed that in such a situation the provisions of the Act did not provide for compulsory registration of the transfer deed. The allegations of undue influence against defendant-respondent No. I and any foul play on his part have been denied and it is claimed that the proceedings before the Civil Judge at Gurgaon were valid as the plaintiff-appellant herself appointed her Lawyer, made statement in the Court relinquishing her share in the suit property in view of the partition and Memoradum of Understanding. The written statement was filed by her through her counsel Shri R.P. Kaushal, Advocate in which the claim made by the defendant-respondent No. 1 in the plaint was admitted. On the basis of the decree dated 18-1-1995 passed in civil suit No. 741 of 1994, defendant-respondent No. 1 had become the owner of the share in the suit properly which earlier belonged to plaintiff-appellant and, therefore, he had every right to transfer the same to the defendant-respondent Nos. 3 to 5. Defendant- respondent Nos. 3 and 4 also filed their separate written statements.

4. The trial Court after detailed examination of the documentary as well as oral evidence concluded that after differences developed between the parties, a partition had taken place and the aforementioned partition was recorded in a Memorandum of Understanding executed between the parties on 5-12-1994 which has been duly signed by each of the members of joint Hindu Family. Everyone of the signatories had agreed and accepted the arrangement made with regard to separate shares of properties. In pursuance to the stipulations of Memorandum of Understanding the plaintiff-appellant was required to take all the necessary steps. Accordingly suffering of a declaratory decree dated 18-1-1995 in favour of defendant-respondent No. 1 conceding half share to him in the civil suit No. 741 of 26-10-1994 titled as Bishan Sarup Gupta v. Smt. Manju Devi has been claimed to be part of that obligation. It has further been found that after the passing of decree, plaintiff-appellant has stopped showing her agricultural income in the income tax returns for the financial year 1996-1997 i.e. assessment year 1997-1998 and that defendant-respondent No. 1 started showing his income from his land in his returns. It has still further been found that the joint Hindu family was having several other properties which were partitioned amongst themselves before 5-12-1994 when the Memorandum of Understanding was prepared acknowledging the said partition in order to avoid any future controversy.

5. It has also been held that the decree dated 18-1-1995 (annexure P-15) has been legally passed. The plaintiff-appellant has categorically admitted her signatures on the Power of Attorney, written statement and the statement made in the Court as her own. Accordingly, it was held that no registration was required as the consent decree did not extinguish or create any new right. It merely recognised the rights flowing from partition as recorded in Memorandum of Understanding Ex. D1

dated 5-12-1994.

6. On appeal, the learned lower Appellate Court upheld the findings recorded by the learned Civil Judge. It has been held that the plaintiff-appellant along with her husband Shri Dwarka Parshad on the one side and defendant-respondent. No. 1 Bishan Sarup Gupta along with his wife Smt. Luxmi Devi defendant-respondent No. 2 and Manish Khandelwal on the other side constituted a Joint Hindu Family who had purchased properties in their names jointly as well as severally. The aforementioned facts were proved by the copies of the sale deeds Exs. P-17 to P-23. The copies of mutation Ex. P5 to P9 also supported the same fact. It has also been found as a fact, that differences arose between the parties which led to family partition. A categorical finding upheld by the lower Appellate Court is that before the execution of Memorandum of Understanding Ex. D1 dated 5-12-1994 partition had already taken place. In that regard reliance has been placed on the language used in Paras 1 and 2 of the document. The view of the Lower Appellate Court in this regard reads as under :--

> "If we go through the memo of understanding Ex. D1, it is clear that the partition had taken place before the day this document was written because in paras No. 1 and 2 of this document, it has been mentioned that a partition wall in the middle of house No. 1296 (old number C-332) Basti Nanak Chand, Kotla Mubarikpur, New Delhi, which was purchased jointly in the names of Dwarka Parshad and Laxmi Devi, defendant No. 2, had been erected. Had the partition not taken place, then there would have been no question of erecting of that wall dividing the said house in equal shares. The partition of the joint family property is also proved from Ex. DW1/1 which is the copy of deed of dissolution dated 1-12-1994 of partnership firm M/s. Thermocol Enterprises, because in this document, it has been mentioned that Laxmi Devi, the defendant No. 2, who was the party of the second part, was shown to have received the consideration from Dwarka Parshad, the party of the first part, the agricultural land which was in the name of his wife Smt. Manju Gupta. Dwarka Parshad was assigned all the shares, other rights, title and interest in the dissolved partnership including goodwill, fixtures, fittings, plant and machinery etc. It has also been mentioned in this document that the second party would get agricultural land transferred in her name or in the name of any other member of the family as per the family settlement arrived at between the parties and for the same Dwarka Parshad would cooperate in getting the transfer of the agricultural land done.
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> 14. Thus, from the aforesaid document, it is clearly established that the partition of the joint Hindu family properties of the parties had taken place much before the memo of understanding Ex. D1 was reduced into writing. That being the position, this document i.e. Ex. D1 did not require registration."

7. It has further been found by the lower Appellate Court that no rights were created for the first time vide decree dated 18-1-1995 as per the statement made by Bishan Sarup Gupta who had appeared as D.W. 1. However, his statement has been relied upon to conclude that the consent decree dated 18-1-1995 (Ex. P. 15) had been acted upon immediately as after suffering the decree she

had stopped showing income from the agricultural land in respect of which she relinquished her right. The aforementioned findings of fact is discernible from paras 15 and 16 which reads as under :--

> "15. Though, D.W. 1 has stated that after the decree, the plaintiff had left with no right in the suit land, but it does not mean that the rights were created in him for the first time vide the decree dated 18-1-1995. His statement is not in consonance with the document Ex. D1 and Ex. D.W. 1/1. So, on the basis of this statement which is erroneous and against the factual position, it cannot be said that the rights were created in his favour for the first time vide the decree dated 18-1-1995. Moreover, as per his (D.W. 1's) statement, he had started showing the income of the suit land in his account statements and Income tax returns w.e.f. 31-3-1995 and Manju Devi, plaintiff had stopped showing her income of the suit land in her income tax returns. The defendant has produced the account statements as Ex. D.W. 1/3 and Ex. D.W. 1/4 in which the income of the agricultural land has been shown w.e.f. 31-3-1995. There is no cross-examination on the statement of D.W. 1 that Manju Devi stopped showing her income from the agricultural land i.e. the suit land after the decree, which means that the plaintiff has admitted this fact and that the decree has been fully acted upon and was in her knowledge from the very beginning. So, the plaintiff cannot derive any benefit out of the statement of D.W. 1 or the pleadings in the plaint, the copy of which is Ex. D.W. 1/A of the Civil Suit, titled Bishan Sarup Gupta v. Smt. Manju Devi, bearing No. 741 of 26-10-1994, particularly when it has been mentioned that the possession of the suit land was obtained by the defendant No. 1 at the time of family settlement.
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> From the aforesaid discussion, it is clear that the suit land fell to the share of defendant No. 1 in the oral family settlement before execution of Ex. D1 as well as decree dated 18-1-1995, therefore, the decree was not compulsorily registrable as the rights were not created in favour of defendant No. 1 for the first time vide the judgment and decree dated 18-1-1995. Thus, the observations made in Bhoop Singh's, , Brij Lal (2004 (2) RCR (Civil) 536) and Ajay Chaudhary's cases (supra) are not helpful to the case of the plaintiff because in all those cases, the persons in whose favour the decree were passed, were not having any pre-existing rights in the properties which were the subject matters of those cases."

8. It is further appropriate to mention that the suit filed by the plaintiff-appellant has been found to be hopelessly time barred because it has been found that she had the knowledge about passing of decree dated 18-1-1995 (p-15) right from the beginning. However, she preferred not to challenge the same until the expiry of the limitation period as contemplated by Article 113 of the Schedule appended to the Limitation Act, 1963. It is appropriate to mention that the decree has been suffered on 18-1-1995 whereas the suit was instituted on 12-1-2000 whereas the period of limitation provided by Article 113 is three years. Dealing with this aspect the lower appellate Court has found that the suit was hopelessly time barred and, therefore, no declaration could be granted in favour of the plaintiff-appellant. The view of the lower Appellate Court on the aforementioned issues reads as

under :--

> "19. When, it has been established that the plaintiff had stopped showing the income from the agricultural suit land after the decree, in her income-tax returns then it means that she had the knowledge about the passing of the decree pertaining to the suit land in favour of defendant No. 1 from the very beginning but she did not challenge the same within a period of three years. So, her suit is time barred, even if it is considered that the decree was a nullity being unregistered one. The illegal orders or decree cannot be challenged at any point of time, as observed by the Hon'ble Apex Court in State of Punjab v. Gurdev and Ashok Kumar, AIR 1991 SC 2219, wherein it has been ruled that a suit for declaration that the dismissal of an employee was wrongful or ultra-vires, was governed by residuary Article 113 of the Limitation Act and that the aggrieved must approach the Court within the prescribed period of limitation. It has also been further observed if the statutory time limit expires, the Court cannot give the declaration sought for. These observations are squarely applicable on the present case. The plaintiff to get the decree set aside, should have approached the Court within three years of passing the decree but when it has not been done so, the suit is liable to be dismissed being barred by limitation."

9. Mr. Harbhagwan Singh, learned Senior counsel has argued that the findings recorded by both the Courts below are vitiated because the Memorandum of Understanding Ex. D1 dated 15-12-1994 cannot be regarded as a document recording any past events. According to the learned Counsel the document Ex. D1 in fact creates proprietary rights for the first time and, therefore, Section 17(1)(ii) of the Act would apply and the document would require registration before it can be accepted as a transfer deed. As a consequence of the non-registration of the document Ex. D1 no consent decree could be suffered unless the same is registered. In support of his submission, learned Counsel has heavily relied upon a judgment of the Supreme Court in the case of Bhoop Singh v. Ram Singh Major, . Learned Counsel has argued that once the consent decree Ex. P-15 is considered to be invalid then no period of limitation would, apply and such a decree is liable to be ignored in the eyes of law.

10. Having heard the learned Counsel at a considerable length, I am of the considered view that there is no room to interfere in the concurrent findings of fact recorded by both the Courts below, It has been found as a fact that before the execution of Memorandurn of Understanding dated 5-12-1994 Ex. D1, partition between the joint owners of the Joint Hindu Family had taken place. In support of the aforementioned view, reliance has rightly been placed on Clause 2 of the Memorandum of Understanding which shows that the property bearing Municipal No. 1296 Basti Nanak Chand, Kotla Mubarakpur, New Delhi has been divided into two parts and partition wall had already been erected dividing both the portions. Even a site plan showing the respective shares of the parties was enclosed with the Memorandum of Understanding. The aforementioned clause from the document Ex. D1 dated 5-12-1994 reads as under :--

> "2. The said property is assessed in the name of Smt. Laxmi Devi and Shri Dwarka Parshad and the mutation was effected in their names by means of Municipal

> Corporation of Delhi letter No. Tax OS/82/2623 dated 6-10-1982. Both the parties will continue paying House Tax in equal proportions till each portion is assessed in separate names of Sh. Dwarka Parshad and Laxmi Devi. It has been mutually agreed and the said house has been divided into two parts, the portion adjoining House No. C-333 abutting towards Defence Colony, New Delhi will go to the share of Smt. Laxmi Devi and the portion adjoining House No. C-331 will be owned by Shri Dwarka Prashad. The partition wall has been erected dividing both the portions and the site plan in respect thereof showing the respective shares of the parties has been enclosed with this Memorandum of Understanding and has been signed by both the parties."

(Emphasis added)

11. It is further appropriate to mention that the consent decree dated 18-1-1995 (Ex. P-15) is in respect of the agricultural land which was subject-matter of Memorandum of Understanding Ex. D1 dated 5-12-1994 as is evident from, covenant 5 of Memorandum of Understanding Ex. D1 which reads as under :--

> "Agricultural land admeasuring 49 Kanal 13 Maria situate in Khewat No. 7, Khata No. 8, Reel. No. 23, Killa No. 12/2(1/15), 13(9-13), 14(6-2), 16/2(2-4), 17(8-0), 18/1(5-2). 24/1/1(2-9), Rect. No. 37 Killa No. 7/1 (3-0), 14/2(4-1) and 15(7-7) and Khewat No. 156 Khata No. 171, Rect. No. 35, Killa No. 1/1-1/3 (516) Killa No. 10(8-0) Rect. No. 34, Killa No. 6.2(4-0) Khewat No. 113 Khata No. 127 Rect. 32, Killa No. 2/1-3(4-17), 9/1/3(0-13) situate in Village Gawal Pahari, Teh. and Distt. Gurgaon was purchased in the name of Smt. Laxmi Devi and Smt. Manju Devi wife of Shri Dwarka Parshad.
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> This Agricultural land shall belong exclusively to Shri Vishnu Sarup Gupta and Smt. Manju Devi wife of Shri Dwarka Parshad will have no right, interest, share in the said land. She will execute all necessary papers required in this behalf for perfecting the title of Shri Vishnu Sarup and withdrawing her self from any claim in the said land."

12. Another fact which would support the view that the partition had taken place before the execution of Memorandum of Understanding on 5-12-1994 is that the suit in which the consent decree has been passed was filed on 26-10-1994 and the Memorandum of Understanding was executed on 5-12-1994.

13. In view of the above, I am in agreement with the view taken by the Courts below that the Memorandum of Understanding merely recorded a past event and as such did not require registration. It is in these circumstances that a Constitution Bench of the Supreme Court in the case of Sahoo Magho Dass v. Mukand Ram, AIR 1955 SC 481 has been held chat no registration of such a document would be needed and observed as under :--

> "It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort of the parties and the agreement acknowledges and defines what that title is, each party relinquishing all

> claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it, to the partions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary."

(Emphasis added)

14. The aforementioned dictum has been followed by another Constitution, Bench of the Supreme Court in the case of Teg Bahadur v. Devi Singh, . In that case also three brothers who were joint owners of the property had made arrangements to enjoy their respective share to the exclusion of others and it was held by the Constitution Bench that it would not require registration as contemplated by Section 17 of the Act. The observation of their Lordships in this regard reads as under :--

> "12. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. The document, Exhibit 3 does not appear to be of such a nature. It merely records the statements which the three brothers made, each referring to others as brothers and referring to the properties as joint property. In fact the appellant, in his statement, referred to respondents 1 and 2 as two brothers co-partners; and the last paragraph said :
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> "We, the three brothers, having agreed over the above statement and having made out own statements in the presence of the Panch called by us, and signed and kept a copy of each of this document as proof of it."

The document would serve the purpose of proof or evidence of what had been decided between the brothers. It was not the basis of their rights in any form over the property which each brother had agreed to enjoy to the exclusion of the others. In substance it records what had already been decided by the parties. We may mention that the appellant and respondent No. 1, even under this arrangement, were to enjoy the property in suit jointly and it is this agreement of theirs at the time which has later given rise to the present litigation between the two. The document, to our mind, is nothing but a memorandum of what had taken place and therefore, is not a document which would require compulsory registration under Section 17 of the Registration Act."

(Emphasis added)

15. Similar view has been expressed by the Supreme Court in the cases of Kale v. Deputy Director of Consolidation, and Roshan Singh v. Zile Singh, AIR 1988 SC 881.

16. When the principles laid down by the Supreme Court in the aforementioned judgments of Supreme Court are applied to facts of the present case, then no doubt is left that the document Ex. D1 dated 5-12-1994 is a narration of existing rights which have come into existence much before the execution of that document. The erection of the partition wall in respect of a property situated at Kotla Mubarakpur, New Delhi can be taken as a sample in support of the aforementioned facts. In these circumstances, provisions of Section 17(1)(b) would not be attracted and the Memorandum of Understanding would not require any registration. Once that is the position with regard to Memorandum of Understanding Ex. D1, it follows that the consent decree dated 18-1-1995 (Ex. P-15) would also not require registration.

17. As a natural consequence of the findings in support, of the validity of Memorandum of Understanding Ex. D1, and a consent decree. Ex. P. 15, it is to be held that valid proprietary rights came to vest in defendant-respondent No. 1 in respect of the properly which was subject-matter of consent decree Ex.. P-15 and he could have passed a valid title by execution of transfer deed in favour of defendant-respondent Nos. 3 to 5. Accordingly, the sale deed executed in their favour by defendant-respondent. No. 1 has to be regarded as valid, and legal.

18. The judgment of the Supreme Court in Bhoop Singh's case, (supra) does not come to the rescue of the plaintiff-appellant because in that case the view taken by the Supreme Court is that a decree or an instrument which creates for the first time right title or interest would require registration.

19. I am further of the view that the suit of the plaintiff-appellant has been rightly held to be barred by Section 113 of the Limitation Act, 1963 because the plaintiff-appellant is deemed to have knowledge of the fact that she had suffered a consent decree on 18-1-1995. The suit was filed on 26-10-1994 and the Memorandum of Understanding has been executed and signed by the plaintiff-appellant on 5-12-1994. The decree is dated 18-1-1995. Therefore, the period of limitation would be taken from the date of the decree. If that be so, then the suit filed by the plaintiff-appellant in the year 2000 is hopelessly time barred and the findings to that effect recorded by the lower Appellate Court deserve to the upheld.

20. Even otherwise no question of law has been, raised warranting admission of appeal which is sine qua non for exercise of jurisdiction under Section 100 of the Code.

21. For the reasons stated above, this appeal fails and the same is dismissed.