

S.Kuldeep Singh vs S.Prithpal Singh on 2 August, 2022

Author: Hrishikesh Roy

Bench: Hrishikesh Roy, K.M. Joseph

[R]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 81_OF 2011

S. KULDEEP SINGH & ANR.

APPELLANT

VERSUS

S. PRITHPAL SINGH

RESPONDENT

JUDGMENT

Hrishikesh Roy, J.

1. The present appeal is against the judgment and order dated 28.10.2009 in LPA No.174/2008 where under the Division Bench of the High Court of Jammu & Kashmir at Srinagar upheld the decree in favour of the respondent-plaintiff rendered on 31.07.2003 by the learned District Judge, Anantnag. The suit was filed seeking declaration and possession in respect of the land measuring 11 Kanals and 15 marlas falling within the survey nos.1829 and 1838 situated at Ranbirpora, Anantnag. The appellants are the natural son and daughter of late S. Sucha Singh whereas the respondent/plaintiff S. Prithpal Singh claimed to be the adopted son of Sucha Singh.

2. In the suit, Prithpal Singh as the plaintiff claimed that he received gifts of land in his favour from Sucha Singh. But although the suit schedule properties were more, the plaintiff confined his relief to the land measuring 11 kanals and 15 marlas mentioned above and not any other lands of his adoptive father Sucha Singh. In the plaint, Prithpal Singh enclosed certified copy of a compromise deed in between himself and one Abdul Jalil Khan and the claim of the plaintiff centers around the said compromise deed dated 18.12.1975. The terms of the compromise being relevant are extracted hereinbelow:

“COMPROMISE PARTIES Sir, compromise is submitted as under:-

1. That in the case entitled above the parties have amicably compromised as under;

out of Survey No. 1829 = Four kanals and five marlas and out of Survey No. 1835 Min one Kanal fifteen marlas in total six kanals including trees and houses situated at Ranbirpora Tehsil Anantnag will remain under the ownership of the Appellant in consideration of the Appellant under Survey No. 1829 = 3 Kanals 15 marlas, 1838 min 8 Kanals in total = 11 kanals 15 marlas including trees situated at village Ranbirpora Tehsil Anantnag gives up his tenancy rights and hands over its possession to the Respondent who will be considered its owner, no dispute remains in future.

2. That the parties will bear their own costs of litigation, in light of compromise the land be recorded in the name of parties in the Revenue Registers.

3. It is prayed the compromise be accepted and the appeal decided on the condition mentioned that will do justice.

Respondent	The Parties
Accepted the compromise	Appellant
Left Thumb impression of	Abdul jalil
Pritpal Singh	Thumb Impression

I also accept the
Compromise Sardar Sacha
Singh S/o Amar Singh
Ranibirpora Anantnag
Father of Respondent
Thumb Impression."

3. As can be seen Sardar Sucha Singh appended his thumb impression to the above compromise deed with the expression "I also accept the compromise". The Deputy Commissioner, Anantnag ("D.C" for short) thereafter passed an order on 24.12.1975 on the File No.168/06 recording the presence of both parties and the settlement made amongst them whereunder the tenant Abdul Jalil Khan gave up his tenancy rights over certain parcels of land and for the earlier noted 11 kanals and 15 marlas including the trees situated on the said parcel at village Ranbirpora, the respondent was accepted to be the owner by the tenant. Consequential directions were accordingly issued by the D.C for entering the compromise in the revenue records and as such the order dated 24.08.1974 by the Circle Officer regarding correction of tenancy was disposed of in light of the compromise amongst both parties.

4. Parallelly, during the aforesaid proceedings, on 1.5.1972 the Jammu & Kashmir Agrarian Reforms Act, 1972 (hereinafter referred to as, "the 1972 Act") came into force under which new rights and obligations were created and jurisdiction was conferred on the competent authority for the purpose of correcting the revenue records. Section 2 (6) of this Act gave a wide interpretation to the term "owner" for the purposes of revenue records and included "inferior owners", and those claiming through the proprietor. Similarly, under Section 2(7), "personal cultivation" by a person also included cultivation by owner and his adopted son.

5. On the strength of Section 50 of 1972 Act, the Jammu and Kashmir Agrarian Reforms Rules, 1973 (for short, “the 1973 Rules”) were notified. Rule 5 provided that the Khasra Girdwari Register for Kharif 1971 upon due verification and authentication, was to be the record of personal cultivation of lands as on 1.9.1971 (cutoff date). The Circle Officers under Rule 7 were required to visit each village within their jurisdiction to verify, amend, and authenticate entries for Kharif Register Girdwari 1971. Rule 15 provided the procedure for amendment of “return” or for collecting information for filing revenue entries under Rule 11. This shows that after the cutoff date of 1.9.1971, the Circle Officers were given new responsibility for verifying and compiling land revenue entries and the procedure for amending entries in case of errors or disputes, were also prescribed.

6. At that stage, Abdul Jalil Khan claiming tenancy rights on the subject land applied for correction of tenancy to the Circle Officer and exercising the power for correction of tenancy, the Circle Officer on 24.8.1974 ordered the application made by the tenant Abdul Jalil Khan. The tenant Abdul Jalil Khan being aggrieved preferred appeal before the DC under the 1972 Act but in the meantime on 25.3.1975, the Jammu & Kashmir Agrarian Reforms (Suspension of Operations Act), 1975 (hereinafter “the Suspension Act, 1975”) was notified. The suspension was to be in effect initially till 19.12.1975 but was extended later to 30.3.1976. These dates are significant because the compromise dated 18.12.1975 was entered while certain provisions of 1972 Act remained inoperative because of the Suspension Act, 1975.

7. On 1.6.1978 the new Jammu & Kashmir Agrarian Reforms Act, 1976 (hereinafter referred to as, “the 1976 Act”) came into force with effect from 13.07.1978, replacing the suspended Act of 1972.

8. In course of verifying and correcting the entries in terms of the order passed by the Collector on 24.12.1975 (during the period while the Act of 1972 was under suspension) inquiries were conducted and the competent officer attested mutation no.4133 whereby the land with trees to the extent of 11 Kanals and 15 Marlas, were re-recorded in the name of late S. Sucha Singh. The appellants, who are the natural son and daughter of the land owner, claimed that since that date till today, they are in possession of the land although in the interregnum, their father S. Sucha Singh died.

9. The civil Suit by the respondent no.1 was initially instituted before the Jammu & Kashmir High Court, for declaration and possession of land and it was claimed in the Suit by the adopted son that the appellants have forcibly dispossessed him from the land claimed in the Suit. The respondent has founded his claim over Sucha Singh’s land on the basis of the compromise dated 18.12.1975 and the subsequent order recording the compromise passed by the DC on 24.12.1975. Although the respondent claimed to be adopted son of Sucha Singh (appellants’ father), similar assertion was not made on such basis for other properties of Sucha Singh. The Suit filed before the High Court was transferred in 1995 to the Court of the District Judge, Anantnag where the appellants as the defendant nos.1 and 2 filed their written statement stating, inter alia, that the compromise and the order passed thereon by the D.C on 24.12.1975, was without jurisdiction and the same do not confer any right on the plaintiff. On the given-up claim based on the gift executed by late Sucha Singh, the stand of the appellants/defendants was that the documents were revoked by their father during his life time and the revocation deed executed in September, 1975 was registered on 22.1.1976. Notably the amendments sought by the plaintiff to the plaint was not pressed/rejected and the relief in the

suit was confined to 11 Kanals and 15 Marlas of land based on the compromise dated 18.12.1975 and the Deputy Commissioner's order dated 24.12.1975.

10. The learned District Judge took note of the following pedigree table of the parties:

S. Sucha Singh Mrs. Raj Kaur (Dfdt. 2) Mrs. Isher Kaur (2nd wife) (1st wife) Mrs. Shant Kaur (Dfdt.5) Prethipal Krishna Kaur Nasib Kuar Kuldeeps Singh Singh (Plntf.) Dfdt. 3 Dfdt. 4 Contesting Dfdt. 1 (Adopted Son) (1) (2) (3) (4)

11. Framing several issues on the basis of the pleadings of the parties, the learned Judge after considering the materials on record found in favour of the plaintiff that he is the owner of 11 Kanals and 15 Marlas in Survey Nos. 1829 and 1838. This finding was based primarily on the compromise dated 18.12.1975 between the plaintiff and Abdul Jalil Khan and accordingly a decree for possession of land was passed in favour of the plaintiff-respondent and against the defendants-appellants.

12. The Civil First Appeal No.117 of 2003 was then filed by the appellants and likewise Cross Appeal No.72 of 2004 was filed by the respondent assailing the District Judge order dated 31.7.2003 but the learned Single Judge under his 24.9.2008 common order, dismissed both appeals and thereby the decree/order dated 31.7.2003 came to be upheld.

13. Thereafter the appellants preferred the LPA No.174 of 2008 and specifically questioned the jurisdiction of the DC to pass the 24.12.1975 order by contending that the compromise dated 18.12.1975 was a nullity. According to the appellants, their father late Sucha Singh through whom the plaintiff claims, was the owner of the subject land and unless the land owner transferred the land in favour of the plaintiff, through a valid registered instrument, the plaintiff can have no claim over the subject land. It was specifically contended that under Section 49 of the Registration Act, 1908 and Section 138 of the Jammu & Kashmir Transfer of Property Act, 1920 which are applicable to the State, claim for title or of possession of immoveable property without a registered instrument, cannot be entertained. Their say was that there is nothing on record that Sucha Singh had transferred any land to the plaintiff through a valid instrument. On the compromise, which was the basis for plaintiff's claim, the appellants projected that in terms of Section 3 of the Suspension Act, 1975, the operation of the concerned provisions of the 1972 Act and all proceedings thereunder, remained in suspension until 30.3.1976 and therefore the 18.12.1975 compromise and the DC's order dated 24.12.1975 for correction of revenue records based on the compromise are non-est as the same was passed while the 1972 Act was under

suspension.

14. Having considered the rival projections, the High Court observed that the only question which requires determination in the appeal is, what is the effect of the compromise. To give the answer, the Court noted that the certified copy of the compromise does not disclose that the same was in connection with a proceeding initiated for resumption of land but noted that the same related to correction of revenue records. According to the Court the plaintiff being an Army personnel, was in a better position to resume the land which was under the tenancy of Abdul Jalil Khan and therefore

the plaintiff was authorized to launch the proceeding and enter into compromise with the tenant Abdul Jalil Khan. The Division Bench also noted that the owner of the land Sucha Singh had acknowledged the compromise deed which recorded the respective ownership of the tenant Abdul Jalil Khan and the plaintiff, for the concerned portions of the land of Sucha Singh. On the issue of the transfer of land being without a registered document, the Court observed that the instrument of compromise where a tenant accepts that his landlord is in possession of certain land over which the tenant makes no claim and surrenders his tenancy, would not require registration. The plaintiff's right on the concerned land is also recognized by the Sucha Singh through his endorsement. Moreover, since the appellants had not taken steps to appropriately challenge the 18.12.1975 compromise within the period of limitation, the title of the plaintiff stood perfected. The appeal accordingly was dismissed under the impugned judgment.

15. We have heard Mr. Huzefa A. Ahmadi, learned Senior Counsel appearing for the appellants. Mr. S.N.Bhat, learned Senior Counsel appears for the respondent (plaintiff).

16.1 Explaining the implications of the thumb impression of late Sucha Singh on the compromise deed, Mr. Ahmadi, learned Senior Counsel submits that the same related only to the internal arrangement regarding the tenancy of Jalil Khan and does not in any way transfer any right of ownership to the plaintiff. According to the counsel the endorsement "I accept the compromise" does not in any manner suggest that Sucha Singh had intended to confer title of his land to the plaintiff.

16.2 Focusing on the appellants' challenge to the compromise, Mr. Ahmadi, learned Senior Counsel submits that the compromise was entered in a proceeding for correction of revenue records and the same must therefore be understood in that context. Adverting to the wide definition of "owner" and "personal cultivation" under Section 2 (6) and Section 2 (7) respectively under the 1972 Act, it is argued that the definition is wide and includes persons claiming through the legal owner and also "adopted sons" of the owner. Accordingly, it is argued that acceptance of the plaintiff as an owner, does not imply that Sucha Singh had intended to transfer his ownership right in favour of the plaintiff. Projecting the limited power of the Circle Officer which was confined to compiling and correcting revenue records as they existed on the cutoff date 1.9.1971, it is submitted that the compromise in the revenue correction proceedings under Chapter III of the Rules, can only relate to revenue records and to possession of land in capacity as personal cultivator. It is therefore argued that the compromise cannot and does not confer title on the plaintiff.

16.3 Highlighting the requirement of mandatory registration under Section 17 of the Registration Act, 1977, it is next argued that the compromise does not comply with the mandate of law and since title is claimed by the plaintiff only on the strength of compromise, the same could not have been granted. The learned senior counsel has relied on *Bhoop Singh v. Ram Singh Major*¹ to argue that the law requires registration of compromise order which creates rights, title or interest in immovable property. The ratio in *K. Raghunandan & Ors. v. Ali Hussain Sabir & Ors.*² is also 1 (1995) 5 SCC 709 2 (2008) 13 SCC 102 cited by the counsel to point out that the Court has held that since the plaintiff claims title from the compromise deed, as distinguished from recognition of pre-existing rights, the same would necessarily require registration. The judgment in *Phool Patti v.*

Ram Singh³ is also pressed home by the counsel to buttress his argument. Appellants question how legal title can be secured on the strength of the compromise arrived at in the proceedings initiated by the tenant Jalil Khan which arose from a change in the entry in the records, during the process of verification under the 1972 Act. The document in question in any case is required to be registered, in terms of Section 49 of the Registration Act and Section 138 of the Jammu & Kashmir Transfer of Property Act and the submission of Mr. Ahmadi is that without such registration, the title rights for the plaintiff do not get crystalized.

16.4 Adverting to the provisions of Section 17 (2)

(vi) of the Registration Act, 1977 as applicable to the (2015) 3 SCC 465 State of Jammu & Kashmir, it is next argued that the DC's order dated 24.12.1975 was required to be registered as the compromise was in consequence of revenue proceeding and not by a competent Court. Since the DC's order was based on the compromise which also dealt with 6 Kanals land forming part of Survey Nos. 1829 and 1838 which was declared in favour of the tenant Jalil Khan, it is argued by Mr. Ahmadi that since the suit of the plaintiff is not restricted only to the 11 Kanals and 15 Marlas claimed by him, the DC's order endorsing the compromise would require registration, in order to legally recognize plaintiff's title, on the strength of these two documents. 16.5 According to the appellants, the DC's order is of no legal effect as the same was passed while the 1972 Act was under suspension and during that period the authority lacked jurisdiction to exercise powers under the 1972 Act. The 1972 Act remained under suspension during 25.3.1975 to 30.3.1976 and it is during this phase, the 18.12.1975 compromise was re-recorded. As such the compromise and the DC's 24.12.1975 order were at a time when the suspended Act was operating. Therefore, it is argued that the DC/Collector lacked jurisdiction and authority to entertain the appeal. In such a situation, the consent of the parties to the lis can have no implication as the Authority lacked jurisdiction by virtue of suspension of the 1972 Act. In support of his contention Mr. Ahmadi, learned Senior Counsel relied on Ajudh Raj v. Moti⁴, "5. The principle for deciding the question of limitation in a suit filed after an adverse order under a Special Act is well settled. If the order impugned in the suit is such that it has to be set aside before any relief can be granted to the plaintiff the provisions of Article 100 will be attracted and if no particular article of the Limitation Act is applicable the suit must be governed by the residuary Article 113, prescribing a period of three years. Therefore, in a suit for title to an immovable property which has been the subject matter of a proceeding under a Special Act if an adverse order comes in the way of the success of the plaintiff, he must get it cleared before proceeding further. On the other hand if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it (1991) 3 SCC 136 aside; and such a suit will be covered by Article 65. In the present case the controversial facts have been decided in favour of the plaintiff-appellant and the findings were not challenged before the High Court. The position, thus, is that the plaintiff was the owner in cultivating possession of the land and the defendant Moti was merely a labourer without any right of a tenant or a sub-tenant. The question is as to whether in this background it is necessary to set aside the order passed in favour of the respondent under Section 27(4) of the Act before the suit can be decreed or whether the plaintiff can get a decree ignoring the said order as void, in which case the suit undoubtedly will be governed by Article 65." The learned senior counsel further relied on Mohammad Ansari v. Union of India & Ors⁵, "35. At this stage, it is necessary to recapitulate that during the pendency of the matter before the High

Court, the Central Administrative Tribunal had passed the final order on 5-11-2012 in favour of the appellant. Be that as it may, the Tribunal does not have the jurisdiction to deal with an issue of upgradation or the nature of lis raised by the appellant before it. In the absence of lack of inherent jurisdiction to deal with the issue, the said judgment is a nullity. It has no existence in law. It is well settled in law that the judgment passed is a nullity if it is passed by a court having no inherent jurisdiction. The decree to be called a 5 (2017) 3 SCC 740 nullity is to be understood in the sense that it is ultra vires the powers of the court passing the decree and not merely voidable decree. (See *Hiralal Moolchand Doshi v. Barot Raman Lal Ranchhoddas [Hiralal Moolchand Doshi v. Barot Raman Lal Ranchhoddas, (1993) 2 SCC 458].*)” 16.6 The appellants next contend that the subject matter of the compromise is Orchard land which, under Section 2(4) of the 1972 Act, stood excluded from the definition of land and therefore neither the tenant Jalil Khan nor the plaintiff, could claim any title over such Orchard land. It is therefore argued that the 1972 Act did not allow for any private agreements in furtherance of which, any compromise could be entered.

16.7 On the finding against the defendants that they had not challenged the compromise and therefore the rights over the land for the plaintiff stood crystalized is contended to be an untenable position of law. The decree according to the appellants is a legal nullity as the authority lacked jurisdiction to pass any such order. It is therefore argued that the same can be set aside even in collateral proceedings and the compromise would not obliterate any lawful right of the landowner Sucha Singh, over his own land. 17.1 Per contra, Mr. S.N. Bhat, the learned Senior Counsel for the respondent (plaintiff) would firstly submit that since the appeal arises out of the concurrent findings of three courts which decreed the suit declaring title and possession in favour of the plaintiff, this Court in exercising power under Article 136, should not upset those findings. Furthermore, in the facts of the present case, this Court should not interfere. It is submitted that the respondent as adopted son would get only 11 Kanals & 15 Marlas. (The appellant has a case that respondent had other properties). This in turn is disputed by the respondent.

17.2 According to the respondent, the right over the land in question is declared on the basis of the 18.12.1975 compromise and the DC's endorsement and since Sucha Singh the landowner had appended his thumb impression on the compromise, the ownership of the plaintiff is acknowledged. Thus, plaintiff's title was rightly protected by the courts. According to Mr. Bhat, the parties to the transaction clearly understood the purport of the compromise and as such confusion must not be created on the issue by adverting to the definition of “owner” under the 1972 Act. It is further submitted that the Sucha Singh by making his endorsement on the compromise obviously intended to give and recognize the right of the plaintiff over the subject land and his act cannot be seen through the definition of “owner” under the 1972 Act. 17.3 On the issue of DC's order dated 24.12.1975 being non est and void for having been passed during the operation of Suspension Act, 1975, the respondent argues that such a contention was raised for the first time in the LPA before the Division Bench of the High Court and since that issue was not raised by the defendants either before the Trial Court or the First Appellate Court, the Division Bench rightly held that the appellants are disentitled to raise such contention. It is further pointed out that the Suspension Act, 1975 did not suspend all proceedings under the 1972 Act in its entirety and certain proceedings were kept alive under Section 4 of the Suspension Act, 1975. Therefore, unless the exact nature of the proceedings initiated before the Circle Officer is brought forth, it cannot be said that Suspended Act,

1975 applies to the compromise and the proceedings before the Deputy Commissioner. Since great prejudice was caused to the respondent-plaintiff by permitting the appellants to raise such contention for the first time in the LPA proceedings, Mr. Bhat, learned senior counsel places reliance on Sitabai & Anr. v. Ramachandra⁶ and Om Prakash & Ors. v. R.K. Kalra⁷.

17.4 The plea of estoppel against the appellants is also pressed home by the senior counsel by projecting 6 AIR 1970 343 7 (1988) 4 SCC 705 that the admission of ownership of the respondent-plaintiff was made by Sucha Singh in the compromise and the same being accepted by the DC, the appellants as the legal heirs of Sucha Singh are estopped from raising such contention.

17.5 According to Mr. Bhat, the appellants are wrong in saying that the compromise and the DC's order would require registration. The counsel further argues that the transaction is essentially within the family of Sucha Singh and the respondent herein being the adopted son of Sucha Singh, the transaction should be construed as a family transaction, and it would be an exception to the principles governing transaction amongst strangers. Therefore, placing reliance on Kale and others vs. Deputy Director of Consolidation and others⁸, Ram Charan Das vs. Girija Nandini Devi and others⁹, Maturi Pullaiah and another vs. Maturi Narasimham and others¹⁰, Mr. Bhat argues that the principles of estoppel and equity will apply against the appellant on 8 (1976) 3 SCC 119 9 AIR 1966 SC 323 10 AIR 1966 SC 1836 their insistence of formalities like registration for what is nothing but a family arrangement. In order to explain the principles of estoppel in transactions involving families, Mr. Bhat relies on K. C. Kappor vs. Smt. Radhika Devi (dead) by Lrs. and others¹¹, Mehaboob Sahab vs. Syed Ismail and others¹², Bhagwan Krishan Gupta (d) vs. Prabha Gupta and others¹³, Ganeshi (Dead) Through Lrs. and others vs. Ashok and Another¹⁴ and Ajambi (Dead) by legal representative vs. Roshanbi and others¹⁵.

Findings A. Whether the compromise dated 18.12.1975 confers title?

18. In order to adjudicate the above issue, we need to look at the compromise in its intent and functioning. The compromise between the Plaintiff and Abdul Jalil Khan (tenant) was recorded in a proceeding for 11 (1981) 4 SCC 487 12 (1995) 3 SCC 693 13 (2009) 11 SCC 33 14 (2011) 15 SCC 417 15 (2017) 11 SCC 544 correction of revenue records under the 1972 Act and the Rules. There, the Plaintiff was admitted to be the owner and in possession of land which he personally cultivated. Sucha Singh with his thumb impression endorsed the compromise deed. On this the defendants have contended that the said statement has to be read in the context in which it was made and how the parties to the transaction understood the same. The plaintiff says that his adoptive father Sucha Singh intended to confer title on the Plaintiff and Sucha Singh would not have looked into the definition of "owner" under the 1972 Act, before making the endorsement on the compromise. On this, it cannot be ignored that the parties effectuated the transaction in a proceeding under the 1972 Act. Thus, the compromise exists within the four corners of the 1972 Act, and must therefore be read by applying the statutory provisions.

19. Proceeding further, the definitions of 'owner' and 'personal cultivation' under Ss. 2(6) and (7) respectively of the 1972 Act are expansive. The definition of owner is an inclusive one. It includes not only the legal owner/proprietor, but also person claiming through the legal owner. Specifically,

the ‘adopted sons’ of the owner. Hence, the purpose of the compromise decree in the correction proceedings under Chapter III of the Rules pertain only to revenue entries, and the possession of land in capacity of a personal cultivator. This could hardly confer any lawful title on the plaintiff over Sucha Singh’s land.

20. The power under the 1973 Rules confers limited power to the circle officer’s and it is confined to verifying, amending, and authenticating revenue records as they existed on the cutoff date i.e., 1st September, 1971. Thus, it is clear that a mere affirmation in the context of revenue records and personal cultivation rights cannot be interpreted as an intention of Sucha Singh to confer title upon the Plaintiff. With his endorsement on the compromise, Sucha Singh perhaps intended to give the right of personal cultivation but the same does not in any manner suggest that Sucha Singh had intended to confer title on the plaintiff.

21. It is also important to note that Plaintiff in his own testimony (led before Trial Court, and recorded in the Trial Court judgment) had stated that Sucha Singh prepared “orchards”. Albeit, by using the salary of Plaintiff. The land is therefore of the orchard category. In this situation, the land which is the subject matter of the Compromise being an Orchard stood excluded from the definition of land under S. 2(4) of the 1972 Act. As such, the title for such category of land could not vest with the Plaintiff. This determination of fact is essential to adjudicate the title and the issue was definitely raised in the LPA proceeding before the High Court, apart from being raised in the lower court also. In such a situation this Court is required to keep the ‘orchard’ aspect in mind and also address the implication of the same on the contesting parties. The upshot of the above persuade us to hold that the compromise (18.12.1975) does not convey any lawful title on the Plaintiff. B. Did the compromise require registration?

22. It is contended by the defendants that the compromise did not comply with Section 17 of the Registration Act, 1977 which mandates compulsory registration, and without a registered document, no title or claim or possession can fructify. On the other hand, Plaintiff has argued that the transaction is essentially within the family of Sucha Singh since plaintiff is the adopted son of Sucha Singh. The transaction of the present nature belongs to a different class, and thus, the normal principles governing transaction among strangers, do not apply to this class of transactions.

23. We are however unable to see the compromise as a kind of ‘family arrangement’. The compromise was not amongst family members but between the plaintiff and the tenant – Jalil Khan (not a family member). The statement of Sucha Singh “I accept the compromise”, is only with regard to the internal arrangement regarding the tenancy of Jalil Khan, and this will not make it a family arrangement. Moreover, the plea that compromise is a “Family Arrangement” is raised for the first time before this Court. The Plaintiff significantly had waived his claim to other assets left by Sucha Singh (on the basis that the Plaintiff is his adopted son), before the High Court. He cannot therefore be permitted to raise such a contention for the first time before this Court. Even otherwise, Jalil Khan was not a family member. Thus, he could not have been a party to a so called “family arrangement”. Besides, none of the other family members were parties to the said compromise either. Therefore, the documents in question would require registration and it cannot be treated as a family arrangement.

24. It is pertinent to note that the ownership claim for the plaintiff is founded only on the compromise and the respondent is not claiming any antecedent title. The issue whether the compromise decree between parties to a suit proceeding, could vest or transfer title to one of them, was decided in *Bhoop Singh v. Ram Singh Major* [supra], where the requirement of registration of such compromise order which create new rights, title, or interest, was upheld in the following manner: -

“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.”

25. Further, in *K. Raghundandan & Ors. vs. Ali Hussain Sabir & Ors.* [supra], while referring to *Bhoop Singh* [supra], the Court held that consent terms creating rights/title or interest for the first time, as distinguished from recognition of a right, would require registration if the value of property is above Rs. 100. This was affirmed by a three Judges bench in *Phool Patti vs. Ram Singh* [supra]. Lastly, in *Ripudaman Singh vs. Tikka Maheshwar Chand*¹⁶, this Court held that where there is no pre-existing right, but right has been created by the compromise alone, such compromise creating new right, title or interest in immovable property of value of Rs. 100 or above, is compulsorily registrable.

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26. In the present case, the Appeal filed by the tenant – Jalil Khan arose from the change of the entry in the records during the process of verification under the 1972 Act. It was in this Appeal that

the compromise was recorded and endorsed by the DC's Order, recognizing the possession of the Plaintiff for the very first time, as was also admitted by plaintiff in paragraph 6 of the Suit. In circumstances of this kind, we are quite certain that the compromise was required to be registered, under Section 49 of the Registration Act, 1977 and also under Section 138 of the J&K Transfer of Property Act. Without such registration no title can fructify for the plaintiff from the documents in question.

27. Furthermore, the compromise and the DC's consequent Order, was passed in a revenue proceeding and this was definitely not a part of a Court proceeding. That being the case, the compromise did not fall under the exception category under Section 17(2)(vi) of Registration Act, 1977 (as applicable to then State of J&K). The above makes it abundantly clear that the compromise in order to have legal effect needed registration under the Registration Act, 1977.

28. Significantly, the DC's 24.12.1975 order based on the Compromise, also dealt with 6 Kanals land forming part of Survey No. 1829 & 1838 which went to the ownership of the tenant - Jalil Khan. The subject compromise or the DC's order was not restricted only to 11 Kanals and 15 Marlas as claimed by the Plaintiff. These circumstances would imply that the compromise required registration for it to be of any legal effect. Since title is claimed, and the plaintiff founded his entire case on the compromise, it would necessarily require registration. Accordingly, question B is answered in affirmative.

29. The defendants have also unsuccessfully argued before the High Court that the jurisdiction of the Deputy Commissioner to exercise powers under the J&K Agrarian Reforms Act, 1972 stood suspended on the date of passing the Compromise Decree. Such a question of law has a material bearing on this litigation and the same needs to be considered. The 1972 Act as noted earlier, was suspended during 25.03.1975 to 30.03.1976 and during this period the Compromise was recorded on 18.12.1975 and the 24.12.1975 Order was passed by the DC. The power exercised for these orders are traceable to the suspended provisions of the Act. Of course, the J&K Agrarian Reforms (Suspension of Operations) Act, 1975 did have a proviso which created exceptions for certain sections of the 1972 Act. The relevant part of the proviso reads thus;

“4. Certain provisions of Act No. XXCI not suspended for the time being- (1) The provisions of Sections 15, 25, 26, 27, 28, and 51 and the provisions of Chapter V of the principal Act in so far as they relate to these sections and any rules, notifications, orders and instructions issued thereunder including any proceedings instituted or actions taken under the said provisions and pending on the date of commencement of this Act, shall be continued and enforced as heretofore:...”

30. The above makes it clear that this case is outside the ambit of any of the exempted sections such as Section 15 (Prohibition on transfer of land), 25 (levy of annual tax), 27 (collection of tax), 28 (Determination of ques-levy of tax related), 51 (repeal & savings) of the 1972 Act. Only such provisions of Chapter V which were relatable to the aforesaid provisions were relevant, and not all sections were within the ambit of exception. Section 31 of the 1972 Act which provided for Appeals and Revisions, was not protected by Section 4 of the Suspension Act, 1975. Thus, the DC, in our mind lacked inherent jurisdiction to either entertain the appeal or endorse the compromise during

the suspended phase. In cases where the authority lacked jurisdiction under a special Act and yet exercises powers, without authority of law, any order or decree so passed through such unlawful exercise of power, will be a legal nullity. The deficiency of jurisdiction of the authority cannot be cured by the consent of the parties. The challenge to such an incompetent order could be set up wherever it is sought to be enforced or relied upon, even in execution or in collateral proceedings¹⁷. Accordingly answering in favour of the defendants, the DC's order in our opinion can have no legal effect as the same was passed during the operation of Suspension Act, 1975. We have found that the compromise being unregistered cannot confer title on the respondent.

31. The final issue for our consideration is whether estoppel principle would apply against the defendants in their challenge to DCs order. Equity as we know follows the law, and whenever there is a conflict between law and equity, it is the law which must prevail. Here the Latin maxim "dura lex sed lex", which means "the law is hard, but it is the law" would apply. Equity can only supplement the law, but it cannot supplant or override it¹⁸, and this would have a bearing against the respondent.

32. The records in the case show that Sucha Singh, during his life time, had cancelled the two Wills in favour of the plaintiff. This indicates that Sucha 17 (1991) 3 SCC 136, Para. 5 | (2017) 3 SCC 740, Para. 35 18 (2007) 2 SCC 230, Para. 29 Singh was not interested to give any part of his property to the plaintiff. Even otherwise, the suit property is self-acquired property of Sucha Singh, and a donee cannot claim equity in respect of the disposal of self-acquired properties, by a donor. Equity is all about balancing the competing interests and due weightage must be given to the fact that the appellants have been in possession and was nurturing their father's land for over four decades and the estoppel principle propounded against them by the respondent must give way to the law set out by the statute¹⁹.

33. Notwithstanding the concurrent finding against them, in a case like this, where the law leans in appellant's favour, the Court has to exercise corrective jurisdiction as the circumstances justify. As such, taking a cue from Haryana State Industrial Development Corporation vs. Cork Manufacturing Co., the exercise of extraordinary jurisdiction under Article 136 is found to be merited in this matter. 19 (2021) 3 SCC 401 20 (2007) 8 SCC 120

34. Proceeding accordingly, the decree in favour of the respondent (Plaintiff) in respect of the land measuring 11 Kanals and 15 Marlas falling within the survey nos.1829 and 1838 situated at Ranbirpora, Anantnag, are set aside. The Appeal stands allowed by leaving the parties to bear their own cost.

.....J. [K.M. JOSEPH]J.
[HRISHIKESH ROY] NEW DELHI AUGUST 2, 2022