
(2008) 05 SC CK 0154

In the Supreme Court Of India

Case No : Civil Appeal No. 3572 of 2008 (Arising out of SLP (Civil) No. 6504 of 2006)

K. Raghunandan and Others

APPELLANT

Vs

Ali Hussain Sabir and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Evidence Act, 1872 — Section 44

Registration Act, 1908 — Section 17, 17(1), 17(2)

Citation : AIR 2008 SC 2337 : (2008) AIRSCW 3844 : (2008) 13 SCC 102

Hon'ble Judges : S. B. Sinha, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : H.S. Gururaja Rao, Y. Raja Gopala Rao, Y. Raja Gopala Rao, Y. Ramesh and Y. Vismai, for the Appellant; P.S. Narsimha, Soriman Sharma and Aribam Guneshwar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Application of Section 17(2)(vi) of the Registration Act, 1908 (for short "the Act") in the facts and circumstances of this case is in question in this appeal which arises out of a judgment and order dated 31.03.2001 passed by the High Court of Andhra Pradesh at Hyderabad in L.P.A. Nos. 163 and 229 of 2000.

3. Appellants are neighbours. The dispute between the parties relate to a passage. Plaintiffs - Appellants claimed to have purchased 590 sq. yards of premises No. 5-4-413 to 415 at Nampally, Hyderabad from one P.N. Vijaya Lakshmi. Allegedly, another 259 sq. yards of land was also purchased by them from the said vendor. When they had been proceeding with the construction of the building, allegedly, respondents interfered.

A suit bearing No. OS No. 76 of 1975 was filed claiming for a decree for perpetual injunction. The said suit ended in a compromise, the terms whereof

are as under:

1. That the portion marked Green in the plan shall be exclusively enjoyed by the Defendant without any interference from the plaintiffs. The plaintiffs hereby admit that this portion of land marked Green in the plan attached with the Memo of compromise belongs to the Defendant No. 1 and his brother Sri Noman Ali son of Sri Abdul Khader, Defendant No. 2.

2. That the portion marked Red will be enjoyed by the plaintiffs exclusively without any interference with the Defendants or his agents.

3. That all other claims against Defendant in the suit are hereby withdrawn by the plaintiffs.

4. A map was annexed to the consent terms. All the properties shown in the red were accepted to be the properties of the plaintiffs and the defendants had allegedly agreed not to interfere with their possession. It was stated that a passage running from north to south connecting Mukarramjahi Road was shown to be the exclusive property of the plaintiffs. It was furthermore alleged that the respondents' father was a tenant in the premises bearing No. 5-4-412. The said property was purchased by the respondent No. 1 in a public auction held on 8.11.1957. The extent of the land which was the subject matter is in dispute.

5. Respondents admittedly had constructed shops on Moajamjahi road with a huge opening on the main road. The defendants despite the said consent terms made attempt to fix an old door on the eastern side of their wall making an opening on the purported private passage belonging to the appellants.

Respondents, however, contended that the appellants have no exclusive right over the scheduled property, i.e., passage measuring 80 yards situated at Nampally, Hyderabad. According to them, the passage in question was a common passage.

6. Appellants filed a suit which was marked as O.S. No. 341 of 1993 for a declaration that the suit passage, as shown in the red marked A, B, C and D in the plaint is their private property.

7. Respondents filed a suit for perpetual injunction which was marked as O.S. No. 1132 of 1993, and renumbered as O.S. No. 769 of 1994, seeking injunction against the appellants from interfering with their usage of the passage. It was alleged that the appellants tampered with the plan by adding the word "plaintiffs" above the word "passage" in the plan.

8. The said suits were consolidated; the claims of the parties having common issues. The issues framed were:

In O.S. No. 341/93

1) Whether the plaintiffs are entitled for the relief of declaration as prayed for?

2) Whether the plaintiffs are entitled for perpetual injunction as prayed for?

3) Whether the plaintiffs are entitled for mandatory injunction as prayed for?

4) To what relief?

In O.S. No. 769/1994

1) Whether the plaintiffs are entitled for the relief of perpetual injunction as prayed for?

2) To what relief?

The learned Senior Civil Judge, City Civil Court, Hyderabad by a common judgment decreed O.S. No. 341 of 1993 and dismissed the suit filed by the respondents viz. O.S. No. 769 of 1994.

9. Appeals were preferred thereagainst by the respondents. Whereas the learned Trial Judge held that the compromise decree conferred a right on the appellants in respect of the passage in question, the First Appellate Court opined that the suit passage was not the subject matter of compromise and in any event the same did not confer any exclusive right, title and interest thereto upon the appellants.

10. Two Letters Patent Appeals were preferred thereagainst by the appellants, which have been dismissed by reason of the impugned judgment inter alia on the premise that the compromise decree being not registered, no claim relying on or on the basis thereof could form the basis of the suit.

11. Mr. H.S. Gururaja Rao, learned senior counsel appearing on behalf of the appellants, would submit that a consent decree not only operates as estoppel by judgment, even the general principles of res judicata would be applicable.

The High Court, it was submitted, thus, committed a serious error in relying on the decision of this Court in Bhoop Singh Vs. Ram Singh Major and others, which has been distinguished in Som Dev and Others Vs. Rati Ram and Another, and, thus, the impugned judgment cannot be sustained.

12. Mr. P.S. Narsimha, learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the First Appellate Court having arrived at a question of fact that the plaintiffs - appellants did not derive any right, title and interest in the passage by reason of the said compromise and/ or in any event the plaintiffs - appellants having not claimed any right, title and interest thereupon in the suit, the compromise decree required registration.

13. O.S. No. 76 of 1975 admittedly was a suit for injunction. The plaint of the said suit is not before us. It, however, appears from the judgment of the First Appellate Court that the passage was not the subject matter of compromise in the said O.S. No. 76 of 1975. This fact is not disputed.

14. The First Appellate Court as also the High Court analysed the materials brought on record.

The question which would arise for our consideration is as to what would be the effect of admitted case of the parties that the suit passage was not the subject matter thereof.

We have noticed hereinbefore that the parties joined issues as to whether the word "plaintiffs" was added before the word "passage" in the plan annexed to the consent terms or not. We have also noticed hereinbefore that the portion marked in red was allotted to the plaintiffs- appellants and that marked in green was allotted to the defendants - respondents. Appellant No. 1, examined himself as PW-1. He admitted that in the compromise memo there was no mention about the suit passage. He also admitted that he had not claimed the suit passage in the said suit. He also admitted that his vendor had provided the suit passage for his use. A finding of fact has been arrived at that the passage was not shown either in the areas demarcated in red or green.

15. With a view to determine the issue as to whether the passage could have been the subject matter of compromise, the parties adduced evidence. The building plan submitted by the appellants before the Municipality was brought on record. The passage was shown as a road which means a public road. A finding of fact had been arrived at that there was nothing on record to show that the passage was a private one. The High Court, in our opinion, rightly came to the conclusion that the plan must be read in terms of the memo filed and as the passage did not form part of the building plan, prima facie, it was common to both. It has furthermore been found that the defendants had no other motorable road for approach to their factory which is being run on premises No. 5-4-412.

16. Sub-section (1) of Section 17 of the Act specifies the documents of which registration is compulsory; Clauses (b), (c) and (e) whereof read as under:

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) ***

(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;

(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

(d) ***

(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: 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.

17. Sub-section (2) of Section 17 of the Act, however, carves out an exception therefrom stating that nothing in Clauses (b) and (c) of Sub-section (1) of Section 17 would inter alia apply 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". Even if the passage was not the subject matter of the suit, indisputably, in terms of the CPC Amendment Act, 1976, a compromise decree was permissible.

18. A plain reading of the said provision clearly shows that a property which is not the subject matter of the suit or a proceeding would come within the purview of exception contained in Clause (vi) of Sub-section (2) of Section 17 of the Act. If a compromise is entered into in respect of an immovable property, comprising other than that which was the subject matter of the suit or the proceeding, the same would require registration. The said provision was inserted by Act 21 of 1929.

19. The CPC Amendment Act, 1976 does not and cannot override the provisions of the Act. The purported passage being not the subject matter of the suit, if sought to be transferred by the defendants - respondents in favour of the plaintiffs - appellants or if by reason thereof they have relinquished their own rights and recognized the rights of the plaintiffs - appellants, registration thereof was imperative. The First Appellate Court held so. The High Court also accepted the said findings.

20. Mr. Gururaja Rao is, therefore, not correct in contending that the High Court has not gone into the said question. The High Court clearly affirmed the findings of fact arrived at by the learned First Appellate Court.

It had, however, gone into the legal question as to whether insertion of the word "plaintiffs" before the word "passage" was an act of interpolation on the part of the appellants or not, stating:

There is also some confusion with regard to the plan itself. Whereas the plaintiffs claim that the plan showed the passage as plaintiffs' passage the defendants claim and submitted a certified copy showing that the passage was shown only as 'passage' and the word 'plaintiffs' was an act of interpolation. Even without going into that controversy and believing that the memo stated the passage as

plaintiffs' passage could it still be enforced by this Court would be a question. The case of the plaintiffs is that they had given up claim to 150 yards of land which was to the rear side of their property and in lieu of it the passage was exclusively given to the plaintiffs. This assertion in itself would show that even before the compromise the passage was being used by the defendants but whether the right over the passage by the defendants was given up by them in lieu of 150 yards of land cannot be gone into because the compromise could not be enforced as it was not a registered compromise....

21. Appellants have given up their claim of 150 yards of land which was to be on the rear side of the property and in lieu thereof the passage was exclusively given to the plaintiffs - appellants. Thus, the appellants have rested its case on the basis of an exchange of land between the plaintiffs and defendants. The High Court opined that as by reason thereof an inference can be drawn that the defendants who had been in possession of the passage had given up their rights in lieu of 150 yards of land, the same would constitute a transfer of property and, thus, necessitated registration. It was in the aforementioned situation the High Court relied upon the decision of this Court in Bhoop Singh (supra).

22. Bhoop Singh (supra), inter alia, lays down:

(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.

23. Thus, indisputably, if the consent terms create a right for the first time as contra-distinguished from recognition of a right, registration thereof would be required, if the value of the property is Rs. 100/- and upwards.

Strong reliance has been placed by Mr. Gururaja Rao on *Tulsan Vs. Pyare Lal and Others*, *Shankar Sitaram Sontakke and Another Vs. Balkrishna Sitaram Sontakke and Others*, , *Raja Sri Sailendra Narayan Bhanja Deo v. The State of Orissa* 1956 SCR 73, *Ramdas Sah and Another Vs. Jagarnath Prasad and Others*, and *M. Pappu Reddiar (Died) and Others Vs. Amaravathi Ammal and Others*, .

24. In view of the point involved in this appeal, we need not go into the question as to whether a consent decree would attract the principles of res judicata or estoppel by judgment. We will assume (although there may be some doubt or dispute with regard to the said proposition that the said principles are applicable. The question, as indicated hereinbefore, however, is as to the effect thereof.

25. In *Ramdas Sah* (supra), a Division Bench observed:

2. The first point taken on behalf of the appellants is that the compromise decree

in Title Suit No. 2 of 1948 required registration, because plot No. 2240 was outside the scope of the suit, and in the absence of registration the compromise decree was not effective with regard to plot No. 2240. We do not think there is any substance in this argument. It appears that the plaintiff in the partition suit in the present case claimed exclusive title to plot No. 2240 but sought a decree for partition with regard to other properties.

In the compromise decree there was an agreement between the parties that plot No. 2240 be exclusively allotted to the plaintiff and since the title of the plaintiff to plot No. 2240 was taken as part of the consideration for the compromise entered into between all the parties and since it is an integral part of the compromise it is obvious that title to plot No. 2240 was within the scope of the partition suit and the decree is operative even with regard to plot No. 2240 in the absence of registration. The point has been fully dealt with in a judgment of this Court in Miscellaneous Appeal No. 237 of 1953, decided on the 27th July, 1955, and also in two other decisions, Ramjanam Tewary and Another Vs. Bindeshwari Bai, and Jagdish Chandra Sinha and Another Vs. Maharajadhiraj Dr. Sir Kameshwar Singh Bahadur and Others, . The question whether a particular term of a compromise relates to the subject-matter of the suit is obviously a question to be answered on the frame of the particular suit, the relief claimed in the suit and the matters arising for decision on the pleadings of the parties. The term is comprehensive enough, and if the compromise relates to all the matters which fall to be decided in the case, it cannot be said that any part of the compromise is beyond the subject-matter of the suit.

It was clearly held that the subject matter of the suit was the subject matter of compromise. Having held so, it was opined:

In other words where the compromise is really an adjustment of the rights and differences in respect of all matters in dispute between the parties and the compromise purports to be a final settlement and adjustment of these disputes on a fair and satisfactory basis acceptable to all, it must be held to relate to the suit. Applying the principle to the present case we hold that the title to plot No. 2240 was the subject-matter of the compromise and adjustment between the parties and so it falls within the scope of the suit and the compromise decree does transfer title to plot No. 2240 even without it being registered.

26. The said decision was followed by the Madras High Court in M. Pappu Reddiar (supra). In the fact situation obtaining therein, it was held that the subject matter of the compromise was inseparable from the other provisions of the compromise decree and constituted part of the consideration for the compromise holding that the subject matter of the suit is not synonymous with subject matter of the plaint. It was in the peculiar facts of the said case, the Court opined:

...If the consent decree or order in the suit or proceeding covered the property, although it was not in the plaint or in dispute, such property constituting, as it does, an inseparable part of the consideration for the compromise, may well, in

our view, be regarded as the subject-matter of the suit. This is because of the decree passed on the basis of the compromise cannot stand without that property. If by the amendment it was intended that if the property was not in the plaint schedule, the consent decree should not be exempted from registration, we are afraid the phraseology actually employed by Section 17(2)(vi) has failed to achieve the objective. We are aware that the extended scope we have given to the expression "subject-matter of the suit" may narrow down the scope of the exclusion from exemption from registration under that provision....

The said decisions, therefore, cannot be said to have any application in the present case.

27. In Bhoop Singh (supra), this Court referring to Gurdev Kaur and Another Vs. Mehar Singh and Others, as also a decision of the Bombay High Court in Sumintabai Ramkrishna Jadhav Vs. Rakhmabai Ramkrishna Jadhav and Others, held:

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.

It was further observed:

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 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.

28. The decision of this Court in Som Dev (supra) did not lay down any law which runs contrary to or inconsistent with the law laid down in Bhoop Singh (supra). Bhoop Singh (supra) was distinguished on fact stating:

18. Therefore, it was a case of the right being created by the decree for the first

time unlike in the present case. In para 13 of that judgment it is stated that 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 if the document extinguishes that right of one and seeks to confer it on the other, it requires registration. 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. A decree or order of a court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law. But otherwise that decree is operative and going by the plain language of Section 17 of the Registration Act, particularly, in the context of Sub-clause (vi) of Sub-section (2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming u/s 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting forward in the suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted....

(emphasis supplied)

In *Som Dev* (supra), the plaintiff claimed half share in the property. The defence was that the right of the plaintiff having been created under a compromise and the same having not been registered the same could not be enforced as against the contesting defendants or their assignor, the other co-owner. The High Court opined that the suit was based on a family settlement which did not require registration and, thus, would come within the purview of Section 17(2)(vi) of the Act. It was on the basis of the said finding of fact, the law was laid down stating:

...Of course, we are not unmindful of the line of authorities that say that even if there is inclusion of property that is not the subject-matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject-matter of the suit and such a decree would also not require registration in view of Clause (vi) of Section 17(2) of the Registration Act. Since we are not concerned with that aspect here, it is not necessary to further deal with that question. Suffice it to say that on a plain reading of Clause (vi) of Section 17(2) all decrees and orders of the court including a compromise decree subject to the exception as regards

properties that are outside the subject-matter of the suit, do not require registration on the ground that they are hit by Sections 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of Clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an early rent or a transfer of a decree or order of a court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered.

29. A statute must be construed having regard to the purpose and object thereof. Sub-section (1) of Section 17 of the Act makes registration of the documents compulsory. Sub-section (2) of Section 17 of the Act excludes only the applications of Clauses (b) and (c) and not Clause (e) of Sub-section (1) of Section 17. If a right is created by a compromise decree or is extinguished, it must compulsorily be registered if the compromise decree comprises immovable property which was not the subject-matter of the suit or proceeding. Clause (vi) is an exception to the exception. If the latter part of Clause (vi) of Sub-section (2) of Section 17 of the Act applies, the first part thereof shall not apply. As in this case not only there exists a dispute with regard to the title of the parties over the passage and the passage, itself, having not found the part of the compromise, we do not find any infirmity in the impugned judgment.

The appeal is accordingly dismissed with costs. Counsel's fee assessed at Rs. 25,000/-.