

A.F.R.

Neutral Citation No. - 2025:AHC:3355

Reserved on 02.08.2024

Delivered on 08.01.2025

Case :- CIVIL REVISION No. - 205 of 2009

Revisionist :- Suresh Kumar Sharma And Others

Opposite Party :- M/S Khanna Automobiles And Others

Counsel for Revisionist :- A.K.Gupta, ,Ashish Agrawal

**Counsel for Opposite Party :- ,Pankaj Agarwal,Rahul
Pandey,S.Niranjan**

Hon'ble Saral Srivastava,J.

1. Heard Sri P.K. Jain, learned Senior Counsel assisted by Sri Ashish Agrawal, learned counsel for the revisionists and Sri D.P. Singh, learned Senior Counsel assisted by Sri Rahul Pandey, learned counsel for the respondents/Opposite Parties.

2. The revisionists are the plaintiffs in S.C.C. Suit No.63 of 2008 and have preferred the present Revision against the judgement and order dated 08.04.2009 passed by the District Judge/Judge, Small Causes Court, Ghaziabad whereby he has dismissed the suit of the plaintiffs/revisionists.

3. For the convenience, the revisionists are referred to as 'plaintiffs' and respondents are referred to as 'defendants'.

4. The plaintiffs instituted S.C.C. Suit No.63 of 2008 for eviction of the defendants from Shop No.3 situated at Ground Floor Building, Nagar Nigam No.537-A, Purva Ismail Khan being constructed on G.D.A. Plot No.56, Ambedkar Road, Ghaziabad (hereinafter referred to as the 'shop').

5. The plaintiffs' case is that the defendants are the tenants of the shop, of which plaintiffs' mother was the owner, and after her death on **24.05.2008**, the plaintiffs being legal heirs became the owner of the shop.

6. It is stated that in **S.C.C. Suit No.33 of 2003**, a compromise was entered into between the parties on 01.10.2008 in which it was agreed that the rent of the shop would be Rs.4200/-. The defendants paid the rent at the rate of Rs.4200/- for the month of October, 2008 under the compromise.

7. It is further stated that the defendants had deposited Rs.3,50,000/- with the mother of the plaintiffs as a security, which the plaintiffs are liable to return to the defendants at the time of vacation of the shop by the defendants.

8. Further case of the plaintiffs was that the building in which the shop is situated was constructed in the year 1988, and the First Assessment of the shop was done on 01.04.1989, and since the rent of the shop was more than Rs.2000/-, therefore, the provision of U.P. Act No.13 of 1972 is not applicable, and the plaintiffs can terminate the tenancy of defendants at 'will'. Accordingly, the plaintiffs served a notice dated **01.11.2008** under Section 106 of Transfer of Property Act by registered post to the defendants terminating the tenancy of the defendants which notice was served upon the defendants on **05.11.2008**.

9. Further case of the plaintiffs is that the defendants are liable to pay rent of Rs.4900/- for the period from 01.11.2008 to 05.12.2008 at the rate of Rs.4200/- per month. Accordingly,

the plaintiffs prayed for a decree of eviction alongwith the damages and other relief against the defendants.

10. The suit was contested by the defendants by filing written statement contending *inter-alia* that the defendants were tenants of mother of the plaintiffs namely, Late Bimla Devi at the rate of Rs.1130/- per month. It is further stated that by mutual agreement, it has been agreed that the rent is to be increased by 10% in every three years and the entire rent was paid by the defendants during the lifetime of Late Bimla Devi.

11. It is further stated that in the S.C.C. Suit No.33 of 2003 (Bimla Devi Vs. M/s. Khanna Automobiles) instituted by Late Bimla Devi, a compromise was entered into between the parties i.e. Late Bimla Devi and defendants on **25.09.2007** in the Court of 3rd Additional District Judge, Ghaziabad which was verified on **20.01.2008**, whereby it was agreed that the rent of the shop will be Rs.4000/- per month w.e.f. **01.10.2007**, and there will be increase in the rent at the rate of **5% every year**. It is further stated that the defendants have been paying the rent at the rate of Rs.4200/- per month currently.

12. It is also agreed in the compromise that a security amount of Rs.3,50,000/- has been deposited by the defendants with the mother of the plaintiffs who was landlord of the shop, and under an agreement, the security amount shall be refunded at the time of vacation of the shop by the defendants. It is also stated that under the compromise in S.C.C. Suit No.33 of 2003, the defendants could vacate the shop at their 'will', and the compromise entered into between the defendants and mother of the plaintiffs namely, Late Bimla Devi in S.C.C. Suit No.33 of 2003 is binding upon the plaintiffs being the legal heirs of Late

Bimla Devi, therefore, the plaintiffs do not have any authority under law to institute the present suit.

13. The Trial Court on the basis of pleadings between the parties, framed the following three issues which reads as under:-

“1. Whether compromise decree of S.C.C. Suit No.33 of 2003 requires registration ?

2. Whether the lease is permanent lease and as such is void ?

3. Whether the plaintiff has waived notice of determining tenancy of the defendants by accepting rent of month of November 2008 ?”

14. The Trial Court on the issue No.1 held that no new rights have come into existence by the compromise between the mother of the plaintiffs and the defendants, since relationship of landlord and tenant between the parties were already in existence, therefore, the case does not fall under Section 17(1) (d) of the Registration Act, 1908 (hereinafter referred to as the ‘Act, 1908’). Accordingly, it held that the compromise decree passed in S.C.C. No.33 of 2003 was not required to be registered.

15. On the issue No.2, the Trial Court returned a finding that from perusal of the compromise deed in S.C.C. Suit No.33 of 2003, it appears that the parties agreed that the tenancy will continue till the wishes of the tenant subject to regular payment of rent, and in case of default in payment of rent, the tenant will be liable for eviction. Accordingly, it held that tenancy was not terminable at the ‘will’ of the landlord/lessor. It further held that the tenancy at ‘will’ is determinable by the choice of the

lessee or lessor, but in the instant case, it is manifest from the terms of compromise between the parties in S.C.C. Suit No.33 of 2003 that tenancy is not determinable at the 'will' of the lessor, therefore, it is clear that the tenancy was not at 'will'.

16. It further held that according to the terms and conditions enumerated in the compromise, it cannot be said to be a lease for one year nor a permanent lease, but it is a lease for lifetime, therefore, it is not hit by Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as the 'Act, 1882').

17. On the issue No.3, it held that mere acceptance of rent for certain period when the relationship of landlord and tenant continued, cannot amount to waiver of notice.

18. Challenging the aforesaid order, learned counsel for the plaintiffs has submitted that the compromise decree requires registration inasmuch as the lease is for more than one year since the compromise decree in S.C.C. Suit No.33 of 2003 provides for enhancement of rent at the rate of 5% every year. Accordingly, it is contended that the lease deed between the mother of plaintiffs and defendants by way of compromise deed is for more than one year, therefore, it requires registration under Section 17(1)(d) of the Act, 1908. Accordingly, it is submitted that the Trial Court has erred in law in concluding that since the compromise decree does not recognize new rights of the party, but only a pre-existing right with regard to relationship of landlord and tenant has been recognized by the compromise decree, therefore, it does not fall within the ambit of Section 17(1) (d) of the Act, 1908.

19. He further submits that the ratio laid down in the case of ***B.P. Sinha Vs. Som Nath 1971 AIR (All.) 297*** based on which

the Trial Court has held that the nature of the lease executed by way of compromise deed is a lease for lifetime and is not a permanent lease nor it can be termed as tenancy at 'will' therefore, it is not hit by Section 107 of the Act, 1882, is not applicable in the facts of the present case.

20. He further submits that in the case of ***B.P. Sinha (supra)***, term of lease was less than one year, whereas in the instant case, the lease deed is of more than one year as is evident from the lease deed, therefore, Section 107 of the Act, 1882 would apply in the facts of the present case. He further submits that in the case of ***B.P. Sinha (supra)***, the Court has relied upon Section 53-A of the Act, 1882. He submits that at the relevant time when the judgement of ***B.P. Sinha (supra)*** was pronounced, agreement which fell under Section 53-A of the Act, 1882 was not required to be registered, whereas by virtue of an amendment introduced in Section 17 of Act, 1908 by inserting sub-section (1A) by Act No.48 of 2001, the documents evidencing transfer for consideration of any immovable property for the purpose of Section 53-A of the of the Act, 1882 shall require registration, if they have been executed on or after commencement of the Registration (Amendment) Act, 2001, and if such documents are not registered on or after such commencement, they shall have no effect for the purpose of said Section 53-A of the Act, 1882. Accordingly, he submits that since in the present case, the compromise deed was executed after induction of Section 17(1A) of Registration Act, therefore, the compromise deed requires registration and benefit under Section 53-A of the Act, 1882 cannot be extended to the defendants.

21. On the aforesaid count, he submits that the judgement of **B.P. Singh (supra)** is not applicable in the facts of the present case, therefore, the Trial Court has erred in law in relying upon the judgment of **B.P. Singh (supra)** case to conclude that Section 107 of the of the Act, 1882 is not attracted in the present case.

22. *Per contra*, learned counsel for the respondents would contend that the Trial Court has rightly concluded that by the compromise deed, only pre-existing rights between the parties with regard to relationship of landlord and tenant has been recognized, and no new right has been recognized, therefore, the compromise decree does not fall within the ambit of Section 17(1) (d) of the Act, 1908, and the compromise decree comes within the ambit of Section 17(2) (vi) of the Act, 1908 therefore, it does not require registration and the Trial Court has rightly concluded that the compromise decree does not require registration.

23. He further submits that the Trial Court has rightly placed reliance upon the judgement of this Court in the case of **B.P. Sinha (supra)** in concluding that the lease by way of compromise deed between the parties is a lease for lifetime, and therefore, it is not hit by Section 107 of the of the Act, 1882.

24. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

25. Before appreciating the argument of learned counsel for the respective parties, it would be useful to have a glance at the compromise deed entered into between the parties in S.C.C.

Suit No.33 of 2003. The compromise deed entered into between the parties is reproduced herein-below:

“उपरोक्त वाद में निवेदन है कि पक्षकारान वाद में समझौता हो गया है। प्रतिवादीगण विवादग्रस्त सम्पत्ति वाद पत्र में वादी की ओर से अंकन चार हजार रुपया मासिक की दर से किरायेदार बदतूर रहेगा। प्रतिवादी अपनी स्वेच्छा से दुकान खाली कर सकता है यदि प्रतिवादीगण किराया अंदायगी में डिफाल्ट करते हैं तो बेदखाली के पात्र होंगे। किराया दि० 1-10-2007 से 4,000/- रुपया मासिक रहेगा। और प्रत्येक वर्ष उपरोक्त किराये में 5 प्रतिशत की वृद्धि होती रहेगी। प्रतिवादीगण ने किराया वासलात दि० 30.9.07 तक का न्यायालय में जमा कर दिया है जिसे वादी को प्राप्त करने का अधिकार है। प्रतिवादीगण ते तीन लाख पचास हजार रुपया की जमानत राशि वादनी पर जमा कर दी है वह रकम उपरोक्त प्रतिवादीगण बरवक्त खाली करने विवादित सम्पत्ति वादी से वापिस पाने की अधिकारी होंगे। खर्चा पक्षकार दोनों पक्ष अपना-अपना स्वयं वहन करेंगे। अतः प्रार्थना है कि वाद उपरोक्त समझौते के अनुसार निर्णित करने की कृपा की जावे किराया प्रतिवादीगण, वादनी को चेक के माध्यम से अदा करते रहेगे।”

26. Under the compromise deed, it has been agreed between the parties that the rent of the shop would be Rs.4000/- per month and the defendants can vacate the shop at ‘will’. However, the compromise deed further recorded that in case of default in payment of rent, the defendants would be liable for eviction. The compromise deed further recorded that the rent of the shop will be Rs.4,000/- per month from 01.10.2007 which shall be enhanced to 5% every year.

27. Under the compromise decree, the defendants deposited Rs.3,50,000/- as security money with the plaintiffs mother which is to be returned to the defendants at the time of vacation of the shop by the defendants.

28. At this stage, it would be useful to refer to a judgement of the Apex Court in the case of **Bhoop Singh Vs. Ram Singh Major and others AIR 1996 SC 196** in which it has been held

that if the documents 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. In this respect, paragraph nos.13, 17 & 18 of the judgement relevant in the context of the present case are reproduced herein-below:-

“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.

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 of 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 registerable.

18. The legal position qua Clause (vi) of Section 17(2) 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."

29. Now, in the light of the principles enunciated by the Apex Court in the case of **Bhoop Singh (supra)**, laying down the conditions when a compromise memo requires registration, this Court proceeds to consider whether in the present case, the compromise memo requires registration or not.

30. In the present case, as already stated that by the compromise deed though relationship of landlord and tenant was already in existence, but it has been agreed between the parties for the first time that the defendants could vacate the shop at their 'will'. However, in case of default in payment of rent, the defendants would be liable for eviction.

31. By the said compromise memo, it has also been agreed for the first time that the rent of the shop has been enhanced to Rs.4,000/- w.e.f. 01.10.2007 which shall be enhanced at the rate of 5% every year. By the said compromise deed, the security amount of Rs.3,50,000/- was to be deposited by the defendants which they are entitled to get at the time of vacation of the shop.

32. From the aforesaid terms and conditions of the compromise memo, it is evident that new right of the defendants has come into existence to the effect that the defendants could vacate the shop at their 'will'. However, plaintiffs could evict the defendants on default in payment of rent.

33. By the said agreement, the rent of Rs.4,000/-has also been agreed between the parties and the defendants are bound to pay Rs.4,000/- per month, and the rent under the agreement is to be increased every year at the rate of 5%.

34. Under the compromise memo, it has also been agreed for the first time that the defendants shall deposit Rs.3,50,000/- as security money which they are entitled to recover from the plaintiffs.

35. There is nothing on record nor any such plea has been set up by the defendants that the rights flowing from the compromise memo delineated above were already in existence. The aforesaid rights of the parties which flow from the compromise deed has been recognized for the first time by the compromise decree and those rights were not the pre-existing rights, therefore, this Court is of the view that the compromise decree creates new rights between the parties as the said compromise memo for the first time gives right to the defendants to vacate the shop at their own 'will' besides the other rights which have been delineated above.

36. Hence, this Court is of the view that the compromise decree falls within the ambit of Section 17 (1)(d) of the Act,

1908 in view of the judgement of Apex Court in the case of ***Bhoop Singh (supra)*** which requires registration.

37. In view of the terms and conditions of the compromise deed by which it has recognised the rights of the defendants to vacate the shop at 'will' and further enhancement of rent at the rate of 5% per year, this Court finds substance in the submission of the learned counsel for the plaintiffs that the compromise memo is a lease for more than one year, and therefore, requires registration under Section 17(1)(d) of the Act, 1908.

38. So far as the judgement of Apex Court in the case of ***Som Dev & Others Vs. Rati Ram & Another 2006 (10) SCC 788*** relied upon by the learned counsel for the defendants is concerned, this Court is of the view that the judgement of ***Som Dev (supra)*** is not applicable in the facts of the present case inasmuch as in paragraph 12 of the said judgement, the Apex Court held that there is no exemption or exclusion in respect of clauses (a), (d) & (e) of Section 17 (1) 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. Since, this Court has held that compromise decree is for a term exceeding one year, therefore, it requires registration even as per the case of ***Som Dev (supra)*** relied upon by the learned counsel for the respondents.

39. Now, the second limb of argument is whether the judgement of this Court in the case of ***B.P. Sinha (supra)*** is

applicable in the facts of the present case, it is pertinent to note that in the case of **B.P. Sinha (supra)**, the lease deed which is in the form of a letter purporting to be the lease deed contained following recitations:-

“I want to let out my entire bungalow in the western corner of which you live to the A.G.'s Office. I hope you will vacate this. In place of this you will please go to the house behind this Kothi. You will pay Rs.40/- per month as rent of that and in that you can live as long as you desire and you will receive the same facility which you had in the old house.”

40. This Court while interpreting the lease deed in the case of **B.P. Sinha (supra)** has placed reliance upon the extract of the lease deed *“You will pay Rs.40/- per month as rent of that and in that you can live as long as you desire and you will receive the same facility which you had in the old house”* and concluded that the aforesaid quoted statement in the lease deed reflects the intention of the lessor to lease out the suit property for the lifetime of the lessee. Consequently, this Court held that the lease is not a lease at ‘will’ or permanent lease, but it is a lease for lifetime.

41. Further, this Court placed reliance upon Section 53-A of the Act, 1882 to conclude that by virtue of Section 53-A of the Act, 1882, the possession of the defendant is protected. In the present case, the terms and conditions in the compromise memo are entirely different from the lease deed in the case of **B.P. Sinha (supra)**.

42. In the case of **B.P. Sinha (supra)**, there was no condition enumerated in the lease deed that the plaintiff/lessor could evict the lessee from the suit premises in case of default in payment of rent. The lease deed is silent in this respect.

43. Further, there was no condition of enhancement of rent in the lease deed in the case of ***B.P. Sinha (supra)*** whereas in the present case, it is stated in the compromise deed that there shall be 5% increase in the rent every year. In the case of ***B.P. Sinha (supra)***, it is evident from the lease deed that the lessor did not have any right to evict the defendant from the shop on the default of payment of rent.

44. It is also pertinent to note that this Court on interpretation of the lease deed in the case of ***B.P. Sinha (supra)*** concluded that the lease is for less than one year whereas this Court in the present case has held above that terms and conditions of the compromise memo in the instant case clearly establishes that the lease is for more than one year, and therefore, Section 107 of Act, 1882 is attracted.

45. Further, in the case of ***B.P. Sinha (supra)***, protection of Section 53-A of the Act, 1882 was extended by the Court as at that relevant time, the document transferring the possession of property for the purpose of Section 53-A of the Act, 1882 did not require registration whereas after the Registration (Amendment) Act, 2001, sub-section (1A) has been inserted in Section 17 of the Act, 1908, which provides that the document containing stipulation to transfer any immovable property for consideration for the purpose of Section 53-A of the Act, 1882 requires registration.

46. In the instant case, the compromise memo has been entered after Section 17 (1A) of the Act, 1908 has been introduced in the Act, 1908, therefore, in view of Section 17(1A) of the Act, 1908, the compromise memo requires

registration. Thus, for the aforesaid reason, the judgement of this Court in the case of ***B.P. Sinha (supra)*** is not applicable in the facts of the present case, and the Trial Court has erred in law in relying upon the judgement of ***B.P. Sinha (supra)***.

47. Thus, for the reasons given above, the impugned order cannot be sustained and is hereby set aside. Consequently, the present revision is ***allowed*** and the S.C.C. Suit No.63 of 2008 is decreed.

Order Date :- 08.01.2025
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