

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

1. RSA No.3361 of 1987 (O&M)  
Date of decision : 17.01.2018

Dass Ram (deceased) through his LRs

...Appellants

Versus

Mohinder Singh (deceased) through his LRs

...Respondents

2. RSA No.216 of 1988 (O&M)  
Date of decision : 17.01.2018

Sukhpal Singh and others

...Appellants

Versus

Mohinder Singh (deceased) through his LRs and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Ish Puneet Singh, Advocate for the appellants.

Ms. Upasna Dhawan, Advocate for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

By this order, I shall be disposing of two Regular Second  
Appeal bearing Nos.3361 of 1987 and 216 of 1988.

The defendants-appellants are in two separate appeals against  
the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for declaration claiming that he is

owner in possession of land measuring 18 kanals 12 marlas. In the alternative, the plaintiff also prayed that if he is not found in possession, then the decree for recovery for possession be passed in his favour with respect to 9 kanals and 2 marlas. The plaintiff claimed that in the previous litigation filed by the father of the plaintiff against defendant No.1, a Civil Court decree was passed on the basis of the compromise and it was declared that the father of the plaintiff is owner in possession of 18 kanals and 12 marlas of land. The previous suit was a genuine dispute between the parties as father of Mohinder Singh was in possession of land measuring 40 kanals and 18 marlas which was allotted to defendant No.1-Das Ram and a dispute arose between the parties. In that litigation, the parties settled their disputes and arrived at a compromise. It is not in dispute that the aforesaid decree has become final between the parties and has never been set aside.

On appreciation of the evidence, available on the file, both the Courts below have recorded the concurrent findings of fact, decreeing the suit of the plaintiff declaring him to be the owner of land measuring 18 kanals and 12 marlas as per the Civil Court decree dated 18.04.1972 and also passed a decree for possession of land measuring 9 kanals and 2 marlas.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the records.

Learned counsel for the appellants has made two fold submissions. First submission is that earlier decree dated 18.04.1972 is not enforceable, since the decree is not registered. He has further submitted that the terms of the compromise deed are not part of the decree and hence

decree does not enure for the benefit of the plaintiff or his predecessor. In support of his first argument, learned counsel for the appellants has relied upon the judgments passed by the Hon'ble Supreme Court in *AIR 1996 Supreme Court 196(1), Bhoop Singh Vs. Ram Singh Major and others*, and *AIR 2008 Supreme Court 2337, K. Raghunandan and others Vs. Ali Hussain Sabir and others*.

Before examining the judgments passed by the Hon'ble Supreme Court, it would be apt to notice the statutory provisions. Section 17 of the Registration Act, 1908 provides a list of documents which are compulsorily registrable. Sub-Section 2 of Section 17 of the Act excludes certain documents which are in the nature of exception. Section 17(2)(vi) provides that a decree or order of a Court does not require registration except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit or proceedings. Section 17 of Registration Act, 1908 is extracted 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) instruments of gift of immovable property;*

*(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) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*

*12[(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 leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.*

*The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then,*

*they shall have no effect for the purposes of the said Section 53-A.*

*(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-*

*(i) any composition-deed; or*

*(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or*

*(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or*

*(iv) any endorsement upon or transfer of any debenture issued by any such company; or*

*(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or*

*(vi) 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;] or*

*(vii) any grant of immovable property by government; or*

- (viii) any instrument of partition made by a revenue-officer; or*
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or*
- (x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or*
- [(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or]*
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or*
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.*

*15[Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]*

*(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”*

A careful reading of Section 17 of the Act would establish that  
a decree passed by the Civil Court does not require registration unless

decree is on the basis of the compromise and comprising the immoveable property other than that which is the subject matter of the suit or proceedings. Hence, both the conditions must co-exist before a Civil Court decree is held to be compulsory registrable i.e. the decree must have been passed on the basis of compromise and such compromise deals with the immoveable property which is beyond the subject matter of the suit or other than the subject matter of the suit.

The judgment relied upon by the learned counsel i.e. *AIR 1996 Supreme Court 196(1), Bhoop Singh Vs. Ram Singh Major and others*, deals with the situation where compromise is creating a right in the property in presenti. In other words, through a compromise decree, for the first time, the rights are being created then the decree shall require registration. This is not the position in the present case. The predecessor of the defendants was in possession of the property since long. The property was allotted to Das Ram-defendant-appellant. There was dispute between the parties. In a litigation filed, parties entered into a settlement to resolve the dispute. The suit was disposed of on the basis of the aforesaid settlement. Hence, the rights were not created in favour of the father of the plaintiff-respondent for the first time through the decree. The possessory right of the predecessor of the plaintiff was recognized and the litigation between the parties was resolved through a settlement.

Second judgment relied upon by the learned counsel also does not have any bearing on the present case because in that case, Hon'ble the Supreme Court was dealing with a situation where decree of compromise was dealing with a property which was not subject matter of the suit. In the

present case, even the appellants do not dispute that compromise is with respect to the property which was subject matter of the suit filed. Still further, the defendants-appellant were party to the decree passed in the year 1972. It has never been challenged by the defendants.

In the considered opinion of this Court, a party who had suffered a decree cannot later on challenge the same on the ground of non-registration. Reliance can be placed on the judgments of this Court in *2000 (2) PLR 312, Parveen Kumar Vs. Shiv Ram @ Sheo Ram, 2011(3) PLR 164, Zehro Vs. Balbir Singh and 2007(2) RCR (Civil) 62 Rajjo Vs. Jawahar Singh.*

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, both the appeals are dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

**17.01.2018**  
*Pawan*

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned:-**                      **Yes/No**

**Whether reportable:-**                              **Yes/No**