

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

RSA No.681 of 2002 (O&M)

Date of decision : 13.02.2019

Jasvir Singh and another

...Appellants

Versus

Shavinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Garg, Advocate for the appellants.

Mr. J.S. Gill, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff Nos.3, 4 and 5-appellants have filed the appeal against the judgment passed by learned First Appellate Court reversing the judgment and decree passed by the trial Court.

The judgment and decree passed by the trial Court was reversed only on the ground that plaintiff Nos.3 to 5 are not heirs of late Sh. Narinder Singh, who died as childless bachelor, therefore, they cannot claim to have become owner of the suit property on the basis of compromise decree as they had no pre-existing rights in the property and the compromise decree has not been registered.

In the considered view of this Court, question of law which requires consideration is “whether a bona fide compromise decree is required to be registered with respect to the property subject matter of the

suit between the parties to the litigation?”

Facts are not much in dispute. Five plaintiffs filed the suit for declaration that they are owners in possession of the land measuring 68 kanals on the basis of a compromise decree dated 06.02.1992.

Defendants contested the suit and pleaded that the suit is hit by principle of res judicata which applies against plaintiff Nos.1 and 2 and plaintiff Nos.3 to 5 are not owners of the suit land, although they were defendants in the previous suit but their names were dropped by the plaintiffs in the previous suit. Hence, it was claimed that the defendants are not bound by any compromise decree.

Learned trial Court on appreciation of evidence decreed the suit whereas as noticed above, learned First Appellate Court has reversed the judgment of the trial Court.

In the present case, the compromise decree passed in the previous suit is available on file. Through the compromise decree, two civil suits in between the parties were disposed of by a consolidated compromise (Ex.PX) judgment and decree passed. The Civil Suits which were disposed of were Civil Suit No.493-I of 11.12.1987 in which appellants-plaintiff Nos.3, 4 and 5 herein were defendant Nos.23, 24 and 25. There was another suit bearing Civil Suit No.240 of 30.11.1984. As per the aforesaid compromise decree, plaintiff Nos.3, 4 and 5 herein were fourth party and they were declared owners of the suit property. The relevant part of the decree dealing with the plaintiffs is extracted as under:-

“4) Fourth party; Jasvir Singh, Chand Kaur and Balwinder Kaur have become owners with possession of land

measuring 68 kanals zero marlas comprising khasra Nos.15min (17-0), 16min (29-0), 23min (6-0), 26min (16-0), situated in the area of V. Narain Garh Tehsil Faridkot out of the disputed land on the basis of possession and rights in the land.”

The plaintiffs have now in this suit claimed that they are owners of the property on the basis of compromise judgment and decree.

As per Section 17(2)(vi) of the Registration Act, 1908 (hereinafter to be referred as “the Act of 1908”), any decree or order of a Court is not required to be registered except a decree or order expressed to be made on a compromise and comprising of immovable property other than that which is the subject matter of the suit or proceedings. Section 17 of the Act of 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 examined on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 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;

[(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 rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A 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 53A.]

(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 in so far 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 [other than the documents specified in sub-section (1A)] 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 the 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

[(x-a) any order made under the Charitable Endowments Act, 1890, (6 of 1890), vesting any property in a Treasurer of Charitable Endowments of 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.

[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.”

Thus, any decree or order of a Court does not require registration unless it falls in the excepted category as specified in Section 17 (2)(vi) of the Act of 1908. It is apparent that the appellants were party to the litigation. It has not been shown that the compromise decree was not subject

matter of the previous litigation (suits). In absence thereof, the judgment and decree passed on 06.02.1992 on the basis of compromise, correctness whereof is not disputed, was not required to be registered. Therefore, the judgment and decree passed by the learned First Appellate Court while recording a finding that the compromise decree was required to be registered, is erroneous. Hence, the judgment and decree passed by the learned First Appellate Court is set aside. Accordingly, the question of law framed is answered against the respondents and in favour of the appellants.

The Regular Second Appeal is allowed.

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

13.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No