

## **A CONSENT DECREE DOES NOT REQUIRE REGISTRATION IF IT CONFIRMS A PRE-EXISTING RIGHT IN PROPERTY**

### **INTRODUCTION:**

*The Supreme Court in its recent decision in **Khushi Ram and Others Vs Nawal Singh and Others**<sup>1</sup> held that a consent decree does not require registration under Section 17(2)(vi) of the Indian Registration Act, 1908 if it confirms a pre-existing right in property.*

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### **FACTS:**

One Badlu, who was the tenure-holder of an agricultural land situated in Village Garhi Bajidpur, Tehsil and District Gurgaon, had two sons Bali Ram and Sher Singh.

Sher Singh died in the year 1953 issueless leaving his widow Smt. Jagno.

The Appellants (Original Plaintiffs in Suit No. 79 of 1991) are descendants of Bali Ram.

After the death of Sher Singh, his widow inherited the share of her late husband, i.e., the half share of the agricultural property originally owned by Badlu.

A civil suit was filed by Nawal Singh and others (Respondents) against Smt. Jagno in the Court of Sub-Judge, Gurgaon claiming decree of declaration as owners in possession of the agricultural land mentioned in the suit to the extent of the half share. The Respondents claim was that Smt. Jagno, who was the owner of the half share, had in a family settlement, settled the land in favour of the Respondents, who were the son's of her (Smt. Jagno's) brother.

Smt. Jagno filed a written statement in the civil suit admitting the claim of the Respondents. Smt. Jagno also made a statement in the suit

accepting the claim of the Respondents. The trial court, by consent of the parties thereto, on 19th August, 1991, declared Nawal Singh and two others as the owners in possession of the half share in the land which originally belonged to Badlu.

The Appellants filed a Civil Suit No. 79 of 1991 in the Court of Senior Sub-Judge Gurgaon praying for a declaration that the decree dated 19th August, 2021 passed in the Suit filed by Nawal Singh and others, is illegal, invalid and without legal necessity. The Appellants also claimed a decree of declaration in their favour declaring them owners in possession of the land in question.

The trial court rejected the argument of the Appellants (Original Plaintiffs) that in the absence of registration of a decree, no right or title would pass in favour of the Respondents (Original Defendants). The Trial court held that registration is required when fresh rights are created for the first time by virtue of a decree itself. It was held that in the case in hand, Respondents had pre-existing rights in the suit property under a family settlement. Smt. Jagno acknowledged them as owner and surrendered the possession of the suit property in their favour at the time of the family settlement and

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<sup>1</sup> 2021 SCC OnLine SC128

the decree dated 19th August, 1991, merely affirms their pre-existing rights and hence, does not require registration.

The Appellants aggrieved by the judgment of the trial court, filed a first appeal before the learned District Judge, which appeal came to be dismissed.

Aggrieved against the judgment of the First Appellate Court, the Appellants approached the Punjab and Haryana High Court.

The Punjab and Haryana High Court upheld the order passed in the first appeal; hence the Appellants approached the Apex Court.

### **ISSUES FOR CONSIDERATION:**

One of the issues for consideration before the Apex Court *inter alia* was as follows:

Whether the decree dated 19<sup>th</sup> August, 1991, passed in civil suit required registration under Section 17 of the Indian Registration Act, 1908?

### **SUBMISSIONS ON BEHALF OF THE APPELLANT:**

The Appellants submitted that no family settlement could have been entered by Smt. Jagno in favour of the Respondents, on them being strangers to the family. A Hindu widow cannot constitute a Joint Hindu Family with the descendants of her brother, i.e., her parental side. Family settlement can take place only between members, who have antecedent title or pre-existing right in the property proposed to be settled.

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<sup>2</sup> (1995) 5 15 SCC 709

All the Courts below committed an error in upholding the decree dated 19th August, 1991, whereas the decree being an unregistered decree was liable to be ignored and declared inoperative.

The submission of the Appellant was that there was no pre-existing right in the Respondents, hence the decree dated 19th August, 1991, required registration under Section 17(1)(b) since the decree created rights in favour of the Respondents<sup>2</sup> and<sup>3</sup>.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

The Respondents contended that they had a pre-existing right in the suit property.

It was submitted that the decree passed in the civil suit filed by Nawal Singh and others dated 19th August, 1991, only declared the pre-existing rights of the Respondents, which was based on a family settlement. It was submitted that the Respondents being the brother's sons of Smt. Jagno, were not strangers to Smt. Jagno and a family settlement could have been very well entered by Smt. Jagno with them.

Accordingly, the decree dated 19th August, 1991, did not require any registration under Section 17 of the Indian Registration Act, 1908 ("the Act").

### **JUDGMENT:**

The Apex Court observed and held that the consent decree dated 19th August, 1991, was

<sup>3</sup> Civil Appeal No. 890 of 2008

related to the subject matter of the suit filed by Nawal Singh and others and the consent decree did not require registration under Section 17 (2) (vi) of the Act.

The consent decree dated 19th August, 1991, was not registrable and the lower Courts had rightly held that the consent decree did not require registration as there were pre-existing rights. The appeal was dismissed.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*