

COMPROMISE DECREE REQUIRES NO REGISTRATION IF IT DOES NOT TAKE IN PROPERTY THAT IS NOT SUBJECT MATTER OF SUIT

*The Supreme Court of India in its recent decision in **Mohammade Yusuf & Ors V. Rajkumar & Ors.** observed that a compromise decree does not require registration if it does not take in property that is not the subject-matter of the suit.*

FACTS:

A suit for declaration and injunction being (suit no. 250-A of 1984) was filed by one Habib Kha, the father of the Appellant in respect of property admeasuring. 7 biswa at Survey No. 203 situated at Village Kitvani, Kasba Mandsaur ("**Suit Property**"), which was attached in east to the land of plaintiff being Survey No.223 (hereinafter the "**First Suit**"). The plaintiff was in possession of the suit property, which was recorded in the name of defendant. A compromise decree dated 04th October 1985 was passed in the Suit declaring the right of plaintiff on 7 biswa area i.e. the Suit Property and it was declared that remaining land belonged to the defendant to the Suit.

The Appellants, being sons of Habib Kha claimed to be in possession of the Suit Property and continued to be in possession thereof. Another suit (being suit no.90-A of 2006) was filed by Respondent Nos. 1 and 2 against the Appellants for perpetual injunction in respect of two areas admeasuring 825 square feet and 1650 square feet bearing Survey No.203 forming part of the Suit Property ("**Second Suit**").

A written statement was filed by the Appellants in the Second Suit wherein it was pleaded that the Respondents have forcefully taken the possession of area admeasuring 1650 sq. ft.

being the part of survey No.203, which was in actual, peaceful and uninterrupted possession of the Appellants and their family since 1951. Along with the written statement, a counter claim was filed by the Appellants for recovery of possession of the said area.

During the evidence of one of the Appellants, he tried to exhibit the compromise decree dated 04th October 1985 passed in the First Suit, and this was objected by the plaintiff to the Second Suit. The Plaintiff's objection to the admissibility of the decree was that the decree was not registered and therefore cannot be accepted in evidence.

The Learned Civil Judge on hearing the parties, passed an order dated 7th October 2015 on the admissibility of the said decree and stated that the compromise decree dated 04th October 1985 is required to be registered as per the provisions of Section 17(1) (e) of the Registration Act, hence it is not admissible in evidence. A Writ Petition (being No. 2170 of 2015) was filed by the Appellant challenging the Civil Judge's order dated 7th October 2015. The High Court by the impugned judgment dismissed the Writ Petition stating that the decree was required to be registered.

The High Court held that the very fact that the First Suit was based on the plea of adverse possession reflects that the Plaintiff of the First

Suit had no pre-existing title to the Suit Property. Relying on the judgment of the Supreme Court in *Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another, (2014) 1 SCC 669*, the High Court held that it is settled that declaratory decree based on the plea of adverse possession cannot be claimed and adverse possession can only be used as a shield by the defendant. Aggrieved with this judgment of the High Court, the plaintiff filed an appeal before the Supreme Court of India.

ISSUE:

The issue to be considered in the appeal was whether the compromise decree dated 4th October 1985 was required to be registered under Section 17 of the Registration Act, 1908 or not?

JUDGMENT:

The apex court considered Part III of the Registration Act, more particularly, Section 17 thereof. Section 17(1) deals with documents of which registration is compulsory. Section 17(2) provides that nothing in clauses (b) and (c) of sub-Section (1) applies to various documents as enumerated therein. Importantly, Section 17(2)(vi) states as follows:

"(2) Nothing in clauses (b) and (c) of subsection (1) applies to— (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;"

The court observed that generally, a compromise decree passed by a Court would be covered by Section 17(1)(b) but subsection(2) of Section 17 provides for an

exception for any decree or order of a Court except a decree 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. Thus, by virtue of sub-section(2)(vi) of Section 17, any decree or order of a Court does not require registration.

By conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of Section 17(2)(vi).

A copy of the compromise decree passed on 04th October 1985 in the First Suit was brought on record in the Second Suit. The compromise decree was passed by the court in respect of the Suit Property, which was also the subject matter of the Second Suit. Accordingly, the court observed that the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree was not required to be registered.

The apex court discussed the judgment in ***Gurdwara Sahib v. Gram Panchayat*** (*supra*) relied upon by the High Court while dismissing the Writ Petition of the Appellant. In ***Gurdwara Sahib v. Gram Panchayat*** (*supra*), the apex court had held that declaratory decree based on the plea of adverse possession cannot be claimed and adverse possession can only be used as a shield in defence by the defendant.

However, a three Judge Bench of the Supreme Court expressly overruled the judgment of ***Gurdwara Sahib v. Gram Panchayat Village***

(*supra*) in **Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, (2019) 8 SCC 729.**

The apex court in the above case held that once the 12-year period of adverse possession is over, even owner's right to eject the possessor is extinct and the possessory owner acquires right, title and interest possessed by the outgoing person/owner. In **Ravinder Kaur Grewal and Others v. Manjit Kaur and Others (supra)**, the apex court stated as follows:

"62. ... In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession."

As the Supreme Court by Three Judge Bench judgment in *Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others (supra)* overruled the view taken in *Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra)*, the very basis of the High Court for holding that compromise decree dated 04th October 1985 requires registration is ruled out. The court further observed that there is no allegation that the decree dated 04th October 1985 is a collusive decree.

In view of the facts in the present case, the compromise decree dated 4th October 1985 was with regard to property, which was the subject matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi).

Accordingly, the Supreme Court held that the compromise decree did not require registration and the Learned Civil Judge as well as the High Court

erred in holding otherwise. The order of the Civil Judge as well as the judgment of the High Court were set aside. While allowing the appeal, the compromise decree was directed to be exhibited by the trial court.

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.