2024 INSC 1026

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14808 OF 2024
(Arising out of SLP (C)No. 4293 of 2021)

MUKESH ...APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH & ANR. ...RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted.

2. This appeal has been filed against the Order dated 06.12.2019 passed by the High Court of Madhya Pradesh, Bench at Indore[1] in dismissing the Miscellaneous Petition bearing No.3317 of 2019 filed by the appellant herein. By the said order, the High Court upheld the order dated 23.08.2016 passed by the Collector of Stamps, determining stamp duty at Rs.6,67,500/- payable by the appellant *qua* land in Survey No.2087, 2088/9/1/1 measuring an extent of 0.076 Ares situated at Village Kheda, Tehsil Badnawar, District Dhar[2], acquired by him by way of consent decree, as affirmed by the Board of Revenue by order dated 12.02.2019.

[1] Hereinafter referred to as "the High Court"

[2] Hereinafter referred to as "the subject land"

3. Originally, the appellant had filed a Civil Suit bearing No.47-A/2013 before the Court of First Civil Judge, Class-2, Badnawar, for declaration and permanent injunction against one Abhay Kumar (Respondent No.2 herein) and the State of Madhya Pradesh (Respondent No.1 herein) stating that he is the owner of the subject land and is in long and continuous possession of the same by doing cultivation. It was alleged in the said suit that in the year 2013, the Respondent No.2 herein, who is the adjacent land owner of the appellant, attempted to sell the subject land to third parties, thereby dispossessing the appellant from the same. Pending the suit, both the parties entered into a compromise, based on which, the suit came to be decreed in favour of the appellant, on 30.11.2013 and the Respondent No.1 - State of Madhya Pradesh did not raise any objection nor filed any appeal against the said compromise decree. In terms of the said order dated 30.11.2013, the appellant applied for mutation of the said land before the Tehsildar concerned, who in turn referred the case to the Collector of Stamps, District Dhar (M.P). Upon perusal of the records, the Collector of Stamps initiated proceedings under Section 33 of the Indian Stamp Act, 1899, and consequently directed the appellant to pay a sum of Rs.6,67,500/- towards stamp duty, by order dated 23.08.2016. Challenging the said order, the appellant preferred a revision, which was dismissed by the Board of Revenue, Gwalior, Madhya Pradesh, *vide* order dated 12.02.2019. Aggrieved by the same, the appellant preferred Miscellaneous Petition No.3317 of 2019 to quash the said

orders passed by the Collector of Stamps as well as the Board of Revenue. By the order impugned herein, the High Court dismissed the said Miscellaneous Petition, relying on its earlier order dated 24.07.2019 passed in M.P.No.3634 of 2019[3], wherein, reference was made to (i)the decision of this Court in *Bhoop Singh v. Ram Singh Major*[4], in which, it was held that 'if a compromise decree is obtained as a device to obviate payment of stamp duty and frustrate the latter requirement of registration, then such a decree is required to be registered under the Registration Act and as a consequence thereof, the stamp duty is also payable'; and (ii)the order of the High Court *dated 13.02.2017 in WP No.2170 of 2015*[5]; and ultimately, it was held that the consent decree obtained in the suit, through which, new right was created over the property, needs registration and for this reason, stamp duty is also required to be paid. Being dissatisfied with the same, this appeal came to be filed by the appellant before this court.

4. According to the learned counsel for the appellant, the issue involved in this matter is squarely covered by the judgment of this Court in *Mohd. Yusuf v. Rajkumar*[6], wherein, the order dated 13.02.2017 passed in W.P.No.2170/2015 relied on by the High Court in the order dated 24.07.2019 passed in M.P.No.3634 of 2019, based on which, the order impugned herein came to be passed by the High Court, has been set aside, by holding that a compromise decree does not

[3] Siddhulal Kachi v. State of Madhya Pradesh and another

[4] (1995) 5 SCC 709

[5] Mohd. Yusuf and others v. Rajkumar and others

[6] (2020) 10 SCC 264

require registration. It was further clarified in the said judgment 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) of the Registration Act, 1908*'.

4.1. Adding further, the learned counsel submitted that the High Court erred in placing reliance on its earlier order dated 24.07.2019 made in M.P.No.3634/2019 (*Siddhulal* case), as the facts of the present case are clearly distinguishable from the facts of that case. *Siddhulal* case was arising out of a suit for declaration on the basis of adverse possession and that, by way of consent decree, new right was created over the property, whereas the appellant herein preferred the suit for declaration and permanent injunction on the basis of his long and continuous ownership and possession of the subject land and he acquired pre-existing right over the same through consent decree.

4.2. It is also submitted by the learned counsel that there was no finding of collusion between the appellant and Respondent No.2 by any Court.

4.3. The learned counsel further submitted that court orders or decrees are not chargeable with stamp duty unless they fall under specific categories of instruments enumerated in Schedule I read with section 3 of the Indian Stamp Act, 1899. In the present case, the consent decree in favor of the appellant is not chargeable with stamp duty, as it does not create any new right, but it conveys the pre-existing title, right or interest over the subject land.

4.4. Thus, according to the learned counsel, the order of the High Court upholding the order of the Collector of Stamps as affirmed by the Board of Revenue, determining stamp duty under Article 22A of Schedule 1A of the Indian Stamp Act, 1899, and for recovery of the same from the appellant, is illegal and contrary to law and is hence, liable to be set aside.

5. On the other hand, the learned counsel for the Respondent No.1 submitted that during the pendency of the civil suit, the appellant and Respondent No. 2 mutually agreed to enter into a compromise and accordingly, presented an application to refer the case to National Lok Adalat and a compromise decree was passed on 30.11.2013 in Civil Suit No.47A/2013, by which, the Respondent No.2 was restrained from interfering with the appellant's possession over the subject land and the appellant was entitled to get his name recorded in the revenue records in respect of the subject land.

5.1. It is further submitted that based on the reference made by the Tehsildar, Badnawar District, Dhar (MP), the Collector of Stamps initiated proceedings under section 33 of the Indian Stamp Act, 1899 and *vide* order dated 23.08.2016, directed the appellant to pay a sum of Rs.6,67,500/- towards stamp duty as per the market value of the subject land. According to the learned counsel, the Collector of Stamps has not gone into the question of registration, but has determined the stamp duty payable by the appellant for the subject land, which was also rightly affirmed by the Board of Revenue, by order dated 12.02.2019 in

the revision preferred by the appellant.

5.2. The learned counsel further submitted that admittedly, the subject land was not recorded in the name of the appellant in the revenue records maintained by the State and there was a dispute regarding title of the property. As such, the protection claimed by the appellant under Section 17(2)(vi) of the Registration Act, 1908, does not hold good.

5.3. That apart, it is contended by the learned counsel that the present case seems to be a case of collusion between the appellant and Respondent No.2 and the Civil Suit was instituted only with an intent to evade the payment of stamp duty.

5.4. The learned counsel for the Respondent No.1 ultimately submitted that in view of the settled legal position and taking note of the facts and circumstances indicated above, the decision in *Mohd. Yusuf v. Rajkumar [(2020) 10 SCC 264]* is factually distinguishable and therefore, the appellant is liable to pay stamp duty against mutation of the subject land.

5.5. Thus, according to the learned counsel, the order passed by the High Court is a well-considered one and the same does not require any interference in the hands of this Court.

6. We have heard the learned counsel for the appellant and the learned counsel for the Respondent No.1 and also perused the materials available on record. Despite service of notice, none appeared on behalf of the Respondent No.2.

7. There are two issues involved herein *viz.*, Registration of the document and payment of stamp duty, which are separate and distinct concepts. As regards the issue of registration, we may refer to Section 17 of the Registration Act, 1908[7], which deals with the documents of which registration is compulsory and the same reads as follows:

> ***"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;*
> *[(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 lease 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 (48 of 2001) and if such documents are not registered on or after such*

[7] For short, "the Act, 1908"

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 [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, or the Land Improvement Loans Act, 1883; or
(x) any order granting a loan under the Agriculturists, Loans Act, 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.
[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."

It is thus, clear from the above that Section 17(1) of the Act, 1908 specifies the documents for which Registration is compulsory. Sub-section (2) of Section 17 carves out the exceptions. The documents/instruments enumerated in sub-section (2) of section 17 are not compulsorily registerable. The exemption for decree or order of the Court is covered under section 17(2)(vi) of the Act, 1908 with a rider. Under the said provision, any decree or order of a Court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings) would not require compulsory registration. Section 17(2)(vi) carves out the distinction between the property which forms subject-matter of the suit and the property that was not the subject-matter of the suit, but for which a compromise has been arrived at. It would be relevant to point out that the provision permitting the compromise between the parties to include in the compromise decree, the subject matter not forming part of the suit property was introduced with effect from 01.02.1977. Prior to that, the compromise decree can be passed only with respect to properties or subject matter of suit. If a compromise decree involves immovable property other than the property for which a decree is prayed for, such a property would not be exempted and would require registration. This condition or the exclusion clause was introduced in the Registration Act, 1908 by Act 21 of 1929 by substituting for "and any award". To avail the exemption from the

mandate of compulsory registration of documents conveying immovable property of a value of more that Rs 100/-, the compromise decree arrived must be only in respect of the property that is the subject-matter of the suit. The compromise arrived at before the Lok Adalat and the award passed by the Lok Adalat thereto assume the character of a decree passed under Order XXIII Rule 3 and would also come within the ambit and purview of sub-section (2) of section 17 of the Act, 1908.

8. In the present case, seemingly, the appellant preferred Civil Suit No. 47-A/2013 against the respondents for declaration and permanent injunction claiming ownership and continuous possession over the subject land, and the same came to be decreed in favour of him, in view of the compromise arrived at between the appellant and the Respondent No.2 on 30.11.2013. For better appreciation, the order passed in the said suit is extracted below:

> *<u>Order Dt. 30.11.13</u>*
> *Both parties having presented an application have requested to take up the case in National Lok Adalat for disposal.*
> *On the request of both parties this case was taken up today in National Lok Adalat.*
> *Sh. M.P. Sharma Advocate is present with the plaintiff.*
> *Defendant is present in person.*
> *Compromise application presented on behalf of both parties was taken into consideration.*
> *Both parties were identified by Sh.M.P. Sharma Advocate.*
> *Case record was perused.*
> *It appears from the perusal of case records that according to compromise application, this suit is admitted by Def. No.1. Plaintiff is in possession over Land Survey No.2087/2088/9/1/1/ measuring 0.076 Ares situated at Village Kheda. Defendant shall not interfere with the possession of plaintiff over aforesaid lands. Plaintiff shall be entitled to get his name recorded in revenue records over aforesaid lands in place of defendant.*
> *Both parties have expressed to have voluntarily entered into this compromise.*

> *Therefore, this compromise is hereby allowed as per Ex.P-1. In context of compromise, both parties have got their statements recorded. Decree be prepared in accordance with compromise. Compromise shall be an integral part of this decree…"*

In view of the above, the appellant is entitled to possession of the subject land and the Respondent No.2 shall not interfere with the same; and the appellant is entitled to get his name recorded in the revenue records in respect of the subject land in the place of the Respondent No.2. Pertinently, it is to be pointed out that the said compromise decree has not been challenged by the Respondent No.1 before any Court of law and hence, the same attained finality and is binding on the parties.

9. It is further seen that on the strength of the compromise decree passed by the civil court, the appellant approached the Tehsildar for mutation of the subject land in his favour. However, the Tehsildar referred the case to the Collector of Stamps, who after examination, determined the stamp duty under Article 22 of Schedule IA of the Indian Stamp Act, 1899 and directed the appellant to pay a sum of Rs.6,67,500/- in the Government Treasury. The said order of the Collector of Stamps was affirmed by the Board of Revenue, in the revision filed by the appellant. The High Court has also upheld the orders so passed by the authorities below, by order dated 06.12.2019, which is impugned in this appeal.

10. Evidently, the High Court passed the impugned order by observing that the compromise decree needs registration and stamp duty is also required to be paid for mutation of the subject land. While so, reliance was made on its earlier order

dated 24.07.2019 in M.P.No.3634 of 2019 (*Siddhulal* case), in which, two decisions were referred to, *viz*., (i)the order of this Court in *Bhoop Singh* (supra) and (ii)the order passed by the High Court dated 13.02.2017 in W.P.No.2170 of 2015 in *Mohd. Yusuf* (supra). It is worth mentioning at this juncture that the said order of the High Court dated 13.02.2017 in W.P.No.2170 of 2015 was subsequently, challenged by filing Civil Appeal No.800 of 2020[8] and this Court *vide* judgment dated 05.02.2010[9], after having found that pre-existing right through adverse possession existed, has categorically held that a compromise decree does not require registration and accordingly, set aside the said order of the High Court. While so, the decision of this Court in *Bhoop Singh* (supra) was also elaborately discussed. The relevant portions of the said judgment are reproduced below for ready reference:

> ***"6.*** *Under Section 17(1)(b), 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 requires registration. The word "instrument" is not defined in the Registration Act, but is defined in the Stamp Act, 1899 by Section 2(14).*
>
> ***7.*** *A compromise decree passed by a court would ordinarily be covered by Section 17(1)(b) but sub-section (2) of Section 17 provides for an exception for 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. Thus, by virtue of sub-section (2)(vi) of Section 17 any decree or order of a court does not require registration. In sub-clause (vi) of sub-section (2), one category is excepted from sub-clause (vi) i.e. 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*

[8] Arising out of SLP (C) No.32799 of 2019)

[9] Mohammade Yusuf & others v. Rajkumar & others (2020) 10 SCC 264

proceeding. ***Thus, 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 decree passed in Suit No. 250-A of 1984 has been brought on record as Annexure P-2, which indicates that decree dated 4-10-1985 was passed by the Court for the property, which was subject-matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 4-10-1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to judgment of this Court in* ***Bhoop Singh Vs. Ram Singh Major and Others, (1995) 5 SCC 709****, in which case, the provision of Section 17(2)(vi) of Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down following in paragraphs 16, 17 and 18:-*

"16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

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 or 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 registrable.

18. The legal position qua clause (vi) 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."

8. *In the facts of that case, this Court held that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Further, the earlier decree was held to be collusive. Two reasons for holding that the earlier decree in the above said case required registration have been mentioned in paragraph 19 of the judgment, which is to the following effect:-*

"19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons:

(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.

(2) A perusal of the impugned judgment shows that the first appellate court held the decree in question as 'collusive' as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same view."

9. *Following the above judgment of Bhoop S Singh (supra), the High Court held that since the compromise decree dated 04.10.1985 did not declare any pre-existing right of the plaintiff, hence it requires registration. The High Court relied on the judgment of Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra) and made following observations in paragraphs 10, 11 and 12: -*

"10. In the present case, in the earlier suit CS No.250-A/1984 the petitioner had claimed declaration of title on the plea of adverse possession and the compromise decree was passed in the suit. The very fact that the suit was based upon the plea of adverse possession reflects that the petitioner had no pre-existing title in the suit property. Till the suit was decreed, the petitioner was a mere encroacher, at the most denying the title of lawful owner.

11. The Supreme Court in the matter of Gurudwara Sahib Vs. Gram Panchayat Village Sirthala reported in 2014(3) MPLJ 36 has settled that declaratory decree

based on plea of adverse possession cannot be claimed and adverse possession can be used only as shield in defence by the defendant. It has been held that:- (SCC p.673, paras 7-8)

"7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

8. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

12. The plea of the petitioner based upon Sec.27 of the Limitation Act is found to be devoid of any merit since it relates to the extinction of the right of the lawful owner after expiry of the Limitation Act, but in view of the judgment of the supreme court in the matter of Gurudwara Sahib (supra), the petitioner cannot claim himself to be the owner automatically after the expiry of the said limitation."

10. *The judgment of Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra) has now been expressly overruled by a Three Judge Bench judgment in Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others, (2019) 8 SCC 729. This Court held in the above case in paragraph 62 that once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner.*

11. *In para 62, following has been laid down: (Ravinder Kaur Grewal case, SCC pp.778-78)*

"62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. 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. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be

evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

12. *In para 61, this Court has expressly overruled the Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra).*

13. *In view of the pronouncement of this Court by the three-Judge Bench judgment in Ravinder Kaur Grewal v. Manjit Kaur [(2019) 8 SCC 729: (2019) 4 SCC (Civ) 453], the very basis of the High Court for holding that compromise deed dated 4-10-1985 requires registration is knocked out. The present is not a case where there is any allegation that the decree dated 4-10-1985 is a collusive decree. The decree dated 4-10-1985 was in favour of the plaintiff of 7 biswa land, Survey No. 203 and for remaining land of Survey No. 203, it was held that it belonged to the defendants.*

14. *In Bhoop Singh (supra), this Court held that the earlier decree required registration for the reasons as mentioned in paragraph 19. The reasons given in paragraph 19 of the above case has no application in the facts of the present case.*

15. *This Court in Som Dev v. Rati Ram [(2006) 10 SCC 788] while explaining Section 17(2)(vi) and Sections 17(1)(b) and (c) held that all decrees and orders of the Court including compromise decree subject to the exception as referred that the properties that are outside the subject-matter of the suit do not require registration. In para 18, this Court laid down the following: (SCC p. 800)*
"18. ... But with respect, it must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit."

16. *In the facts of the present case, the decree dated 4-10-1985 was with regard to the property, which was the subject-matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi) and the present case is covered by the main exception crafted in Section 17(2)(vi) i.e. "any decree or order of a court". When registration of an instrument as required by Section 17(1)(b) is specifically excluded by Section 17(2)(vi) by providing that nothing in clauses (b) and (c) of sub-section (1) applies to any decree or order of the court, we are of the view that the compromise decree dated 4-10-1985 did not require registration and the learned Civil Judge as well as the High Court erred in holding otherwise. We, thus, set aside the order of the Civil Judge dated 7-1-2015 as well as the judgment of the High Court dated 13-2-2017 [Mohd. Yusuf v. Rajkumar, 2017*

SCC OnLine MP 2056]. The compromise decree dated 4-10-1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly."

10.1. The judgments in *Mohd Yusuf case* (supra)[10] and *Bhoop Singh* (supra) were followed by this court in the following subsequent decisions:

(i) *Khushi Ram v. Nawal Singh*[11]:

"30. *This Court in Rajkumar case [Mohd. Yusuf v. Rajkumar, (2020) 10 SCC 264 : (2021) 1 SCC (Civ) 45] held that since the decree which was sought to be exhibited was with regard to the property which was subject-matter of suit, hence, was not covered by exclusionary clause of Section 17(2)(vi) and decree did not require registration. The issue in the present case is squarely covered by the above judgment. We, thus, conclude that in view of the fact that the consent decree dated 19-8-1991 relates to the subject-matter of the suit, hence it was not required to be registered under Section 17(2)(vi) and was covered by exclusionary clause. Thus, we, answer Question 1 that the consent decree dated 19-8-1991 was not registrable and the courts below have rightly held that the decree did not require registration."*

(ii) *Ripudaman Singh v. Tikka Maheshwar Chand*[12]

16. *The judgments of this Court in Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] and K. Raghunandan [K. Raghunandan v. Ali Hussain Sabir, (2008) 13 SCC 102] were found to be inconsistent in an order reported in Phool Patti v. Ram Singh [Phool Patti v. Ram Singh, (2009) 13 SCC 22] and the matter was thus referred to a larger Bench. The larger Bench in the judgment reported as Phool Patti v. Ram Singh [Phool Patti v. Ram Singh, (2015) 3 SCC 465: (2015) 2 SCC (Civ) 312] did not find inconsistencies between the two judgments.*

17. *Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] was a case dealing with both the situations, decree between the parties where the decree-holder does not have any pre-existing right in the property and also the situation where decree-holder has a pre-existing right. It was the second situation where the decree-holder has a pre-existing right in the property, it was found that decree does not require registration. In K. Raghunandan case [K. Raghunandan v. Ali Hussain Sabir, (2008) 13 SCC 102], the dispute was not*

[10] (2020) 10 SCC 264

[11] (2021) 16 SCC 279

[12] (2021) 7 SCC 446

> *amongst the family members but between neighbours regarding right over passage. Obviously, none of them had any pre-existing right over the immovable property in question.*
>
> ***18.*** *In view of enunciation of law in Bhoop Singh case [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709], we find that the judgment [Tikka Maheshwar Chand v. Ripudaman Singh, 2016 SCC OnLine HP 3808] and decree of the High Court holding that the decree requires compulsory registration is erroneous in law. The compromise was between the two brothers consequent to death of their father and no right was being created in praesenti for the first time, thus not requiring compulsory registration. Consequently, the appeal is allowed and the suit is decreed."*

Thus, it could be discernible that in order to fall under the exception of Section 17(2)(vi) of the Act, 1908, the following conditions must be satisfied:

(i)There must be a compromise decree as per the terms of the compromise without any collusion;

(ii)The compromise decree must pertain to the subject property in the suit; and

(iii)There must be a pre-existing right over the subject property, and the compromise decree should not create a right afresh.

11. There cannot be any doubt that in the civil suit filed by him, the appellant categorically stated that he is the owner of the subject land and is in long and continuous possession by doing cultivation for several years. When the Respondent No.2 sought to disturb the possession of the appellant by selling the subject land to third parties, taking advantage of his name standing in the revenue records, the appellant prayed for declaration and permanent injunction. It is settled law that revenue records are not documents of title. Any entry therein will not *ipso facto* confer ownership. In the present case, the possession is

continuously with the appellant. As per the judgement of this Court in *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others*[13], continuous and uninterrupted adverse possession would confer right, title and interest and the same can be used as a sword. Admittedly, the suit has been filed by the appellant seeking a declaration asserting his pre-existing right, title and interest and for permanent injunction. Thereafter, in terms of the compromise entered into between the parties, the suit was decreed in favour of the appellant. Hence, it is clear that through the said compromise decree, the appellant did not obtain any new right, but he has asserted his pre-existing right/ title/ interest over the subject land. The Judgment in *Ravinder Kaur Grewal*'s case (supra) was delivered on 06.08.2019, whereas the order in *Siddhulal* case was passed by the High Court on 24.07.2019 relying on the judgment of the High Court in *Mohd. Yusuf and others v. Rajkumar's* case rendered on 13.12.2017. The said judgement was reversed by this Court in the Judgment reported in *(2020) 10 SCC 264*. In view of the change in law with regard to the right accrued to a holder in adverse to be treated as a pre-existing right and since the order in *Mohammed Yusuf*'s case was subsequently reversed, the judgment of the High Court is not sustainable.

12. Though the Respondent No.1 alleged that the suit was filed by the appellant in collusion with the Respondent No.2 and within a short time from the date of initiation of the suit, the parties compromised the matter in order to evade

[13] (2019) 8 SCC 729

payment of stamp duty, no concrete evidence was placed before this court to substantiate that the same. That apart, it is not the case of the Respondent No.1 - State that the suit itself was collusive as the property was not in possession of the appellant and that it belongs to any other third party. Such rival claim by any other person other than the defendant has not been brought to our knowledge. Obviously, the case before us is not a title dispute, but rather one relating to registration and payment of stamp duty and therefore, we leave the issue there. Under the above circumstances, we have no option but to hold that the compromise decree is by way of collusion, cannot be accepted. As already indicated above, the compromise decree reached finality, as the Respondent No.1 has not challenged the same. There is no finding of collusion between the parties in entering into the compromise by any Court as on date. Indisputably, the property is the subject matter of the suit. Thus, the appellant has satisfied the conditions enumerated in section 17(2)(vi) of the Act, 1908 and hence, the subject land acquired by him by way of compromise decree, requires no registration.

13. In respect of the issue relating to payment of stamp duty for mutation of the subject land, it is the specific plea of the appellant that "consent decrees" / "decrees" are not chargeable with "stamp duty" under the Indian Stamp Act, 1899 as applicable to the State of Madhya Pradesh. Section 3 of the Indian Stamp Act, 1899 provides the instruments which are chargeable with duty and the same reads as under:

"3. Instrument chargeable with duty— Subject to the provision of this Act and

the exemptions contained is Schedule I, the following instrument shall be chargeable with duty of the amount indicated in the schedule as the proper duty therefore, respectively, that is to say-

(a) Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in India on or after the first day of July 1899;

(b) Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiable in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that schedule, which not having been previously executed by any property situate, or to any matter or thing done, or to be done, in India and is received in India:

Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clause (a), clause (b), or clause (c) of this section or in Schedule I, the amount indicated in schedule I-A to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable on the instruments mentioned in clauses (aa) and (bb) of this proviso, as the proper duty thereof, respectively, -

(aa) every instrument, mentioned in schedule I-A as chargeable with duty under that schedule, which not having been previously executed by any person, is executed in Madhya Pradesh on or after the commencement of the Central Provinces and Berar Indian stamp (Amendment) Act, 1939; and

(bb) every instrument mentioned in Schedule I-A as chargeable with duty under that schedule, which not having been previously executed by any person, is executed out of Madhya Pradesh on or after the commencement of the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939 and relates to any property situated or to any matter or thing done or to be done, in Madhya Pradesh and is received in Madhya Pradesh:

Provided further that no duty shall be chargeable in respect of- (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument; (2) any instrument for the sale, transfer or other disposition, either absolutely, or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894 or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 as amended by subsequent Acts."

From the above, it is apparent that stamp duty is not chargeable on an order/decree of the Court as the same do not fall within the documents mentioned in Schedule

I or I-A read with Section 3 of the Indian Stamp Act, 1899. Though the Collector of Stamps determined the stamp duty for the subject land as per Article 22 of Schedule IA of the Indian Stamp Act, 1899, which states about conveyance, in this case, we have already held that the compromise decree does not fall under the instruments mentioned in the Schedule and that it only asserts the pre-existing rights. Therefore, in the facts of the case, the consent decree will not operate as conveyance as no right is transferred and the same does not require any payment of stamp duty. Since the appellant has only asserted the pre-existing right and no new right was created through the consent decree, the document pertaining to mutation of the subject land is not liable for stamp duty.

14. In the ultimate analysis, we find that the impugned order passed by the High Court, upholding the orders of the authorities below, has no legs to stand and is hence, set aside. Accordingly, this appeal stands allowed and the authority concerned shall make mutation of the revenue records in respect of the subject land in favour of the appellant. There is no order as to costs.

15. Consequently, connected Miscellaneous Petition(s), if any, shall stand disposed of.

……..……J.
[J.B. Pardiwala]

……..……J.
[R. Mahadevan]

NEW DELHI
DECEMBER 20, 2024.