CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MOHINDER PAL SINGH AND ANOTHER,—*Appellants*

versus

LAKSHMAN DASS AGGARWAL AND OTHERS,—*Respondents*

Second Appeal from Order No. 83 of 1967

September 26, 1968

Registration Act (XVI of 1908)—S. 17(2) (vi)—Suit not ending in a decree but only judgment given—Such judgment—Whether saved from registration—Words "decree" and "order" interpretation of.

Held, that the two words "decree" and "order" in section 17(2)(vi) of Indian Registration Act have been used in contra-distinction to each other. A *decree* is passed when *a suit* has been filed by a party. On the other hand when some *proceeding* has been commenced by a person, then it would end in an *order* by the court. Both the decree and the order mentioned in section 17(2)(vi) of the Act must be such as could be executed by virtue of their own force. If a suit does not end in a decree but only in a judgment, then that judgment cannot be saved from registration. It is only a decree, if it is passed in that suit, which will not require registration, the reason being that the judgment cannot be enforced as such. It is only the decree based on the judgment which can be executed. Anything signed by a Judge can in one respect be loosely termed as an order of the court, but that is not what is meant by the word 'order' which occurs in section 17(2)(vi) of the Act. Hence where a suit has been filed but the same has not ended in a decree and only a judgment is given, the judgment as such cannot be executed by its own force. Consequently such a judgment is not covered by the words "decree" or "order" mentioned in section 17(2)(vi) of the Act and, therefore, it is not saved from registration. (Para 6)

Second appeal from the order of the Court of Shri Asa Singh Gill, Additional District Judge, Ludhiana, dated 7th November, 1967, reversing that of Shri Mohinder Singh Lobana, Subordinate Judge II Class, Ludhiana, dated 3rd January, 1967 (dismissing the plaintiffs suit) and remanding the case back to the trial Court for giving a decision on all the issues.

H. L. SARIN, SENIOR ADVOCATE WITH V. P. SARDA AND H. S. AWASTHY, ADVOCATES, for the Appellants.

P. S. JAIN, ADVOCATE, for Respondents Nos. 1 to 4.

JUDGMENT

PANDIT, J.—One Dila Ram was the owner of the property in dispute, which consists of agricultural land measuring 137 Kanals 16 Marlas situate in village Mangli Khas, district Ludhiana. He died somewhere in 1940 leaving behind four sons, namely, Lakshman Dass, Jagdish Chander, Hari Chand and Madan Mohan, plaintiffs 1—4, from one wife and two other sons Brij Bhushan and Raj Kumar, defendants 3-4, from the second wife Sarswati Devi. After the death of Dila Ram, this land was mutated in favour of Sarswati Devi on the basis of a will alleged to have been executed by the deceased in her favour. In October, 1941, Jagdish Chander filed a suit for partition of the property left by Dila Ram against all his heirs in the court of the Senior Subordinate Judge, Ludhiana. This suit remained pending for quite some time and on 17th of February, 1948, the parties effected a compromise and filed a compromise deed, Exhibit P-1, under which the property left by Dila Ram was distributed amongst his heirs. On the same date, the learned Judge passed an order, Exhibit P-4, saying that in accordance with the terms of the compromise and the statement of the parties, a final decree for possession by partition was granted. The terms of the compromise were also incorporated in that order. It was further said that the parties might supply stamped paper in proportion to their shares in the property for the preparation of the final decree sheet. It appears that none of the parties filed the stamp paper, with the result that the decree sheet was never prepared and the file was consigned to the record room. Subsequently, in May, 1965, Brij Bhushan managed to get the land in dispute entered in his name alone in the revenue papers and on 8th of July, 1965, he sold the whole of it in favour of Mohinder Pal Singh and his wife Amarjit Kaur, defendants 1 and 2, for Rs. 53,000. On 14th of December, 1965, plaintiffs 1—4, filed a suit, out of which the present appeal has arisen, against defendants 1—4 for joint possession of 102/150 share of the land in dispute on the ground that they were owners of that land to that extent on the basis of the compromise and the order of the Court, dated 17th February, 1948. It might be mentioned that the land in dispute was allotted during the consolidation proceedings in lieu of the original land in village Mangli Khas.

(2) The suit was contested only by defendants 1 and 2 who pleaded that they were bona fide purchasers for value of the suit land without notice of the interests of the plaintiffs therein, and thus, the plaintiffs could not obtain possession of the land. The plaintiffs' title to the land

on the basis of the compromise was denied and it was alleged that Brij Bhushan alone was its sole owner. They had purchased the same from him by registered sale deed after making full enquiries.

(3) On the pleadings of the parties, the following issues were framed :—

(1) Whether the plaintiffs are co-sharers in the land in dispute, if so what is their share?

(2) Whether the defendant No. 3 had the authority to sell the land in dispute to defendant Nos. 1 and 2?

(3) Whether the defendants 1 and 2 are bona fide purchasers for value without notice, if so, to what effect?

(4) Whether the plaintiffs are entitled to the joint possession of the suit land?

The trial Judge came to the conclusion that since no decree was prepared in the previous partition suit in terms of the compromise in pursuance of the order passed thereon, the plaintiffs could not claim any right on the basis of the compromise-deed Exhibit P-1 which was in admissible in evidence for want of registration, as it purported to transfer interest in immovable property worth more than Rs. 100. It was, therefore, held that the plaintiffs had failed to establish that they acquired any interest in the land in suit. Issue No. 1 was, therefore, decided against them. Under issue No. 2, it was found that the plaintiffs, having failed to establish their own right to the land in suit, could not challenge the right of defendant No. 3 to sell it in favour of defendants 1 and 2 and as such no finding could be claimed by the plaintiffs on that issue. In view of the finding on issue No. 1, the trial Judge did not record any finding on issue No. 3. Under issue No. 4, it was found that the plaintiffs were not entitled to claim joint possession of the suit-land. In view of these findings, the suit was dismissed.

(4) Aggrieved by this decision, the plaintiffs went in appeal before the learned Additional District Judge, Ludhiana. He reversed the finding of the trial Court on issue No. 1, holding that the compromise deed Exhibit P-1 and the order of the Court, Exhibit P-4 were admissible in evidence without being registered and the trial Court could not ignore those documents while deciding issue No. 1. The

learned Judge accepted the appeal, set aside the judgment and decree under appeal and remanded the case to the trial Court for giving a fresh decision on all the issues in accordance with law.

(5) Against this order, the present second appeal has been filed by defendants 1 and 2.

(6) The sole question for decision in this appeal is whether the compromise, Exhibit P-1, and the order of the Court, Exhibit P-4, are admissible in evidence without being registered. If they are, as held by the learned Additional District Judge, then admittedly, the appeal has to be dismissed. The answer to the question will depend on whether Exhibits P-1 and P-4 would be covered by the provisions of section 17(2)(vi) of the Indian Registration Act, 1908.

The relevant part of section 17 runs as under :—

"17(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) * * * * *

(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

* * * *

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

(i) * * * *

(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

* * * *

Undoubtedly, the compromise Exhibit P-1 in the present case would be covered by clause (b) in section 17(1) of the Indian Registration Act, because it was a non-testamentary instrument which created, declared and extinguished right, title or interest of the value of more than one hundred rupees in immovable property belonging to the various co-sharers. Therefore, it did require registration under section 17(1). By virtue of the provisions of sub-section (2) of section 17, it would, however, not require registration if it came within the purview of clause (vi) thereof i.e. if it could be said that this compromise was a decree or order of a Court. That is to say if the same was made a part of any decree or order of a Court. Was P-1 made a part of the Court's order? That would be the question, because admittedly no decree was framed in the instant case. It is undisputed that after the compromise deed, Exhibit P-1, was put in Court by the parties and their statements were recorded, the trial Judge, on the same date i.e. 17th February, 1948, passed an order, Exhibit P-4, to the effect that in accordance with the terms of the compromise and the statements of the parties, a final decree for possession by partition was granted. The terms of the compromise were also mentioned in that order and it was said that the parties might supply stamp paper in proportion to their shares in the property for the preparation of the final decree sheet. Could Exhibit P-4 be termed as an order within the meaning of this expression in section 17(2)(vi) of the Indian Registration Act? It is noteworthy that in section 17(2)(vi), the two words "decree" or "order" have been used in contra-distinction to each other. There is no dispute that the non-testamentary instruments which are covered by section 17(1)(b) of the Registration Act are compulsorily registrable, but if certain dispute regarding property, even though it is of the value of more than Rs. 100, has been settled by a decree or order of a court, then the said decree or order would be covered by section 17(2)(vi) and would not require registration. The idea seems to be that if the parties have fought out a litigation with regard to immovable property and that litigation has ended in the passing of a decree or order by a court, then in that case, they should be absolved from getting the decree or order registered. The *decree*

will be passed when *a suit* has been filed by a party. On the other hand, when some *proceeding* has been commenced by a person, then it would end in an *order* by the court. For instance, if some proceedings are commenced in the Insolvency Court or in the revenue court, they will end in an order by the Insolvency court or the revenue court and that order will finally determine the rights of the parties and will be executable of its own force. Similarly, if a suit has been filed, it would end in a decree which would conclusively settle the rights of the parties and will be executable as such. Both the decree and the order mentioned in section 17(2)(vi) must be such as could be executed by virtue of their own force. If a suit does not end in a decree but only in a judgment, then that judgment cannot be saved from registration. It is only a decree, if it is passed in that suit, which will not require registration, the reason being that the judgment cannot be enforced as such. It is only the decree based on the judgment which could be executed. Anything signed by a Judge could in one respect be loosely termed as an order of the court, but that is not what is meant by the word 'order' which occurs in section 17(2)(vi). The expression "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 proceedings*" occurring in section 17(2)(vi) lends support to the interpretation that I have placed on the words 'decree' or 'order' in this very sub-section. The expression referred to by me indicates that the suit will end in a decree and the proceeding in an order of a court. The exception that is carved out in section 17(2)(vi) means that if the decree or order has been made on a compromise and comprises immovable property, which is not the subject matter of the suit or proceeding, which has ended in that decree or order, then such a decree or order will not be saved from registration, the reason being that that immovable property was neither the subject of a suit nor a proceeding and, therefore, if it is of more than Rs. 100 in value, any dispute regarding the same if settled by means of a compromise, the compromise deed in that case would be compulsorily registrable under section 17(2)(vi). It might be mentioned that the words 'decree' and 'order' have been separately defined in section 2(2) and 2(14) of the Code of Civil Procedure, 1908, and in the definition of the word 'order', it has been stated that it means the formal expression of any decision of a civil court, which is not a decree. Both these expressions are different. A judgment, however, means the statement given by the Judge of the grounds of a decree or order (*vide* section 2(9) of the Code of Civil Procedure). In the

instant case, it is the common case of the parties that a suit had been filed, but the same had not ended in a decree and only a judgment, namely, Exhibit P-4, had been given on 17th February, 1948. The parties did not supply the stamp duty and that is why the decree sheet was not prepared. The judgment as such could not be executed of its own force. It was only the decree, if framed, which was capable of execution as such. Consequently, the judgment would not be covered by the words 'decree' or 'order' mentioned in section 17(2)(vi) and, therefore, it would not be saved from registration. Under these circumstances, Exhibits P-1 and P-4 will require compulsory registration and would be inadmissible in evidence, if not so registered.

(7) The learned Additional District Judge has, however, relied on two decisions, one in *Mahbub* v. *Munshi and others* (1), and the other by the same learned Judge in *Kishan Singh and another* v. *Pritam Singh and others* (2). In the former authority, it was held—

> "Where all the terms of the compromise are not reproduced ad verbatim in the Court's order, but only a reference is made to them to the effect " hasab tasfiya bahami" the terms of the compromise must be deemed to be recorded in the order and do not require registration."

Similarly, in the latter ruling, it was observed:—

> "Where a compromise entered into by the parties to a suit is embodied in a petition which is presented to the Court and the Court passes an order recording the compromise and also passes a decree on basis of the compromise, making a reference to it, the compromise does not require registration according to section 17(2) clause (vi), Registration Act, although the terms of the compromise are not actually embodied in the decree. The compromise can be proved by the petition, embodying the terms thereof, presented by the parties as it forms part of the judicial order made by the Court thereon by virtue of reference made to the compromise."

(1) A.I.R. 1932 Lah. 24.
(2) A.I.R. 1938 Lah. 737.

In both these rulings, however, decrees had been framed and, consequently, they cannot be of any help to respondents. No judgment was cited by the learned counsel for the respondents in which a suit had been filed and the same had ended merely in a judgment and not a decree and yet it was held that that judgment was exempt from registration in view of section 17(2)(vi) of the Act.

(8) The counsel for the petitioners on the other hand, placed his reliance on a Bench decision of the Lahore High Court in *Ghulam Mustafa Khan and others* v. *Ghulam Nabi and others* (3), where it was held:—

> "If a suit has been adjusted in the manner contemplated by Order 23, rule 3, of the Code of Civil Procedure, and the terms and conditions of the adjustment have been reduced to writing by the parties then the writing of the parties may be produced in evidence in any subsequent suit without being registered *only* if the Court has duly recorded those terms and conditions and *passed a decree* in accordance with such of them as are the subject of the then existing litigation."

This decision supports the view that I have taken above.

(9) In view of what I have said, I would accept this appeal, set aside the order passed by the learned Additional District Judge and send the case back to him for deciding the appeal in accordance with law. In the circumstances of this case, however, the parties are left to bear their own costs throughout.

(10) The parties have been directed to appear before the learned Additional District Judge on 22nd October, 1968.

K.S.K.

LETTERS PATENT APPEAL

Before S. B. Capoor and R. S. Narula, JJ,

UNION OF INDIA AND OTHERS,—*Appellants*

versus

KARAM SINGH,—*Respondent*

Letters Patent Appeal No. 78 of 1964

September 30, 1968

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—*Rules* 18 *and* 21—*Assessed value of individual claims of a displaced person for urban immovable properties left in Pakistan—Such displaced person inheriting similar*

(3) A.I.R. 1923 Lah. 581.