

**INFORMATION MEMORANDUM :**

Section 17(2) of the Registration Act, carves out an exception to section 17(1) and lays down that a decree or order of a Court will not require registration unless it fulfils two conditions i.e. it is based on a compromise and if it deals with the property other than suit property.

**Gurcharan Singh and Others v. Angrez Kaur and Others.**

Civil Appeal no. 6835/2009 (SC)

Decided on 19/03/2020

A decree or Order of the Court does not require registration as per Section 17(2) of Registration Act, 1908

**Facts of the case :**

Bhajan Singh was the owner of the Suit Land and was married to Gurmail Kaur. They had two daughters named Angrez Kaur and Paramjit Kaur (the "**said Daughters**"). On 15/09/1973, Bhajan Singh and Gurmail Kaur executed a divorce in writing and Gurmail Kaur took the Daughters along with her and started residing with Bhajan Singh's brother Maghar Singh. Bhajan Singh after divorce started residing with Gurcharan Singh, Gurnman Singh and Kulwant Singh (the "**said Appellants**"). He executed a Will dated 02/09/1986 in favour of the Appellants as they looked after him from 1973.

On 21/09/1994, a Civil Suit no. 556 was filled by the Appellant praying for declaration that they are the owners and in possession of the suit land. The appellant claimed that Bhajan Singh had executed a will in favour of the appellants in 1986 followed by family settlement on 15.06.1994 where suit property was given to appellants in equal share. Bhajan Singh admitted the facts and stated that he has no objection if suit property is decreed in favour of appellants. Accordingly, mutation was also affected of the Suit Land in favour of the appellants on 03/03/1995. Bhajan Singh died on 24/04/1998.

The daughters filed a suit in 1998 challenging the earlier decree of 1995 in favour of appellants stating that the said decree was wrongly obtained as the daughters were the legal heirs. The trial court dismissed the suit. The first appeal before District judge was decided in favour of the Daughters. The appeal filed by appellants before High Court was dismissed on the ground that the first decree was not registered and hence cannot be effected.

### **Appellant Contentions:**

- (i) The trial court has rightly dismissed the suit of the Plaintiffs-Respondents holding that decree dated 09/01/1995 was a valid decree, which does not require any registration.
- (ii) On 02/09/1986, executed a registered Will in favour of the Appellants and further after the decree dated 09/01/1995 accepting the mutation in the favour of Appellants.
- (iii) Thereafter, the Will which was executed on 02/09/1986 was validly executed, which Will was admitted by Bhajan Singh in his written statement filed in suit no.

556 and execution of Will dated 02/09/1986.

- (iv) The Courts committed error in not accepting the Will due to want of examination of attesting witness.
- (v) Family Settlement on 15/06/1994 giving the suit land to the Appellants was a valid settlement even though Respondents were not related by blood as Bhajan Singh was living with them.
- (vi) High Court has discarded wrongly the compromise decree dated 09/01/1995 on the grounds the same required compulsory registration.

### **Respondent Contention:**

- (i) Bhajan Singh relationship with the Appellants was not proved. Hence family settlement was not valid.
- (ii) The compromise decree is not registered under section 17 of the Registration Act, 1908
- (iii) the will dated 02/09/1986 has not been accepted by the lower three courts.

- (iv) The attesting witnesses to the Will have not been produced and hence the will cannot be accepted.
- (v) The scribe who was produced to prove the will has no animus to attest the will.

### Issue before the Supreme Court:

The apex court was called upon to decide whether the decree dated 1995 was compulsorily registrable under the Registration Act 1908 in view of the section 17(1) of the said Act.

### Supreme Court verdict:

- (i) The earlier suit was filed on the basis of pre-existing right in favour of Appellants. The Pre-existing right of the Appellants was admitted by Bhajan Singh and decree was passed accordingly. Supreme Court in Civil Appeal no. 800 of 2020 Mohammad Yusuf and Ors. v. Rajkumar and Ors : has held that, a compromise decree would ordinarily be covered by section 17(1)(b) but sub-section (2) of section 17 carves out an exception clearly stating that court orders are not to be registered unless two conditions are satisfied i.e. it is made on a compromise **and** comprise immoveable

property other than that which is the subject-matter of the suit or proceedings.

- (ii) Accordingly, the apex court reversed the decision of the High Court and held that the decree passed in 1995 was valid and binding. The court held that the said decree was not compulsorily registrable.
- (iii) It further held that the decree was by no means fraud or coerced. The daughters did not point it out when Bhajan Singh was alive. Therefore, the decree passed by the trial Court is not coerced.

### *Key Principles :*

Immoveable property acquired from decree will not require registration if;

- a. Party to Suit have Pre-existing rights in Suit Property;
- b. Decree passed by the Court is either not as a consequence of compromise decree or the decree is in respect of suit property only.

### Acelegal Analysis:

The provisions of section 17(1)(b) of registration Act provides for compulsory registration of certain instruments through which the rights in a property are transferred .

However, section 17(2) is an exception to clause 17(1)(b) and (c). It specifically excludes requirement of registration of a "decree" or "order" of a court. However, there is an exception to this exception in sub clause (vi) of section 17(2). The exception is that if both the following conditions are fulfilled then exclusion under section 17(2) will not apply

and such "order" or "decree" of court would require mandatory registration. The twin conditions are:

- a) the decree should be a compromise decree.
- b) It should contain the property which is not the suit property.

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