PHOOL PATTI AND ANR. A

v.

RAM SINGH (DEAD) THROUGH LRS. & ANR.

(Civil Appeal No. 1240 of 2005)

JANUARY 06, 2015 B

[MADAN B. LOKUR AND C. NAGAPPAN, JJ.]

Registration Act, 1908 – ss. 17(1)(a), 17(2)(vi) – Documents of which registration is compulsory – Gift – Registration of – Non-collusive consent decree and a family C *settlement between the parties – Statement of the owner-uncle that he gave the disputed property to his nephew under his free will treating him as his son – 20 kanals of land was his self acquired property while 32 kanals of his ancestral property came to the share of the nephew through the family settlement* D *– Registration of the said lands – Held: As regards 32 kanals of land, the nephew's claim over the said land was acknowledged in the consent decree – It did not require compulsory registration in view of s. 17(2)(vi) – As regards, the gift of 20 kanals of land by the uncle in favour of his* E *nephew, notwithstanding the decree in the first suit, it requires compulsory registration u/s.17(1)(a) since it created, for the first time, right, title or interest in immovable property of a value greater than Rs.100/- in favour of the nephew.*

Partly allowing the appeal, the Court F

HELD: 1.1 In the face of contradictory facts, the only statement that can be relied upon is that of 'B'-owner himself who stated in the witness box (in the second suit) that the entire disputed property was not ancestral but G **that 20 kanals were purchased by him while 32 kanals were ancestral property. If that be so, then 'B' was entitled to gift 20 kanals of land to 'RS'-nephew which he did. As regards the remaining 32 kanals, 'B' accepted the**

 H

existence of a family settlement, and the trial court (in the first suit) did accept that there was a family settlement. It has been held that in a suit for declaration filed by 'RS' against "B, the consent decree was not a collusive decree, then it must follow that the finding that there was no family settlement (arrived at in the second suit) must be held incorrect, and it is done so. Consequently, in terms of the family settlement, 32 kanals of land originally belonging to 'B' came to the share of 'RS' in the family settlement. This explains the statement of 'B' that he "gave" the disputed property to 'RS' under his free will treating him as his son, that is, 20 kanals of his self acquired property and 32 kanals of his ancestral property that then came to the share of 'RS' through the family settlement. 20 kanals of land was gifted by 'B' to 'RS'. This gift clearly requires compulsory registration under Section 17(1)(a) of the Registration Act, 1908. 'RS's claim over 32 kanals of land was acknowledged in the consent decree. This did not require compulsory registration in view of Section 17 (2) (vi) of the Act. [Para 27, 28, 29] [316-D-H; 317-A-C]

1.2 The terms of the family settlement are not on record. The family settlement could relate to the ancestral as well as self-acquired property of 'B' or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration. However, the self acquired property of 'B' that is 20 kanals, therefore, in view of the law laid down in *Bhoop Singh's case* the gift of 20 kanals of land by 'B'in favour of 'RS', notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs.100/- in favour of 'RS'. [Para 32] [318-B-D]

Bhoop Singh v. 'RS' Major **1995 (3) Suppl. SCR 466: (1995) 5 SCC 709 – relied on.** A

K. Raghunandan and Ors. v. Ali Hussain Sabir & Ors. **2008 (8) SCR 657: 2008 (9) SCALE 215: (2008) 13 SCC 102;** *Nagubai Ammal v. B. Shama Rao* **1956 SCR 463;** *Rup Chand Gupta v. Raghuvanshi Pvt. Ltd.* **(1964) 7 SCR 760, 763;** *Ramchandra G. Shinde v. State of Maharashtra* **1993 (1) Suppl. SCR 589: (1993) 4 SCC 216 – referred to.** B

Case Law Reference:

			C
2008 (8) SCR 657	**Referred to**	**Para 19**	
1956 SCR 463	**Referred to**	**Para 30**	
(1964) 7 SCR 760, 763	**Referred to**	**Para 30**	
1993 (1) Suppl. SCR 589	**Referred to**	**Para 30**	D
1995 (3) Suppl. SCR 466	**Relied on**	**Para 32**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1240 of 2005

From the Judgment and Order dated 22.10.2003 of the High Court of Punjab and Haryana Chandigarh in Regular Second Appeal No. 2176 of 1985. E

Dhruv Mehta, Mahabir Singh, Shobha, Sameer P. A., Jyoti, Gagan Deep Sharm, Preeti Singh, Nikhil Jain with them, for the Appellants. F

Neeraj Kumar Jain, Pratham Kant, Umang Shankar, Dr. Kailash Chand, Ashok Kumar Sharma, Devashish Bharuka for the Respondents.

G

The Judgment of the Court was delivered by.

Madan B. Lokur, J. 1. On 3rd November, 1980 Ram Singh (nephew of Bhagwana) filed Suit No. 630 of 1980 in the Court of the Senior Sub-Judge, Sonepat (Haryana). He stated H

A in the plaint that 52 kanals of land in the revenue estate of Nizampur Majra in district Sonepat was joint Hindu family property. There was also a residential house situated in the village but it is not clear whether the residential house stood on the said land or was on a separate parcel of land. However, B the appeal before us proceeded on the basis that the residential house is on the 52 kanals of land.

2. The plaint filed by Ram Singh further stated that some differences had arisen between the members of the joint Hindu family and as a result of a family settlement, the said land was C given to him. Ram Singh further stated that he was in cultivating possession of the agricultural land and in physical possession of the residential house.

3. Ram Singh averred that Bhagwana refused to admit his D (Ram Singh's) claim to the agricultural land and the residential house and in effect sought to negate the family settlement. Accordingly, Ram Singh prayed for a declaration that he is the owner and in cultivating possession of the agricultural land and in physical possession of the residential house.

E 4. On 5th November, 1980 Bhagwana filed his written statement admitting the entire claim set up by Ram Singh. It appears that Bhagwana's statement was also recorded subsequently. In view of the written statement as also Bhagwana's oral statement, the Senior Sub-Judge, Sonepat F passed a consent decree on 24th November, 1980 and decreed the suit as prayed for by Ram Singh. The result of the decree was that Ram Singh was declared the owner in possession of 52 kanals of land, that is, the agricultural land and the residential house in the revenue estate of Nizampur G Majra in district Sonepat.

5. In view of the consent decree, there was no occasion for the Senior Sub-Judge to decide whether there was or was not any family settlement, nor did the occasion arise for him to specifically decide whether the said land was self-acquired or H ancestral.

6. However, two conclusions can be drawn quite safely: (i) There was no denial of the existence of a family settlement but on the contrary this was admitted by Bhagwana; (ii) The family settlement could be with reference to both the ancestral property as well as the self-acquired property or only with reference to the ancestral property.

7. Bhagwana had two daughters, namely Phool Patti and Phool Devi. He had no son. On 11th March, 1982 another nephew of Bhagwana, that is, Shobha Ram along with Phool Patti and Phool Devi filed Suit No. 234 of 1982 before the Senior Sub-Judge, Sonepat. In that suit Ram Singh was the first defendant and Bhagwana was the second defendant.

8. It was stated in the plaint that Bhagwana is the owner of 52 kanals of land which was inherited by him from his lineal male ascendant and that the properties are ancestral in his hands. It was averred that Bhagwana could not gift the agricultural land and residential house to anybody thereby depriving his legal heirs (Phool Patti and Phool Devi) of their rights in the disputed property.

9. It was further averred in the plaint that the decree dated 24th November, 1980 was obtained collusively by Ram Singh and that the admissions made by Bhagwana in the suit filed by Ram Singh were without applying his mind. It was stated that there was no family settlement whatsoever and that the decree dated 24th November, 1980 amounted to a gift made by Bhagwana in favour of Ram Singh. This could only be through a written instrument that was duly stamped and registered. Since the gift was neither written, nor stamped, nor registered it could not be acted upon.

10. On the basis of the pleadings, the Trial Court framed three issues as follows:-

1. Whether judgment and decree dated 24.11.1980 is void, illegal and not binding upon the rights of the plaintiffs?

A 2. Whether any family settlement was made between the parties?

3. Relief.

B 11. In support of the plaint, Shobha Ram (another nephew of Bhagwana) entered the witness box and stated that there was no family settlement and that Bhagwana was the owner of the ancestral land and house. Phool Patti and Phool Devi did not enter the witness box at all.

C 12. On 27th January, 1983 Bhagwana entered the witness box and stated that he "gave" the disputed property to Ram Singh under his free will treating him as his son. He also stated that the entire land was not ancestral – 20 kanals were purchased by Bhagwana while 32 kanals were ancestral D property.

13. Ram Singh also entered the witness box and stated that Bhagwana had given him his property through the civil suit filed by Ram Singh against Bhagwana and that the disputed property was given by Bhagwana of his own free will. Ram E Singh also made a mention of some *hibba* (gift) but it is not clear whether the reference was to the gift of the disputed property or some other land. However, for the purposes of the present appeal, it is assumed that Ram Singh referred to a *hibba* of the disputed property in his favour by Bhagwana.

F

14. The Trial Court gave its decision on 31st May, 1983 and it was held that the decree dated 24th November, 1980 was a collusive decree and a nullity and therefore illegal and void. In effect, Bhagwana made a gift of the disputed property G in favour of Ram Singh and that the gift required compulsory registration under Section 17(1)(a) of the Registration Act, 1908. It was also held that there was no family settlement. The Trial Court did not give any finding whether the disputed property was self-acquired or ancestral.

H 15. Feeling aggrieved by the decision of the Trial Judge,

Ram Singh preferred Civil Appeal No. 43/13 in the Court of the Additional District Judge, Sonepat. By its judgment and order, the First Appellate Court held that Shobha Ram had no *locus standii* in the matter at all, since he had no right, title or interest in the disputed property. As regards the claim of Phool Patti and Phool Devi, it was held that they could not challenge the gift made by Bhagwana in favour of Ram Singh. It was observed that they did not even enter the witness box to challenge the decree dated 24th November, 1980 and that Bhagwana was alive and had supported the judgment and decree. As such, the challenge made by Phool Patti and Phool Devi could not be sustained. The First Appellate Court further held that the decree dated 24th November, 1980 was not a collusive decree since Bhagwana had supported it. Accordingly, the appeal filed by Ram Singh was allowed and the decree of the Trial Court dated 31st May, 1983 was set aside.

16. The First Appellate Court noted that the learned counsel for Shobha Ram, Phool Patti and Phool Devi did not challenge the transfer of the disputed property but challenged the collusive decree. It appears that in view of this, the First Appellate Court did not examine the question whether there was any family settlement and whether the disputed property was self-acquired or ancestral. The second issue framed by the Trial Court was, therefore, not even adverted to by the First Appellate Court.

17. Feeling aggrieved by the setting aside of the decree of the Trial Court, Phool Patti and Phool Devi preferred Second Appeal No. 2176 of 1985 in the Punjab & Haryana High Court. The respondents in the Second Appeal were Ram Singh, Shobha Ram and Bhagwana.

18. The High Court, by the impugned judgment and order, dismissed the Second Appeal while holding that the disputed property admittedly was the self-acquired property of

A Bhagwana; the decree suffered by Bhagwana on 24th November, 1980 was of his own free will and was for the services rendered by Ram Singh in looking after and taking care of Bhagwana; only Bhagwana could challenge the decree dated 24th November, 1980 but he did not do so and finally, B that Phool Patti and Phool Devi had no *locus standii* to challenge the decree dated 24th November, 1980.

19. When this appeal came up for consideration on 21st March, 2009 a Bench of two learned judges considered the submissions of learned counsel, particularly with reference to C two decisions cited at the Bar, namely, *K. Raghunandan and Ors. v. Ali Hussain Sabir & Ors*[1]. and *Bhoop Singh v. Ram Singh Major*[2]. The Bench was of the view that there was an inconsistency in the decision of this Court in the two cases mentioned above. It was observed as follows:-

D

"9. Since the consent decree dated 24.11.1980 had been held by the First Appellate Court to be not collusive, the High Court in our opinion rightly refused to interfere with that finding of fact.

E

10. It was then urged by the learned counsel for the appellant that there was violation of the Section 17 of the Registration Act, 1908.

11. In this connection, it may be noted that Section 17(2)(vi) F of the Registration Act states that "nothing in clauses (b) and (c) of sub-section (1) of Section 17 applies to:

"any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising G immovable property other than that which is the subject-matter of the suit or proceeding".

12. In our opinion the exception mentioned in Section

1. 2008 (9) SCALE 215 = (2008) 13 SCC 102.

H 2. (1995) 5 SCC 709.

17(2)(vi) means that if a suit is filed by the plaintiff in respect of property A, then a decree in that suit in respect of immovable property B (which was not the subject-matter of the suit at all) will require registration. This is the view taken by this Court in *K. Raghunandan & Ors. v. Ali Hussain Sabir & Ors.* 2008 (9) Scale 215. A B

13. However, a different view was taken by this Court in *Bhoop Singh v. Ram Singh Major* 1995 (5) SCC 709 in which it is stated that:

"....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....." C D

14. In our opinion there seems to be inconsistency between the decisions of this Court in *Bhoop Singh's* case (supra) and *K. Raghunandan's case* (supra) in so far as the Registration Act is concerned. Prima facie it seems to us that the decision in *Bhoop Singh's* case (supra) does not lay down the correct law since Section 17(2)(vi) on its plain reading has nothing to do with any pre-existing right. All that seems to have been stated therein is that if a decree is passed regarding some immovable property which is not a subject-matter of the suit then it will require registration. As already explained above, if a suit is filed in respect of property A but the decree is in respect of immovable property B, then the decree so far as it relates to immovable property B will require registration. This seems to be the plain meaning of clause (vi) of Section 17(2) of the Registration Act. E F G

15. It is a well settled principle of interpretation that the Court cannot add words to the statute or change its H

A language, particularly when on a plain reading the meaning seems to be clear. Since there is no mention of any pre-existing right in the exception in clause (vi) we have found it difficult to accept the views in *Bhoop Singh's* case (supra).

B

16. It seems that there is inconsistency in the decisions of this Court in *Bhoop Singh's* case (supra) and *K. Raghunandan's case* (supra) and since we are finding it difficult to agree with the decision of this Court in *Bhoop Singh's case* (supra), the matter should be considered by

C a larger Bench of this Court." [3]

20. The appeal was then placed before a Bench of three learned judges of this Court and by an order dated 24th July, 2014 it was held, in the following words, that there was no

D inconsistency between the two decisions:

"The learned counsels have submitted that there is no inconsistency in the judgments referred to in the order dated 31st March, 2009.

E

Upon hearing the learned counsel we also do not find any inconsistency between the judgments delivered in the cases of (i) *Bhoop Singh v. Ram Singh Major & Ors.* [(1995) 5 SCC 709] and (ii) *Raghunandan & Ors v. Ali Hussain Sabir & Ors.* [(2008) 13 SCC 102].

F

In view of the afore-stated circumstances, we refer the matter back to the concerned Court so that the appeal can be decided on merits."

21. The appeal was then sent back to a Bench of two

G judges for a decision on the appeal on merits. It is under these circumstances that it has come up for final disposal.

22. On these broad facts, learned counsel for the

H 3. (2009) 13 SCC 22.

appellants Phool Patti and Phool Devi contended that the decree dated 24th November, 1980 was a collusive decree. In fact, a false case of a family settlement had been made out by Ram Singh. In reality, Bhagwana had gifted the disputed property to Ram Singh and that required compulsory registration under Section 17(1)(a) of the Registration Act, 1908. Bhagwana had not only avoided payment of registration charges but also stamp duty and had played a fraud upon the Trial Court in the first instance.

23. It was submitted that the disputed property was not the self-acquired property of Bhagwana and being ancestral property, Phool Patti and Phool Devi had an interest in the disputed property and would have inherited it on the death of Bhagwana.

24. It was further submitted by learned counsel that if it is assumed that the decree dated 24th November, 1980 was not a collusive decree and that no gift had been made by Bhagwana in favour of Ram Singh, then a right in the disputed property was created for the first time in favour of Ram Singh and this required compulsory registration.

25. The sum and substance of the submissions of learned counsel for the appellants is that if the decree dated 24th November, 1980 is a collusive decree, then Bhagwana had, in reality, gifted the disputed property to Ram Singh and the gift was required to be compulsorily registered; but if the decree is not a collusive decree then an interest had been created in the disputed property in favour of Ram Singh for the first time by a decree of a court and therefore the transfer of the disputed property was required to be compulsorily registered. Either way, according to learned counsel, the transfer of the disputed property by Bhagwana to Ram Singh required compulsory registration.

26. The basic premise on which the case of the appellants rests is that the consent decree dated 24th November, 1980

A was a collusive decree. However, in the order dated 21st March, 2009 it was specifically held by this court that "Since the consent decree dated 24.11.1980 had been held by the First Appellate Court to be not collusive, the High Court in our opinion rightly refused to interfere with that finding of fact." This B conclusion cannot now be challenged by the appellants and we too are bound by this conclusion. The only doubt that this court had was with regard to what appeared to be an inconsistency between two decisions of this court. A Bench of three judges of this court has now held that there is no inconsistency C between the two decisions. That issue is also no longer open for discussion.

27. In the welter of conflicting and sometimes contradictory facts, the only statement that can be relied upon is that of Bhagwana himself who stated in the witness box on 27th D January, 1983 (in the second suit) that the entire disputed property was not ancestral but that 20 kanals were purchased by him while 32 kanals were ancestral property.

28. If that be so, then Bhagwana was entitled to gift 20 E kanals of land to Ram Singh which he did. As regards the remaining 32 kanals, Bhagwana accepted the existence of a family settlement, and the Trial Court (in the first suit) did accept that there was a family settlement. It is in this family settlement that 32 kanals of land, being the ancestral property of F Bhagwana came to the share of Ram Singh. It is true that in the second suit it was held that there was no family settlement but that was on the basis that the decree dated 24th November, 1980 was a collusive decree. But if it is held, as indeed it has been held in the order dated 21st March, 2009 that the consent G decree was not a collusive decree, then it must follow that the finding that there was no family settlement (arrived at in the second suit) must be held incorrect, and we do so, particularly in the absence of any contrary finding on this issue by the First Appellate Court or the High Court. Consequently, in terms of the family settlement, 32 kanals of land originally belonging to H

Bhagwana came to the share of Ram Singh in the family settlement. This explains the statement of Bhagwana that he "gave" the disputed property to Ram Singh under his free will treating him as his son, that is, 20 kanals of his self acquired property and 32 kanals of his ancestral property that then came to the share of Ram Singh through the family settlement.

29. What follows from this is that 20 kanals of land was gifted by Bhagwana to Ram Singh. This gift clearly requires compulsory registration under Section 17(1)(a) of the Registration Act, 1908 (the Act). Ram Singh's claim over 32 kanals of land was acknowledged in the consent decree dated 24th November, 1980. This did not require compulsory registration in view of Section 17 (2) (vi) of the Act.

30. Learned counsel for the appellants cited three decisions to support his contention that the consent decree was collusive and therefore of no effect. He referred to *Nagubai Ammal v. B. Shama Rao*[4], *Rup Chand Gupta v. Raghuvanshi Pvt. Ltd*[5]. and *Ramchandra G. Shinde v. State of Maharashtra*[6]. However, in view of the conclusion arrived at by this court in its order dated 21st March, 2009 we are not inclined to reopen the issue, as indeed we cannot. Nor do we disagree with the finding so as to refer the issue to a larger Bench.

31. It was contended that Phool Patti and Phool Devi, the daughters of Bhagwana had the necessary *locus standii* to challenge the gift made by Bhagwana to Ram Singh. While this may or may not be so (we are not commenting on the issue) the question of a challenge to the gift of 20 kanals of land does not arise on the facts of this case. There was no pleading to this effect, no issue was framed in this regard in the suit filed by Phool Patti and Phool Devi, nor was any evidence led to challenge the validity of the gift. It is too late in the day for them

4. 1956 SCR 463.

5. (1964) 7 SCR 760, 763.

6. (1993) 4 SCC 216, 225.

A to question the validity of the gift in favour of Ram Singh for the first time in this court without any foundation, factual or otherwise, having been laid for a decision on this issue.

32. The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self-acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a *hibba*). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in ***Bhoop Singh*** the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs.100/- in favour of Ram Singh.

33. In view of the above discussion, the appeal is partly allowed and disposed of in the manner indicated above. No costs.

Nidhi Jain Appeal partly allowed.