KHUSHI RAM & ORS. A

v.

NAWAL SINGH & ORS.

(Civil Appeal No. 5167 of 2010)

FEBRUARY 22, 2021 B

[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Hindu Succession Act, 1956 – s.15 – Succession – Properties inherited by female Hindus – "Family" – Family settlement – 'J', a widow inherited share of her late husband in the land in question – Family settlement – She gave said share to her nephews-respondents (her brother's sons) – Respondents filed suit against 'J' claiming decree of declaration as owners in possession thereof – Respondents' claim accepted by her, consent decree passed in favour of respondents – Appellants (descendants of J's late husband's brother) filed suit inter alia *for declaring the decree invalid – Dismissed – First and second appeals were also dismissed – Held: s.15(1)(d) indicates that heirs of the father of a female are covered in the heirs who can succeed – Thus, it cannot be held that the respondents who were J's nephews were strangers and not the members of the family* qua *her – Further, she was the absolute owner when she entered into settlement – All the Courts rightly dismissed the suit of the appellants, which need no interference – Indian Registration Act, 1908 – s.17(2)(vi).* C D E

Indian Registration Act, 1908 – s.17(1)(b), 17(2)(vi) – Consent decree passed on the basis of family settlement, if required registration – Held: Issue in the present case is squarely covered by the judgment in Mohammade Yusuf & Ors. v. Rajkumar & Ors. *reported as* 2020(3) SCALE 146 *wherein it was 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 s.17(2) (vi) and did not require registration – In the present case also, the consent decree related to the subject matter of the suit, thus was not required to be registered u/s.17(2)(vi) – Courts below rightly held that the decree did not require registration.* F G

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A *Words & Phrases – "Family" – Concept of – Discussed.*

Dismissing the appeal, the Court

HELD : 1.1 There is no dispute that in the earlier Civil Suit No.317 of 1991 in which consent decree was passed on 19.08.1991, the subject matter of suit was the agricultural land situated in Village Garhi, Bajidpur. Further the suit was decreed on the written statement filed by Smt. 'J' (the widow) accepting the claim of plaintiffs that there was family settlement between the parties in which the half share in the land was given to the plaintiffs of Civil Suit No.317 of 1991. [Para 12][1027-E-F]

1.2 In Mohammade Yusuf & Ors. Vs. Rajkumar & Ors. this Court 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 said judgment. In view of the fact that the consent decree dated 19.08.1991 relate to the subject matter of the suit, hence it was not required to be registered under Section 17(2) (vi). The consent decree dated 19.08.1991 was not registrable and Courts below rightly held that the decree did not require registration. [Para 20][1036-G-H; 1037-A]

Mohammade Yusuf & Ors. v. Rajkumar & Ors. **2020 (3) SCALE 146 – relied on.**

2.1 It is necessary to find out what is the concept of family with regard to which a family settlement could be entered. Every party taking benefit under a family settlement must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim. Term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a *spes successionis*. [Paras 22, 23][1037-C-D; 1038-A-B]

Ram Charan Das v. Girjanandini Devi and Ors. **[1965] 3 SCR 841;** *Kale and Ors. v. Deputy Director of*

Consolidation and Ors., **(1976) 3 SCC 119 : [1976] 3 SCR 202 – relied on.**

2.2 The defendants-respondents were nephews, i.e., brother's sons of Smt. 'J'. The Hindu Succession Act, 1956, Section 15, deals with the general rules of succession in the case of female Hindus for properties inherited by female Hindus, which are devolved in according to Sections 15 and 16. A perusal of Section 15(1)(d) indicates that heirs of the father are covered in the heirs, who could succeed. When heirs of father of a female are included as person who can possibly succeed, it cannot be held that they are strangers and not the members of the family *qua* the female. 'Smt. J', who as a widow of 'SS', who had died in 1953, had succeeded to half share in the agricultural land and she was the absolute owner when she entered into settlement. No merit in the submission that the defendants-respondents were strangers to the family. All the Courts have rightly dismissed the suit of the plaintiffs-appellants, which need no interference. [Paras 26-29][1042-F-G; 1043-B-E]

Mata Deen v. Madan Lal & Ors. **Decision of Supreme Court in Civil Appeal No. 890 of 2008 – held inapplicable.**

K. Raghunandan and Ors. v. Ali Hussain Sabir and Ors. **(2008) 13 SCC 102 : [2008] 8 SCR 657 – relied on.**

Bhoop Singh Vs. Ram Singh Major and Ors., **(1995) 5 SCC 709 : [1995] 3 Suppl. SCR 466,** *Som Dev and Ors. v. Rati Ram and Anr.,* **(2006) 10 SCC 788 : [2006] 5 Suppl. SCR 778 – referred to.**

Case Law Reference

[1995] 3 Suppl. SCR 466	**referred to**	**Para 13**
[2006] 5 Suppl. SCR 778	**referred to**	**Para 17**
[2008] 8 SCR 657	**relied on**	**Para 18**
2020(3) SCALE 146	**relied on**	**Para 19**
[1965] 3 SCR 841	**relied on**	**Para 22**
[1976] 3 SCR 202	**relied on**	**Para 23**

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5167 of 2010.

From the Judgment and Order dated 16.04.2009 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 750 of 2002.

B Manoj Swarup, Sr. Adv., Ranbir Singh Yadav, Prateek Yadav, Mrs. Pratima Yadav, Rohit Kumar Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

C 1. This appeal has been filed by the plaintiffs of Civil Suit challenging the judgment dated 16.04.2009 of High Court of Punjab & Haryana dismissing the second appeal filed by the appellant.

2. The brief facts of the case as emerged from the pleadings of the parties are:

D 2.1 One Badlu, who was the tenure-holder of agricultural land situate in Village Garhi Bajidpur, Tehsil and District Gurgaon, had two sons Bali Ram and Sher Singh. Sher Singh died in the year 1953 issueless leaving his widow Smt. Jagno.

E 2.2 Plaintiffs-appellants are descendents of Bali Ram. After death of Sher Singh, his widow inherited share of her late husband, i.e., the half of the agricultural property owned by Badlu. A Civil Suit No.317 of 1991 was filed by Nawal Singh and two others against Smt. Jagno in the Court of Sub-Judge, Gurgaon claiming decree of declaration as owners in possession of the agricultural land mentioned in F the suit to the extent of half share situate in Village Garhi Bajidpur. The plaintiffs claim was that Smt. Jagno, who was sharer of the half share, has in a family settlement settled the land in favour of the plaintiffs, who were the brother's sons of Smt. Jagno.

G 2.3 Smt. Jagno filed a written statement in the suit admitting the claim of the plaintiffs. Smt. Jagno also made a statement in the suit accepting the claim of plaintiffs, the trial court vide its judgment and decree dated 19.08.1991 passed the consent decree in favour of the plaintiffs declaring the plaintiffs owners in possession of the half share in the land.

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2.4 The plaintiffs, who were descendents of brother of husband of Smt. Jagno filed a Civil Suit No.79 of 1991 in the Court of Senior Sub-Judge Gurgaon praying for declaration that the decree passed in Civil Suit No.317 of 1991 dated 19.08.1991 is illegal, invalid and without legal necessity. The plaintiffs also claimed decree of declaration in their favour declaring them owners in possession of land in question. In Suit No.79 of 1991, a joint written statement was filed by the defendants. Smt. Jagno was also defendant No.4 in the civil Suit No.79 of 1991. The defendants supported the decree dated 19.08.1991. The defendants No.1 to 3 claimed land by family settlement out of love and affection by the defendant No.4, which family settlement was duly affirmed by Civil Court decree dated 19.08.1991.

2.5 The trial court framed nine issues. Issue No. 5 being "Whether the decree dated 19.08.1991 passed in civil suit no.317/91 titled Nawal Singh Etc. Vs. Smt. Jagno passed by Sh. K.B. Aggarwal SJIC, Gurgaon is illegal, invalid without jurisdiction and against custom, without legal necessity and consideration and a result of fraud and undue influence and is liable to be set aside?

2.6 Issue Nos. 2 to 5 were answered in favour of defendants. The trial court also rejected the argument of the plaintiffs that in absence of registration of decree, no right or title would pass in favour of the defendants. Trial court held that registration is required when fresh rights are created for the first time by virtue of decree itself. It was held that in the case in hand, defendants were having pre-existing right in the suit property under as in a family settlement defendant No.4 acknowledged them as owner and surrendered the possession of the suit property in their favour at the time of family settlement and the decree dated 19.08.1991 merely affirms their pre-existing rights and hence, does not require registration.

2.7 The plaintiffs aggrieved by the judgment filed first appeal before the learned District Judge, which too was dismissed. The First Appellate Court held that under Section 14(1) of the Indian Succession Act, a Hindu female become full owner

of the property, which she acquires before the commencement of the Act and not as a limited owner. The First Appellate Court also held that defendants being near relations of defendant No.4, they cannot be said to be strangers to her. First Appellate Court also held that decree did not require registration. The findings of the trial court were affirmed by the First Appellate Court dismissing the appeal. Aggrieved against the judgment of the First Appellate Court, the plaintiffs filed R.S.A. No.750 of 2002. Second appeal was admitted on following question of law:-

> "Whether in the absence of any pre-existing right with the defendant- respondents 1 to 3, a decree (Exhibit P.2) suffered by Jagno (who is father's sister of defendant- respondent) required registration under Section 17(1) of the Indian Registration Act, 1908?"

2.8 The High Court answered the above question of law against the plaintiffs and in favour of the defendants-respondents. The High Court held that judgment and the decree rendered in Civil Suit No.317 of 1991 dated 19.08.1991 merely recognise the existing right which was created by the oral family settlement. High Court further held that apart from relationship of Smt. Jagno with defendants-respondents 1 to 3, she has developed close affinity, love and affection for defendant respondent Nos.1 to 3 as per the findings recorded by the learned Courts below. The High Court dismissed the second appeal, aggrieved against which judgment, this appeal has been filed.

3. We have heard Shri Ranbir Singh Yadav, learned counsel for the appellant and Shri Manoj Swarup, learned senior counsel for the respondent.

4. Learned counsel for the appellants, Shri Yadav submits that no family settlement could have been entered by Smt. Jagno in favour of defendant Nos.1 to 3, they being strangers to the family. A Hindu widow cannot constitute a Joint Hindu Family with the descendants of her brother, i.e., her parental side. Family settlement can take place only between members, who have antecedent title or pre-existing right in the property proposed to be settled. Smt. Jagno could have transferred her absolute share in favour of the respondents or to any stranger only in accordance

with law by complying with the provisions of the Transfer of Property Act, 1882, the Indian Registration Act, 1908 and the Indian Stamp Act, 1899. Learned counsel further contends that registration of compromise decree was compulsory by virtue of Section 17 of the Indian Registration Act and the decree dated 19.08.1991 having not been registered, it did not confer any valid title to the defendant Nos.1 to 3. All the Courts below committed error in upholding the decree dated 19.08.1991 whereas the decree being an unregistered decree was liable to be ignored and declared in operative.

5. Shri Manoj Swarup, learned senior counsel for the respondents refuting the submissions of the learned counsel for the appellant contends that defendant Nos.1 to 3 had pre-existing right in the suit property, which was clear from the pleadings of Civil Suit No.317 of 1991. In the above suit, it was categorically pleaded that family settlement/ arrangement took place about two years back and since then plaintiffs are owners in possession of land and defendant No.4 had relinquished all her rights therein.

6. It is submitted that decree passed in the Civil Suit dated 19.08.1991 only declared the existing rights of the defendant Nos.1 to 3, which was based on the family settlement. It is submitted that the defendant Nos.1 to 3 being brother's sons of Smt. Jagno, they were not strangers to Smt. Jagno and family settlement could have been very well entered by Smt. Jagno with them. It is submitted that the expression "family" for the purpose of family settlement is not to be given any narrow meaning; it should be given a wide meaning to cover the members, who are by any means related. It is further submitted that the decree dated 19.08.1991 did not require any registration under Section 17 of the Indian Registration Act, 1908. The decree was passed with regard to subject matter of the suit property, it was exempted from registration by virtue of Section 17(2)(vi) of the Indian Registration Act, 1908. Shri Swarup further contends that the family settlement could have been made out of love and affection with regard to which there was ample pleading in the Civil Suit No.317 of 1991 and out of love and affection defendant No.4, Smt. Jagno could have very well settled the properties in favour of defendant Nos.1 to 3, her nephews being brother's sons.

7. Learned counsel for the parties have relied on judgments of this Court for their respective submissions, which shall be referred to while considering the submissions in detail.

A 8. The Civil Suit No.79 of 1991, which gives rise to this appeal was a suit where following reliefs were claimed by plaintiffs-appellants:-

> "**10.** That the plaintiffs, therefore, pray that a decree for declaration to the effect that the decree in question passed in Civil Suit No.317 of 1991 dated 19.8.1991 is illegal, invalid, without legal necessity
B and consideration on the grounds stated above in the plaint, and the same does not convey any title in favour of the defendants No.1 to 3 and does not effect any reversionary rights of the plaintiffs and the plaintiffs are owners in possession of the land in question, fully detailed and described in para no.3 of the plaint above, with consequential relief of permanent injunction restraining the
C defendants further alienating the land in question to anyone else, may kindly be passed in favour of the plaintiffs and against the defendants with costs of this suit.
>
> Any other relief which this Hon'ble Court may deems fit and proper may also be granted to the plaintiffs."

D 9. There is no dispute between the parties that Shri Sher Singh, husband of Smt. Jagno had half share in the agricultural land situate in village Garhi Bajidpur, which was suit property. Sher Singh died in 1953. Smt. Jagno after enforcement of the Hindu Succession Act, 1956 by virtue of Section 14 became the absolute owner of the half share of the
E suit property. The bone of contention between the parties centres round the decree dated 19.08.1991 passed by the Sub-Judge in Civil Suit No.317 of 1991 filed by defendant Nos.1 to 3 against Smt. Jagno seeking declaration that they are owners in possession of the suit land. In Civil Suit No.317 of 1991, following was pleaded in paragraphs 2 and 3:-

> F "**2.** That the parties are closely related to each other, the plaintiffs are nephews of the deft and constituted a Joint Hindu Family. The deft Smt. Jagno Devi is the daughter of Sh. Shib Lal, the grand father of the plaintiffs.
>
> **3.** That the defendant is living with the plaintiffs at Village
G Chakerpur and the plaintiffs are looking after her in her old age and the deft has no issue. The deft is very happy with the services of the plaintiff rendered to her and out of love and affection, the deft had allotted the above mentioned land to the plaintiffs in equal share in a family settlement /arrangement, which took place about
H 2 years back and since then the plaintiffs are owners in possession of the said land and the deft had relinquished all rights therein."

10. In the aforesaid suit, written statement was filed by Smt. Jagno admitting the claim of the defendants. The trial court in its decree dated 19.08.1991 held following in paragraph 2:-

> "**2.** The defendant appeared and filed written statement admitting in toto the claim of the plaintiffs. Statements of the parties were also recorded. In view of the written statement and statements of parties, a consent decree in favour of the plaintiffs and against the defendant is passed for declaration as prayed for, leaving the parties to bear their own costs. Decree sheet be prepared and file be consigned to the record room."

11. In this appeal, following two questions arise for consideration:-

(1) Whether the decree dated 19.08.1991 passed in Civil Suit No.317 of 1991 requires registration under Section 17 of the Indian Registration Act, 1908?; and

(2) Whether the defendant Nos.1 to 3 were strangers to defendant No.4 so as to disable her to enter into any family arrangement with defendant Nos.1 to 3?

Question No.(1)

12. There is no dispute that in the earlier Civil Suit No.317 of 1991 in which consent decree was passed on 19.08.1991, the subject matter of suit was the agricultural land situated in Village Garhi, Bajidpur. Further the suit was decreed on the written statement filed by Smt. Jagno accepting the claim of plaintiffs that there was family settlement between the parties in which the half share in the land was given to the plaintiffs of Civil Suit No.317 of 1991. The question is as to whether the decree passed on 19.08.1991 required registration under Section 17 of the Indian Registration Act, 1908. Sections 17(1) and 17(2)(vi), which are relevant for the present case, are as follows:-

> **"17. Documents of which registration is compulsory.—**(l) 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 (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
B 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

C (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,
D 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-
E 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.

XXXXXXXXXXXXXXXXX

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

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

G XXXXXXXXXXXXXXXX"

13. The submission of the learned counsel for the appellant is that there was no existing right in the plaintiffs of Civil Suit No.317 of 1991, hence the decree dated 19.08.1991 required registration under Section 17(1)(b) since decree created right in favour of the plaintiffs. In support

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of his submission, he has placed reliance on judgment of this Court in **Bhoop Singh Vs. Ram Singh Major and Ors., (1995) 5 SCC 709** where this Court held that decree or order including compromise decree granting new right, title or interest in praesenti in immovable property of value of Rs.100 or above is compulsorily registrable. In paragraphs 17 and 18 of the judgment, following was laid down:-

> **"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.
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> **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.
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> (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.
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> (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

A 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."

14. The decree passed in **Bhoop Singh's case (supra)** has been B quoted in paragraph 2 of the judgment, which clearly proved that declaration was granted that plaintiff will be the owner in possession from today. In the above case, the suit was decreed on the basis of compromise though the decree is on the ground that defendant admitted the claim of the plaintiff in written statement.

C 15. Learned counsel for the appellant has further placed reliance on another judgment of this Court in **Civil Appeal No.890 of 2008 – Mata Deen Vs. Madan Lal & Ors.,** in which case also, decree was passed on the ground of family settlement in favour of the plaintiffs-defendants. The decree passed was required to be compulsorily registered under Section 17(2)(vi) of the Registration Act, which having not been D done, the judgment was set aside and the case was remanded for the consideration of the question of law. The observation of this Court in the above judgment is to the following effect:-

"……..The second Appellate Court was required to examine this aspect of the case. As it is a substantial E question of law which fell for consideration under Section 100 CPC, as could be seen, the impugned judgment passed by the High Court is simply concurred with the finding of fact concurred with by the first Appellate Court in its judgment in exercise of its appellate jurisdiction and it had not adverted to the substantial F question of law with respect to compulsory registration of a decree in favour of the first defendant and the consequences for non registration of a decree under Section 17(2)(vi) of the Act and the law laid down by this Court in the case of Bhoop Singh vs. Ram Singh Major & Ors., (1995) 5 SCC 709 is not applied to the case on hand, which rendered the impugned judgment and decree bad G in law.

In view of the reasons stated supra, we set aside the impugned judgment and decree passed by the High Court and remand the matter to it with a request to reconsider the matter after framing the substantial questions of law that would arise for

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consideration and hear the parties and pass appropriate orders in accordance with law. Since the matter is of 1995 we request the High Court to dispose of the matter as expeditiously as possible but not later than six months from the date of receipt of a copy of this Order. A

The appeal is disposed of accordingly." B

16. From the above judgment, it is not clear as to whether the decree, which was passed on the basis of family settlement, relate to the suit property or the property which was covered in the decree was not part of the suit land. The above fact is crucial and it is yet to be determined in view of the remand by this Court, hence, the said judgment cannot be said to be lend any support to the learned counsel for the appellant. C

17. Shri Manoj Swarup, learned counsel for the respondents has on the other hand placed reliance on judgment of **Som Dev and Ors. Vs. Rati Ram and Anr., (2006) 10 SCC 788**. The above was a case where decree was based on an admission recognising pre-existing rights under family arrangement. This court held that in the above case, the decree did not require registration under Section 17(1)(b). D

18. This Court in a subsequent judgment in **K. Raghunandan and Ors. Vs. Ali Hussain Sabir and Ors., (2008) 13 SCC 102,** Court had occasion to interpret Section 17 and laid down following in paragraphs 23, 24, 25 and 28:- E

"23. Sub-section (2) of Section 17 of the Act, however, carves out an exception therefrom stating that nothing in clauses (*b*) and (*c*) of sub-section (1) of Section 17 would inter alia apply to "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". Even if the passage was not the subject-matter of the suit, indisputably, in terms of the Code of Civil Procedure (Amendment) Act, 1976, a compromise decree was permissible. F

24. A plain reading of the said provision clearly shows that a property which is not the subject-matter of the suit or a proceeding would come within the purview of exception contained in clause (*vi*) of sub-section (2) of Section 17 of the Act. If a compromise is entered into in respect of an immovable property, comprising other than that which was the subject-matter of the suit or the G H

A proceeding, the same would require registration. The said provision was inserted by Act 21 of 1929.

25. The Code of Civil Procedure (Amendment) Act, 1976 does not and cannot override the provisions of the Act. The purported passage being not the subject-matter of the suit, if sought to be B transferred by the respondent-defendants in favour of the appellant-plaintiffs or if by reason thereof they have relinquished their own rights and recognised the rights of the appellant-plaintiffs, registration thereof was imperative. The first appellate court held so. The High Court also accepted the said findings.

C **28.** *Bhoop Singh* [(1995) 5 SCC 709], inter alia, lays down: (SCC p. 715, para 18)

> "*18*. (*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.
>
> D (*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."
>
> E (emphasis in original)
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> Thus, indisputably, if the consent terms create a right for the first time as contradistinguished from recognition of a right, registration thereof would be required, if the value of the property is Rs 100 and upwards."

F 19. In the above judgment, the case of **Bhoop Singh** was also considered and distinguished. In a recent judgment delivered by Two Judge Bench of this Court of which one of us was also member (Ashok Bhushan, J.), the judgment of **Bhoop Singh** and **Som Dev** came to be considered in **Mohammade Yusuf & Ors. Vs. Rajkumar & Ors., G 2020(3) SCALE 146.** The question arose in the above case was also non-registration of a decree on the basis of which the Court has refused to admit the decree in evidence in a subsequent suit. This Court had occasion to interpret Section 17 and had also considered the **Bhoop Singh** and **Som Dev's** case. In paragraphs 6, 8, 13 and 14 of the judgment, which are relevant are as follows:-

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"6. 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 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 the 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 the Registration Act came for consideration. This Court in the above case while considering clause (*vi*) laid down the following in paras 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. Following the above judgment of *Bhoop Singh* (supra), the High Court held that since the compromise decree dated 4-10-1985 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 paras 11, 12 and 13:

> "*11*. 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.
>
> *12*. The Supreme Court in the matter of *Gurdwara Sahib* v. *Gram Panchayat Village Sirthala* reported in (2014) 1 SCC 669 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:
>
> > *"7*. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. 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 the defendant that it can use this adverse possession as a shield/defence."
>
> *13*. The plea of the petitioner based upon Section 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 *Gurdwara Sahib* (supra), the petitioner cannot claim himself to be the owner automatically after the expiry of the said limitation."

13. This Court in *Som Dev* v. *Rati Ram and Another,* (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:

> "*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....."

14. 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. The compromise decree dated 4-10-1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly."

20. This Court 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 19.08.1991 relate 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 No.1 that the consent decree dated 19.08.1991

was not registrable and Courts below have rightly held that the decree did not require registration.

Question No.2

21. The submission of the learned counsel for the appellant is that the consent decree was passed in favour of nephews of Smt. Jagno, who do not belong to the family of the plaintiffs-appellants. It is submitted that plaintiffs-appellants belonged to the family of Badlu, who was the tenure-holder of the property. It is submitted that the defendants-respondents belong to family of Smt. Jagno being brother's son of Smt. Jagno, i.e., nephews, hence, they belong to different family and no family arrangement could have been entered with them.

22. Before we answer the above issue, it is necessary to find out what is the concept of family with regard to which a family settlement could be entered. A Three-Judge bench of this Court in **Ram Charan Das Vs. Girjanandini Devi and Ors., 1965 (3) SCR 841** had occasion to consider a family settlement regarding the immovable property, this Court laid down that every party taking benefit under a family settlement must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim. Following was laid down at page 851:-

> ".....In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Mst. Hiran Bibi case [AIR 1914 (PC) 44] in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiaopa Gounden [LR 46 I.A. 72] that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.....

23. A Three Judge Bench in the celebrated judgment of this Court in **Kale and Ors. Vs. Deputy Director of Consolidation and Ors., (1976) 3 SCC 119** had elaborately considered all contours of the family

A settlement. This Court laid down that term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis. In paragraphs 9 and 10, this Court laid down following:-

B **"9.** Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences C and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this D connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

> "The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case E of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on F which their rights actually depend."

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to G build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain .and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the H property is equitably divided between the various contenders so

as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In *Halsbury's Laws of England*, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account.

A Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be
B reduced into the form of the following propositions:

"(*1*) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

C (*2*) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(*3*) The family arrangement may be even oral in which case no registration is necessary;

D (*4*) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made *under the document* and a mere memorandum prepared after the family arrangement had already been made either for
E the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

F (*5*) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party
G relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(*6*) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family
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arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement." A

24. After reviewing the earlier decision, this Court laid down following in paragraph 19:-

"19. Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds." B C

25. In the above case, the Kale**, with whom the two sisters of his mother entered into family settlement** was not a legal heir within meaning of U.P. Tenancy Act, 1939 but the family settlement entered with Kale was upheld by this Court. Following was laid down in paragraph 27:- D

"27. As regards the first point it appears to us to be wholly untenable in law. From the principles enunciated by us and the case law discussed above, it is absolutely clear that the word "family" cannot be construed in a narrow sense so as to confine the parties to the family arrangement only to persons who have a legal title to the property. Even so it cannot be disputed that appellant Kale being the grandson of Lachman and therefore a reversioner at the time when the talks for compromise took place was undoubtedly a prospective heir and also a member of the family. Since Respondents 4 and 5 relinquished their claims in favour of appellant Kale in respect of Khatas Nos. 5 and 90 the appellant, according to the authorities mentioned above, would be deemed to have antecedent title which was acknowledged by Respondents 4 and 5. Apart from this there is one more important consideration which clearly shows that the family arrangement was undoubtedly a bona fide settlement of disputes. Under the family arrangement as referred to in the mutation petition the Respondents 4 and 5 were given absolute and permanent rights in the lands in dispute. In 1955 when the compromise is alleged to have taken place the Hindu Succession Act, 1956, was not passed and Respondents 4 & 5 would have only a limited interest even if they had got the entire property which would ultimately pass to appellant Kale after E F G H

A their death. Respondents 4 & 5 thought that it would be a good bargain if by dividing the properties equally they could retain part of the properties as absolute owners. At that time they did not know that the Hindu Succession Act would be passed a few months later. Finally the compromise sought to divide the properties between the children of Lachman, namely, his two daughters and B his daughter's son appellant Kale in equal shares and was, therefore, both fair and equitable. In fact if Respondents 4 & 5 would have got all the lands the total area of which would be somewhere about 39 acres they might have to give away a substantial portion in view of the ceiling law. We have, therefore, to see the C circumstances prevailing not after the order of the Assistant Commissioner was passed on the mutation petition but at the time when the parties sat down together to iron out differences. Having regard to the circumstances indicated above, we cannot conceive of a more just and equitable division of the properties than what appears to have been done by the family arrangement. In these D circumstances, therefore, it cannot be said that the family settlement was not bona fide. Moreover, Respondents 4 and 5 had at no stage raised the issue before the revenue courts or even before the High Court that the settlement was not bona fide. The High Court as also Respondent 1 have both proceeded on the footing E that the compromise was against the statutory provisions of law or that it was not registered although it should have been registered under the Registration Act."

26. Reverting to the facts of the present case, admittedly, the defendants-respondents were nephews, i.e., brother's sons of Smt. F Jagno. We need to look into the Hindu Succession Act, 1956, Section 15, which deals with the general rules of succession in the case of female Hindus for properties inherited by female Hindus, which are devolved in according to Sections 15 and 16. Section 15(1), which is relevant is as follows:-

G "**15. General rules of succession in the case of female Hindus.**—(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

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(b) secondly, upon the heirs of the husband; A

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother."

27. A perusal of Section 15(1)(d) indicates that heirs of the father B
are covered in the heirs, who could succeed. When heirs of father of a female are included as person who can possibly succeed, it cannot be held that they are strangers and not the members of the family qua the female.

28. In the present case, Smt. Jagno, who as a widow of Sher C
Singh, who had died in 1953, had succeeded to half share in the agricultural land and she was the absolute owner when she entered into settlement. We, thus, do not find any merit in the submission of learned counsel for the appellants that the defendants-respondents were strangers to the family.

D

29. In view of our discussions on above two questions, we do not find any merit in this appeal. All the Courts have rightly dismissed the suit of the plaintiffs-appellants, which need no interference. This appeal is dismissed. Parties shall bear their own costs.

E

Divya Pandey Appeal dismissed.