

**SUPREME COURT OF INDIA**

Phool Patti

Vs.

Ram Singh (Dead) through Lrs.

C.A.No.1240 of 2005

(Markandey Katju and Asok Kumar Ganguly JJ.)

31.03.2009

**JUDGMENT**

**Markandey Katju, J.**

1. This appeal by special leave has been filed against the impugned judgment of the Punjab and Haryana High Court dated 22.10.2003 in Regular Second Appeal No.2176 of 1985.
2. Heard learned counsel for the parties and perused the record.
3. The appellants are the daughters of one Bhagwana. They along with one Shobha Ram filed Civil Suit No.234 of 1982 against the respondents challenging the decree in Civil Suit No.630 of 1980 regarding certain land and a house filed by Ram Singh against Bhagwana on the ground that the said suit was a collusive suit and hence the decree was illegal and void. Accordingly the prayer in Civil Suit No.234 of 1982 filed by the appellants was to set aside the decree in Civil Suit No.630 of 1980. The trial court on 31.5.1983 decreed Civil Suit No.234 of 1982 and set aside the judgment and decree dated 24.11.1980 in Civil Suit No.630 of 1980 on the ground that the same was collusive. However, in the first appeal under Section 96 C.P.C. the learned Additional District and Sessions Judge, Sonapat allowed the appeal and set aside the judgment of the trial court and dismissed the suit by his judgment dated 21.3.1985.
4. Aggrieved against the judgment of the learned Additional District and Sessions Judge dated 21.3.1985 the appellants filed a second appeal before the High Court which was dismissed by the impugned judgment dated 22.10.2003. Hence this appeal by special leave.
5. The finding of the First Appellate Court that the judgment and decree dated 24.11.1980 in Civil Suit No.630 of 1980 was not collusive is a finding of fact. It may be noted that Bhagwana who was the defendant in the said Civil Suit No.630 of 1980 was alive when the Suit No.18 of 1982 was filed and he had supported the judgment and decree dated 24.11.1980 in Civil Suit No.630 of 1980 by giving his evidence on oath as DW2.

6. On the other hand the appellants did not appear at any stage of the trial of the suit being No. 234 of 1982 before the trial court to stake or affirm or claim any right in the disputed land.

7. It has come in evidence that Bhagwana was residing with the respondents for the last several years and Bhagwana treated the respondent as his real son. As regards the appellants who are daughters of Bhagwana, they had been married long back, and had left for their maternal home, and hence Bhagwana was living with the respondent alone. Bhagwana is said to have had great love and affection for the respondent. There was a family arrangement in which the disputed property fell exclusively to the respondent.

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 findings of fact.

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) 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 immovable property other than that which is the subject-matter of the suit or proceeding.” (emphasis supplied)

12. In our opinion the exception mentioned in Section 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. vs. Ali Hussain Sabir & Ors.*<sup>1</sup>.

13. However, a different view was taken by this Court in *Bhoop Singh vs. Ram Singh Major*<sup>2</sup> 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.....” (emphasis supplied)

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 interpretation to the exception in clause (vi) of Section 17(2) of 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.

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

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 a larger Bench of this Court.

17. Let the papers be laid before Hon'ble the Chief Justice of India for constituting a larger Bench for interpreting the exception in clause (vi) of Section 17(2) of the Registration Act.

<sup>1</sup>2008(9) Scale 215

<sup>2</sup>1995(5) SCC 709