

ALLAHABAD HIGH COURT

Luxmi Narain

Vs.

Radhey Mohan

First Appeal No. 52 of 1981

(K.N. Misra and S. Saghir Ahmad, JJ.)

05.09.1984

JUDGEMENT

K.N. Misra, J.

1. This appeal is directed against the judgment and decree dt. 24-2-1981 passed by Civil Judge, Mohanlalganj, Lucknow on the basis of compromise. The plaintiff had filed a suit for declaration alleging that in the family settlement, which took place before the filing of the suit, the property was divided in metes and bounds between the parties. It was, thus, prayed that by means of declaratory decree it be declared that the plaintiff is the exclusive owner and in possession over the property shown by letters A and E in the list of site-plan annexed to the plaint by virtue of mutual family settlement mentioned in paragraph 4 of the plaint. The parties to the suit entered into a compromise which was filed and verified before the court. The learned court below accepted the compromise, but it passed an order which reads as follows :-

"In this suit for declaration parties have filed compromise which has been verified before me. In terms of compromise parties have settled their disputes regarding immovable properties specifying particular portion of which particular person has to remain exclusive owner. Rights over the immovable properties are to be created and extinguished by observing provisions of Registration Act and, therefore, the present compromise between the parties is to be accepted subject to provisions of Registration Act and not in absolute terms."

ORDER

"Compromise A-14 is allowed subject to the provisions of Registration

Act and suit is decided in terms of compromise A-14 which shall form part of the decree."

Sd/- (B. N. Tewari) rightalight/24-3-1981
Civil Judge, Mohanlalganj, rightalight/Lucknow.

2. Learned counsel for the appellant urged that the compromise which was filed in the present case between the parties relate to the property in suit, and, as such, it did not require registration in view of Section 17(2)(vi) of the Registration Act. Learned counsel, thus, urged that the learned lower court erred in accepting the compromise subject to the provisions of the Registration Act. Learned counsel urged that the learned lower court appears to be laboring under the impression that since the compromise relates to immovable property of more than one hundred rupees value, and, as such, it would require registration. Learned counsel submitted that this view taken by the trial court appears to be erroneous in law and the decree should have been passed in the present suit without any such rider that it would be subject to the provisions of Registration Act. Learned counsel for the respondents could not controvert the said argument.

3. We have considered the arguments of the learned counsel for the appellant and have gone through the averments contained in the plaint as well as in the compromise. The suit is based on the alleged family settlement entered into between the parties in respect of property in suit prior to the filing of the present suit.

4. It is well settled that a family settlement can be arrived at orally between the parties and there is no necessity of any registered document to be executed to witness that family settlement. In *Ram Charan Das v. Girija Nandini Devi*,¹ it was held by the Hon'ble Supreme Court that the Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst the members of a family. The consideration for a family settlement is the expectation that such a family settlement will result in establishing or ensuring amity and good-will amongst the relations. This consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot

be impeached thereafter. The Hon'ble Supreme Court went on to consider the true nature of the family settlement and observed that 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. Every party who takes benefit under it need not necessarily be shown to have under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other 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.

5. In *Shiv Ram v. Ram Ratan*,² Hon'ble Satish Chandra, J. (as he then was) observed that :-

"The compromise decree represented a family settlement between the parties. It was in law not a transfer of property. Section 10 of the Transfer of Property Act would not be applicable to it or govern its terms."

6. More or less on similar facts Hon'ble M. P. Mehrotra, J. in *Hari Shankar v. Durga Devi*,³ while dealing with the question of registration of the compromise decree, observed as under :-

"To see whether any document is saved from the provisions of Section 17 of the Act under Section 17(2) (vi), the only thing that is to be seen is whether there is a compromise decree which deals with immovable property. Once that is ascertained, the other matters such as, how the property is sought to be disposed of by the parties, or what was the nature of the suit in which compromise in respect of immovable property was arrived at or what was the relief prayed for in the suit or the manner in which the said property is being dealt with, are all irrelevant. In other words, the nature, scope and contents of compromise between the parties are extraneous considerations while deciding as to whether there was a decree or order of a Court made on a compromise between the parties comprising immovable properties and whether the same should be registered or not. We have only to see whether immovable property is the subject-matter of the suit or not."

(Emphasis supplied)

It was further observed that :-

"If the declaration is made as a result of the compromise between the parties concerning immovable property and if such a compromise is made rule of the court, then unless the immovable property is not the subject-matter of the suit in which the compromise is arrived at, the same shall be saved from the necessity of registration in view of the Clause (vi) of Sub-section(2) of Section 17 of the Registration Act."

7. In *Mehdi Hasan v. Ram Ker* ⁴ Hon'ble V. K. Mehrotra, J., after considering the relevant case law on the subject took a similar view.

8. In the present case the plaintiff had sought declaration on the basis of earlier family settlement arrived at between the parties prior to the filing of the suit. The compromise was filed by the parties incorporating the terms of the earlier family settlement. The compromise also relates only to the property in suit and no other immovable property other than the immovable property in suit was referred in the compromise. Thus, the compromise decree did not require any registration in view of sub-section (2) (vi) of Section 17 of the Registration Act. The present compromise decree also does not create any right or title in favor of the parties by its own force, but it operates to recognize pre-existing right in respect of each family member. The settlement had already taken place prior to the filing of the present suit.

9. In view of what has been said above, we find that the learned lower court has erred in accepting the compromise subject to the provisions of the Registration Act. The learned lower court had failed to consider that the compromise, which was filed and verified in the present suit, did not require registration, and, as such, there was no question of accepting the compromise with the aforesaid rider. The suit should have been decreed in terms of the compromise without any further rider that it will be subject to the provisions of the Registration Act.

10. In the result, the appeal succeeds and is hereby allowed and the suit filed by the plaintiff-appellant is hereby decreed in terms of compromise (paper No.A-14), which was filed and verified by the parties before the court below. The direction contained in the operative part of the decree of the trial court to the effect "subject to the provisions of the Registration Act," is hereby set-aside and

the suit is decreed in terms of the compromise, which shall form part of the decree.

11. In the circumstances of the case we direct the parties to bear their own costs.

Appeal allowed.

Cases Referred.

1. AIR 1966 SC 323
2. 1969 All LJ 83
3. AIR 1977 All 455
4. AIR 1982 All 92