A GURCHARAN SINGH & ORS.

v.

ANGREZ KAUR & ANR.

(Civil Appeal No. 6835 of 2009)

B MARCH 19, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Registration Act, 1908: s.17 – Case of appellants was that they were looking after one 'B', the sole defendant (owner of the suit property) who was divorced long back and was staying with them – His daughters (respondents) had left with their mother after the divorce and never met him – Sole defendant had executed registered will in favour of appellants and also a family settlement was effected in which suit property was given to the appellants in equal share – Sole defendant in a suit filed by appellants admitted the claim of the appellants that a registered will was executed by him in respect of the suit property in favour of the appellants and also a family settlement was effected in which suit property was given to the appellants in equal share – Suit was decreed on the basis of admission of the sole defendant and after the decree, mutation was effected in favour of the appellants – After the death of the sole defendant, the said decree was challenged by the respondents as null and void on the ground that it was not registered and therefore was not valid decree – Held: The suit was based on pre-existing right and the decree was expressly covered by expression "any decree or order of the Court" under s.17(2)(vi) – Decree and order did not require registration and were fully covered by s.17(2)(vi), which contains exclusion from registration as required in s.17(1) – Sequence of events clearly indicated that the sole defendant of his own volition wanted to give the entire property to the defendants due to the circumstances of the case, in which he was placed – Therefore, the decree cannot be held to be suffering from any fraud or coercion as contended by the respondents.

Allowing the appeal, the Court

HELD: 1. Suit filed by the appellants against 'B' relates to the suit property described in plaint and the decree was passed

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only with regard to suit property. The decree dated 09.01.1995 was, thus, expressly covered by expression "any decree or order of a Court". When legislature has specifically excluded applicability of clause (b) and (C) with regard to any decree or order of a Court, applicability of Section 17(1)(b) cannot be imported in Section 17(2)(v) by any indirect method. Decree and order dated 09.01.1995 did not require registration and were fully covered by Section 17(2)(vi), which contains exclusion from registration as required in Section 17(1). High Court as well as First Appellate Court erred in coming to the conclusion that decree dated 19.01.1995 required registration and due to not registered is null and void. [Para 17]

Bhoop Singh v. Ram Singh Major and Others, **(1995) 5 SCC 709 : [1995] 3 Suppl. SCR 466 – held inapplicable.**

Mohammade Yusuf & Ors. v. Rajkumar & Ors. **Civil Appeal No. 800 of 2020 decided on 05.02.2020 – referred to.**

2. 'B' had executed Will dated 02.09.1986, which was a registered Will and pleaded in paragraph 2 of the plaint. In paragraph 3 of the plaint, it was also pleaded that pursuant to a Family Settlement dated 15.06.1994 by which 'B' decided to allot plaintiffs in equal share and relinquished all his rights in the suit property, which pleadings were admitted by 'B' in his statement. The decree was passed on 09.01.1995 on the basis of which mutation was sanctioned on 03.03.1995. 'B' was admittedly alive till 24.04.1998 and in his lifetime, he never objected the decree or mutation in favour of the defendants. It has been accepted by the Courts below that 'B' and 'G' were divorced and which divorce was recorded in writing on 15.09.1973 as proved before the Courts below. 'G' after 15.09.1973 along with daughters started living with brother of 'B' and thereafter never returned to 'B'. The Courts have found that 'B' lived with the defendants after the divorce, who were taking care of him. The execution of registered Will by 'B' on 02.09.1986 in favour of the defendants and further his admission that all the claim of the defendants in Suit No. 556 are correct and accepting that he has relinquished

A **his rights in favour of the respondents clearly disprove any ground of fraud either on the Court or on 'B'. Sequence of events clearly indicate that 'B' of his own volition wanted to give the entire property to the defendants due to the circumstances of the case, in which 'B' was placed. There is thus no substance in the**
B **submission that any fraud was played in obtaining decree dated 09.01.1995 by the defendants. [Para 20][347-A-C; D-H]**

Som Dev and Others v. Rati Ram and Another, **(2006) 10 SCC 788 : [2006] 5 Suppl. SCR 778 – referred to.**

Case Law Reference

C **[1995] 3 Suppl. SCR 466**	**held inapplicable**	**Para 14**
[2006] 5 Suppl. SCR 778	**referred to**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6835 of 2009

D From the final Order dated 09.05.2008 of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 3472 of 2004.

Pallav Sisodia, Sr. Adv., Ms.Swarupama Chaturvedi, Ms. Babita Yadav, Ashutosh Mohan, Mukesh Kumar, Ms. Aparna Trivedi, Aman Jha, R.C. Kohli, Advs. for the Appellants.

E Dhruv Mehta, Sr. Adv., S.N. Chopra, Mrs. Reeta Dewan Puri, Jasan Chopra, J.S. Marahatta, P.N. Puri, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

F This is a defendant's appeal challenging the judgment of the High Court of Punjab & Haryana dismissing the Regular Second Appeal No. 3472 of 2004 of the appellants. The plaintiffs-respondents suit for declaration was dismissed by the trial court which decree was reversed by First Appellate Court decreeing the suit. The High Court affirmed the
G decree of First Appellate Court.

2. The brief facts of the case giving rise to this appeal are:-

2.1. One Bhajan Singh was owner of suit land situated in Village Siraj Majra, Tehsil Amloh, District Fatehgarh Sahib. Bhajan Singh was married with Gurmail Kaur. Two daughters (namely Angrez Kaur and
H Paramjit Kaur) were born to Bhajan Singh with Gurmail Kaur. Between

Bhajan Singh and Gurmail Kaur, a divorce in writing was entered on 15.09.1973 whereafter Gurmail Kaur started residing with one Maghar Singh, the brother of Bhajan Singh in village Jalowal. Gurmail Kaur also took alongwith her both the daughters who were minors at that time to Village Jalowal where they all resided with Maghar Singh.

2.2. Bhajan Singh resided in Village Siraj Majra with Gurcharan Singh, Gurnam Singh and Kulwant Singh, the appellants, who looked after Bhajan Singh. Bhajan Singh executed a registered Will dated 02.09.1986 in favour of Gurcharan Singh, Gurnam Singh and Kulwant Singh, the appellants. A Civil Suit No. 556 dated 21.09.1994 was filed by the appellants impleading the Bhajan Singh as the sole defendant praying for declaration to the effect that plaintiffs are the owners and in possession of the suit land.

2.3. In the plaint, the plaintiff pleaded that defendant had executed a registered Will in favour of the plaintiffs, which was made as per defendant's free will and consent and which was attested and duly registered by Sub-Registrar. It was further pleaded in the plaint that defendant effected a Family Settlement on 15.06.1994 in which suit property was given to the plaintiffs in equal share. In the suit, a written statement was filed by the defendant – Bhajan Singh on 03.12.1994 where he admitted the plaint allegations and also prayed that decree be passed in favour of the plaintiffs. On the same day, i.e., 03.12.1994, Bhajan Singh also recorded his statement in the Court, where he stated that averments in the plaint are correct and he has no objection if the suit of the plaintiff is decreed.

2.4. The Court of Additional Senior Sub Judge, Amloh decreed the suit on 09.01.1995. On the basis of admission by the defendant of the claim of the plaintiffs after decree dated 09.01.1995 mutation was also affected of the land in suit in favour of the plaintiff on 03.03.1995. Bhajan Singh died on 24.04.1998.

2.5. After death of Bhajan Singh both Angrez Kaur and Paramjit Kaur filed Civil Suit No. 167 of 19.05.1998 praying for declaration to the effect that decree and judgment in Civil Suit No. 556 of 21.09.1994 decided on 09.01.1995 in respect of the suit property is wrong, without jurisdiction, illegal, null and void, ineffective and inoperative qua the proprietary rights of the plaintiffs as heirs of the said Bhajan Singh.

A 2.6. In the suit filed by the plaintiffs, the present appellants, who were impleaded as defendants filed a written statement refuting the plaint allegations. It was pleaded by defendants-appellants that after divorce of Bhajan Singh and Gurmail Kaur on 15.09.1973, Bhajan Singh was residing with defendants, who were serving Bhajan Singh. Bhajan Singh out of his free will executed a Will on 02.09.1986 in favour of the B defendants. In the suit filed by the defendants -Suit No. 556 of 21.09.1994, Bhajan Singh filed a statement admitting the claim of the defendants including the confirmation regarding execution of Will in favour of the defendants. It is the defendants, who are in possession of suit land, in whose favour, mutation has also been affected. The plaintiffs had no C concern with Bhajan Singh, who was residing with defendants at Village Siraj Majra. The vote and ration card of Bhajan Singh was with the defendants, who were serving him like their father. A replication was also filed by the plaintiffs where Family Settlement as well as the Will dated 02.09.1986 was denied. The trial court vide its judgment and order dated 05.03.2003 dismissed the suit of the plaintiffs.

D 2.7. The plaintiffs aggrieved by the said judgment filed an appeal before District Judge. The first appeal filed by the plaintiffs was decreed and allowed by learned Additional District Judge vide its judgment dated 13.08.2004. The defendants filed Regular Second Appeal before the High Court, which was dismissed by the impugned judgment. This appeal E has been filed by the defendants aggrieved with the judgment of the High Court.

3. We have heard Shri Pallav Sisodia, learned senior counsel and Mrs. Swarupama Chaturvedi, learned counsel for the appellant. Shri Dhruv Mehta, learned senior counsel had appeared for the respondents.

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4. Shri Pallav Sisodia, learned senior counsel for the appellant contends that both First Appellate Court and High Court erred in decreeing the suit of the plaintiffs. The trial court has rightly dismissed the suit of the plaintiffs holding that decree dated 09.01.1995 was a valid decree, which did not require any registration. The claim of the appellants of G declaration as owner in possession of the suit property in Civil Suit No. 556 was admitted by Bhajan Singh, who filed the written statement and got recorded his statement admitting the claim of the plaintiffs. The decree dated 09.01.1995 was not based on any fraud or coercion. Bhajan Singh at his own free will had decided to give the suit property to the appellants, H which is clearly depicted by executing a registered Will dated 02.09.1986

in favour of the appellants and further after the decree dated 09.01.1995 accepting the mutation in favour of the appellants. Divorce between Bhajan Singh and Gurmail Kaur took place on 15.09.1973 and Gurmail Kaur thereafter started residing with Maghar Singh, brother of Bhajan Singh and never came back to Bhajan Singh. There was no relation between Gurmail Kaur and Bhajan Singh after the divorce dated 15.09.1973. The plaintiffs also went alongwith Gurmail Kaur after the divorce and throughout lived with Maghar Singh and Gurmail Kaur and never came to see their father Bhajan Singh. The Will dated 02.09.1986 was validly executed, which Will was admitted by Bhajan singh in his written statement filed in Suit No. 556. When Bhajan Singh has admitted the execution of Will dated 02.09.1986, Courts below committed error in not accepting the Will due to want of examination of attesting witness whereas Will was proved by the defendants-appellants by producing scribe, who scribed the Will as well as clerk from Registrar's Office, who proved the registration of the Will. It is further submitted that oral Family Settlement dated 15.06.1994 giving the suit property by Bhajan Singh in favour of the defendants was a valid settlement even though defendants were not related by blood as Uncle and Nephew but Bhajan Singh was living with the defendants after the divorce throughout. Defendants treated Bhajan Singh as member of their family and served them. Family Settlement in above facts was valid Family Settlement. It is not necessary that person, who is given a right in any property should be necessarily a blood relation. It is further submitted that both the First Appellate Court and the High Court erred in holding that compromise decree dated 09.01.1995 required compulsory registration under Section 17 of Registration Act, 1908. High Court has discarded the compromise decree dated 09.01.1995 on the ground that same required compulsory registration and the decree being not registered was not valid decree.

5. Shri Dhruv Mehta, learned counsel for the plaintiffs-respondents submits that decree dated 09.01.1995 was obtained by fraud and on false allegations made in the plaint. It is submitted that appellants, who were plaintiffs in the above suit described themselves as nephews of Bhajan Singh and Bhajan Singh as Uncle, which relationship was not proved, hence, decree was obtained by playing fraud. It is further submitted that decree dated 09.01.1995 was compulsorily registrable under Section 17 and it having not been registered First Appellate Court and the High Court has rightly discarded the decree. It is submitted that the Will dated 02.09.1986 has not been accepted by all the three courts.

A It is submitted that under Section 68 of the Evidence Act, a Will requires attestation. It is submitted that out of the two attesting witnesses namely Darshan Singh and Gurdev Singh, Gurdev Singh was admittedly alive, which was admitted by defendant himself in his statement and Gurdev Singh having not been produced to prove the Will, the Will has rightly been held not to be proved, which findings need no interference in this B appeal. The scribe, who appeared to prove the Will cannot be treated as an attesting witness, since he had no animus to attest the Will. It is further submitted that there can be no Family Settlement in favour of a person, who has no relation with the owner of the property. The Family Settlement dated 15.06.1994 was no Family Settlement.

C 6. Learned counsel for the parties have relied on various judgments of this Court, which we shall refer to hereinafter while considering the submissions in details.

7. We may notice the issues framed by the trial court and the findings returned thereon. On the basis of the pleadings of the parties, D trial court framed following issues:-

"1. Whether impugned judgment and decree passed in Civil Suit No. 556 of 21.09.1994 decided on 09.01.1995 titled as Gurcharan Singh etc. Vs. Bhajan Singh, by S. Dalip Singh the then Additional Senior Sub Judge, Amloh in respect of E property earlier in name of Bhajan Singh in the subject matter of the suit is illegal, null and void or otherwise bad as alleged in the plaint, if so its effect? OPP

2. Whether plaintiffs are entitled to possession of the suit land? OPP

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3. Whether Sh. Bhajan Singh executed a legal and valid will dated 09.02.98 in favour of defendants, if so its effect? OPD

4. Whether suit is not maintainable and competent in the present form? OPD

G 5. Whether plaint is liable to be rejected u/o 7 rule 11 CPC? OPD

6. Whether suit is within limitation? OPD

7. Whether defendants have taken possession of the suit land from plaintiffs 3 weeks before filing of the suit? OPD

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8. Relief"

8. Issue No.1 was decided in favour of the defendants holding the decree dated 09.01.1995 as a valid decree. Issue No.2 was decided in favour of the defendant. The issue No. 3 regarding Will dated 02.09.1986 was decided in favour of the plaintiffs holding that defendant failed to prove the Will dated 02.09.1986 since one of the attesting witnesses was alive but was not produced by the defendants. Trial court held the suit to be within limitation. The trial court has also returned a finding that it has been proved from the evidence of PW1, the plaintiff that they never visited their father from Village Jalowal, which clearly establish that Bhajan Singh resided with the defendants, who used to look after and serve him. The trial court also returned a finding that there was no element of fraud, misrepresentation or coercionin obtaining a decree dated 09.01.1995. The First Appellate Court reversed the judgment of the trial court holding that the decree dated 09.01.1995 first time created rights in favour of the defendants, hence it required registration. It was held that decree dated 09.01.1995 was not a valid document and was null and void and *non est* being an unregistered decree. The findings of the trial court with regard to Will were not interfered with by the First Appellate Court. In the Regular Second Appeal filed by the defendants, the decree of the First Appellate Court was confirmed. In the Regular Second Appeal, following substantial questions of law were framed by the High Court:-

"a) Whether in the facts and circumstances of the instant case, the decree dated 09.01.1995 which has, otherwise, been proved to have been suffered by Bhajan Singh in favour of the appellant, could be ignored by the learned Ist Appellate Court on the ground of non-registration particularly when the decree was based on earlier family settlement?

b) Whether in the facts and circumstances of the instant case, the suit filed by the plaintiff/respondents could be said to be within limitation?

c) Whether in the facts and circumstances of the instant case, the registered Will in favour of the appellants could be ignored by the learned courts below when the appellants had led affirmative evidence proving the due execution and validity of the Will?

A d) Whether the interpretation put by the learned Ist Appellate Court to the meaning of Family can be sustained in law?

9. All the substantial questions of law have been answered by the High Court in favour of the plaintiffs and against the defendants. The first substantial question of law framed by the High Court was with B regard to non-registration of decree dated 09.01.1995. We may first consider the rival submissions of the parties on the question of registration of the decree dated 09.01.1995. The First Appellate Court and the High Court both have upheld the decree 09.01.1995 as null and void due to non-registration of decree. The question is as to whether the decree C dated 09.01.1995 required registration under Section 17 of the Registration Act. Section 17 of the Registration Act provides for registration of documents, which is to the following effect:-

"**17. Documents of which registration is compulsory.**—(l) The following documents shall be registered, if the property to D 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:—

E (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 immovable F 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

G (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, H

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 immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-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.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

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

(i) any composition deed; or

(ii) … … … …

(iii) … … … …

(iv) … … … …

(v) … … … …

(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

… … … …

… … … …"

10. Sub-section (2) of Section 17 provides that nothing in clause (b) and (c) of sub-section (1) applies to item No.(i) and (xii) enumerated therein. We in the present case have to consider as to whether the decree dated 09.01.1995 is covered by sub-section(2) (vi) or not. Both the First Appellate Court and the High Court have proceeded on the premise that

since the decree dated 09.01.1995 first time created right in favour of the defendant, it required registration, on the ratio of a judgment of this Court in **Bhoop Singh Vs. Ram Singh Major and Others, (1995) 5 SCC 709**. In **Bhoop Singh (supra),** this Court laid down following in paragraphs 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.
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> **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:
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> (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.
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> (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.
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> (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.

11. Learned counsel for the respondent has placed reliance on paragraph 18(2) to support his submission that since for the first time right, title and interest in the suit property being created in favour of the defendants, it required registration. Respondent's counsel further submits that defendant in the statement before the Court has admitted that the respondents-defendants for the first time obtained right, title and interest in the suit property by virtue of decree dated 09.01.1995. The present is a case where by decree dated 09.01.1995 only suit property was made part of the decree. Suit No. 556 was filed with the pleading that Will dated 02.09.1986 as well as Family Settlement dated 15.06.1994, which are specifically pleaded in paragraphs 2 and 3 of the plaint are to the following effect:-

"2. That the defendant has executed a valid and legal Will dated 02.09.1986 in favour of the plaintiffs with his free will and consent while he was in a fit disposing mind, which was attested and registered by the Sub-Registrar.

3. That the defendant considering it proper has effected a family settlement on 15.06.1994 vide which the property in suit was allotted to the plaintiffs in equal shares and the defendant has relinquished all his right, title and interest whatsoever in the said property in favour of the plaintiff in the said family settlement."

12. In the suit, Bhajan Singh was only defendant, who filed his written statement on 03.12.1994, allegations in paragraphs 2 and 3 of the plaint were admitted by the defendant in his statement in paragraphs 2 and 3, which is to the following effect:-

"2. Para No. 2 of the plaint is admitted to be correct.

3. Para No. 3 of the plaint is admitted to be correct."

13. In the written statement, the defendant Bhajan Singh prayed that suit of the plaintiffs be decreed as prayed. The pleading in the suit and in the written statement clearly leads to the conclusion that suit was filed on the basis of pre-existing right in favour of plaintiffs, which was basis of the suit. Pre-existing right of the plaintiffs was admitted by the defendant and decree was passed therein.

14. Thus, the submission of the plaintiffs-respondents that suit was not based on pre-existing right of the plaintiffs cannot be accepted, which is belied by the categorical pleading in the plaint. In view of the above pleadings, we are of the view that very basis of the applicability of the judgment of **Bhoop Singh (supra)**is knocked out and is not attracted in the present case. This Court in a recent judgment in **Civil Appeal No.800 of 2020 – Mohammade Yusuf & Ors. Vs. Rajkumar & Ors.** decided on 05.02.2020 had occasion to consider Section 17 as well as judgment of **Bhoop Singh (supra)**. While elaborating Section 17, this Court laid down following in paragraph 6:-

"6. A compromise decree passed by a Court would ordinarily be covered by Section 17 (1) (b) but subsection (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 04.10.1985 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 04.10.1985 was not required to be registered on plain 8 reading of Section 17 (2) (vi)……."

15. In the above case, this Court further relied on earlier judgment of this Court in **Som Dev and Others Vs. Rati Ram and Another, (2006) 10 SCC 788** in paragraph 13 and laid down following:-

"13. This Court in **Som Dev and Others Vs. Rati Ram and Another, (2006) 10 SCC 788** while explaining Section 17(2)(vi) and Section 17(1)(b) and (c) held that all decree 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 paragraph 18, this Court laid down 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……."

16. In the above case, the earlier decree, which was sought to be ignored on the ground that it was not registered related only with the suit property. This Court held that the said decree did not require registration. Following reasons were given in paragraph 14:-

"14. In facts of the present case, the decree dated 04.10.1985 was with regard to property, which was subject matter of the suit, hence not covered by exclusionary clause of Section 17 (2) (vi) and 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

A nothing in clause (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 04.10.1985 did not require registration and learned Civil Judge as well as the High Court erred in holding otherwise. We, thus, set aside the order of the Civil Judge dated 07.01.2015 as well as the judgment of the High Court dated 13.02.2017. The compromise decree dated 04.10.1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly."

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17. Reverting back to the facts of the present case, it is clear that the Suit No. 556 of 21.09.1994 filed by the appellants against Bhajan Singh relates to the suit property described in plaint and decree was passed only with regard to suit property A to D. The decree dated 09.01.1995 was, thus, expressly covered by expression "any decree or order of a Court". When legislature has specifically excluded applicability of clause (b) and (C) with regard to any decree or order of a Court, applicability of Section 17 (1) (b) cannot be imported in Section 17 (2) (v) by any indirect method. We, thus, are of the considered opinion that decree and order dated 09.01.1995 did not require registration and were fully covered by Section 17 (2) (vi), which contains exclusion from registration as required in Section 17(1). High Court as well as First Appellate Court erred in coming to the conclusion that decree dated 19.01.1995 required registration and due to not registered is null and void.

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18. Trial Court's view that decree dated 19.01.1995 being binding on Bhajan Singh, the plaintiffs, who are the daughters of Bhajan Singh cannot avoid the decree. The submission of the learned counsel for the respondent that decree dated 09.01.1995 was obtained by fraud also needs to be considered.

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19. The submission of the learned counsel for the respondent is that since in the suit, which was filed by the defendant, they described the defendant as uncle of the plaintiffs, who were looking after and serving the defendant, which statement having been found not to be proved, it was fraud played on the defendant and the Court.

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20. We need to revisit the facts and sequence of events in the case to examine as to whether any fraud was played on the Court or Bhajan Singh in obtaining the decree dated 09.01.1995. Bhajan Singh

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had executed a registered Will dated 02.09.1986, which was a registered Will and pleaded in paragraph 2 of the plaint. In paragraph 3 of the plaint, it was also pleaded that pursuant to a Family Settlement dated 15.06.1994 by which Bhajan Singh decided to allot plaintiffs in equal share and relinquished all his rights in the suit property, which pleadings were admitted by Bhajan Singh in his statement. The decree was passed on 09.01.1995 on the basis of which mutation was sanctioned on 03.03.1995. Bhajan Singh was admittedly alive till 24.04.1998 and in his lifetime, he never objected the decree or mutation in favour of the defendants. It has been accepted by the Courts below that both Bhajan Singh and Gurmail Kaur were divorced and which divorce was recorded in writing on 15.09.1973 as proved before the Courts below. Gurmail Kaur after 15.09.1973 started living with Maghar Singh, brother of Bhajan Singh in Village Jalowal and thereafter never returned to Bhajan Singh. Gurmail Kaur also filed a suit for maintenance against Bhajan Singh, which was dismissed for non-prosecution. The plaintiffs, i.e., Angrez Kaur and Paramjit Kaur, after divorce went with their mother and lived with Maghar Singh and never returned to Bhajan Singh. In her statement, PW1 has admitted that she never came to see her father. The Courts have found that Bhajan Singh lived with the defendants after the divorce, who were taking care of Bhajan Singh. The execution of registered Will by Bhajan Singh on 02.09.1986 in favour of the defendants and further his admission that all the claim of the defendants in Suit No. 556 are correct and accepting that he has relinquished his rights in favour of the plaintiffs, Gurcharan Singh, Gurnam Singh and Kulwant Singh clearly disprove any ground of fraud either on the Court or on Bhajan Singh. The divorce between Bhajan Singh and Gurmail Kaur took place on 15.09.1973 and thereafter for 25 years, Bhajan Singh lived away from his wife and daughters and it was the defendants, who were taking care of Bhajan Singh. Admitting the claim of plaintiffs/appellants in the suit filed against the defendant Bhajan Singh for declaration cannot be termed as any fraud played on Bhajan Singh or the Court. Sequence of events clearly indicate that Bhajan Singh of his own volition wanted to give the entire property to the defendants due to the circumstances of the case, in which Bhajan Singh was placed. It is due to this reason that Bhajan Singh in his Will dated 02.09.1986 stated that he has no wife or children. We, thus, do not find any substance in the submission of the learned counsel for the respondents that any fraud was played in obtaining decree dated 09.01.1995 by the defendants. The decree dated 09.01.1995 cannot

A be held to be suffering from any fraud or coercion as contended by the learned counsel for the respondents.

21. We having held that decree dated 09.01.1995 was a valid decree, the decision of the trial court dismissing the suit for declaration that decree dated 09.01.1995 was null and void, has to be upheld. In
B view of our above conclusion, we do not find it necessary to consider various submissions raised by the learned counsel for the parties regarding the validity of the registered Will dated 02.09.1986.

22. In view of the foregoing discussions, we set aside the judgment of the High Court as well as First Appellate court and restore the decree of trial court. The appeal is allowed accordingly.

Devika Gujral Appeal allowed