

Civil Revision**Present: The Hon'ble Justice Jyotirmay Bhattacharya****Judgment On : 18th June, 2010.
C.O. No. 668 of 2010*****SMT. DIPALI ROY*
Versus
*SRI SAMIR BANERJEE*****POINTS**

COMPROMISE DECREE, REGISTRATION – The parties agreed by the compromise decree to transfer the non-suit property in favour of the decree-holder on a subsequent date - Whether it requires registration – Registration Act 1908, S 17 .

FACTS

The opposite party herein filed a suit against the judgment-debtor/petitioner herein in the Court of the Learned Civil Judge, Junior Division, Second Court at Alipore, inter alia praying for declaration of his lease hold right in respect of the suit property and for injunction for restraining the defendant/petitioner herein from disturbing the peaceful possession of the plaintiff/opposite party herein in the suit premises. The said suit was ultimately decreed on compromise, on the basis of the terms of settlement incorporated in the compromise petition signed by the plaintiff/opposite party and the constituted attorneys of the petitioner herein .

When the said decree was put into execution by the decree-holder/opposite party to enforce the terms of the said compromise decree against the judgment-debtor, the constituted attorneys filed an objection under Section 47 of the Civil Procedure Code challenging the executibility of the said decree, primarily, on the ground that such compromise decree having not been registered as per Section 17 of the Registration Act, is incapable of execution, as according to them, the said decree whereby a new right was created in favour of the decree-holder in respect of property which was not the subject matter of the suit, is required to be compulsorily registered under Section 17 of the Registration Act and the effectiveness of the said decree was lost due to non-registration of the said decree as per Section 17 of the said Act. Accordingly, they objected to the execution of the said decree by filing the said application under Section 47 of the Civil Procedure Code.

HELD

Under the amended provision of the Civil Procedure Code compromise between the parties in respect of a non-suit property is permissible under Order 23 Rule 3 of the Civil Procedure Code. As such the parties can settle their dispute by compromise in respect of a non-suit property. The validity of the decree, thus, cannot be challenged because of inclusion of a non-suit property within the campus of compromise decree. Para 19

Section 17 Sub-Section 2(vi) of the Registration Act provides that if any settlement is made in respect of any non-suit property, the compromise decree passed on the basis of such settlement comprising of such non-suit immovable property is required to be compulsorily registered when such decree creates an interest in such non-suit property in favour of any of the parties in present i.e. by present demise. Para 19

The use of the expression “creates” in Section 17(2)(vi) of the said Act, makes it clear that in order to attract the provision, interest in the non-suit property should be created by present demise. The

parties simply agreed to transfer the said non-suit property in favour of the decree-holder on a subsequent date by executing a registered deed of conveyance and that too after delivery of possession thereof to the decree holder. It was also agreed between the parties that surrender of lease will be made by the decree-holder in favour of the judgment debtor only after execution and registration of the deed of conveyance for transferring the title in respect of the non-suit property by the judgment debtor in favour of the decree-holder. Thus, in fact, an agreement to create an absolute interest in the non-suit property was entered into between the parties in the said compromise decree and the said non-suit property was introduced in the compromise as a consideration for settlement of a dispute relating to suit property. Thus, no interest in the non-suit property was, in fact, created in favour of the decree holder in presenti. Rather the said compromise decree provides for doing certain further acts by the parties in future for creating an interest in the non-suit property in favour of the decree holder. Thus, such a decree, does not require registration compulsorily under Section 17 of the said Act for receiving its enforceability by way of execution. Para 23

CASES CITED

- i) In the case of Bhoop Singh –vs- Ram Singh Major and ors. reported in AIR 1996 Supreme Court page 196;
- ii) In the case of Som Dev & ors. –vs- Rati Ram & anr. reported in AIR 2006 10 Supreme Court Cases 788;
- iii) In the case of Rani Hemanta Kumari Dev –vs- M/s. Zamindari Com. Ltd. reported in 46 Indian Appeals 240;

- iv) In the case of Sujoy Kumar Das – vs- Smt. Maya Dutta reported in AIR 1982 Calcutta page 222;
- v) In the case of Raj Kumar Rawala –vs- Manabendra Banerjee reported in AIR 2004 Calcutta 294;
- vi) In the case of V.B. Dharmayat (deceased) Through LRS –vs.- Shree Jagadgure Tontadrya and ors. reported in 1999 Volume 6 SCC page 15.

For the Petitioner : Mr. S. P. Roy Chowdhury,
Mr. Jiban Ratan Chatterjee,
Ms. Sudeshna Basu Thakur

For the Opposite Party : Mr. Aniruddha Chatterjee,
Mr. Priyankar Saha,
Mr. S.R. Ghosh

THE COURT

1.This application under Article 227 of the Constitution of India is directed against an order being No. 59 dated 24th February, 2010 passed by the Learned Civil Judge, Junior Division, Second Court at Alipore, in Misc. Case No. 1091 of 2008 by which the petitioner’s objection under Section 47 of the Civil Procedure Code challenging the executability of a compromise decree was rejected by the Learned Executing Court. The judgment-debtor/petitioner is thus aggrieved by the said order. Hence she has come before this Court with this application under Article 227 of the Constitution of India.

2. Heard Mr. Ray Chowdhury, Learned Senior Counsel, appearing for the petitioner and Mr. Chatterjee, learned Advocate, appearing for the opposite party. Considered the materials on record including the order impugned.

3. Let me now consider as to how far the Learned Executing Court was justified in passing the impugned order in the facts of the instant case.

4. Admittedly, the decree-holder/opposite party was a lessee in respect of the entire ground floor comprised of two flats each containing two bedrooms, one kitchen and three privies adding a total area measuring about 1913 square feet more or less at premises No. 18/57, Dovar Lane, Kolkata-700029 (hereinafter referred to as the suit property) under the judgment-debtor/petitioner for a period of 99 years under a registered lease dated 16th April, 2004. Since the judgment-debtor/petitioner threatened to disturb the possession of the decree-holder/opposite party in the said premises and was also trying to evict the opposite party therefrom forcefully and illegally with the help of some antisocial elements, the opposite party herein filed a suit being Title Suit No. 304 of 2005 against the judgment-debtor/petitioner herein in the Court of the Learned Civil Judge, Junior Division, Second Court at Alipore, inter alia praying for declaration of his lease hold right in respect of the suit property and for injunction for restraining the defendant/petitioner herein from disturbing the peaceful possession of the plaintiff/opposite party herein in the suit premises.

5. The said suit was ultimately decreed on compromise, on the basis of the terms of settlement incorporated in the compromise petition signed by the plaintiff/opposite party and the constituted attorneys of the petitioner herein. In fact, the developers who were authorised to develop the suit property on the basis of an agreement entered into between the petitioner and the said developers, are the constituted attorneys of the petitioner. Two sets of power of attorney were

executed by the petitioner appointing the developers as her constituted attorneys for discharging different types of duties on her behalf. First of such power of attorney was executed by the petitioner on 2nd July, 2005 whereby the said attorneys were authorised to exercise all acts on behalf of the petitioner which are necessary for development of the said property including the power to negotiate with the tenants of the said premises for getting vacant possession thereof and to represent the petitioner in legal proceeding before the Court of law as her constituted attorneys and also to appoint Advocate for conducting and/or defending such suit for and on behalf of the petitioner. The said power of attorney which was in the nature of the general power of the attorney, was executed by the petitioner before a Notary Public. Subsequently, another power of attorney was executed and registered by the petitioner on 22nd November, 2005 whereby the developers were appointed as her constituted attorneys for negotiating the terms of sale of the said property and for selling the said property to the prospective purchasers and to take all necessary steps for execution and registration of sale deeds by presenting the deed of conveyance before the Sub-Registrar and/or the Registrar having authority and also to receive consideration for such sale from the prospective purchasers on behalf of the petitioner. Thus, the said power of attorney was basically executed for negotiation and/or completion of sale of the said property and/or any portion thereof to the prospective buyers on the behalf of the petitioner.

6.The terms of the settlement, on which the suit was ultimately decreed on compromise was, in fact, signed by the plaintiff/opposite party herein and the constituted attorneys of the petitioner.

7.When the said decree was put into execution by the decree-holder/opposite party to enforce the terms of the said compromise decree against the judgment-debtor, the constituted attorneys filed an objection under Section 47 of the Civil Procedure Code challenging the

executibility of the said decree, primarily, on the ground that such compromise decree having not been registered as per Section 17 of the Registration Act, is incapable of execution, as according to them, the said decree whereby a new right was crated in favour of the decree-holder in respect of property which was not the subject matter of the suit, is required to be compulsorily registered under Section 17 of the Registration Act and the effectiveness of the said decree was lost due to non-registration of the said decree as per Section 17 of the said Act. Accordingly, they objected to the execution of the said decree by filing the said application under Section 47 of the Civil Procedure Code.

8.The maintainability of the said application was challenged by the opposite party as the constituted attorneys of the petitioner who filed the said application had no authority to represent the petitioner with effect from 1st January, 2008 when their authority under the power of attorney was revoked by the petitioner by executing a registered Deed of revocation on 1st January, 2008.

9.The decree-holder/opposite party also contended that since no new right was created in respect of any non-suit property in favour of the decree-holder by the compromise decree, in presenti, such compromise decree does not require registration under Section 17 of the Registration Act. The decree holder/opposite party also contended that if the parties agree to confer any right in favour of the decree-holder in respect of a non-suit property, such agreement itself does not confer any right in favour of the decree holder as for conferment of a right in favour of the decree holder, the judgment debtor is required to execute a deed of conveyance in favour of the decree holder in furtherance of the terms of the said compromise decree. Thus, according to the decree-holder, the said compromise decree at best can be regarded as a document which recognizes an agreement between the parties to the compromise petition, to confer right in favour of the decree holder in the

non-suit property and such agreement does not require registration compulsorily under Section 17 of the said Act.

10.The Learned Executing Court was pleased to reject the judgment-debtor's said application under Section 47 of the Civil Procedure Code by holding inter alia that the constituted attorneys have no locus to maintain such application under Section 47 of the Civil Procedure Code on behalf of the judgment-debtor as their authority to represent the petitioner was revoked by the petitioner by executing a registered deed of revocation on 1st January, 2008. The Learned Executing Court also held that since the judgment-debtor agreed to give a flat on the second floor of the proposed building and a car parking space in the ground floor of the said building (herein after referred to as the non-suit property) in exchange of the plaintiff's lease hold interest in the ground floor flats of the same premises, the compromise decree does not require registration in view of the exception provided in Section 17(2)(vi) of the Registration Act.

11.The propriety of the said order is under challenge before this Court in this application. Let me now consider the merit of the impugned order in the facts of the instant case as stated above.

12. RE: Locus of the constituted attorneys to maintain such application under Section 47 of the Civil Procedure Code on behalf of the judgment-debtor:

13.I have already indicated above that two deeds of power of attorney were executed by the judgment-debtor. First of such power of attorney was a notarized one. The said power of attorney which was executed by the petitioner on 7th September, 2005 was a general power of attorney whereby the developers, namely, Rajib Bannerjee and Debobrata Nath were jointly appointed as

her constituted attorneys for implementation of the development agreement and for doing of acts which are necessary for implementation of the said agreement including the power of negotiation with the tenants and for representing the petitioner in legal proceeding with the power to appoint Advocates for conducting and/or defending the suit and/or settlement of dispute by entering into the compromise with the tenants in the suit. Subsequently, another power of attorney was executed by the petitioner on 22nd November, 2005. That was a registered power of attorney. The said developers, namely, Rajib Bannerjee and Debobrata Nath were appointed as the constituted attorneys by the petitioner by the said document. By the said power of attorney the constituted attorneys were authorised to negotiate the terms of transfer of the said building and/or any part thereof with the prospective buyers and for execution of deed of conveyance and/or registration thereof by presenting the deed of conveyance before the competent registering authority after receiving the consideration money from the prospective buyers. Thus, the said power of attorney was basically executed for authorizing the constituted attorneys to sell the said property and/or any portion thereof.

14. In fact, the subsequent power of attorney which was executed on 22nd November, 2005 was revoked by the petitioner by executing a deed of revocation on 1st January, 2008. In the said deed of revocation it was specifically mentioned that “the power of attorney which was registered on 22nd November, 2005 being No. 5936 in favour of Rajib Bannerjee and Debobrata Nath is hereby cancelled today.” Thus, if the said deed of revocation is considered carefully then this Court has no hesitation to hold that the power of attorney which was executed on 22nd November, 2005 authorizing the constituted attorney to negotiate with the prospective purchaser for settlement of the terms for sale of said property and/or any portion thereof together with power of transfer by execution and registration of the deed of conveyance, was revoked by the said deed of revocation.

By the said deed of revocation the earlier power of attorney which was executed on 7th September, 2005 was not revoked. Thus, the authority which the constituted attorneys enjoyed by virtue of the earlier power of attorney still remains valid and effective. As such, neither the validity of the compromise decree which was signed by those constituted attorneys on behalf of the petitioner can be challenged for want of competence of those constituted attorneys to represent the petitioner nor it can be held that the said constituted attorneys are not competent to maintain the present application under Section 47 of the Civil Procedure Code on behalf of the petitioner herein. Accordingly, this Court cannot agree with the Learned Executing Court with regard to his findings on the objection regarding maintainability of the said application under Section 47 of the Civil Procedure Code for want of locus of the said constituted attorneys.

15. Thus this Court holds that the said application under Section 47 of the Civil Procedure Code is maintainable.

16. RE: Requirement of registration of such a compromise decree as per Section 17 of the Registration Act:

17. For appreciation of this point certain terms on which such settlement was arrived at, are required to be taken note of. The relevant terms of settlement on which such compromise decree was passed are as follows:

- i) The defendant/constituted attorney shall hand over and deliver the possession of the proposed flat measuring about 900 square feet floor area in the front portion of the second floor of the premises No.18/57, Dover Lane, Kolkata-700029 and one car parking space as mentioned in the schedule of the said compromise petition being the non-suit property to the plaintiff within 19 months from the date of passing of the order on the compromise petition;

- ii) After delivery of possession of the non-suit property to the plaintiff/decree-holder, the defendant and/or her constituted attorneys will execute a registered deed of conveyance in the name of the plaintiff in respect of the non-suit property.
- iii) Simultaneously, the plaintiff will be bound to surrender his right in the lease hold right in the suit property to the defendant and/or her constituted attorneys. The plaintiff will, thus, get the non-suit property in consideration of surrender of his lease hold interest in the suit property. Various other terms and conditions were mentioned therein laying down the modalities for implementation of the terms of settlement on which such compromise decree was based.

18. Thus, it is a case where both the suit property i.e. the lease hold property of the plaintiff/opposite party and the property which was agreed to be given absolutely to the plaintiff by the defendant in consideration of surrender of the said lease hold interest in the suit property, situate in the same premises i.e. premises No. 18/57, Dover Lane, Kolkata-700029. As such the Learned Executing Court held that since the Municipal holding number of both the suit property and the non-suit property are same and identical, the exception which is provided in Section 17(2)(vi) of the Registrations Act is not attracted in the instant case. Though, it is true that the Municipal holding number of the premises concerned is same but the suit property and the non-suit property are different as the lease hold interest was created in favour of the plaintiff under the lease in respect of ground floor flats while the non-suit property which was agreed to be given to the plaintiff/decree-holder by the defendant/judgment-debtor in the front portion of the second floor of the building which was proposed to be constructed by the constituted attorneys in the same premises. Thus, apparently it appears that a compromise was sought to be effected in respect of a non-suit property which was proposed to be constructed in the same premises, but since the non-

suit property is different from the suit property, the exception provided in Section 17(2)(vi) is apparently attracted in the instant case. Let me now examine as to how far this apparent view can be accepted in the facts of the instant case.

19. Under the amended provision of the Civil Procedure Code compromise between the parties in respect of a non-suit property is permissible under Order 23 Rule 3 of the Civil Procedure Code. As such the parties can settle their dispute by compromise in respect of a non-suit property. The validity of the decree, thus, cannot be challenged because of inclusion of a non-suit property within the campus of compromise decree. Now the question is as to whether such a decree requires registration compulsorily. Section 17 Sub-Section 2(vi) of the Registration Act provides that if any settlement is made in respect of any non-suit property, the compromise decree passed on the basis of such settlement comprising of such non-suit immovable property is required to be compulsorily registered when such decree creates an interest in such non-suit property in favour of any of the parties in presenti i.e. by present demise. But if no interest is created in such non-suit property in presenti by any compromise decree then can it be said that such a compromise decree is required to be registered?

20. In fact, various decisions were cited at the bar on the said question. Mr. Ray Chowdhury, Learned Senior Counsel, appearing for the petitioner, cited the following decisions of the Hon'ble Supreme Court:

- vii) In the case of Bhoop Singh –vs- Ram Singh Major and ors. reported in AIR 1996 Supreme Court page 196;
- viii) In the case of Som Dev & ors. –vs- Rati Ram & anr. reported in AIR 2006 10 Supreme Court Cases 788;

Mr. Chatterjee, Learned Advocate, appearing for the opposite party also cited the following decisions:-

- i) In the case of Rani Hemanta Kumari Dev –vs- M/s. Zamindari Com. Ltd. reported in 46 Indian Appeals 240;
- ii) In the case of Sujoy Kumar Das – vs- Smt. Maya Dutta reported in AIR 1982 Calcutta page 222;
- iii) In the case of Raj Kumar Rawala –vs- Manabendra Banerjee reported in AIR 2004 Calcutta 294;
- iv) In the case of V.B. Dharmayat (deceased) Through LRS –vs.- Shree Jagadgure Tontadrya and ors. reported in 1999 Volume 6 SCC page 15.

21. On perusal of the aforesaid decisions, this Court finds that the decision which was cited by Mr. Ray Chowdhury in the case of Som Dev and ors. –vs- Rati Ram and anr. (supra) exhaustively discussed the present issue, after taking into consideration various decisions of different High Courts as well as of the Supreme Court including majority of the decisions cited by Mr. Chatterjee. In my view, the principle which was laid down by the Hon’ble Supreme Court in paragraph 12 of the said decision clinches the issue. Paragraph 12 of the said decision is thus set out herein:-

“12. On a plain reading of Section 17 of the Registration Act, with particular reference to clause (vi) of sub-section (2) it is clear that a decree or order of a court and a compromise decree that relates only to the subject-matter of the suit need not be registered on the ground that it is a non-testamentary instrument which purports to or operates to create, declare, assign, limit or

extinguish any right to or in immovable property or which acknowledges receipt or payment of any consideration on account of a transaction which brings about the above results. But if a suit is decreed on the basis of a compromise and that compromise takes in property that is not the subject-matter of the suit, such a compromise decree would require registration. Of course, we are not unmindful of the line of authorities that say that even if there is inclusion of property that is not the subject-matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject-matter of the suit and such a decree would also not require registration in view of clause (vi) of Section 17(2) of the Registration Act. Since we are not concerned with that aspect here, it is not necessary to further deal with that question. Suffice it to say that on a plain reading of clause (vi) of Section 17(2) all decrees and orders of the court including a compromise decree subject to the exception as regards properties that are outside the subject-matter or the suit, do not require registration on the ground that they are hit by Sections 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an yearly rent or a transfer of a decree or order of a court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered.”

22. For giving emphasis on certain portion of the said judgment which is relevant for the present purpose, I underlined those portion of this said judgment. If the principles which were laid down by the Hon'ble Supreme Court in the said decisions is applied in the instant case, then it cannot be held that the non-suit property which was agreed to be given absolutely by the judgment-debtor to the decree holder as a consideration for settlement of the dispute relating to the said property, was not the subject matter of the suit. If the terms of settlement are considered minutely then it will be found that the non-suit property was introduced in the said compromise decree as a consideration for compromise of the dispute relating to the suit property. As such even for inclusion of the said non-suit property in the compromise decree, it cannot be held that registration of the said compromise decree is compulsorily required for validating the said compromise decree.

23. That apart if the terms of the compromise petition are further considered from a different angle, then it will be apparent that by the said decree no interest was created in the non-suit property in favour of the decree-holder in presenti. The use of the expression "creates" in Section 17(2)(vi) of the said Act, makes it clear that in order to attract the provision, interest in the non-suit property should be created by present demise. The parties simply agreed to transfer the said non-suit property in favour of the decree-holder on a subsequent date by executing a registered deed of conveyance and that too after delivery of possession thereof to the decree holder. It was also agreed between the parties that surrender of lease will be made by the decree-holder in favour of the judgment debtor only after execution and registration of the deed of conveyance for transferring the title in respect of the non-suit property by the judgment debtor in favour of the decree-holder. Thus, in fact, an agreement to create an absolute interest in the non-suit property was entered into between the parties in the said compromise decree and the said non-suit property was introduced in

the compromise as a consideration for settlement of a dispute relating to suit property. Thus, no interest in the non-suit property was, in fact, created in favour of the decree holder in presenti. Rather the said compromise decree provides for doing certain further acts by the parties in future for creating an interest in the non-suit property in favour of the decree holder. Thus, such a decree, in my view, does not require registration compulsorily under Section 17 of the said Act for receiving its enforceability by way of execution. In this regard, reliance may be made on the decision cited by Mr. Chatterjee in the case of V.B. Dharmayat vs. Shree Jagadgure Tontadrya & ors. (supra) and in the case of Raj Kumar Rawala –vs- Manabendra Banerje (supra), wherein identical issue was discussed.

24. That apart the judgment-debtor has also obtained the benefits under such compromise decree. The possession of the lease hold property was handed over by the decree-holder to the constituted attorneys of the judgment-debtor in terms of the said compromise decree for enabling them to develop the suit property. As such, in my view, the judgment-debtors, after having enjoyed the benefits under the compromise decree, are estopped from challenging the executibility of such decree for want of non-registration even though for the sake of argument it is accepted that such compromise decree requires registration.

25. The said compromise decree, as it stands, is very much executable. Accordingly, this Court holds that the revisional application deserves no merit for consideration. The revisional application thus, stands rejected.

26. Considering the long pendency of the execution proceeding, the learned Executing Court is directed to conclude the execution proceeding at an early date.

27. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)