Case Citation: (2026) ibclaw.in 6397 HC

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

SECOND APPEAL No. 171 of 2019

CNR No.: MPHC020014992019

JAGDISH PRASAD

Versus

THESILDAR AND OTHERS

Appearance:

Shri Ashish Choubey - Advocate for the appellant.

Shri Anshul Rajpurohit - Govt. Advocate for the respondent / State.

Reserved on : 17.09.2026

Delivered on : 14.10.2026

ORDER

This second appeal is preferred by the plaintiff, who filed a suit for declaration and consequential relief against the respondents, which was dismissed by Second Civil Judge, Class-II, Kukshi vide judgment and decree dated 31.03.2018 passed in Civil Original Suit No. 05-A/2018, which have been affirmed by Second Additional District Judge, Kukshi, District Dhar in Civil Regular Appeal No. 30-A/2018 by judgment and decree dated 27.10.2018.

2. The facts of the case in nutshell are that earlier the appellant (hereinafter referred to as "plaintiff") filed a suit 69-A/2001 for declaration of Bhumiswami rights over the land bearing survey No. 81/5 admeasuring 1.933 hectare of village Tanda, Tehsil Kukshi, District Dhar on the ground that he has acquired the title as per the doctrine of adverse possession. The suit was contested by the defendants therein and ultimately Civil Judge, Class-II, Kukshi, by judgment and decree dated 28.03.2008, decreed the suit and declared the plaintiff as Bhumiswami of

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the subject land.

3. The judgment and decree passed by Civil Judge, Class-II, Kukshi were challenged by the defendant therein in Civil Regular Appeal before the Appellate Court and during the pendency of the appeal, the parties settled the dispute to the effect that the plaintiff will not claim Bhumiswami rights over the land utilized for construction of Girls Hostel, and would be entitled to get mutation as Bhumiswami over the balance available agriculture land only. The appeal was dismissed as withdrawn after considering the aforesaid compromise between the parties. Thereafter, the plaintiff applied for mutation before Tehsildar Kukshi on the basis of the judgment and decree passed by the Trial Court for mutation, wherein the Tehsildar after considering the provisions of the Section 17(1) of the Registration Act, 1908 referred the matter to the Collector Stamps for supplying the information regarding the market value of the subject land, in respect of which, the decree was passed.

4. Collector Stamps in his reply intimated to the Tehsildar that the market value of the subject agricultural land would be Rs. 32,86,100/- in case the land is irrigated and Rs. 27,06,200/- for unirrigated land. Collector Stamps intimated that total 6.125% stamp duty will be payable on a decree of transferring the title. Consequently, the Tehsildar, by order dated 22.11.2014, though accepted the mutation on the basis of the decree passed by the trial Court on 28.03.2008 in Civil Suit No. 69-A/2001, but impounded the decree and forwarded to Collector Stamps for registration and recovery of deficit stamp duty. In view of the Tehsildar, the decree is compulsorily registrable in accordance with the provisions of the Section 17(1)(b) and (c) of the Registration Act.

5. The order passed by the Tehsildar was assailed by the plaintiff before Sub Divisional Officer, Kukshi, District Dhar in appeal, which was dismissed by

order dated 30.09.2016 and consequently a civil suit was filed by the plaintiff against Tehsildar, Sub Divisional Officer and State of M.P. through Collector for seeking decree of declaration that the orders passed by the Tehsildar and Sub Divisional Officer for impounding and forwarding the decree to Collector Stamps for registration and charging deficit stamp duty are illegal and not binding on the plaintiff. He also prayed for decree for perpetual injunction restraining the defendants from execution of the said orders.

6. The defendants filed the written statement and denied the plaint allegations. After settling the issues, plaintiff examined himself as PW/1, whereas no one has been examined on behalf of the defendants. The trial Court, by impugned judgment and decree dated 31.03.2018, dismissed the suit filed by the plaintiff on the ground that the decree dated 28.03.2008 was challenged in an appeal and the appeal decided on the basis of out of Court settlement, by which the plaintiff has acquired the title over the land, and he was not already having the rights and title and, therefore, as per Section 17(1)(b), (c) read with Section 17(2)(vi) of Registration Act, the decree passed in favour of the plaintiff on the basis of compromise is required to be registered. The trial Court after relying the judgment delivered by the Supreme Court in the matter of ***Bhoop Singh v/s Ram Singh Major & Ors., (1995) 5 SCC 709, K. Raghunandan and others v/s Ali Hussain Sabir and others, (2008) 13 SCC 102*** and ***Phool Patti and another v/s Ram Singh (Dead) through LRs. and another, (2015) 3 SCC 164***, dismissed the suit.

7. The judgment and decree passed by the trial Court were assailed by the plaintiff in Civil Regular Appeal before Second Additional District Judge, Kukshi, District Dhar, Civil Regular Appeal No. 30-A/2018, which was decided by judgment and decree dated 27.10.2018 and the First Appellate Court, after considering the judgment delivered by the Supreme Court in the matter of ***Bhoop***

Singh (supra) and ***Som Dev and others v/s Ratiram and another, AIR 2006 SC 3297***, upheld the finding recorded by the trial Court and dismissed the appeal preferred by the plaintiff.

8. Hence, this second appeal has been filed impugning the judgment and decree passed by the trial Court and affirmed by the First Appellate Court. The Coordinate Bench, by order dated 09.09.2019, admitted this second appeal on the following substantial question of law:

> ***"Whether, the Courts below were justified in holding that the decree dated 28.03.2008 created rights in favour of the appellant for the first time and under exception to clause (vi) of sub-section 2 of Section 17 of Registration Act, was compulsorily required to be registered?"***

With the consent of the parties and considering the fact that short point is involved in this appeal, the matter was heard finally for the purpose of final disposal of the appeal.

9. Shri Ashish Choubey, Advocate appearing on behalf of the appellant submits that the trial Court and First Appellate Court have committed error in passing the judgment and decree of dismissal of suit and in upholding the findings recorded by the Tehsildar that by the compromise, the plaintiff has acquired the title in respect of a property, and he was not having rights earlier, therefore, the decree is required to be registered. He further submits that the trial Court and First Appellate Court have failed to interpret the provisions of Section 17 of the Registration Act particularly Clause (vi) of sub-section 2, which provides that a decree or order of a Court or a compromise decree that relates only to 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 an immovable property or which acknowledges receipt or payment of any consideration on account of a transaction, which brings about the above results, whereas in the case in hand, it was brought on record that the decree was in respect of the subject matter of the suit property and by the decree, no rights were created in favour of the plaintiff, but the dispute between the parties was decided by the trial Court.

10. Learned counsel further submits that the trial Court and First Appellate Court have failed to examine that the plaintiff was having pre-existing right of adverse possession to the immovable property and, therefore, the exemption granted by the Registration Act is applicable to the case in hand and the trial Court and First Appellate Court erroneously held that the said decree created a right in favour of the plaintiff, whereas the same was in respect of pre-existing right of the plaintiff, which was declared and no new right was created and, thus, no registration was required. Learned counsel relied upon the judgment delivered by the Supreme Court in the matter of ***Mukesh v/s State of M.P., 2024 INSC 1026*** , wherein the Supreme Court, dealing with the case arising out of the order passed by the Collector Stamps demanding the stamp duty upon the compromise decree and after considering the provisions of Section 17 (1) (b), (c) of the Registration Act, 1908, held that for the purpose of claiming the exception of Section 17 (2) (vi) of the Act, three conditions are essential, *firstly*, there must be a compromise decree as per the terms of the compromise, without any collusion, *secondly*, the compromise decree must pertain to the subject property in the suit and, *thirdly*, there must be pre-existing right over the subject property and the compromise decree should not create a fresh right.

11. Learned counsel submits that in view of the law laid down by the

Supreme Court in the matter of ***Mukesh (supra)***, the issue is no more *res integra.* In the case in hand, the compromise decree was not the result of any collusion between the parties, as the parties contested the case till appellate stage, and the compromise decree was in respect of the subject property of the suit and it was in respect of pre-existing right over the suit property, no fresh right had been created in favour of the plaintiff by the compromise decree. He submits that the order passed by the Tehsildar and affirmed by the Sub Divisional Officer are liable to be declared null and void and not binding on the plaintiff, however, the trial Court erroneously dismissed the suit and the First Appellate Court affirmed the judgment of trial court by dismissing the appeal. He prays for allowing the second appeal by deciding the substantial question of law in his favour.

12. Learned Government Advocate appearing on behalf of the respondent / State supported the judgment and decree passed by the trial Court and First Appellate Court and submits that the plaintiff was not having any right in the subject land and he was claiming the right on the basis of adverse possession in a property owned by the defendants therein and at the stage of first appeal, the parties settled the dispute out of the Court and as a result of which, the appeal was dismissed by holding that the plaintiff would be entitled for mutation on the land other than the piece of land utilized for the purpose of Girls Hostel, thus, Tehsildar has not committed any error in passing the order of payment of deficit stamp duty and for registration in view of the provisions of Section 17(1)(b), (c) & 17(2)(vi) of the Registration Act, 1908, which provides that all the non-testamentary documents if, by the said document any right is created or declared would be compulsorily required to be registered. He submits that as per the provisions of the Indian Stamp Act read with M.P. Amendment, the compromise decree would be chargeable as a settlement and the stamp duty for conveyance would be applicable

on the compromise decree, and as the same has not been paid by the plaintiff, the document cannot be given any effect. He further submits that the judgment and decree passed by the trial Court are duly based on the due appreciation of evidence and do not require any interference by this Court. He prays for dismissal of the appeal.

13. For ready reference, Section 17(1)(b) & (c) and Section 17(2)(vi) of the Registration Act, 1908 are reproduced hereinbelow:

> **17. Documents of which registration is compulsory.—(1)** 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)** ----------xxx----------
>
> **(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 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;
>
> ----------xxx----------
>
> **17(2).** Nothing in clauses (b) and (c) of sub-section (1) applies to —
>
> **(i)** ----------xxx----------
>
> ----------xxx----------
>
> **(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;

14. In the matter of ***Bhoop Singh (supra)***, the Supreme Court has held as under:

> "**13.** In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs 100 and upwards, the document or record or compromise memo shall be compulsorily registered.

14. In *Tek Bahadur Bhujil v. Debi Singh Bhuji* the Constitution Bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered under Section 17. This Court, while upholding oral family arrangement, held that registration would be necessary only if the terms of the family arrangements are reduced into writing. A distinction should be made between the document containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of 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. It was held that a memorandum of family arrangement made earlier which was filed in the court for its information was held not compulsorily registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in Maturi Pullaiah v. Maturi Narasimham14 wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by Section 17 of the Act.

15. In Ratan Lal Sharma v. Purshottam Harit this Court held that the award had expressly made an exclusive allotment of partnership assets, including the factory and liabilities to the appellant, and made him absolutely entitled to the same, thereby purporting to create rights in immovable property worth above Rs 100 in favour of the appellant. It was, therefore, held that it required registration under Section 17 of the Act. It was also pointed that it is equally settled law that the share of a partner in the assets of the partnership which has immovable property is a moveable property and that the assignment of the share does not require registration under Section 17. Take the familiar cases of a decree in suit for specific performance of a contract. Though a contract of sale is not compulsorily registrable as it does not create title or right in immovable property; but on a decree for specific performance made by the court, the document executed in furtherance thereof requires registration though it has the imprint of the decree of the court.

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.

19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons:

(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.

(2) A perusal of the impugned judgment shows that the first appellate court held the decree in question as 'collusive' as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same

view."

15. Reference may be had to ***Mohammade Yusuf and others v/s Rajkumar and others, (2020) 100 SCC 264***, wherein the Supreme Court has held as under:

> "**6.** Under Section 17(1)(b), 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 property requires registration. The word "instrument" is not defined in the Registration Act, but is defined in the Stamp Act, 1899 by Section 2(14).
>
> **7.** 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)(vl) The High Court referred to the judgment of this Court in Bhoop Singh v. Ram Singh[3], 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: (SCC pp. 715-16)
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> > "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. In the facts of that case, this Court held that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Further, the earlier decree was held to be collusive. Two reasons for holding that the earlier decree in the abovesaid case required registration have been mentioned in para 19 of the judgment, which is to the following effect: (Bhoop Singh case[3], SCC p. 716)

"19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons:

(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed 'in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct'. Decreeing of suit in such a

situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.

(2) A perusal of the impugned judgments shows that the first appellate court held the decree in question as "collusive" as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. The learned Judge of the High Court also took the same view."

9. Following the above judgment of Bhoop Singh[3], 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 v. Gram Panchayat Village Sirthala[2] and made the following observations in paras 10, 11 and 12: (Mohd. Yusuf case[1], SCC OnLine MP)

"10. 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.

11. The Supreme Court in the matter of Gurdwara Sahib v. Gram Panchayat Village Sirthala 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: (SCC p. 673, paras 7-8)

7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

8. 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."

12. 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[2], the petitioner cannot claim himself to be the owner automatically after the expiry of the said limitation."

10. The judgment of Gurdwara Sahib v. Gram Panchayat Village Sirthala has now been expressly overruled by a three-Judge Bench judgment in Ravinder Kaur Grewal v. Manjit Kaur. This Court held in the above case in para 62 that once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner.

11. In para 62, the following has been laid down: (Ravinder Kaur Grewal case, SCC pp. 777-78)

> "62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

12. In para 61, this Court in Ravinder Kaur Grewal case has expressly overruled Gurdwara Sahib v. Gram Panchayat Village Sirthala[2].

13. In view of the pronouncement of this Court by the three-Judge Bench judgment in Ravinder Kaur Grewal v. Manjit Kaur, the very basis of the High Court for holding that compromise deed dated 4-10-1985 requires registration is knocked out. The present is not a case where there is any allegation that the decree dated 4-10-1985 is a collusive decree. The decree dated 4-10-1985 was in favour of the plaintiff of 7 biswa land, Survey No. 203 and for remaining land of Survey No. 203, it was held that it belonged to the defendants.

14. In Bhoop Singh[3], this Court held that the earlier decree required registration for the reasons as mentioned in para 19. The reasons given in para 19 of the above case have no application in the facts of the present case.

15. This Court in Som Dev v. Rati Ram 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: (SCC p. 800)

> "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 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.

16. In ***Khushi Ram and others v/s Nawal Singh and others, (2021) 16 SCC 279***, the Supreme Court has held as under:

"**30.** This Court in Rajkumar case[7] 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 19-8-1991 relates 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 1 that the consent decree dated 19-8-1991 was not registrable and the courts below have rightly held that the decree did not require registration."

17. Recently in ***Mukesh (supra)***, the Supreme Court has held as under :

"**10.** *****

Thus, it could be discernible that in order to fall under the exception of Section 17(2)(vi) of the Act, 1908, the following conditions must be satisfied:

(i) There must be a compromise decree as per the terms of the compromise without any collusion;

(ii) The compromise decree must pertain to the subject property in the suit; and

(iii) There must be a pre-existing right over the subject property, and the compromise decree should not create a right afresh.

11. There cannot be any doubt that in the civil suit filed by him, the appellant categorically stated that he is the owner of the subject land and is in long and continuous possession by doing cultivation for several years.

When the Respondent No.2 sought to disturb the possession of the appellant by selling the subject land to third parties, taking advantage of his name standing in the revenue records, the appellant prayed for declaration and permanent injunction. It is settled law that revenue records are not documents of title. Any entry therein will not ipso facto confer ownership. In the present case, the possession is continuously with the appellant. As per the judgement of this Court in *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others*, continuous and uninterrupted adverse possession would confer right, title and interest and the same can be used as a sword. Admittedly, the suit has been filed by the appellant seeking a declaration asserting his pre-existing right, title and interest and for permanent injunction. Thereafter, in terms of the compromise entered into between the parties, the suit was decreed in favour of the appellant. Hence, it is clear that through the said compromise decree, the appellant did not obtain any new right, but he has asserted his pre-existing right/ title/ interest over the subject land. The Judgment in *Ravinder Kaur Grewal's case (supra)* was delivered on 06.08.2019, whereas the order in Siddhulal case was passed by the High Court on 24.07.2019 relying on the judgment of the High Court in Mohd. Yusuf and others v. Rajkumar's case rendered on 13.12.2017. The said judgement was reversed by this Court in the Judgment reported in (2020) 10 SCC 264. In view of the change in law with regard to the right accrued to a holder in adverse to be treated as a pre-existing right and since the order in Mohammed Yusuf's case was subsequently reversed, the judgment of the High Court is not sustainable.

12. Though the Respondent No.1 alleged that the suit was filed by the appellant in collusion with the Respondent No.2 and within a short time from the date of initiation of the suit, the parties compromised the matter in order to evade payment of stamp duty, no concrete evidence was placed before this court to substantiate that the same. That apart, it is not the case of the Respondent No. 1 -State that the suit itself was collusive as the property was not in possession of the appellant and that it belongs to any other third party. Such rival claim by any other person other than the defendant has not been brought to our knowledge. Obviously, the case before us is not a title dispute, but rather one relating to registration and payment of stamp duty and therefore, we leave the issue there. Under the above circumstances, we have no option but to hold that the compromise decree is by way of collusion, cannot be accepted. As already indicated above, the compromise decree reached finality, as the Respondent No.1 has not challenged the same. There is no finding of collusion between the parties in entering into the compromise by any Court as on date. Indisputably, the property is the subject matter of the suit. Thus, the appellant has satisfied the conditions enumerated in section 17(2)(vi) of the Act, 1908 and hence, the subject I land acquired by him by way of compromise decree, requires no registration.

13. In respect of the issue relating to payment of stamp duty for mutation of the subject land, it is the specific plea of the appellant that "consent decrees" /"decrees" are not chargeable with "stamp duty" under the Indian Stamp Act, 1899 as applicable to the State of Madhya Pradesh. Section 3 of the Indian Stamp Act, 1899 provides the instruments which are chargeable

with duty and the same reads as under:

> "3. Instrument chargeable with duty Subject to the provision of this Act and the exemptions contained is Schedule 1, the following instrument shall be chargeable with duty of the amount indicated in the schedule as the proper duty therefore, respectively, that is to say-
> (a) Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in India on or after the first day of July 1899;
> (b) Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiable in India; and
> (c) every instrument (other than a bill of exchange or promissory note) mentioned in that schedule, which not having been previously executed by any property situate, or to any matter or thing done, or to be done, in India and is received in India:
> Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clause (a), clause (b), or clause (c) of this section or in Schedule 1, the amount indicated in schedule I-A to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable on the instruments mentioned in clauses (aa) and (bb) of this proviso, as the proper duty thereof, respectively, -
> (aa) every instrument, mentioned in schedule I-A as chargeable with duty under that schedule, which not having been previously executed by any person, is executed in Madhya Pradesh on or after the commencement of the Central Provinces and Berar Indian stamp (Amendment) Act, 1939; and
> (bb) every instrument mentioned in Schedule 1-A as chargeable with duty under that schedule, which not having been previously executed by any person, is executed out of Madhya Pradesh on or after the commencement of the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939 and relates to any property situated or to any matter or thing done or to be done, in Madhya Pradesh and is received in Madhya Pradesh:
> Provided further that no duty shall be chargeable in respect of- (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument; (2) any instrument for the sale, transfer or other disposition, either absolutely, or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894 or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 as amended by subsequent Acts."

From the above, it is apparent that stamp duty is not chargeable on an order/decree of the Court as the same do not fall within the documents mentioned in Schedule I or I-A read with Section 3 of the Indian Stamp Act, 1899. Though the Collector of Stamps determined the stamp duty for the subject land as per Article 22 of Schedule IA of the Indian Stamp Act, 1899, which states about conveyance, in this case, we have already held

that the compromise decree does not fall under the instruments mentioned in the Schedule and that it only asserts the pre-existing rights. Therefore, in the facts of the case, the consent decree will not operate as conveyance as no right is transferred and the same does not require any payment of stamp duty. Since the appellant has only asserted the pre-existing right and no new right was created through the consent decree, the document pertaining to mutation of the subject land is not liable for stamp duty.

14. In the ultimate analysis, we find that the impugned order passed by the High Court, upholding the orders of the authorities below, has no legs to stand and is hence, set aside. Accordingly, this appeal stands allowed and the authority concerned shall make mutation of the revenue records in respect of the subject land in favour of the appellant. There is no order as to costs."

18. In view of the above legal position and considering the provisions of Section 17 of the Registration Act, 1908, which provides that the documents mentioned in sub-section (1) would be required to register compulsorily and Section 17(1)(b) provides that the 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 or upwards to or in immovable property and sub-section (c) provides, 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; shall be required to be compulsorily registered. However, the exceptions are carved out in sub-section (2) and clause (vi) of sub-section (2) provides that 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 will be exempted from the compulsorily registration of a document. From bare reading of Section 17(1)(b), (c) read with Section 17(2) clause (vi), it is unambiguous that the requirement for compulsorily registrable would be that there must be an order or decree based on compromise in respect of

the property, which is not the subject matter of the suit and the alleged rights declared by the compromise decree should not be pre-existing right and must be created afresh.

19. In the case in hand, the plaintiff filed the suit for declaration and perpetual injunction on the basis of adverse possession over the suit land bearing survey No. 81/5 admeasuring 1.933 hectare of village Tanda, Tehsil Kukshi, District Dhar and the Civil Judge, Class-II, Kukshi, by judgment and decree dated 28.03.2008 decreed the suit and declared the plaintiff as Bhumiswami of the said land, the suit was contested by the defendant and it was not a compromise decree. Thereafter, the defendant filed the appeal before the competent Appellate Court registered as Civil Regular Appeal No. 30-A/2018. The plaintiff was not in possession of some part of the land, which was utilized by the defendant for the purpose of construction of Girls Hostel and Girls Hostel was running there, therefore, the parties entered into a settlement out of the Court that plaintiff will not claim the title over the land utilized for the construction of Girls Hostel and will be entitled to claim the rights in respect of balance land, which is in possession of the plaintiff. Meaning thereby, even by out of Court settlement, the plaintiff has relinquished his rights declared by the trial Court in respect of a part of the land, which was utilized for the purpose of construction of Girls Hostel.

20. The plaintiff has not acquired any additional right or title over any land or additional land by the settlement, which took place out of the Court. Meaning thereby, no rights were acquired by the plaintiff through compromise. In view of the out of Court settlement, the appeal was withdrawn by the defendant and thereafter the plaintiff moved an application before the Tehsildar for mutation on the basis of the decree passed by the trial Court on 28.03.2008 in Civil Suit No. 69-A/2001, which was not a compromise decree and which was a contested

decree. The merits of the case decided by the Court by the said decree. The Tehsildar impounded the decree and referred the matter to the Collector Stamps for registration and recovery of the deficit stamp duty as per the market value treating that decree as a compromise decree / settlement. The decision of the Tehsildar that decree dated 28.03.2008 was passed on the basis of the compromise is completely erroneous and perverse. From bare perusal of the decree dated 28.03.2008, it appears that it is a contested decree passed by the competent trial Court on the basis of the merits of the case and, therefore, the same cannot be treated as a compromise decree.

21. No rights were created in favour of the appellant for the first time by the decree dated 28.03.2008 and only the rights those were acquired by the plaintiff on the basis of adverse possession have been declared by the trial Court on merits. For the purpose of charging the stamp duty, it was essential for the Tehsildar to prove that the decree has been passed on the basis of any compromise. Even by the Appellate Court, no compromise decree was passed. The application for mutation was not filed on the basis of any compromise. There is no compromise decree and there was no collusion between the parties. The decree was in respect of the subject property in the suit and it was in respect of a pre-existing right over the subject property and by the decree, no fresh right has been created. Therefore, in view of the Clause (vi) to Section 17(2) of Registration Act, 1908, such type of decree is exempted from compulsorily registrable and, thus, the Tehsildar has committed error in impounding the decree and forwarded it to the Collector Stamps for registration and recovery of deficit stamp duty. The trial Court and First Appellate Court have also committed error in considering the decree dated 28.03.2008 as a decree of compromise, without considering the fact that it was a contested decree in respect of the subject property of the suit and no fresh right

has been created by the decree in favour of the plaintiff, who filed the suit for declaration and perpetual injunction on the basis of the rights acquired by the plaintiff on the basis of adverse possession.

22. In view of the above conspectus, it appears that the trial Court and First Appellate Court have committed error in dismissing the suit filed by the plaintiff on the ground that the plaintiff has applied for mutation on the basis of the compromise decree. As no rights were created in favour of the plaintiff by the said decree for the first time, therefore, the both the Courts were not justified in holding that the decree dated 28.03.2008 was compulsorily required to be registered and not exempted in view of the clause (vi) of sub-section (2) of Section 17 of the Registration Act, 1908. The substantial question of law is replied accordingly.

23. Consequently, the Second Appeal is **allowed** and the judgment and decree passed by the Second Civil Judge, Class-II, Kukshi in Civil Original Suit No. 05-A/2018 on 31.03.2018 and the judgment and decree passed by Second Additional District Judge, Kukshi, District Dhar in Civil Regular Appeal No. 30-A/2018 on 27.10.2018 are hereby set aside and the suit filed by the plaintiff is allowed and the following decree has been passed in favour of the plaintiff /appellant :-

(a). It is declared that the order passed by the Tehsildar in Revenue Case No. 08/A-8/ 2013-14 on 22.11.2014, whereby the Tehsildar impounded the decree dated 28.03.2008 and forwarded the same to the Collector Stamps for registration and recovery of deficit stamp duty is hereby set aside as being illegal, incorrect and unjust.

(b). The order passed by the Sub Divisional Officer (Revenue)

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Kukshi in Revenue Appeal No. 07/ Appeal/ 2014-15 affirming the order passed by the Tehsildar is also set aside and declared illegal, incorrect and unjust.

(c). The Collector Stamps is restrained from raising the demand of alleged deficit stamp duty upon the decree passed by trial Court in Civil Suit No. 69-A/2001 on 28.03.2008 by Second Civil Judge, Class-II, Kukshi.

24. No order as to costs.

25. Decree be drawn accordingly.

26. The records of the trial Court and First Appellate Court be returned alongwith the copy of the judgment and decree.

(VINAY SARAF)
JUDGE

Divyansh

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