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SOM DEV AND ORS.

v.

RATI RAM AND ANR.

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SEPTEMBER 6, 2006

[H.K. SEMA AND P.K. BALASUBRAMANYAN, JJ.]

C *Indian Registration Act, 1908:*

Section 17—Decree in a civil suit—Recognition of preexisting rights in property based on admission of the defendant—Non registration of—Enforceability—Held, on facts, if based on admission and in nature of a family settlement does not require registration and hence enforceable.

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The issue involved in the present appeal is—Weather a decree passed on admission of relinquishment of right by one of the co sharer of the property in a suit relating to family arrangement requires registration under Section 17(1) of the Registration Act and consequently, whether such decree can entitle the decree holder to enforce a right of pre-emption and recover E **possession of the property from the assignee of the other co-owner? The contention germane to this appeal that was raised by the contesting defendants was that a right was created in the present plaintiff by the decree in the earlier Civil Suit which was one based on a compromise and since the decree purported to create a right in the plaintiff in a property in which he had no pre-existing** F **right, the compromise decree required registration in terms of Section 17(1) of the Registration Act and the decree not having been registered, the plaintiff was not entitled to enforce the alleged right of pre-emption as against the contesting defendants or their assignor, the other co-owner. The trial court held that the decree in the earlier suit was enforceable even without registration as it was not hit by Section 17(1) of the Registration Act. On** G **appeal, the lower appellate court affirmed this view of the trial court. The lower appellate court also held that what was involved in earlier Civil suit was a family arrangement and since a *bona fide* family arrangement among the members of a family in the large sense of the term, did not require registration, no objection could be raised by the contesting defendants to the**

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enforceability of the title claimed by the plaintiff. In the second appeal, the High Court held that the decree in earlier civil Suit was based on a family settlement which did not require registration and that the decree itself did not require registration in view of Section 17(2)(vi) of the Registration Act. Hence the present appeal. A

Dismissing the appeal, the court B

HELD 1.1. The decree in earlier civil Suit was not a compromise decree but really a decree on admission and the admission was of the pre-existing right set up by the plaintiffs. The decree by itself did not create any right in immovable property. It only recognised the right set up by the plaintiffs in that suit in respect of the property involved in that suit. It is one thing to say that that decree is vitiated by collusion or by fraud or some such vitiating element. But it is quite another thing to say that such a decree could be excluded from consideration on the ground of want of registration. The decree, therefore, is admissible and has to be treated as evidencing the recognition of the rights of the present plaintiff and his brother as co owners. C D

[782-B; F-H; C-F]

Bhoop Singh v. *Ram Singh Major and Ors.*, [1995] Supp. SCR 466, distinguished.

Purmananddas v. *Vallabdas,* ILR 11 Bombay 506; *Pranal Anni* v. *Lakshmi Anni and Ors.*, I.L.R. 22 Madras 508; *Rani Hemanta Kumari Debi* v. *Midnapur Zamindari Company Limited,* 46 Indian Appeal 240; *Mangan Lal Deoshi* v. *Mohammad Moinul Haque and Ors.*, [1950] SCR 833 and *S. Noordeen* v. *V.S. Thiru Venkita Reddiar and Ors.*, [1996] 2 S.C.R. 261, referred to. E F

Mulla on Registration Act, Tenth Edition, referred to.

2.1. When a cause of action is put in suit and it fructifies into a decree, the Cause of action gets merged in the decree. Thereafter, the cause of action cannot be resurrected to examine whether that cause of action was enforceable or the right claimed therein could be enforced. It is only permissible to look at the evidentiary value of that decree at least as a case of assertion and recognition of the right by the court. In the case on hand, the family arrangement set up, which suffered no defect on the ground of want of registration, had been accepted by the Court in a civil suit and relief granted. That grant of relief cannot be ignored as not admissible. [790-E-F, H; 791-A] G H

A **Spencer-Bower and Turner on '*Res judicata*' Introduction to the Second Edition, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3951 of 2006.

From the Judgment and Order datd 28.9.2005 of the High Court of
B Punjab and Haryana at Chandigarh in R.S.A. No. 632/1990.

Neeraj Kumar Jain, Bharat Singh, Sanjay Singh, Vikrant Hooda and Ugra Shankar Prasad for the Appellants.

R.K. Kapoor, M.K. Verma, S.S. Yadav, Anita Sharma, Anis Ahmed Khan
C and Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. Heard learned counsel for the parties.

D Leave granted.

1. This Appeal is by the contesting defendants in a suit filed by Respondent No.1 herein for recovery of possession of the suit property in enforcement of a right of pre-emption claimed by him. The plaintiff claimed that a half share in the suit property had been relinquished in favour of
E himself and his brother by Sheoram a co-owner with the assignor of the contesting defendants and the said relinquishment had been recognised by the court by decreeing the claim made by the present plaintiff and his brother in Civil Suit No.398 of 1980. Thus, having become a co-owner with the assignor of the contesting defendants, the plaintiff was entitled to enforce a
F right of pre-emption and recover possession of the property from the assignee of the other co-owner. The contesting defendants resisted the suit. The contention germane to this appeal that was raised by the contesting defendants was that a right was created in the present plaintiff by the decree in Civil Suit No.398 of 1980 which was one based on a compromise and since the decree purported to create a right in the plaintiff in a property in which he had no
G pre-existing right, the compromise decree required registration in terms of Section 17(1) of the Registration Act and the decree not having been registered, the plaintiff was not entitled to enforce the alleged right of pre-emption as against the contesting defendants or their assignor, the other co-owner.

2. The trial court held that the decree in Civil Suit No.398 of 1980 was
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enforceable even without registration as it was not hit by Section 17(1) of the Registration Act; that the said decree had recognised the right claimed by the plaintiff and in the circumstances the plaintiff was entitled to a decree for possession from the assignee of the other co-owner in enforcement of his right of pre-emption. On appeal, the lower appellate court affirmed this view of the trial court. The lower appellate court also held that what was involved in Civil Suit No.398 of 1980 was a family arrangement and since a *bona fide* family arrangement among the members of a family in the larger sense of the term, did not require registration, no objection could be raised by the contesting defendants to the enforceability of the title claimed by the plaintiff. Thus, the decree of the trial court was affirmed. The contesting defendants filed a second appeal. They raised the substantial question of law that the decree in Civil Suit No.398 of 1980 created rights in favour of the plaintiff in a property in which he had no pre-existing right and such a decree, to become enforceable, required registration. Reliance was placed on the decision of this Court in *Bhoop Singh* v. *Ram Singh Major and Ors.*, [1995] Supp. 3 S.C.R. 466 in support. The High Court held that the decree in Civil Suit No.398 of 1980 was based on a family settlement which did not require registration and that the decree itself did not require registration in view of Section 17(2)(vi) of the Registration Act. Thus, the substantial question of law formulated was answered in favour of the plaintiff, the judgments and decrees of the courts below were confirmed and the second appeal filed by the contesting defendants was dismissed. It is challenging this decision of the High Court that this appeal by special leave is filed by the contesting defendants.

3. Before proceeding to consider the question argued before us, we think that it is proper to notice that the case arises from the State of Haryana which was originally a part of the State of Punjab and that the Transfer of Property Act as such did not apply to the State. But, Sections 54, 107 and 123 of the Transfer of Property Act were made applicable to the State of Punjab with effect from 01.04.1955 vide notification dated 23.03.1955. As is clear, Section 54 of the Transfer of Property Act relates to a sale of immovable property of the value of Rs.100/- and upwards, Section 107 deals with leases of immovable property and Section 123 indicates how the transfer of immovable property by way of gift is to be effected. It insists that for making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. One other aspect to be noted is the introduction of sub-section (1A) of Section 17 of the Registration Act made prospective from the date of coming into force of the Registration and Other Related Laws (Amendment) Act, 2001

A insisting that documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53A of the Transfer of Property Act, shall be registered if they have been created after the commencement of sub-section (1A) of Section 17 of the Transfer of Property Act.

B 4. The decree in Civil Suit No.398 of 1980 was really a decree on admission. It was not a compromise decree. In the plaint in that suit the present plaintiff and his brother had asserted that Sheo Ram the son of the sister of the assignor of the contesting defendants had relinquished his half share in the properties in their favour and on the death of Phusa Ram the C grandfather of Sheo Ram, the plaintiffs therein had become the absolute owners of that half share and the defendant Sheo Ram did not have any right in the property. This case set up by the plaintiffs in that suit was admitted in his written statement by Sheo Ram as also in his evidence. Based on these admissions, the court decreed the suit as prayed for by the plaintiffs therein. The decree thus upheld the right of the present plaintiff and his brother to D one half of the present suit property on the basis of the arrangement between themselves and Sheo Ram. This decree is relied on by the present plaintiff as affirming his right that entitles him to exercise a right of pre-emption in respect of the other half that belonged to the assignor of the contesting defendants. It is in that context that the contesting defendants have raised the contention that the decree created fresh rights in the property in favour E of the plaintiff wherein he had no pre-existing right and hence that decree required registration. It is also attempted to be argued that the decree is one on compromise and going by the ratio of *Bhoop Singh* (supra), it required registration.

F 5. On an advertence to the circumstances leading to that decree, in the context of the pleadings in that suit, we are not in a position to agree with counsel for the contesting defendants that the decree was a compromise decree. It was really a decree on admission and the admission was of the pre-existing right set up by the plaintiffs as created by Sheo Ram. The decree by itself did not create any right in immovable property. It only recognised the G right set up by the plaintiffs in that suit in respect of the property involved in that suit. It is one thing to say that that decree is vitiated by collusion or by fraud or some such vitiating element. But it is quite another thing to say that such a decree could be excluded from consideration on the ground of want of registration.

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6. We shall now advert to Section 17 of the Registration Act, 1908. Sub-section (1) specifies what are the documents that are to be registered. An instrument of gift of immovable property, an instrument which purports to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in immovable property, the value of which exceeds Rs.100/-, any instrument which acknowledges the receipt or payment of consideration on account of the creation, declaration, assignment, limitation or extinction of any right title or interest, leases of immovable property from year to year or for a term exceeding one year and instruments transferring or assigning any decree or order of court or any award where such decree or order or award operates to create, declare, assign, limit or extinguish any right, title or interest in immovable property, the value of which exceeds Rs.100/-. Sub-section (1A) provides that agreements for sale to be used to claim protection of Section 53A of the Transfer of Property Act entered into after 24.09.2001 require registration. Sub-section (2) excludes from the operation of clauses (b) and (c) of sub-section (1) of Section 17, the various transactions described therein under various clauses. We are concerned with clause (vi) therein. We shall set down that provision for convenience:

> "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 which is subject matter of the suit or proceeding".* (emphasis supplied)

It may be noted that going by clause (vi), a decree or order of court need not be registered on the basis that it comes within the purview of Section 17(1)(b) or 17(1)(c) of the Act as an instrument purporting to or operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property. It may further be seen that a compromise decree also does not require registration in terms of clauses (b) and (c) of sub-section (1) of Section 17 of the Registration Act unless that decree takes in immovable property valued above Rs.100/-, that is not a subject matter of the suit or the proceeding giving rise to the compromise decree. In other words, only if the compromise also takes in any property that is not the subject matter of the suit, it would require registration. If the compromise is confined to the subject matter of the suit, it would not. It may be noted that Section 43 of the Registration Act of 1864 and Section 41 of the Registration Act of 1866 provided that when any civil court should by a decree or order, declare any document relating to immovable property, which should have been registered, to be invalid or when any civil court should pass a decree or order affecting any such document

A and the decree or order should create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immovable property to which it relates, the court should cause a memorandum of the decree or order to be sent to the Registrar within whose district the document was originally registered. But these sections were omitted while enacting the Registration Act of 1871. But in the Specific Relief Act, 1877, Section 39 was
B introduced providing that where an instrument is adjudged void or voidable under that section and ordered to be delivered up and cancelled, the court should send a copy of its decree, if the instrument has been registered under the Registration Act, to the officer in whose office the instrument had been so registered and such officer should note on the copy of the instrument
C contained in his books the effect of its cancellation. But under the 1887 Act, decrees and orders of courts and awards were exempted from registration. They were also not mentioned in Section 18 which related to documents of which registration was optional. Sargent, CJ in *Purmananddas* v. *Vallabdas,* (ILR 11 Bombay 506) explained the position as follows:

D "The application (for execution) was refused on the ground that the decree was an instrument, which created an interest in immovable property, and could not be given in evidence for want of registration. Provision was made for the registration of such a decree by Section 42 of Act XX of 1886, but that section was not re-enacted in Act VIII
E of 1871. If, therefore, it required registration under the Act, it could only be as an 'executed instrument' under Section 17, a description which is scarcely applicable to a decree. Moreover, it is to be remarked that Section 32 deals only with the presentation of a 'copy' of a decree, the optional registration of which is expressly provided for by section 18 of the Act. Upon a true construction of the Act of 1871,
F read with reference to Act XX of 1866, such a decree, we are strongly inclined to think, did not fall within Section 17. However, Act III of 1877, which is now in force, expressly excludes such decrees, whether passed before or after the Act, from the operation of compulsory registration, and the decree is, therefore, now admissible in evidence."

G In *Pranal Anni* v. *Lakshmi Anni & Ors.,* [I.L.R. 22 MADRAS 508], the Privy Council held:

"The razinamah was not registered in accordance with the Act of 1877; but the objection founded upon its non-registration does not, in their Lordships' opinion, apply to its stipulations and provisions
H in so far as these were incorporated with, and given effect to by, the

order made upon it by the Subordinate Judge in the suit of 1885. The razinamah, in so far as it was submitted to and was acted upon judicially by the learned Judge, was in itself a step of judicial procedure not requiring registration; and any order pronounced in terms of it constituted *res judicata*, binding upon both the parties to this appeal who gave their consent to it." A B

In *Rani Hemanta Kumari Debi* v. *Midnapur Zamindari Company Limited,* (46 Indian Appeals 240) the Privy Council again held that a consent decree did not require registration even if it compromised immovable property other than that which was the subject matter of the suit and that the consequences provided for by Section 49 of the Act would not follow. It was in the light of this decision of the Privy Council, that by virtue of Section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, which came into force on 01.04.1930, clause (vi) of Section 17(2) of the Registration Act was amended and re-enacted in the present form, thus, excluding decrees and orders of courts including compromise decrees from registration because of Section 17(1)(b) and (c), if they related only to the subject matter of the suit or if the compromise did not take in any property outside the subject matter of the suit. *(See Mulla on Registration Act, Tenth Edition)* C D

7. 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 Court including a compromise decree subject to the exception as E F G H

A regards properties that are outside the subject matter of the suit, do not require registration on the ground that they are hit by Section 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of the 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 early rent or a transfer B 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.

8. After the amendment of the Code of Civil Procedure by Act 104 of C 1976, a compromise of a suit can be effected and the imprimatur of the Court obtained thereon leading to a decree, only if the agreement or compromise presented in court is in writing and signed by the parties and also by their counsel as per practice. In a case where one party sets up a compromise and the other denies it, the Court can decide the question whether, as a matter of fact, there has been a compromise. But, when a compromise is to be D recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code insists that the terms to the compromise should be reduced to writing and signed by the parties. Therefore, after 1.2.1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of Order XXIII of the Code and unless a decree is passed in terms thereof, it may not be E possible to recognise the same as a compromise decree. In the case on hand, a decree was passed on 10.10.1980 after the amendment of the Code and it was not in terms of Order XXIII Rule 3 of the Code. On the other hand, as the decree itself indicates, it was one on admission of a pre-existing arrangement.

9. We shall now advert to the position in the present case. The plaintiffs F in Civil Suit No.398 of 1980 were the descendants of Jeeta @ Chet Ram. Sheo Ram, the defendant in that suit, was the descendant of Deepa. Deepa and Jeeta were children of Mauji. The property descended from Mauji and one half of the entire property came to the present plaintiff and his brother, the descendants of Jeeta and the other half descended to Phusa and through him to the assignor of the contesting defendants and to Sheo Ram the defendant G in the earlier suit, through his mother. It was in this property that a half share was surrendered or relinquished by Sheo Ram in favour of the present plaintiff and his brother. The present plaintiff and his brother could not take possession of the property since Phusa Ram was alive at the relevant time. After the death of Phusa Ram the present plaintiff and his brother filed the earlier suit H for establishment of their right on the basis of the arrangement came to with

Sheo Ram even during the life time of Phusa Ram. It was that arrangement or relinquishment of right by Sheo Ram that was admitted by him in his written statement in the earlier suit and it was based on that admission that a decree was given to plaintiff and his brother. It was pleaded that the relinquishment or surrender by Sheo Ram was by way of a family arrangement in view of the close relationship enjoyed by the present plaintiff and his brother, the uncles (not direct) on the one hand and Sheo Ram on the other, who was actually their nephew one step removed, but who was treated by them as their own real nephew. There was no case that his share was gifted by Sheo Ram in favour of the present plaintiff and his brother so as to attract clause (a) of Section 17(1) of the Registration Act. It was really a case of clause (b) of Section 17(1) being attracted, if at all. All the courts have found that the relinquishment was part of a family settlement and hence its validity cannot be questioned on the ground of want of registration in the light of the decisions of this Court. Apart from that strand of reasoning, it appears to us that the decree in Civil Suit No.398 of 1980 did not create, declare, assign, limit or extinguish any right in the suit property. It merely recognised the right put forward by the plaintiffs in that suit based on an earlier family arrangement or relinquishment by the defendant in that suit and on the basis that the defendant in that suit had admitted such an arrangement or relinquishment. Therefore, on principle, it appears to us that the decree in Civil Suit No.398 of 1980 cannot be held to be not admissible or cannot be treated as evidencing the recognition of the rights of the present plaintiff and his brother as co-owners, for want of registration. Nor can we ignore the relief obtained therein by the plaintiff and his brother.

10. Almost the whole of the argument on behalf of the appellants here, is based on the ratio of the decision of this Court in *Bhoop Singh* (supra). It was held in that case that exception under clause (vi) of Section 17(2) of the Act is meant to cover that decree or order of a Court including the 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. It would, therefore, be the duty of the Court to examine in each case whether the parties had 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 a right *in praesenti* in immovable property of the value of Rs.100/- or upwards in favour of the other party for the first

A time either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable. Their Lordships referred to the decisions of this Court in regard to the family arrangements and whether such family arrangements require to be compulsorily registered and also the decision relating to an award. With respect, we may point out that an award does not come within the exception contained in clause (vi) of Section 17(2) of the B Registration Act and the exception therein is confined to decrees or orders of a Court. Understood in the context of the decision in *Hemanta Kumari Debi* (supra) and the subsequent amendment brought about in the provision, the position that emerges is that a decree or order of a court is exempted from registration even if clauses (b)and (c) of Section 17(1) of the Registration Act C are attracted, and even a compromise decree comes under the exception, unless, of course, it takes in any immovable property that is not the subject matter of the suit.

11. In *Mangan Lal Deoshi* v. *Mohammad Moinul Haque & Ors.*, [1950] SCR 833, this Court considered a case where the effect of a decree was to D create a perpetual under-lease and considered the case whether under such circumstances that decree required registration in the context of Section 17(1)(b) of the Act. This Court stated:

> "What the compromise really did was, as stated already, to bring the Singhs and the Deoshis into a new legal relationship as under-lessor E and under-lessee in respect of 500 bighas which were the subject matter of the title suit; in other words, its legal effect was to create a perpetual under-lease between the Singhs and the Deoshis which would clearly fall under clause (d) but for the circumstance that it was to take effect only on condition that the Singhs paid Rs. 8,000 to Kumar within 2 months thereafter. As pointed out by the Judicial F Committee in *Hemanta Kumari's* case [47 Calcutta 485] "An agreement for a lease, which a lease is by the statute declared to include, must, in their Lordships' opinion, be a document which effects an actual demise and operates as a lease....The phrase which in the context where it occurs and in the statute in which it is found, must in their G opinion relate to some document which creates a present and immediate interest in the land." The compromise decree expressly provides that unless the sum of Rs. 8,000 was paid within the stipulated time the Singhs were not to execute the decree or to take possession of the disputed property. Until the payment was made it was impossible to determine whether there would be any under-lease or not. Such a H

contingent agreement is not within clause (d) and *although it is covered by clause (b), is excepted by clause (vi) of sub-section (2).*" (Emphasis supplied)

12. We shall now examine the decision in *Bhoop Singh* (supra). What was involved therein was a decree based on admission. It is to be noted that in that case it was a decree that created the right. The decree that is quoted in paragraph 2 of that judgment was to the effect:

> "It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owner in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant,....."

Therefore, it was a case of the right being created by the decree for the first time unlike in the present case. In paragraph 13 of that Judgment it is stated that 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 if the document extinguishes that right of one and seeks to confer it on the other, it requires registration. 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. A decree or order of a Court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law. But otherwise that decree is operative and going by the plain language of Section 17 of the Registration Act, particularly, in the context of sub-clause (vi) of sub-section (2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming under Section 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting

A forward in the suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted. It is interesting to note that their Lordships who rendered the judgment in *Bhoop Singh* themselves distinguished the decision therein in *S. Noordeen* v. *V.S. Thiru Venkita Reddiar and Ors.*, [1996] 2 S.C.R. 261 on the basis that in the case B of *Bhoop Singh* there was no pre-existing right to the properties between the parties, but a right was sought to be created for the first time under the compromise. Their Lordships proceeded to hold that in a case where the plaintiff had obtained an attachment before judgment on certain properties, the said properties would become subject matter of the suit and a compromise C decree relating to those properties came within the exception in Section 17(2)(vi) of the Act and such a compromise decree did not require registration. Merely because the defendant in that suit in the written statement admitted the arrangement pleaded by the plaintiff it could not be held that by that pleading a right was being created in the plaintiffs and a decree based on such an admission in pleading would require registration. We are satisfied D that the decision in *Bhoop Singh* (supra) is clearly distinguishable on facts. We may notice once again that all the courts have found that it was as a part of a family arrangement that the defendant in the earlier suit relinquished his interest in favour of the present plaintiff and his brother and such a family arrangement has been held even in *Bhoop Singh* (supra) not to require E registration.

13. When a cause of action is put in suit and it fructifies into a decree, the cause of action gets merged in the decree. Thereafter, the cause of action cannot be resurrected to examine whether that cause of action was enforceable or the right claimed therein could be enforced. To borrow the words of F Spencer-Bower and Turner on '*Res judicata*', every judicial decision:

> "is of such exalted nature that it extinguishes the original cause of action, and consequently bars the successful party from afterwards attempting to resuscitate what has been so extinguished and stir the dust which has received such honourable sepulture;"

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(See Introduction to the Second Edition)

In the face of the decree in Civil Suit No. 398 of 1980, it is not permissible to search in the cause of action put in suit therein for any infirmity based on want of registration. The title acquired earlier had been pleaded by the H plaintiff and his brother and upheld by the decree. It is only permissible to

look at the evidentiary value of that decree at least as a case of assertion and recognition of the right by the court. In the case on hand, the family arrangement set up, which suffered no defect on the ground of want of registration, had been accepted by the Court in Civil Suit No. 398 of 1980 and relief granted. That grant of relief cannot be ignored as not admissible.

14. Learned counsel for the plaintiff-contesting respondent raised a contention that the ratio of the decision in *Bhoop Singh* (supra) requires reconsideration since the said decision has not properly understood the scope of clause (vi) of Section 17(2) of the Registration Act. For the purposes of this case we do not think that it is necessary to examine this argument. We are satisfied that the said decision is distinguishable.

15. We also feel that the tendency, if any, to defeat the law of registration has to be curtailed by the legislature by appropriate legislation. In this instance, we wonder why the Transfer of Property Act is not being extended to the concerned states even now. Its extension would ensure that no transfer is effected without satisfying the requirements of that Act and of the Stamp and Registration Acts.

16. Going by the history of the legislation, the decisions of the Privy Council and of the High Courts earlier rendered we are satisfied that the decree in Civil Suit No.398 of 1980 is admissible in evidence to establish that there had been a relinquishment of his interest by Sheo Ram in favour of the present plaintiff and his brother and that they were entitled to possession of half share in the property. Firstly, the decree did not create any title for the first time in the present plaintiff and his brother. Secondly, as a decree it did not require registration in view of clause (vi) of Section 17(2) of the Registration Act, though it was a decree based on admission. We have noticed that there is no challenge to that decree either on the ground that it was fraudulent or vitiated by collusion or that it was passed by a court which had no jurisdiction to pass it. It is not as if a litigant cannot admit a true claim and he has necessarily to controvert whatever has been stated in a plaint or deny a transaction set up in the plaint even if, as a matter of fact, such a transaction had gone through. Therefore, merely because a decree is based on admission, it would not mean that the decree is vitiated by collusion. Though, generally there is reluctance on the part of the litigants to come forward with the truth in a Court of law, we cannot accede to the argument that they are not entitled to admit something that is true while they enter their plea. We are, therefore, satisfied that there is no merit in the challenge of counsel for the contesting

A defendants to the decree in Civil Suit No.398 of 1980.

17. The courts below have held that as a family arrangement the relinquishment had followed and on that basis the decree in the earlier suit recognising that arrangement did not require registration. In the face of that, the High Court was justified in answering the substantial question of law
B formulated by it in favour of the plaintiff and against the contesting defendants.

18. We, thus find no merit in this appeal. We confirm the judgments and decrees under appeal and dismiss this appeal. In the circumstances, we make no order as to costs.

B.K. Appeal dismissed.