

ORDER BELOW APPLICATION u/s 151

Perused the Application along with the record of the case. Heard the Ld. Adv. Of the Plaintiffs and the Defendants. This Application has been jointly preferred by the Ld. Adv. of both the parties, under section 151 of the Civil Procedure Code, 1908. The said Application has been preferred for making amendment into the order below compromise deed dt. 12.06.2023.

There has been a typographical error regarding the sale deed that is to be cancelled, which is the subject matter of the suit and hence, the suit instituted for the said Sale deed which is to be cancelled is registered with Registration Number 1351 dated 28.02.2019.

It is settled law that when once a sale deed has been entered into between the parties the same is to be cancelled through court as provided under section 31 of the Specific Relief Act, 1963.

Section 31 of Specific Relief Act, 1963 provides that CANCELLATION OF INSTRUMENTS.

“When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been

so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

Thus, considering the provision of Section 31 of the Specific Relief Act, 1963 it is crystal clear that only the court has the power under the Act for cancellation of the sale deed .

Further, the Applicants have supplemented the decision of Hon’ble Apex court in the case **Mohammade Yusuf & Ors. V. Rajkumar & Ors. 2020 AIR SC 796** wherein it has been decided that the Compromise Decree does not require registration.

“Para 13. This Court in *Som Dev and Others Vs. Rati Ram and Another, (2006) 10 SCC 788* while explaining Section 17(2)(vi) and Section 17(1)(b) and (c) held that all decree and orders of the Court including compromise decree subject to the exception as referred that the properties that are outside the subject matter of the suit do not require registration. In paragraph 18, this Court laid down following: -

“18. ...But with respect, it must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit....”

Para 14 In facts of the present case, the decree dated 04.10.1985 was with regard to property, which was subject matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi) and present 16 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 clause (b) and (c) of sub-section (1) applies to any decree or order of the Court, we are of the view that the compromise decree dated 04.10.1985 did not require registration and learned Civil Judge as well as the High Court erred in holding otherwise. We, thus, set

aside the order of the Civil Judge dated 07.01.2015 as well as the judgement of the High Court dated 13.02.2017. The compromise decree dated 04.10.1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly. ”

The said decision has been applied in the present case since the matter herein question pertains to cancellation of sale deed which pertains to matter u/s 31 of the Specific Relief Act, 1963, which is also the subject matter of the suit as provided in the said decision. The compromise has been acceptedd after due verification of the parties and the pleaders. Hence, the following decision is passed as below:

ORDER

1. The Application is allowed.
2. The Registered Sale Deed No.1351 dated 28.02.2019 is to be considered in place of Registered Sale Deed No. 3617 dated 04.03.2010.
3. The copy of the said order is to be sent to the sub-registrar.
4. No order as to cost.
5. Decree to be drawn accordingly

Signed and pronounced in special sitting of
Lok Adalat today as on 09.09.2023

Date: 09.09.2023

Place: Rajkot

(A.P.Dave)
4th Addi. Civil Judge &JMFC
Rajkot