

in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary."

10. In the instant case, it is an admitted position to both the parties that award was made on 29.05.2018 i.e. prior to the amendment made in Section 34(2)(a) which came into effect from 30.08.2019. The application moved on 22.10.2024 by petitioner reveals that documents which are being tried to be placed on record by petitioner was discovered on 20.10.2024. Apart from this fact, no other compelling reason has been given for admitting the list of documents appended with the said application.

11. However, the court below has wrongly treated the application to be an application under Order XLI Rule 27 CPC.

12. This Court finds that the court below had wrongly interpreted the provisions of Order XLI Rule 27 as it is applicable in the case of an appeal where the party to an appeal makes an application for production of additional evidence at appellate stage. Section 34 is summary proceeding and is not an appeal as court below has held. The invocation of provisions of Order XLI Rule 27 by court below in rejecting the application of petitioner is wholly misconceived. It seems that court concerned does not know the scope of Order XLI Rule 27 CPC as well as Section 34 of the Act of 1996.

13. The court below on the wrong assumption has proceeded to reject the application on the basis of Order XLI Rule 27 CPC.

14. Considering the facts and circumstances of the case, the order

09.12.2024 is hereby set aside. The writ petition stands partly allowed.

15. The matter is remitted back to court below to consider the application of petitioner afresh in the light of the decision of Apex Court in case of **Alpine Housing Development Corporation (supra) & Emkay Global Financial Services Limited (supra)**, within a period of two months from the date of production of certified copy of this order, strictly in accordance with law.

(2025) 5 ILRA 1709
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.05.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 11867 of 2024
 (CIVIL)
 With
 Other Connected Cases

Sukhdev Singh Majithiya & Ors.
...Petitioners

Versus
Bhavnesh Kumar Jindal & Ors.
...Respondents

Counsel for the Petitioners:
 Sri Adya Prasad Tewari, Sri Shubham Dwivedi

Counsel for the Respondents:
 Sri R.S. Dubey, Ms. Savita Dubey

**Civil Law-The Constitution of India, 1950-
 Article 227 - The Registration Act,1908-
 Sections 17(1), 23 & 32 - The Code of Civil
 Procedure, 1908-Order XII, Rule 6---**
 "Whether the judgment and decree of the year
 1988 needs registration under Section 17(1) of
 the Act of 1908 being the compromise decree or
 otherwise?"--- Compromise decree dated

30.05.1988 and decree on the basis of admission under Order XII, Rule 6 dated 12.08.1988 does not require registration in view of exclusionary clause of Section 17(2) (vi) --- Section 23 of clearly provides for time limit for registration of an order or decree, which is four months when it becomes final. In the instant case, application has been moved after thirty-five years, which is barred by provisions of Section 23--- Section 32 clearly provides for the person who shall present the document for registration. The Act does not envisage any provision requiring the Court to get the order or decree registered--- The application moved by the plaintiff was defective and not maintainable due to non-joinder of necessary parties.

Petition allowed. (E-15)

List of the cases referred:-

1. Civil Appeal No.14808 of 2024 (Mukesh Vs St. of M.P. & anr.)
2. Mohd. Yusuf Vs Rajkumar (2020) 10 SCC 264
3. Khushi Ram Vs Nawal Singh (2021)16 SCC 279
4. Ripudaman Singh Vs Tikka Maheshwar Chand (2021) 7 SCC 446
5. Bhoop Singh Vs Ram Singh (1995) 5 SCC 709

(Delivered by Hon'ble Rohit Ranjan
Agarwal, J.)

1. These five connected writ petitions arise out of common order dated 01.05.2024 passed by Civil Judge (Senior Division), Gorakhpur allowing Misc. Case Nos.292 of 2023, 293 of 2023, 294 of 2023, 295 of 2023 and 296 of 2023 arising out of Original Suit Nos. 316 of 1988, 318 of 1988, 323 of 1988, 324 of 1988 and 325 of 1988, directing for registration of decree dated 30.05.1988 and 12.08.1988 under Section 17(1) of Registration Act, 1908 (*hereinafter called as "Act of 1908"*).

2. The facts, giving rise to these writ petitions, are that one Bharat Bhushan Jindal filed Original Suit No.316 of 1988 against Sardar Daleep Singh, Surjeet Singh and Bramh Gyan Singh claiming relief of declaration in respect of Plot No.51M measuring 3.15 acres and also sought a decree of permanent prohibitory injunction restraining defendants from interfering in his peaceful possession.

3. Similarly, Bhavnesh Kumar Jindal instituted Original Suit No.318 of 1988 for the same relief against Sardar Daleep Singh, Surjeet Singh and Bramh Gyan Singh. Suit No.323 of 1988 was instituted by Vinod Kumar Jindal against the aforesaid three defendants for the same relief.

4. Suit No. 324 of 1988 was instituted by Ramesh Kumar Jindal for the same relief against Sardar Daleep Singh, Surjeet Singh and Bramh Gyan Singh. While Lachman Das Jindal filed Suit No.325 of 1988 against the aforesaid three persons for the same relief of declaration and prohibitory permanent injunction in the Court of Civil Judge, Gorakhpur.

5. All the five suits were contested by the defendants and they filed their written statement admitting the plaint averment. However, in Suit No.316 of 1988, a compromise application was filed on 30.05.1988 and the said suit was decreed on the basis of compromise entered between the parties on 30.05.1988 while the other Suit Nos.318 of 1988, 323 of 1988, 324 of 1988 and 325 of 1988 were decreed on 12.08.1988 on the basis of admission made by the defendants in their written statement under Order XII, Rule 6 C.P.C.

6. Against the judgment and decree dated 30.05.1988 and 12.08.1988, no appeal was preferred by the defendants and the judgment became final between the parties inter se.

7. The plaintiff of the aforesaid suits filed an application on 25.09.2023 before the Court of Civil Judge (Senior Division) Gorakhpur which was registered as Misc. Case No.292 of 2023, 293 of 2023, 294 of 2023, 295 of 2023 and 296 of 2023 for sending the file to the District Magistrate/Additional District Magistrate (Finance & Revenue) Gorakhpur for registration of decree under Section 17 of Act of 1908. The application moved by plaintiff has been allowed by Civil Judge (Senior Division) Gorakhpur by the orders impugned dated 01.05.2024, hence these writ petitions.

8. Learned counsel for the petitioner submitted that neither the consent decree nor any judgment or decree of the Court passed on the basis of admission of the party is necessary to be registered under Section 17(1) of the Act of 1908. According to him, Section 17(2)(vi) of Act of 1908 is an exclusion clause, which provides that any decree or order of a Court need not to be registered. It is also contended that in the application moved by plaintiff for registration of the document, legal heirs of Surjeet Singh, who was defendant No.2 in the suit, has not been impleaded as a party and thus the order has been passed without impleading the necessary parties.

9. He then contended that Section 23 of Act of 1908 provides for the time for presenting documents for registration, which is four months from the date of such decree or order. Reliance has also been

placed upon provision of Section 32 of the Act of 1908 i.e. person who shall present document for registration. It is not the Court who shall send the document for registration. Reliance has been placed upon judgment of Apex Court dated 20.12.2024 rendered in **Civil Appeal No.14808 of 2024 (Mukesh vs. State of Madhya Pradesh & Anr.)**.

10. Learned counsel for respondent No.1 submitted that Section 17(1)(e) of Act of 1908 requires registration of non-testamentary instruments that transfer or assign Court's order, decree or award. This includes cases where the decree, order or award creates, declares, assigns, limits or extinguish any right, title or interest in the movable property. According to him, except the compromise decree having been passed in Suit No.316 of 1988, rest of the suits were decreed on the basis of admission of the defendants under Order XII, Rule 6 C.P.C. According to him, provision of Section 17(2)(vi) would not apply and registration is mandatory. It is also contended that as the name of plaintiff was not being recorded in revenue records despite the fact that decree is of the year 1988, the application was moved before the Court concerned for getting the decree registered.

11. I have heard the respective counsel for the parties and perused the material on record.

12. The issue for consideration before this Court is, "*whether the judgment and decree of the year 1988 needs registration under Section 17(1) of the Act of 1908 being the compromise decree or otherwise?*"

13. Before adverting to decide the issue in hand, a glance of Section 17(1)(e),

17(2)(vi), Sections 23 and 32 of the Act of 1908 would be necessary for the better appreciation of the case which are extracted hereas under :

“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:—*

.....

(e) *non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:*

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.”

.....

(2) *Nothing in clauses (b) and (c) of sub-section (1) applies to-*

....

(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;”*

“23. Time for presenting documents.—*Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:*

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.”

“32. Persons to present documents for registration.—*Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—*

(a) *by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or*

(b) *by the representative or assign of such a person, or*

(c) *by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.”*

14. Part III of Act of 1908 provides for ‘registrable documents’. Section 17 provides for compulsory registration of the documents enumerated thereunder. Sub-section (1)(e) of Section 17 provides for registration of non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, 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.

15. The compromise decree of 30.5.1988 as well as decree dated 12.08.1988 on the basis of admission of the defendants is not covered under the aforesaid provision.

16. Sub-section (2) of Section 17 is the exclusion clause, which does not require registration of certain documents. Sub-section (2)(vi) of Act of 1908 provides that any decree or order of a Court including a compromise decree, which forms subject-matter of the suit, does not require registration. It is only in case of compromise decree where property is not the subject matter of suit, but compromise has been arrived at between the parties, the decree needs to be registered.

17. It is an admitted case to both the parties that compromise entered between the parties on 30.05.1988 was in respect of the property which form subject-matter of the suit. While other four suits filed by the plaintiff was decreed on 12.08.1988 on the basis of admission made in the written statement by the defendants under Order XII, Rule 6 C.P.C. Both the decree of 30.05.1988 and 12.08.1988 are exempted from registration under the exclusion clause of Section 17(2)(vi) of Act of 1908.

18. The Apex Court in **Mohd. Yusuf vs. Rajkumar (2020) 10 SCC 264** had already held 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) of the Registration Act, 1908.”.

19. In **Khushi Ram vs. Nawal Singh (2021)16 SCC 279**, the Apex Court held that exclusionary clause of Section 17(2)(vi) does not require registration of a decree.

20. In **Ripudaman Singh vs. Tikka Maheshwar Chand (2021) 7 SCC 446**, the Apex Court relying upon the earlier decision rendered in **Bhoop Singh vs. Ram Singh (1995) 5 SCC 709** held that there was no requirement for compulsory registration of a decree.

21. Relying upon earlier decisions, Apex Court in **Mukesh (supra)** held as under :

“Thus it could be discernible that in order to fall under the exception of Section 17(2)(vi) of the Act, 1908, the following condition 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.”

22. Thus, it is clear that compromise decree dated 30.05.1988 as well as the decree passed on the admission of the defendants under Order XII, Rule 6 C.P.C. does not require registration in view of exclusionary clause of Section 17(2)(vi) of the Act of 1908.

23. Moreover, Section 23 of Act of 1908 provides time limit for presentation of a document for registration. The timeline provided is four months from the date of

execution of the said document. Proviso to Section 23 provides that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

24. It is an admitted case to both the parties that the compromise decree of 30.5.1988 and 12.08.1988 was never challenged before any Court and became final inter se between the parties. It was for the first time that the application was moved for registering the decree on 25.09.2023 i.e. after 35 years. The application moved by the plaintiff-decree holder though being not maintainable under Section 17(2)(vi), moreover, cannot be looked into by the Court concerned in view of proviso to Section 23 of the Act of 1908 as it provides a deadline of four months from the date when the said order, or decree becomes final.

25. Now, advertent to Section 32, I find that it provides for the persons to present documents for registration. In the instant case, the application was moved before Civil Judge (Senior Division) seeking direction for getting the decree of 1988 registered by the District Magistrate/Additional District Magistrate (Finance & Revenue) under Section 17 of Act of 1908. Section 32(a) clearly provides that document for registration has to be presented by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order. Thus, sub-section (a) of Section 32 clearly provides that it is the decree holder, who has to present the document for registration and there is no provision for moving the application before the Court for getting the same registered.

26. The Court below exceeded its jurisdiction and directed for registration of decree of 1988 which is against the provision of Section 32 of the Act of 1908.

27. Lastly, it was contended that the predecessor-in-interest of the petitioners Surjeet Singh was defendant No.2 in the suit but they were not made party in the application moved before the Civil Judge (Senior Division) Gorakhpur.

28. From perusal of the application moved by the plaintiff before the Court concerned, I find that the petitioners, who were the necessary party, have been deliberately excluded and thus application moved by the plaintiff was not maintainable in view of non-joinder of necessary party.

29. Thus, to sum up, I hold as under :-

(i) Compromise decree dated 30.05.1988 and decree on the basis of admission under Order XII, Rule 6 C.P.C. dated 12.08.1988 does not require registration in view of exclusionary clause of Section 17(2)(vi) of Act of 1908.

(ii) Section 23 of Act of 1908 clearly provides for time limit for registration of an order or decree, which is four months when it becomes final. In the instant case, application has been moved after thirty-five years, which is barred by provisions of Section 23 of Act of 1908.

(iii) Section 32 of Act of 1908 clearly provides for the person who shall present the document for registration. The Act does not envisage any provision requiring the Court to get the order or decree registered.

(iv) The application moved by the plaintiff was defective and not maintainable due to non-joinder of necessary parties.

30. Considering the facts and circumstances of the case, I find that order dated 01.05.2024 passed by Civil Judge (Senior Division), Gorakhpur allowing the Misc. Case No.292 of 2023, 293 of 2023, 294 of 2023, 295 of 2023 and 296 of 2023 arising out of Original Suit Nos. 316 of 1988, 318 of 1988, 323 of 1988, 324 of 1988 and 325 of 1988 are totally illegal and therefore set aside.

31. All the writ petitions stand allowed.

(2025) 5 ILRA 1715
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 7898 of 2017
 Connected With
 Criminal Appeal No. 243 of 2018

Shailendra Kushwaha **...Appellant**
Versus
State of U.P. **...Opposite Party**

Counsel for the Appellant:

Sri Amar Bahadur Maurya, Sri Jitendra Kumar, Sri Kamlesh Kumar Tripathi, Sri Laxmi Narayan Rathour, Sri Rajendra Kumar Pandey, Sri Ranjit Kumar Yadav, Sri Sushil Kumar, Sri Vinay Kumar Nigam, Sri Ashok Kummur Tripathi

Counsel for the Opposite Party:

G.A.

Criminal Law — Indian Penal Code, 1860 - Sections 363, 366 & 376-D — Protection of Children from Sexual Offences Act, 2012, Section 4 — Evidence — Sole testimony of prosecutrix — Contradictory St.ments under Section 164 Cr.P.C. — Absence of corroboration — Victim's first St.ment

exonerating the accused and second St.ment implicating them after 40 days — Unexplained delay, material improvements and improbabilities in prosecution case — Denial by informant of having lodged FIR — Held, conviction cannot rest on inconsistent, uncorroborated, and unreliable testimony of prosecutrix — Benefit of doubt — Accused acquitted. (Paras 28, 33, 34, 37, 39, and 41)

HELD:

Yet the informant 'M' P.W.-2 has simultaneously accepted that the Tehir paper No. 5Ka, does not bear her signature and she had also not submitted it to the police. It is pertinent to mention here that on the basis of informant's application (paper No. 5Ka) F.I.R regarding the incident has been registered on 08.04.2014 at 11:30 a.m. Since the informant has denied that the basis of F.I.R i.e. her purported application (paper No. 5Ka) was not given by her, as such the whole prosecution story becomes doubtful. It is true that F.I.R is not a substantive piece of evidence, but it's contents are required to be proved in accordance with law, which the prosecution has failed to prove beyond reasonable doubt in this case. This will become apparent from our subsequent analysis. (Para 28)

From the perusal of the first St.ment of the victim 'X' recorded under Section 164 Cr.P.C, proved by the accused as Ex. Kha-1, it is evident that she had gone with accused Malik Chandra of her own sweet will. She had thus eloped with him and gone to Gujarat, where she resided with him and no physical relations established between them. The victim has mentioned in her St.ment that the accused Malik Chandra had not raped her and she wanted to stay with him. The victim 'X' had also told the Doctor P.W.-3 at the time of her medical examination, (P.W.-3 has also proved in her examination-in-chief) that on 31.03.2014 at 05:00 a.m. she had left her house with a boy and gone by a truck to Auraiya, who had left her in the way, and then the son-in-law of her aunt had taken her to Gujarat, where she had solemnized marriage in a temple with him. Both the above St.ments have been proved in accordance with law, according to which, the accused Shailendra Kushwaha, Manvendra Singh