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Acquiring Property Through A Compromise Decree In Divorce Case- Understanding Stamp Duty Implication

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Introduction

In a recent landmark judgment of Arun Rameshchand Arya vs. Parul Singh[1], the Supreme Court of India exempted a wife from paying stamp duty for a flat she acquired as part of a compromise in a divorce case. This decision has significant implications for property transfers during divorce settlements and provides clarity on the application of stamp duty in such cases.

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Background of the Case

The case involved a matrimonial dispute where the wife received a flat as part of a compromise agreement with her husband. The title in respect of the flat got transferred in the name of wife. The question before the court was whether the transfer of the flat required the payment of stamp duty under the Indian Stamp Act, 1899. The Supreme Court ruled that no stamp duty was payable in this scenario, setting a precedent for similar cases in the future.

Stamp Duty in Property Transfer- Legal background and Precedents

Section 17 of the Registration Act, 1908 mandates that certain documents, particularly those involving the transfer of immovable property, must be registered to be legally valid. A transfer of property through a compromise decree, i.e. a court order reflecting a compromise agreement between the parties of the suit, falls under the exception under Section 17(2) that exempts certain documents from compulsory registration. As per Section 17(2)(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)[2]” is exempted from compulsory registration.

A compromise decree involving an immoveable property, other than a property for which the decree is prayed for, would fall under the purview of mandatory registration. However, the wife did not obtain new rights over the flat, but was also asserted with her pre-existing right over the said flat.

The Supreme Court in the case of Mukesh vs. the State of Madhya Pradesh & Anr[3] ruled that a compromise decree recognizing pre-existing rights over a property does not require registration under the Registration Act, 1908, nor does it attract stamp duty under the Indian Stamp Act, 1899, as it does not create new rights or transfer property and only formalize such right.

The Supreme Court in the case of Ripudaman Singh vs. Tikka Maheshwar Chand[4] ruled that a compromise decree involving immovable property, which is not the subject of the suit but part of a family settlement, does not require compulsory registration under Section 17(2)(vi) of the Registration Act, which provides for exemption, as it merely acknowledges or settles pre-existing rights without creating new ones.

Exemption in Registration

On the precedents referred to above, a compromise decree does not require registration or stamp duty if it satisfies the following conditions:

1. The compromise decree must be genuine and not collusive.
2. The decree must pertain to the subject property in the suit.
3. There must be a pre-existing right over the subject property, and the decree should not create a new right.

In the case at hand, the court found that the compromise decree merely asserted the wife’s pre-existing right to the flat and did not create any new rights. Therefore, the transfer did not fall under the instruments which require stamp duty and falls under the

ambit of exemption from compulsory registration. Hence, the Court exempted the wife from paying stamp duty for the property acquired through a compromise decree.

Implications of the Judgment

This judgment has several important implications:

1. **Financial relief:** It provides financial relief to individuals going through a divorce, as the payment of stamp duty can be a significant expense where there is a pre-existing right of an individual over the immoveable property.
2. **Legal clarity:** It offers clear guidance on the application of stamp duty in property transfers resulting from compromise decrees in divorce cases. This case upholds the precedents set by the Judiciary wherein compromise decree relating to family property was exempted from payment of stamp duty.
3. **Reduction in procedural burden:** The decision reduces the procedural burdens on litigants by simplifying the process of property transfers in divorce settlements in case of pre-existing right. By exempting these transfers from registration and stamp duty, the court has simplified the legal process, making it easier and less cumbersome for individuals to assert their pre-existing property rights.

Conclusion

It can be concluded that a compromise decree that does not transfer any right but only acknowledges a pre-existing right does not incur stamp duty. The Supreme Court's ruling in this case shows the need for considering the specific circumstances of property transfers during divorce settlements. This decision will likely influence future cases and provide a basis for similar exemptions in property transfers under compromise decrees. This ruling clarifies and provides direction on such legal matters by addressing possible ambiguities in property transactions carried out via compromise decrees and reaffirming the fundamentals of registration and stamp duty compliance.

For more details, write to us at: contact@indialaw.in

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[1] Transfer Petition (Civil) No. 875 of 2024

[2] The Registration Act, 1908 (Act 16 of 1908), s 17(2)(vi)

[3] 2024 INSC 1026

[4] LL 2021 SC 293