

Second Appeal No. 716 of 2024
(Ramautar and 6 others vs
Awadhesh Narayan Singh and another)
Second Appeal No. 717 of 2024
(Ramautar and 7 others vs
Awadhesh Narayan Singh and another)

Neutral Citation No. - 2024:AHC:143360

A.F.R.

Court No. - 36

Case :- SECOND APPEAL No. - 716 of 2024

Appellant :- Ramautar And 6 Others

Respondent :- Awadhesh Narayan Singh And Another

Counsel for Appellant :- Akhilesh Kumar,Suresh Chandra
Srivastava

Counsel for Respondent :- Ishir Sripat

Connect with

Case :- SECOND APPEAL No. - 717 of 2024

Appellant :- Ramautar And 7 Others

Respondent :- Smt Laxmi Devi And 5 Others

Counsel for Appellant :- Akhilesh Kumar,Suresh Chandra
Srivastava

Counsel for Respondent :- Ishir Sripat

Hon'ble Kshitij Shailendra,J.

The Appeal

1. These two second appeals arise out of two civil suits and two civil appeals. Original Suit No. 176 of 2012 was filed by plaintiff-appellants challenging the registered sale deed dated 16.12.2011 executed by respondent No. 1 in favour of respondent Nos. 2, 3 and 4. The other original suit being Original Suit No. 318 of 2013 was filed by the purchasers from respondent No. 4,

claiming a decree for permanent prohibitory injunction. Both the aforesaid suits were decided by separate judgments dated 01.10.2021 and 22.10.2021 respectively. Two civil appeals respectively being Civil Appeal No. 8 of 2022 and Civil Appeal No. 4 of 2022 were filed by the present appellants. Both the civil appeals have been dismissed by separate judgments dated 25.07.2024.

Counsel Heard

2. I have heard Shri Akhilesh Kumar, learned counsel for the appellants in both the appeals and Shri Rahul Sripat, learned Senior Counsel assisted by Shri Ishir Sripat, learned counsel appearing through caveat for respondent No. 5 in Second Appeal No. 717 of 2024 and respondent No. 2 in Second Appeal No. 716 of 2024.

Fact of the case

3. The case of the present appellants is that one Laxmi Devi was bhumidhar of the property in dispute and by executing a document dated 25.04.2006, she delivered possession of the same to the appellants in lieu of Rs. 3,00,000/- (rupees three lac) and the appellants raised constructions thereon and are residing therein. The sale deed of 2011 was challenged on the ground that Laxmi Devi, after delivering possession to the appellants, ceased to be owner of the property and, therefore, sale deed executed by her in favour of the vendees was invalid for want of title. It is not in

dispute that one of the purchasers from Laxmi Devi also executed a sale deed in favour of contesting-respondent, who is represented before this Court through Shri Sripat and that the said purchaser sought his impleadment under Order XXII Rule 10 of Code of Civil Procedure. The impleadment was allowed and, consequently, the suit was contested in between the ultimate purchaser as well as the present appellants.

Submissions on behalf of Appellants

4. The precise submission of learned counsel for the appellants in both the appeals is that transfer of possession by Laxmi Devi in their favour would be a "deemed sale" as per Section 164 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950. In support of his submission, learned counsel for appellants has placed reliance upon judgment of this Court in ***Amresh Chandra Pandey vs. Deputy Director of Consolidation, Mirzapur Camp. Robertsganj, Sonbhadra and others***, 2007 (102) RD 440. Further submission is that Laxmi Devi never appeared in witness box, therefore, the defence of the defendants would be deemed as "not proved" and, hence, the transaction of sale would become invalid.

Submissions on behalf of Respondents

5. Per contra, Shri Sripat submits that except a photostat copy of a document dated 25.04.2006 brought on record as paper No. 12-C, no evidence was led from the appellants side to prove alleged vesting of title in them. He submits that the document 12-

C was neither a piece of primary evidence nor secondary evidence as per provisions of Indian Evidence Act, 1872 and, even if it is read, it recites some understanding as regards delivery of possession in between Laxmi Devi and the present appellants, which would not fall in the definition, meaning and import of "deemed sale" even as per Section 164 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950. He further submits that non-appearance of Laxmi Devi in witness box would be of no significance when the transferees filed separate written statements and proved the sale deed executed in their favour. Further submission is that the disputed sale deed has been recognized by mutation courts and names of the purchasers have been recorded in the revenue records, which were dealt with by courts below. Further submission is that the revenue entries being sufficient to establish title and possession and having not being set aside, the appellants would have no case.

6. In support of his submission, Shri Sripat has placed reliance upon the judgement of this Court in the case of ***Umesh Chand and others vs. Board of Revenue, U.P. Allahabad***, 2002 All LJ 680. He further submits that even for establishing a case of deemed sale under Section 164 of Act of 1950, compliance of Rules 148 and 149 of Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952 is a statutory mandate, however, the procedure contained therein has not been followed in the present case.

7. Learned Senior Counsel has also placed reliance upon the judgment of this Court in ***Ram Sunder and others vs. Joint***

Director of Consolidation, Sultanpur and others, 2021 (6) ADJ 141 and submits that placing reliance upon the judgment of *Umesh Chand* (supra), this Court has taken a view that transfer of an agricultural land cannot be made by a mode, except as provided under law, which may be by way of sale, gift etc.

8. Learned Senior Counsel further submits that judgment of this Court in the case of *Amresh Chandra Pandey* (supra) as cited on behalf of appellant was in fact a follow up of another judgment in *Ramanad and others vs Deputy Director of Consolidation, Basti and others*, 1993 RD 90, however, subsequently, this Court in *Rikhvev and others vs A.D.M. (Finance), Azamgarh and others*, 2011 (1)) ADJ 629 has discussed the judgment in *Ramanand* (supra) and has taken a view that in the said judgment there was no discussion as to why the provisions of Registration Act were not applicable and the only reason given in the judgment was that Section 5 of the Limitation Act had been made applicable in view of Section 53-B of Uttar Pradesh Consolidation of Holdings Act, 1953.

Analysis of rival contentions in the light of statutory provisions
and authorities cited at the bar

9. Having heard the learned counsel for the parties, this Court finds it appropriate to refer Section 164 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 as well as Rules 148 and 149 of Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952. The same are reproduced as under:

"164. Transfer with possession by a bhumidhar to be deemed a sale. - Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163 shall apply."

"148. Section 164.- The Lekhpal shall as soon as he learns of a transfer mentioned in Section 164 submit a report to the Assistant Collector in-charge of the Sub-Division mentioning therein-

- (a) the name, parentage and address of the transferor and the transferee,
- (b) the number and area of the plots transferred,
- (c) the date of the transfer of possession, and
- (d) the nature of the transfer."

149. (1) On receipt of the report from the Lekhpal or information from any interested party the Assistant Collector in-charge of the Sub-Division shall call upon the parties to show cause why action under Section 164 should not be taken in respect of the land in question.

(2) After hearing the parties and making such further inquiry as he considers necessary, the Assistant Collector shall pass suitable orders and shall also order the Correction of papers accordingly."

10. This Court, in paragraph 23 of the judgment in ***Umesh Chand*** (supra), after considering various authorities dealing with Section 164 of the Act of 1950, has laid down as follows:

"In view of what has been stated above, the aforesaid judgment of learned single Judge does not support the contention of the petitioners since the decisions relied in the aforesaid case do not lay down any proposition as referred to in the judgment of learned single Judge. It is true that a document which purports to transfer of immovable property and is not registered, will attract the provisions of Section 164 and will be deemed to be sale but only when the value of the Immovable property is not Rs. 100 or more. Thus, the aforesaid law laid down by learned single Judge in Bashishtha Pandey's case has to be confined to cases in which the value of property is not more than Rs. 100. If the value of property is more than Rs. 100 a transfer can be effected only by a registered instrument as laid down in *Data Ram v. Additional Civil Judge*, 1978 ALJ 840 : *Kedar v. District Judge*, 1978 RD 307, as noted above. In the present case admittedly the amount "in question is Rs. 6,750. hence the interest could have been transferred only by registered deed."

11. Further, this Court in paragraph 21 of judgment in ***Ram Sunder*** (supra) observed as follows:

"21. This court is of the considered view that the transfer of an agricultural land cannot be made by a mode, except as provided under law, which may be by way of sale, gift etc. It is also apparent from reference made in various Sections of Act of 1950, such as section 154 provides that no bhumidhar shall have the right to transfer by sale or gift, section 155 provides that no bhumidhar shall have the right to mortgage any land belonging to him as such where possession of the mortgaged land is transferred or is agreed to be transferred in future to the mortgagee as security for the money advanced or to be advanced. Similarly in Section

157-A and 157-AA, the transfer of the land by way of sale, gift, mortgage or lease has been referred. The alleged mode by which the name of opposite party no.3 was recorded is not provided anywhere. Therefore the transfer of an agricultural land, being an immovable property, can be made by a bhumidhar with transferable rights only in accordance with the Transfer of Property Act and Indian Registration Act and not otherwise. Learned counsel for the respondents no.3/1 and 3/2 could also not show any other mode of transfer and validity of the alleged transfer under any law. This court in the case of, Umesh Chand and others Versus Board of Revenue, Allahabad and others; 2002(2) AWC 932, has held as under in paragraph 15:-

"15. No right or interest can pass in immovable property in a manner contrary to provisions of Transfer of Property Act and Indian Registration Act....."

12. As far as judgment cited on behalf of appellants, reference to paragraph Nos. 43, 44, 45, 46, 47, 48 and 49 of judgment of this Court in ***Rikhvev*** (supra) can be made. The same are extracted below:-

"43. Contention of the learned counsel for the petitioners is that in view of the decision of this Court in ***Ramanand & others vs. Deputy Director of Consolidation, Basti & others*** 1993 RD 90 (H), non-registration of the document will not affect the sale-deed.

44. In the case of ***Ramanand*** (supra) it has been laid down that if a bhumidhar has taken some money from some one and in this regard possession on some land has been given to such a person, this type of transaction would be deemed to be valid transfer and the provisions of Registration Act or Evidence Act cannot be applied in consolidation proceedings, particularly in transaction under Section 164 of the U.P.Z.A. & L.R. Act. A reading of the judgment would show that that there is no discussion at all as to why the provisions of Registration Act are not applicable. The only reason given is that under Section 53-B of U.P.C.H. Act, only Section 5 of the Limitation Act has been

made applicable and there is no mention of either Registration Act or Evidence Act.

45. Except making a reference to Section 53-B of U.P.C.H. Act, there is absolutely no discussion in the judgment. In my considered view, there is no ratio in the aforesaid judgment. The Court has jumped to the conclusion without any discussion that the provisions of Registration Act or Evidence Act are not applicable. Attention of the Court was not drawn to anyone of the earlier decisions on the point. Its attention was not drawn towards earlier judgment in *Ajeet & another vs. Deputy Director of Consolidation & others*, 1982 RR 50. In this case, a dispute arose whether an unregistered mortgage deed attracts Section 164 of the U.P.Z.A. & L.R. Act or not. After considering the earlier judgments of this Court including *Kedar v. District Judge, Banda*, 1978 RD 307 and *Data Ram v. Additional Civil Judge Bulandshahr and another*, 1978 ALJ 840, it has been held that transfer of possession under unregistered mortgage deed will not amount "sale" under Section 164 of the U.P.Z.A. & L.R. Act. The transfer of immovable property for a value of Rs.100/- either by sale or by mortgage necessarily requires registration under the Registration Act otherwise such a transfer is invalid. These decisions were not brought to the notice of the Hon'ble Judge who delivered the judgment in the case of Ramanand (supra). The judgment given in the case of Ramanand (supra) is therefore per incuriam, as it was given in ignorance of the earlier binding precedents. Except a solitary decision in the case of **Ramanand** (supra), all other decisions have taken different view i.e. registration of document of transfer for a value more than Rs.100/- is necessary, under the Registration Act, even for agricultural land. There is good deal of discussion in Umesh Chand and others vs. Board of Revenue, U.P., at Allahabad and others, 2002 (93) R.D. 264. In this case, after noticing the various provisions of U.P.Z.A. & L.R. Act and that of the Transfer of Property Act, the Court has laid down as follows:

"16. Thus it is clear that the provisions of Transfer of Property Act are fully applicable while effecting a transfer of holding by bhumidhar. In the Act wherever it is mentioned that particular meaning given in Transfer of Property Act or Indian Registration Act be not given to a transaction. Specific provision has been made in U.P. Zamindari Abolition and Land Reforms Act. Reference has been made to Section 158 of U.P.

Zamindari Abolition and Land Refoms Act which provides that lease for a terms exceeding one year or from year to year may be made either by a registered instrument or in the prescribed manner. Section 158 of U.P. Zamindari Abolition and Land Reforms Act has overriding effects to the provisions of Transfer of Property Act and Indian Registration Act whereas Section 107 of Transfer of Properties Act provides that a lease of immovable property from year to year, or for any terms exceeding one year can be made only by the registered instrument. Section 158 clearly contemplates that applicability of Transfer of Property Act as well as Indian Registration Act is not ruled out in application to U.P. Zamindari Abolition and land Reforms Act and the provisions are overridden in specific case. Apart from section 59 of Transfer of Property Act, Section 17 of Indian Registration Act also provides that registration of instruments of value of more than 100 Rupees or more of immovable property is required when such instrument 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. Section 17(1) of Indian Registration Act is quoted below:

17. Document 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, an if they have been executed on or after the date on which, Act No. XVI of 1964, or the Indian Registration Act, 1866, or the Indian Registration 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :

- (a) instrument of gift of immovable property;
- (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-testamantary 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; and

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(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 except from the operation of this subsection 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."

46. Thereafter, the Court has noticed a Division Bench decision in ***Mohd. Fasih v. Munir Khan***, 1987 R.D. 36, wherein it has been laid down that transfer of possession alone is not sufficient to attract such Section 164 of the U.P.Z.A. & L.R. Act.

47. The object of registration a document is to give notice to the world that such a document has been executed, to prevent fraud and forgery and to secure a reliable and complete account of all transactions effecting the title to the property.

48. The Registration Act strikes a document and not a transaction. It extends to the whole of India except State of Jammu & Kashmir. Its Section 17 provides a document of which registration is compulsory. Section 17(1)(e) provides that non-testamentary instruments transferring or assigning any any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property shall be considered.

49. Viewed as above, on the admitted case of the petitioners that deed in question is unregistered document, the provisions of Section 164 of the U.P.Z.A. & L.R. Act, assuming what the petitioners are saying is correct, will not be attracted."

13. This Court is of the considered opinion that except photostat copy of some alleged document relied upon by the appellants but denied by Laxmi Devi by filing her written statement, there is no document conferring title upon the present appellants. Even if, photostat copy is read for any purpose in the present case, there is nothing on record to establish that the procedure provided under Rules 148 and 149 of Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952 was followed. Under such circumstances and following the ratio laid down in authorities discussed above, the ingredients of a deemed sale covered by Section 164 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 were not proved in accordance with law. The judgment in Ramanand (supra) has already been held "per incurium" and, hence, its follow up in *Amresh Chandra Pandey* (supra) would be of no avail.

14. This Court further records that in order to sustain a claim for cancellation of a sale deed, as per statutory mandate contained under Section 31 of the Specific Relief Act, 1963, it has to be found as a void or voidable document. In the instant case, none of the pleas raised by the appellants is sufficient to hold the sale deed of 2011 either void or voidable. The revenue entries being also subsisting in favour of the purchasers, this Court is of the considered opinion that right, title, interest and possession of the

property forming subject matter of lis vested lawfully in favour of purchasers from Laxmi Devi. Even if, there was some understanding between Laxmi Devi and the present appellants, at the best there could be a lis between them as regards refund of money allegedly paid by the appellants to Laxmi Devi, but even no such lis came into existence.

15. In view of above discussion, the findings recorded by both the courts below on all disputed aspects involved in the lis, being pure findings of fact, the same do not require any interference in second appellate jurisdiction under Section 100 of Code of Civil Procedure.

16. In ***Kamti Devi (Smt.) and Anr. v. Poshi Ram*** (2001) 5 SCC 311, the Supreme Court came to the conclusion that the finding reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding. In ***Thiagarajan v. Sri Venugopalaswamy B. Koil***, (2004) 5 SCC 762, the Supreme Court has held that the High Court in its jurisdiction under Section 100 C.P.C. is not justified in interfering with the findings of fact and that it is the obligation of the courts of law to further clear intendment of the legislature and not frustrate it by excluding the same and where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappraisal of evidence merely on the ground that another view was possible.

17. Similar view has been taken in ***Kondiba Dagadu Kadam vs Savitribai Sopan Gujar and others***, (1999) 3 SCC 722 by observing that disturbance in findings of fact would be contrary to limitations imposed by section 100 C.P.C. The Supreme Court again reminded in ***Commissioner, Hindu Religious & Charitable Endowments vs. P. Shanmugama*** (2005) 9 SCC 232 that the High Court has no jurisdiction in second appeal to interfere with the findings of fact. The Apex Court, in ***State of Kerala v. Mohd. Kunhi*** (2005) 10 SCC 139 reiterated the same principle by observing that by such interference, the High Court would go beyond the scope of Section 100 of the Code of Civil Procedure.

18. In ***Madhavan Nair v. Bhaskar Pillai*** (2005) 10 SCC 553, the Supreme Court observed that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same. In ***Harjeet Singh v. Amrik Singh*** (2005) 12 SCC 270, the Apex Court, with anguish, observed that the High Court had no jurisdiction to interfere with the findings of fact arrived at by the trial Court and the lower appellate Court regarding readiness and willingness to perform part of contract in its jurisdiction under Section 100 C.P.C.

19. The view taken in the aforesaid decisions has been reiterated by the Apex Court in ***Gurdev Kaur and others vs. Kaki and others***, 2007(1) SCC 546.

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20. No substantial question of law arises for consideration by this Court in both the second appeals.

21. Both the second appeals fail and are, accordingly, **dismissed**.

Order Date :- 4.9.2024

Sazia

(Kshitij Shailendra, J)