

Court No. - 7

Case :- WRIT - B No. - 1034 of 2023

Petitioner :- Suhail Ahmad And Another

Respondent :- Deputy Director Of Consolidation, Faizabad And Others

Counsel for Petitioner :- Rama Kant Dixit, Vijayendra Prakash Tripathi

Counsel for Respondent :- C.S.C., Dhirendra Kumar Mishra, Jitendra

Tiwari, Mohan Singh, Raghaw Ram Upadhyay, Ratnesh Chandra, Shobhit Mohan Shukla

Hon'ble Saurabh Lavania, J.

1. Rejoinder affidavit(s) filed today are taken on record.
2. Heard Sri Rama Kant Dixit and Sri Vijayendra Prakash Tripathi, learned counsel for the petitioners, Sri Badrish Kumar Tripathi, learned counsel for the State-respondent Nos. 1 to 3, Sri Mohan Singh, learned counsel for the Gaon Sabha/respondent No. 4, Sri Jitendra Tiwari, learned counsel for the respondent No. 6, Sri Amar Nath Dubey, learned counsel for the respondent No. 7, Sri Arun Pandey, Advocate holding brief of Sri Shobhit Mohan Shukla, learned counsel for the respondent No. 8, Sri Raghaw Ram Upadhyay, learned counsel for the respondent No. 9 and Ms. Mansi Singh, Advocate holding brief of Sri Ratnesh Chandra, learned counsel for the respondent No. 12.
3. Service upon respondent No. 11 is sufficient, however, on call no one appeared on behalf of this respondent. The service upon respondent Nos. 5 and 10 is not sufficient, however, in view of order proposed to be passed, issuance of notice to these respondents is dispensed with.
4. Present petition has been filed for the following main relief(s):-

"Issue a writ order or direction in the nature Certiorari quashing the impugned order dated 03/07/2023 passed by opposite party no.1 and also quash the order dated 06/01/2022 passed by the opposite party no.2 by which the revision of the petitioner filed against the order dated 06/01/2022 passed by the opposite party no.2 has been rejected illegally, arbitrarily and without application of mind and without considering any ground taken by the petitioner in their revision as well as based on conjuncture and surmises, as contained in ANNEXURE NO.1 to the writ petition.

Issue a writ, order or direction in the nature of MANDAMUS

commanding the opposite party no.5 to 11 not to create any hindrance in peaceful possession of the petitioners over the land in question and not to create the third party right by selling the property in question."

5. Facts indicated by the learned counsel for the parties, which are relevant for adjudication of the present petition, are as under:-

(i) Original tenure holder Umesh Chandra S/o Baldev Prasad executed a sale deed on 08.09.1992 in favour of private respondent No.5 namely Maharshi Ramayan Vidhya Peeth Trust Ayodhya situated at Guru Vashishta Chauk, Tedhi Bazar, Pargana Haweli Awadh, Tehsil Sadar, Ayodhya (Faizabad) and this sale deed dated 08.09.1992 was registered on 30.12.1992.

(ii) The above mentioned sale deed dated 08.09.1992 registered on 30.12.1992 relates to Gata No. 1055/2-12-5 (0.660 hect.) situated at Village-Manjha, Shahnewajpur, Pargana-Haweli Awadh, Tehsil-Sadar, District-Ayodhya.

(iii) In other words, Umesh Chandra S/o Baldev Prasad sold 2 Bigha, 12 Biswa and 5 Biswansi (0.660 hect.) land of Gata No. 1055 through sale deed dated 08.09.1992 registered on 30.12.1992 to private respondent No. 5.

(iv) New number i.e. 389 Gha was given to Gata Nos. 254, 1054M, 1055M and 1056M after completion of process in terms of notification under Section 48 of U.P. Land Revenue Act, 1901 (in short "Act of 1901").

(v) The claim of petitioners with regard to area sold by one Umesh Chandra S/o Baldev Prasad to private respondent No. 5, through sale deed dated 08.09.1992 registered on 30.12.1992 based upon the sale deed executed and registered on 08.04.1999 by Umesh Chandra S/o Baldev Prasad in favour of petitioners, was not found sustainable by the respondent No.2-Settlement officer of Consolidation, District-Ayodhya (in short "S.O.C."), as appears from the order dated 06.01.2022, impugned herein, affirmed by the impugned order dated 03.07.2023 passed by the respondent No. 1-Deputy Director of Consolidation, District-Ayodhya (in short "D.D.C.").

6. In view of aforesaid background of the case, present petition has been filed seeking main relief(s), quoted above.

7. The law is well settled on the issue involved in the present petition, which is to the effect that which sale deed would prevail. The law says that a sale deed executed earlier would prevail.

8. It would be apt to indicate the principles related to execution and registration of sale deed.

9. The earlier sale deed would prevail over the subsequent sale deed. The transferor/vendor cannot prejudice the rights of the transferee/vendee by any subsequent dealing with the property. This proposition is expressed in the equitable maxim "*qui prior est tempore potior est jure*". This means that "the first in time prevails over the others" and in other words "he who is earlier in time is stronger in law". It would also be apt to indicate the principle "*nemo dat quod non habet*" which means "no one can give what they do not have" in other words "no man convey a title than what he has". When a man in possession a property has created an interest in favour of someone, he cannot later deviate from it and create another interest without being free from previous transfer. If there are successive transfers of the same property, the later transfer is subject to the prior transfer.

10. Section 48 of the Transfer of Property Act, 1882 embodies this principle in legislation. Section 48 is founded upon the above said principle(s) including that no man can convey a title than what he has. If a person has already affected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. Section 48 is an absolute in its terms. It determines the priority when there are succeeding transfers. It says that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their fullest extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

11. The Hon'ble Apex Court in the case of ***S. Kumar v. S. Ramalingam, (2020) 16 SCC 553***, observed as under:-

"14. Section 48 of the Transfer of Property Act, 1882, relied upon by the learned counsel for the appellants, reads thus:

"48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

The said provision contemplates that where a person i.e. Rajasekaran has created different rights in or over the same property i.e. 16 ft wide strip of land and such rights cannot be exercised to their full extent together, then each later created right shall be subject to the rights previously created. The exception is if special contract or reservation binding the earlier transferee is executed. It will mean that the exclusive right conferred on the plaintiff in the sale deed dated 31-5-1988 will not be legal till such time the earlier transferee i.e. Defendant 2 has a special contract or reservation which binds her. Since the right of access to Defendant 2 was reserved in the sale deed dated 1-4-1976, therefore, the vendor could not confer exclusive right to the plaintiff vide sale deed dated 31-5-1988.

15. The plaintiff has to maintain the 16 ft wide passage in any case in terms of the recital in his sale deed dated 31-5-1988. Therefore, if Defendant 2 or her transferees use the passage, then such use of passage by Defendant 2 or her transferees cannot be said to be causing any prejudice to the plaintiff."

12. With regard to the issue of date of registration of sale-deed reference can be made to the judgment passed in the case of **Kanwar Raj Singh (D) Th. Lrs. Versus Gejo. (D) Th. Lrs and Others; 2024 SCC OnLine SC 1**, wherein after considering the decision of the Constitution Bench in the case of **Ram Saran Lall v. Domini Kuer; 1961 SCC OnLine SC 133**, the Hon'ble Apex Court observed as under:-

"5. The High Court, in the impugned judgment, has relied upon Section 47 of The Registration Act, 1908 (the Registration Act), which reads thus:

"47. Time from which registered document operates.—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

6. On plain reading of Section 47, it provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof was required. Thus, when a compulsorily registerable document is registered according to the Registration Act, it can operate from a date before the date of its

registration. The date of the operation will depend on the nature of the transaction. If, in a given case, a sale deed is executed and the entire agreed consideration is paid on or before execution of the sale deed, after it is registered, it will operate from the date of its execution. The reason is that if its registration was not required, it would have operated from the date of its execution.

7. Now, we come to the decision of the Constitution Bench in the case of *Ram Saran Lall (Supra)*. In paragraph 8 of the judgment, the Constitution Bench held thus:

"8. We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in *Tilakdhari Singh v. Gour Narain* [AIR 1921 Pat 150]. We believe that the same view was expressed in *Nareshchandra Datta v. Gireeshchandra Das* [ILR (1935) 62 Cal 979] and *Gobardhan Bar v. Guna Dhar Bar* [ILR (1940) 2 Cal 270]."

8. The Constitution Bench held that Section 47 of the Registration Act does not deal with the issue when the sale is complete. The Constitution Bench held that Section 47 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale. It was also held that once a document is registered, it will operate from an earlier date, as provided in Section 47 of the Registration Act.

9. Section 54 of the Transfer of Property Act, 1984 (the Transfer of Property Act) reads thus:

"54. **"Sale" defined.**—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.— Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.— *A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property."

10. Every sale deed in respect of property worth more than Rs. 100/- is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered document would operate.

11. Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of its execution. Thus, the sale deed as originally executed will operate. The corrections unilaterally made by the first defendant after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. Only if such changes would have been made with the consent of the original plaintiff, the same could relate back to the date of the execution. It is not even the first defendant's case that the subsequent correction or interpolation was made before its registration with the consent of the original plaintiff. Therefore, in this case, what will operate is the sale deed as it existed when it was executed."

13. Taking note of aforesaid including the law on the issue as also the facts related to execution and registration of sale deeds in issue and the principles related on this aspect, this Court is of the view that the impugned order(s) dated 06.01.2022 and 03.07.2023 are not liable to be interfered with by this Court in exercising of power under Article 226/227 of the Constitution of India. It is accordingly **dismissed**. No order as to costs.

Order Date :- 29.3.2024/Vinay/-