

Court No. - 37

Case :- SECOND APPEAL No. - 285 of 2025

Appellant :- Smt Niyaz Bandi Begum

Respondent :- Shahid Azeez And 15 Others

Counsel for Appellant :- Anwar Hussain, Anzar

Haroon, Haroon Ahmad

Counsel for Respondent :- Rahul Sahai, Santosh Kumar

Hon'ble Dinesh Pathak, J.

1. Heard Shri Anwar Hussain, learned counsel for the appellant as well as Shri Rahul Sahai, learned counsel for the respondents and perused the record.

2. Plaintiff-appellant has filed suit for permanent prohibitory injunction against the defendants to restrain them not to secure or handover the possession of whole or any portion of the premises No. 40/181 Makhania Bazar, Kanpur, in any manner whatsoever and further be restrained permanently from alienating the said property in favour of defendant nos. 8, 9 and 10 or any other person(s). During pendency of the suit, through amendment dated 09.04.2002, a relief for specific performance of contract dated 16.01.1992 has been sought for as well. Learned trial court, vide judgment dated 25.04.2014, has decreed the suit in toto granting permanent prohibitory injunction and issued a direction to defendant nos. 1 to 5 to execute a registered sale deed in pursuance of the agreement to sale dated 16.01.1992, after receiving the remaining consideration amounting to Rs. 60,000/- with respect to the house no. 40/181 situated in Makhania Bazar, Kanpur. Having been aggrieved with the judgment dated 25.04.2014, defendant nos. 1 to 3 have preferred civil appeal. Learned Additional District and Sessions Judge, Court No.19, Kanpur Nagar has partly allowed the appeal reversing the judgment passed by the trial court with respect to the specific performance of contract dated 16.01.1992 treating it to be not enforceable, however, affirmed the judgment and decree passed by the trial court with respect to the permanent prohibitory injunction over the property in question to the extent of 22% which was gifted to the plaintiff by oral gift pronounced on 20.06.1992.

3. Instant second appeal has been preferred on behalf of plaintiff-appellant assailing the judgment and decree dated 28.11.2024 passed by the first appellate court to the extent of dismissal of the suit with respect to the specific performance of contract on the grounds as mentioned herein below:

"i. The impugned judgment and decree passed by the first appellate court is manifestly illegal and against the settled principle of law.

ii. Learned lower appellate court has affirmed all the findings of learned trial court recorded in favour of the plaintiff/appellant except that on the basis of admitted unregistered agreement to sale no decree for specific performance can be passed, therefore, only issue for the determination in the instant second appeal is "Whether on the basis of admitted unregistered agreement to sale dated 16.01.1992 a decree for specific performance of contract cannot be passed in the facts and circumstances of the case".

iii. Learned lower appellate court has arbitrarily acted in not considering the case of the plaintiff/appellant in the light of unamended Section 20 of the Specific Relief Act, 1963 as even after amendment Act 18 of 2018 w.e.f. 01.10.2018, unamended section would be applicable in so far as the present matter is concerned as the subject agreement having taken place prior to the said amendment.

iv. Learned lower appellate court while interfering with the judgment and decree passed by the learned trial court committed manifest illegality, as the learned trial court had decreed the suit in toto in favour of the plaintiff/appellant after taking into consideration unamended Section 20 (4) of the Specific Relief Act, 1963 which confers discretion upon the court that court shall not refuse for specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

v. As the subject agreement had taken place prior to amendment Act 18 of 2018 w.e.f. 01.10.2018, as such, learned trial court rightly decreed the suit while exercising discretion conferred under unamended Section 20 (4) of Specific Relief Act, 196, however, lower appellate court without taking into the consideration same have passed the impugned judgment interfering with the discretionary powers exercise by the learned trial court.

vi. Learned lower appellate court while passing impugned judgment and decree failed to take into consideration that the unamended section 20 of Specific Relief Act, 1963 is based on equitable principles meaning it aim to achieve fairness and justice in the specific situation.

vii. Learned lower appellate court while passing impugned judgment and decree failed to take into consideration that Act 18 of 2018 amending Specific Relief Act, 1963 is prospective in nature and cannot apply to those transaction that took place prior to its coming into force as held by the judgment of Apex Court in case of Smt. Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd.

viii. Learned lower appellate court while passing impugned judgment and decree not only failed to take into consideration unamended Section 20(4) of Specific Relief Act, 1963 but also failed to decide as to whether discretion should be exercise or not for granting relief of specific performance in the facts and circumstances of the case.

ix. Learned lower appellate court while passing the impugned judgment and decree failed to take into consideration that Order XII Rule 6 C.P.C. is an enabling provision conferring wide discretionary powers on the

courts to pass the judgment on admission especially when in the present case admission so made by the defendant/respondent no. 1 under Order 10 Rule 2 CPC is unconditional, unequivocal and unambiguous.

x. Appellant is advised to state that she has a prima-facie case. She is in exclusive possession of the disputed property along with her sons and grandsons, however, on the basis of impugned judgment and decree passed by lower appellate court, defendants/respondents are attempting to dispossess the plaintiff/appellant not only through execution lawfully levied but also through bringing extraneous pressure through local police to give-up possession. In case the plaintiff/appellant is dispossessed she will suffer irreparable loss and injury. Balance of convenience is in favour of the plaintiff/appellant and against the defendants/respondents."

4. At the bottom of the instant second appeal, the appellant has formulated substantial questions of law, which are quoted herein below:

"i. Whether in a suit for specific performance where defendants in their written statement and statement recorded under Order 10 Rule 2 CPC have admitted not only execution of unregistered agreement to sale but also admitted receiving advance then the same cannot be enforced by the court exercising discretionary powers conferred under unamended Section 20 (4) of the Specific Relief Act, 1963 and judgment cannot be pronounced under Order 12 Rule 6 CPC just for the reason that the same is unregistered?

ii. Whether, under the facts and circumstances of the case, plaintiff/appellant is not entitled for equitable reliefs under unamended Sections 20 and 21 of the Specific Relief Act, 1963?

iii. Whether unamended Section 20 of the Specific Relief Act, 1963 would be available for decision in the appeal before the first appellate court and second appellate court even Section 20 is substituted by a new Section 20 by Act 18 of 2018 which came into force with effect from 1.10.2018 as per Notification No.S.O.4888 (E) dated 19 September, 2018 and published in the Gazette of India, Extra, Part II Section 3(ii) dated 19th September, 2018?"

5. Plaintiff came with the case that defendant nos. 1 to 5 along with defendant nos. 11 (Smt. Farah Deeba) and defendant no.12 (Shabana Parveen) have executed an agreement to sale dated 16.01.1992 with respect to the premises in question for sale consideration amounting to Rs. 80,000/-, out of which Rs. 20,000/- was paid as an earnest money and remaining Rs. 60,000/- was promised to be paid at the time of execution of sale deed. Subsequently, defendant nos. 1 to 5 became dishonest. However, defendant nos. 11 and 12, being dissatisfied with the conduct of defendant nos. 1 to 5, have pronounced an oral gift dated 20.06.1992 to the extent of their shares. Learned trial court has decreed the suit against defendant nos. 1 to 5 along with defendant nos. 11 and 12. The first appellate court has reversed the judgment passed by the

trial court on the ground that alleged agreement to sale dated 16.01.1992 is not a registered document, as required under Section 54 of Transfer of Property Act and Section 17 and 49 of the Registration Act. The appellate court has emphasized that admission made by defendant nos. 1 to 5 cannot create estoppel against the law, therefore, case of the plaintiff cannot be considered under Order 12 Rule 6 of C.P.C. So far as shares of defendant nos. 11 and 12 are concerned, appellate court has acknowledged the right, title and interest of the plaintiff/appellant and considered her co-sharers to the extent of her share i.e. 22% in the suit property, on the basis of admission made by defendant nos. 11 and 12 with respect to the oral gift dated 20.06.1992 pronounced by them. The appellate court has also declined to grant any other relief with respect to the return of earnest money or possession for want of compliance of Section 21(5) and Section 22(2) of Specific Relief Act.

6. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of record, it is manifest that enforceability of the unregistered agreement to sale dated 16.01.1992 is the flash point between the parties in the instant second appeal, which has been negated by first appellate court for want of compliance of legal provisions, as mentioned above. Admittedly agreement to sale dated 16.01.1992 is an unregistered document. Perusal of the judgement passed by the first appellate court evince that learned appellate court has formulated point for determination no.2 with regard to the enforcement of unregistered agreement to sale dated 16.01.1992 said to have been executed by defendant nos. 1 to 5 in favour of the plaintiff. The first appellate court, while deciding the point for determination no.2, has discussed the legality and validity of the unregistered agreement to sale dated 16.01.1992 and come to conclusion that unregistered documents are not enforceable in the eye of law, therefore, suit for specific performance of contract cannot be decreed. To bolster his finding *qua* negating the enforceability of the unregistered agreement to sale dated 16.01.1992, first appellate court has discussed the provisions enunciated under Section 54 of the Transfer of Property Act and the provisions enunciated under Section 17(1)(b) as well as Section 49 of the Registration Act in the light of the amendment made by U.P. Amendment Act No. 57 of 1976. The first appellate court has also refused to return the earnest money and grant any other relief for possession etc. on the ground that no alternative relief has been sought for on behalf of the plaintiff with respect to the return of the earnest money or possession or partition of the property in question. Thus, in absence of specific relief, same is barred under Section 21(5) and Section 22(2) of the Specific Relief Act.

7. Learned counsel for the appellant has laid emphasis on the judgment passed by the Hon'ble Supreme Court in the matter of *Suraj Lamp And Industries Private Limited Vs. State of Haryana And Another* (2012) 1 SCC 656, decided on October 11, 2011; and tried to submit that even unregistered document can be entertained for the purposes of specific performance of contract. In support of his submission, he has placed reliance upon Paragraph nos. 25 and 26 of the aforesaid judgment, which are quoted herein below:

"25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this a decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not "transfers" or "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision."

8. In my considered opinion, learned counsel for the appellant has tried to misread and misinterpreted the judgment passed by the Hon'ble Supreme Court, as cited above, whereby, it has been held that transfer of immovable property by way of sale can only be made by deed of conveyance (sale deed), in absence of deed of conveyance duly stamped and registered, as required under the law, no right, title or interest can be transferred in an immovable property. It is further observed that any contract of sale (agreement to sale), which is a not registered deed of conveyance (deed of sale), is fall short of requirements under Section 54 and 55 of Transfer of Property Act and will neither confer any title nor transfer any interest in any immovable property, except to the limited right granted under Section 53A of the Transfer of Property Act. According to Transfer of Property Act, an agreement for sale, whether with possession or without possession, is not a conveyance. Intending to accord one opportunity to the parties concerned in order to validate their transactions based on sale agreement/general power of attorney/will, the Hon'ble Supreme

Court has given them liberty to get the transactions based on sale agreement, general power of attorney, will transaction validated by obtaining valid deed of conveyance. Hon'ble Supreme Court has made it clear that this decision shall be made applicable prospectively to avoid hardship. The Hon'ble Supreme Court is intended to curb those illegal transactions which are made on the basis of the sale agreement, general power of attorney, will transaction, however, no specific direction has been given by Hon'ble Supreme Court that even unregistered document can be considered as a deed of conveyance for the purposes of transfer of property. It is no more *res integra* that agreement to sale is simply a proposal for the transfer of the property and on the basis thereof no right, title and interest can be conferred upon the vendee unless a valid sale deed is executed or agreement to sale is got executed by filing the civil suit under the provisions of law as enunciated under the Specific Relief Act. Thus, alleged agreement to sale dated 16.01.1992, which is an unregistered document, cannot be made basis for conferring right to get the sale deed executed with respect to the subject matter of the agreement to sale in favour of the vendee.

9. In this conspectus, as above, in my considered opinion, no substantial question of law is made out in the instant second appeal in the light of the discussion as made above. The only point, which is required to be considered with regard to the enforcement of unregistered agreement to sale dated 16.01.1992, has rightly been discarded by the first appellate court by discussing several legal provisions as enunciation under the Transfer of Property Act, the Registration Act and the Specific Relief Act. Unregistered document for agreement to sale has no evidentiary value in the eye of law, therefore, same is not executable/enforceable. In absence of any substantial question of law in the instant matter, I decline to exercise my jurisdiction under Section 100 of C.P.C.

10. Resultantly, instant second appeal, being devoid of merits and misconceived, is hereby ***dismissed*** with no order as to cost.

Order Date :- 13.5.2025

Sumit K.