

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No.418 of 1997**

1. Bhiku Bhai, aged about 42 years, son of Late Shri Deep Singh Chawda
2. Dilip Chawda, aged about 30 years, son of Late Shri Deep Singh Chawda,

All are resident of Village Charama, Tahsil Charama, District Bastar (CG)

**---- Appellants/Defendants****Versus**

Manilal Meerani Died Through Lrs

- (1) Smt. Vijyaben M. Mirani, widow of Late Mani Lal Meerani , aged about 76 years,
- (2) Pradeep M. Mirani, S/o Late Mani Lal Meerani, aged about 56 years,
- (3) Vipin M. Mirani, S/o Late Mani Lal Meerani, aged about 49 years,
- (4) Rajesh M. Mirani, S/o Late Mani Lal Meerani, aged about 47 years,
- (5) Arun M. Mirani, S/o Late Mani Lal Meerani, aged about 42 years,

All are resident of Amapara Ward, Dhamtari, District Dhamtari (CG)

**---- Respondents/Plaintiffs**


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For Appellants :Shri Vishnu Koshta and Shri Shobhit Koshta, Advocates  
 For Respondents :Shri Manoj Paranjpe and Shri Anurag Singh, Advocates

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**Single Bench :** **Hon'ble Shri Justice Manindra Mohan Shrivastava**

**CAV Order**

**03/08/2018**

1. This appeal is directed against the impugned judgment and decree dated 21-08-1997 passed by the Additional Judge to the Court of District Judge, Jagdalpur, Kanker in Civil Suit No.8-A/1992, by which, plaintiff's suit has been decreed and upon declaration of title of the plaintiff, the defendants have been

directed to hand over possession of the property and decree of permanent injunction in favour of the plaintiff against the defendant, has also been passed.

2. The respondent-plaintiff filed a suit seeking declaration of title, possession and permanent injunction against the appellants-defendants on the pleadings inter alia, that the property in dispute belonged to the plaintiff. According to the plaintiff, property was purchased from one P. K. Rai and it was given to Late Deep Singh Chawda, who resided along with his family as Deep Singh Chawda was working as a Manager in the Factory owned by the plaintiff. In the pleadings, it was stated that the house, open land and cow shed was constructed by the plaintiff during the course of construction of his factory under the supervision of Deep Singh Chawda. It was pleaded that as long as Deep Singh Chawda was working as Manager in the employment of the plaintiff, he and his family were licensed to reside in the house in dispute. After death of Deep Singh Chawda, the plaintiff requested defendants to vacate the house, so that, it could be allotted to another Manager, but the defendant refused. When despite notice, possession was not handed over and title was disputed, the plaintiff filed suit.

3. The defendants took a stand that the house, adjoining land, cow shed did not belong to the plaintiff. Though, it was not disputed that Deep Singh Chawda was the Manager of the plaintiff, but the defendants came out with the case that the house was constructed by Deep Singh Chawda from his own funds under his ownership and title on a piece of land adjoining the factory, in which, he was working as Manager. The plaintiff had no title or ownership over the plot nor the plaintiff constructed the house. It was also pleaded that in settlement proceedings, land in dispute, on which, house was constructed and in which, defendants were living since 1978 has finally been settled in their favour by the

order of the Revenue Authorities and they are enjoying the government lease over the land.

4. On the basis of pleadings of the parties, learned trial Court framed following issues:-

- “1.(अ). क्या वादी वादग्रस्त/भूमि खसरा नंबर 103/13—च से स्थित वाद मकान का स्वामी है ?
2. क्या वाद मकान प्रतिवादी क्रमांक 1 के पिता दीपसिंह चावड़ा ने सन् 1978 के पूर्व स्वयं अपने निवास हेतु स्वयं के लागत से निर्माण कराया था, इस कारण वाद मकान के स्वामी प्रतिवादीगण है ?
3. क्या वादी प्रतिवादीगण से वादग्रस्त मकान का रिक्त आधिपत्य प्राप्त करने का अधिकारी है?
4. क्या वादी दिनांक 25.05.92 से वाद प्रस्तुत करने की तारीख तक 20.00 रु० दैनिक की दर से 1200.00 रु० अंतरिम लाभ प्रतिवादीगण से प्राप्त करने का अधिकारी है?
5. क्या म.प्र. शासन भी इस प्रकरण में आवश्यक पक्षकार है?
6. सहायता एवं व्यय ?”

5. Learned trial Court relying upon the evidence of the parties, particularly relying upon a unregistered sale deed, Ex.P-9 for collateral purposes of proving possession of the plaintiff over the land in dispute. It was also held that the house in dispute was constructed by the plaintiff, while he was constructing his factory under the supervision of Deep Singh Chawda. The learned trial Court also relied upon the letters Ex.P-136 to P-144 written by Deep Singh Chawda to hold that house in dispute was constructed under the supervision of Deep Singh Chawda, but it was constructed from the funds made available by the plaintiff. Learned trial Court held that from the evidence, it is borne out that Deep Singh Chawda had come to Charama in connection with his job in the factory, he was provided residential accommodation by the plaintiff. On these findings, it was held that the land in dispute, on which, house was constructed, belonged to the plaintiff and the plaintiff had inducted Deep Singh Chawda and his family in possession of the property in dispute and therefore, entitled to seek decree of eviction.

6. Learned counsel for the appellants argued that the trial Court committed grave error in law as well as on facts in recording a finding regarding title of the plaintiff. It is argued that the plaintiff did not even enter into the witness box. His Power of Attorney could not prove facts which were within the personal knowledge of the plaintiff. No valid title passed in favour of the plaintiff on the basis of the unregistered sale deed Ex.P-9. It being unregistered, was not at all admissible in evidence nor could be used for the collateral purposes to prove possession of the plaintiff over the land, on which, disputed house was constructed. It is next argued that the plaintiff failed to lead any documentary evidence that he had provided residential accommodation to his Manager Deep Singh Chawda free of rent. Except oral evidence of the son and employees of plaintiff, there is no other clinching evidence to prove that the house in dispute was constructed by the plaintiff and after construction, it was handed over to Deep Singh Chawda, merely as a licensee to use the premises till he was working as a Manager in the Factory. Learned counsel for the appellant further argued that the defendants, on the other hand, have proved from the evidence on record that the house in dispute was constructed by Deep Singh Chawda, in which, he along with his family was residing since 1978 and later on, during the pendency of the suit, the Revenue Authorities have settled the lands through revenue proceedings in favour of the defendant by way of government lease, which is not under challenge in the present suit and for this reason also, the suit is liable to be dismissed. In support of his submissions, learned counsel for the appellants placed reliance upon several authorities.

7. Learned counsel for the respondent-plaintiff argued that even though, unregistered sale deed, Ex.P-9 may not be admissible for the purpose of proving acquisition of title by way of purchase from P. K. Rai, it could always be used for the collateral purpose to prove that the possession of the land was

handed over by Shri P. K. Rai to the plaintiff. He next argued that no objection to the admissibility of Ex.P-9 having been raised during trial, it could not be raised in appeal. He next submits that there is overwhelming evidence on record, supported by emphatic pleading that the defendant was employed by the Plaintiff as Manager of the Factory and that between the period from 1980 to 1983, the plaintiff constructed factory and adjacent house, for which, funds were provided only by the plaintiff. Merely because, it was constructed under the supervision of Late Deep Singh Chawda, would not by itself, without any other clinching evidence, amount to proof of valid title of Deep Singh Chawda over the house in dispute. He further submits that the statements of books of accounts prepared and kept by the plaintiff showing the expenditure incurred in connection of construction of factory as also the house in dispute has been proved. He submits that the letters sent by Deep Singh Chawda to plaintiff, Ex.P-136 to P-144 proved that all the constructions which were raised, were being raised in the name of the factory under the ownership and title of the plaintiff, though under the supervision of Deep Singh Chawda. The defendants have failed to place any document on record to show as to how they obtained possession of the land and any other documentary evidence regarding permission to construct the house and the expenditure incurred during construction of house. Therefore, on comparative analysis of the evidence, oral as well as documentary, available on record, the plaintiff's case is on higher scales of probability and as such, the judgment and decree of the trial Court may not be interfered with. In support of the submissions, learned counsel for the respondent relied upon several authorities.

8. I have bestowed my anxious consideration to the submission of learned counsel for the parties and perused records.

9. The following points arise for determination in this appeal :-

- Whether the plaintiff has succeeded in proving its title in respect of the property in dispute?
- Whether the plaintiff has succeeded in proving that the possession of the house in dispute was given by the plaintiff to Deep Singh Chawda as his Manager and Deep Singh Chawda resided in the house as a licensee?
- Whether the plaintiff is entitled to decree, as prayed for?

10. The plaintiff in order to establish his title, originally came out with the pleading that the plaintiff is the owner of the house in dispute and that the house was constructed for residential purposes in the year 1983 and is adjacent to factory and godown etc, which was also constructed in the year 1983. It was pleaded that from 1981 to 1983, Deep Singh Chawda was working as Manager in the Factory and for residential purposes, the house was given to Deep Singh Chawda in his capacity as Manager. The suit was filed by the plaintiff in the year 14-08-1992. After about five years, the plaintiff came out with amendment, incorporating Para 2-अ and 2-ब, in which, the plaintiff stated that Deep Singh Chawda had come in the employment at Charama under the plaintiff's Firm in the year 1967-68 and worked as Manager till his death in the year 1991. He also came out with a pleading that in the year 1991, Deep Singh Chawda sold his land to the plaintiff. Another averment made was that over the land purchased from one P. K. Rai, mutation in the name of the plaintiff was done at the instance of Deep Singh Chawda himself on 10-05-1983. Therefore, the defendants are estopped from disputing the title of the plaintiff. Thus, the plaintiff has made contradictory statement with regard to the date, from which, Deep Singh Chawda was employed as Manager. In the plaint, the plaintiff has originally pleaded that Deep Singh Chawda was working as Manager since 1983 to August 1991, whereas according to the amended pleadings, he was working as Manager since 1967-68. Moreover, the plaintiff, initially while filing a

suit, did not disclose that he had purchased land from Deep Singh Chawda.

It is also pertinent to mention here that in the pleadings, at the time of filing of the suit, it was not stated as to how, the plaintiff acquired title in respect of the land in dispute, over which, he claimed to have constructed the house. It was only later on, he came out with a case that he had purchase land from Shri P. K. Rai. In respect of his claim of acquisition of title over the land and the house constructed, the plaintiff filed photocopy of the sale deed Ex.P-9-C. It contains recital of sale, as below:-

“विदित हो कि मुझे कास्तकारी कार्य के वास्ते रकम की जरूरत होने से अपन धारण की ऊपर बताई संपत्ति को उपरोक्त मूल्य में उक्त केता के पास ब्रिकी कर धारण सदा के वास्ते दे दिया। फिलहाल ग्राम चारामा आदिवासी क्षेत्र घोषित हो जाने के कारण गैरआदिवासियों को बिना कलेक्टर के मंजूरी के लिखा पढ़ी नहीं हो सकने के कारण पक्की लिखा पढ़ी रजिस्ट्री नहीं हो सकता है जब शासन की ओर से मंजूरी मिल जावेगा तो केता के हक में पक्की बैनामा रजिस्ट्री कर दूंगा।”

11. The aforesaid recital is of sale of property. As the recital itself shows, there was no registration of the deed. There is no doubt with regard to this fact that Ex.P-9 is not a registered document. Therefore, it being unregistered sale deed, is not admissible in evidence nor any valid title passed in favour of the plaintiff, so as to say that the plaintiff acquired title in respect of the land in dispute, over which, house in dispute is constructed.

At this juncture, in view of the submissions made by learned counsel for the parties, two questions arise for consideration; one whether the plaintiff, at the appellate stage, could object to the admissibility of the sale deed, Ex.P-9(C), when no objection to it being admitted in evidence was taken during trial, at this stage, when the document was exhibited. The second question is whether the unregistered sale deed could be used for collateral purpose or for the collateral purpose of proving possession of the plaintiff over the land in dispute.

Answer to the first question would essentially depend upon whether it is a case where the document is not at all admissible in evidence or where only the

mode, by which, it could be admitted in evidence is under challenge. The tenability of objections to the admissibility of document at the appellate stage was examined by Their Lordships in the Supreme Court in the case of ***R. V. E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple and another***<sup>1</sup>. Therein, an issue arose whether the document which was allowed to be admitted in evidence during trial, question of admissibility of that document could be raised at appellate stage.

12. The legal position in this regard was propounded thus:-

**20.** “The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission Vs. The State of Madras & Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such

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1 (2003) 8 SCC 752

practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

13. Applying the aforesaid legal proposition to the facts of the present case, it is found that objection to the admissibility of the documents is not with regard to the mode, by which, it is to be proved, because the document itself is inadmissible in evidence. Ex.P-9 is a sale deed in respect of immovable property, valued more than Rs.100/-. Therefore, the law required it to be registered and without registration, the sale deed is completely inadmissible in evidence and it is not merely a case where objection is directed towards mode of proof on the allegation that it is irregular or insufficient. Therefore, merely because objection to the document exhibited during trial was not taken, the appellant is not estopped from objecting to the admissibility of unregistered sale deed. The principles laid down in ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal and another***<sup>2</sup>, would be applicable, wherein it has been held, as below:-

16. “Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., (supra), The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents.”

Present is not a case where the signatory of the documents have admitted their signatures on the document, Ex.P-9.

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2 (2003) 8 SCC 745

14. Learned counsel for the respondent-plaintiff has contended that even if the sale deed, Ex.P-9, for want of registration, may not be admissible, to prove transfer of title in favour of the defendant, the plaintiff has succeeded in establishing title over the suit land and house constructed thereon from other cogent and admissible as also reliable, oral as well as documentary evidence led by it. He submits that the unregistered sale deed, Ex.P-9 would otherwise be admissible for collateral purposes in order to prove that there was an agreement of sale of property in dispute between P. K. Rai and the plaintiff and that possession of the land in dispute was handed over to the plaintiff by P. K. Rai as per the recitals of Ex.P-9.

15. Where a deed of sale for want of registration is not admissible in evidence, it could be used for limited collateral purposes. The collateral purpose for which could be used, is not establishment of title but the collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. In the case of **S. Kaladevi vs. V.R. Somasundaram and others**<sup>3</sup>, the question of admissibility of unregistered sale deed in a suit for specific performance of contract was examined by the Supreme Court with reference to the provisions contained in the Registration Act, Transfer of Property Act and Specific Relief Act, as below:-

11. [Section 49](#) gives teeth to [Section 17](#) by providing effect of non-registration of documents required to be registered. [Section 49](#) reads thus:

"S.49.- Effect of non-registration of documents required to be registered.- No document required by [section 17](#) or by any provision of the [Transfer of Property Act](#), 1882 (4 of 1882), to be registered shall -

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and

required by this Act or the [Transfer of Property Act](#), 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

12. The main provision in [Section 49](#) provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the [Transfer of Property Act](#), 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to [Section 49](#) of 1908 Act.

13. Recently in the case of **K.B. Saha and Sons Private Limited v. Development Consultant Limited<sup>1</sup>**, this Court noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:-

".....The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under [Section 17](#) and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it....."

This Court then culled out the following principles:-

"1. A document required to be registered, if unregistered is not admissible into evidence under [Section 49](#) of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the

purpose of proving an important clause would not be using it as a collateral purpose."

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

**14.** [In Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy<sup>2</sup>](#), the question presented before this Court was whether a decree to enforce the registration of sale deed could be granted. That was a case where respondent therein filed a suit for specific performance seeking a direction to register the sale deed. The contention of the appellant, however, was that decree for specific performance based on unregistered sale deed could not be granted. This Court noticed the provisions contained in Part XII of 1908 Act, particularly [Section 77](#), and difference of opinion between the various High Courts on the aspect and observed:-

"10. The difference of opinion amongst the various High Courts on this aspect of the matter is that [Section 77](#) of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but for the special provision of that section could not be maintainable. Several difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the [Specific Relief Act](#) and the [Registration Act](#) may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in [Section 77](#) of the Act has reached and no other relief except a direction for registration of the document is really asked for, [Section 77](#) of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for specific performance is of a wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit under [Section 77](#) of the Act is not an adequate remedy."

**15.** This Court then held that the first appellate court rightly took the view that under [Section 49](#) of the 1908 Act, unregistered sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. It was held:

".....The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under [Section 77](#) of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated under [Section 77](#) of the Act would arise. It is only on presentation of a document the other circumstances would arise. The first appellate court rightly took the view that under [Section 49](#) of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property.....".

16. In the aforesaid decision of the Supreme Court, earlier decision in the case of ***K. B. Saha and Sons (P) Ltd. v. Development Consultant Ltd.***<sup>4</sup> was also referred to and relied upon which lays down the limited scope of collateral purposes, for which, the unregistered sale deed could be used. The collateral purpose is required to be independent of and divisible from the transaction to effect which law required registration. Therefore, the unregistered sale deed, which is otherwise not admissible in evidence, cannot be used for the collateral purpose to prove that P. K. Rai, transferred possession of the land in dispute to the plaintiff with an intent to create title in favour of the plaintiff. This is so because, that would not be a transaction divisible from or independent of transaction to effect which law required registration. If the document of sale is not admissible for want of registration, it could not be allowed to be used to prove transfer of possession because according to the decisions referred to above, none of the terms of the document could be admitted in evidence so as to prove any important clause in the said agreement.

It has to be noticed that the present is not a suit for specific performance of contract nor the document is being used to prove the pleading that the parties had entered into an agreement of sale of property and in furtherance of that P. K. Rai transferred possession of the land in dispute in favour of the plaintiff herein. The plaintiff's case, as pleaded, is that he is the owner of the property on the basis of sale deed, Ex.P-9. If present is not a case of specific performance of contract filed by the plaintiff against P. K. Rai, the document, Ex.P-9 is not admissible even for the collateral purposes as provided in the proviso to Section 49 of the Registration Act, which provides that such unregistered document may be received in evidence of a contract in a suit for specific performance. The plaintiff has sought declaration based on his title and sought recovery of

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4 (2008) 8 SCC 564

possession of the property in dispute on the basis of his title.

17. Therefore, in view of the aforesaid legal position, present being not a case of specific performance of contract, the document Ex.P-9 cannot be used for collateral purpose for proving that there was transfer of possession by P. K. Rai in favour of the plaintiff or that there was an agreement of sale between the plaintiff and P. K. Rai.

18. Otherwise also, occasion to receive and make admissible in evidence, Ex.P-9, even as an agreement of sale, would not arise, because the execution of very document is not proved by the plaintiff. Neither P. K. Rai nor the plaintiff have entered witness box to prove the said document, Ex.P-9. It is interesting to note that the suit is filed by the plaintiff through power of attorney. The plaintiff having not entered the witness box to prove Ex.P-9, the evidence of his power of attorney, Pradeep, PW-2 does not prove execution of document, Ex.P-9. This witness does not say that the document, Ex.P-9 was executed in his presence or that it was prepared by him or his father or by P. K. Rai. Mere production of the document is not enough. Execution of the document has not been admitted by the defendant. Therefore, burden was on the plaintiff to prove execution of this document. Even assuming that for any other collateral purposes, this document Ex.P-9 could be used, the facts which are within the personal knowledge of the plaintiff ought to be proved by the plaintiff himself by entering into the witness box and his power of attorney holder Pradeep, PW-2, having no personal knowledge, cannot prove the said document, as held in ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others***<sup>5</sup>.

19. With regard to transfer of title, it is equally well settled legal position in the case of ***Suraj Lamp and Industries Private Limited (2) Through Director vs. State of Haryana and another***<sup>6</sup>, their probative value under Section 54 of the

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<sup>5</sup> (2005) 2 SCC 217

<sup>6</sup> (2012) 1 SCC 656

Transfer of Property Act is only against the vender.

20. Protection of possession under the colour of possessory title is available to a person to protect his possession against all except one having better title until he is evicted in accordance with law. That is the principle laid down in the case of ***Devidmati & Others vs. Smt. Shyamkali & Others***<sup>7</sup> & ***Rame Gowda vs. M. Varadappa Naidu and another***<sup>8</sup>.

Present is not a case where the plaintiff had filed a suit to protect his possession on the basis of possessory title, but it is a case where the plaintiff admittedly not being in possession has sought declaration of his title as also for recovery of possession on the assertion of his title, therefore, the aforesaid two decisions cited by learned counsel for the plaintiff, in support of his case, have no application in the present case.

21. There is another argument of the plaintiff that Deep Singh Chawda, having admitted title of the plaintiff in respect of the property in dispute, the defendants who are his successor in title, are estopped from disputing the title of the plaintiff. This argument has been built up on the basis of revenue record, Ex.P-39. It would be important to note that when the plaintiff filed a suit in the year 1992, no such case was set up by the plaintiff. After the evidence begun, amendment was carried out in the year 1997 incorporating Clause 2(b) in the plaint to aver for the first time that purchase of land in dispute from P. K. Rai was mutated in favour of the plaintiff by Deep Singh Chawda on 10-05-1983, therefore, the defendants are estopped from disputing title of the plaintiff.

22. Ex.P-39 is merely an entry in the revenue documents. On what basis, the entry was made is not known. This document cannot be treated as the admission of the plaintiff's title by Deep Singh Chawda. It does not bear signature of Deep Singh Chawda nor any one proved this fact. It is not a case

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<sup>7</sup> 2012 (4) CGLJ 204

<sup>8</sup> (2004) 1 SCC 768

that in certain mutation proceedings, pursuant to which, Ex.P-39, noting were made or Deep Singh Chawda gave statement before the Revenue Officers that he has appeared to seek mutation in the name of the plaintiff as his Manager on the basis of unregistered sale deed, Ex.P-9. A close look of the said document shows that it talks of registered document. This document has been filed during trial on the basis of amended pleadings. Therefore, the noting by some Revenue Officer cannot be treated as an admission of Deep Singh Chawda.

23. The plaintiff sought to make out a case by leading oral evidence of son of the plaintiff and some of his employees examined as plaintiff's witnesses to prove that the house was got constructed by the plaintiff and he had incurred expenditure and further that the construction was raised under the supervision of Deep Singh Chawda, who at the relevant time, was Manager of the plaintiff. The fact that Deep Singh Chawda was the Manager of the plaintiff has not been disputed. However, it has been disputed that the land in dispute belonged to the plaintiff or that the land in dispute, though house was constructed by the plaintiff by his own funds, Deep Singh Chawda only supervised the construction as plaintiff's Manager. Therefore, this fact was required to be proved by the plaintiff by cogent and clinching evidence. The plaintiff's case rests on the oral evidence of all except himself. The documentary evidence, which have been relied upon by the plaintiff to prove the fact that the house was constructed from the funds raised by the plaintiff, are certain books of accounts prepared by Mani Lal himself. These documents have been filed as Ex.P-12 to P-15, but the plaintiff has not entered the witness box to prove that he prepared these documents. In any case, these documents do not contain any statement regarding construction of the house in dispute over the particular land. Document, Ex.P-16(c) to P-18 are not proof of plaintiff having constructed the house in dispute. Valuation report, Ex.P-19 has not been proved by the Valuer, who has prepared it nor the

map attached thereto. Documents, Ex.P-20 to P-33 only proved that Deep Singh Chawda worked as Manager with the plaintiff, which fact is not in dispute. Other documents are related to electricity connection and payment of bills.

All communication between the plaintiff and Late Deep Singh Chawda filed as Ex.P-136 to P-144 do not contain any recital in the nature of admission on the part of the Deep Singh Chawda that the house in dispute belonged to the plaintiff.

It is relevant to mention here that the evidence, which is led by both the parties to the effect that the plaintiff had constructed the factory at Charama and this factory was constructed under the supervision of the then Manager Deep Singh Chawda. In so far as construction of factory and ownership is concerned, the defendants have not raised any dispute, but there is stand that the land adjacent to the factory was occupied by Deep Singh Chawda and Deep Singh Chawda got constructed the house in the year 1978 and since then, Deep Singh Chawda was residing therein. The fact that Deep Singh Chawda and his family were residing in the accommodation is not in dispute. According to the plaintiff, he got constructed the house on the land adjacent to the factory and it was given to his Manager for residential purposes, whereas the defendant stand has been that on a vacant piece of land, he got the house constructed in the year 1978 and ever since, he along with his family was residing there and the fact that the land belonged to the plaintiff and house thereon was constructed by the plaintiff, has been denied. Therefore, the onus was always on the plaintiff to prove that the land belonged to the plaintiff and that the house was got constructed by him.

24. Though, it is an admitted fact that Deep Singh Chawda was the Manager of the plaintiff and managing the affairs of the plaintiff, but there is no documentary evidence to prove that the plaintiff got constructed the house on

the land in dispute and handed over to Deep Singh Chawda by way of license to reside therein along with his family, because of he being under the plaintiff's employment. It is rather improbable that the plaintiff, an established businessman would allow his employee to occupy residential building without any document in writing. The plaintiff appears to be maintaining books of accounts in the course of business, but he has not produced any document/register or any records of his business containing recital that the disputed residential house was given to Deep Singh Chawda as a licensee to occupy and use it till he continues as Manager of the plaintiff's business.

The other improbability that in the private employment, ordinarily, no private employer would give such a huge residential accommodation to his employee without any rent. The plaintiff's plea that the residential house was given to Deep Singh Chawda to reside therein without any averment as to the terms, on which, it was given, much less on rental basis, renders the case of the plaintiff more improbable. The plaintiff has chosen not to enter into the witness box. As power of attorney, Pradeep, PW-2 could not depose as witness that the plaintiff had given house in dispute to Deep Singh Chawda. The plaintiff was the best witness, having personal knowledge of this fact. There is nothing on record to show that because of any incapacity, the plaintiff could not examine himself as witness. The plaintiff did not seek his own examination by way of commission. This weakens the case of the plaintiff. In the absence of there being any cogent proof that the plaintiff obtained possession of the land in dispute from P. K. Rai under an agreement, the plaintiff not coming to the Court to depose that he had constructed the house, invested the money or he had given it to Deep Singh Chawda free of rent, because he was his Manager, by way of license to reside till he works as Manager, the plaintiff's suit is liable to be dismissed.

25. The learned trial Court committed grave illegality in holding that Ex.P-9 could be used for collateral purposes and placing reliance upon the books of accounts, communications between the plaintiff and Deep Singh Chawda, Income Tax papers and Valuation Officer's report, which could not be taken either as proof of valid title or proof of plaintiff having given the house by way of license to Deep Singh Chawda and that too without any rent/license fee etc. The plaintiff's suit was liable to be dismissed on the ground that the plaintiff has failed to prove his title and recovery of possession was sought on the basis of title.

In a case of ***Union of India and others vs. Vasavi Co-operative Housing Society Limited and others***<sup>9</sup>, Their Lordships in the Supreme Court explained legal position in this regard as to what would be the fate of suit based on declaration of title and recovery of possession where the plaintiff has failed to prove his title, as below:-

15. "It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in [Maran Mar Basselios Catholicos v. Thukalan Paulo Avira](#) reported in AIR1959 SC 31 observed that

"20.....in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title."

18. [In Nagar Palika, Jind v. Jagat Singh, Advocate](#) (1995) 3 SCC 426, this Court held as under:

"The onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence

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9 (2014) 2 SCC 269

to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

26. Even if the argument of learned counsel for the plaintiff is considered that the plaintiff's case is not only based on title but on the basis of better title as plaintiff had inducted Deep Singh Chawda in the possession of the house in dispute as licensee and therefore, as licensor, the plaintiff was entitled to recovery of possession from the widow of Deep Singh Chawda and sons of Late Deep Singh Chawda, on facts, is not made out, in view of the detailed discussion and analysis of evidence on record, wherein this Court has found that the plaintiff did not enter the witness box to prove the aforesaid fact and rest of the evidence are short of proving the fact that the plaintiff had inducted Deep Singh Chawda in the house in dispute as licensee. To establish this relationship, no documentary evidence has been produced apart from improbability of the said case, noted hereinabove. The best evidence available being the plaintiff himself has not been examined during trial and all these facts were stated by the power of attorney holder and other witnesses, who are employees of the factory. Therefore, reliance placed on ***Laxman Singh & Others vs. Urmila Devi & Others, ILR (2014) III Delhi 1649***, is misplaced and the same is distinguishable on facts.

27. Though, learned counsel for the appellant raised submission that the suit is liable to be dismissed on the ground of non-joinder of necessary parties as during the pendency of the suit, lease of the land in dispute was granted in favour of the defendants in settlement proceedings drawn by the Revenue Officers under the Chhattisgarh Land Revenue Code, having decided other issues, I need not to go into that question in this appeal.

28. In the result, the impugned judgment and decree cannot be sustained in

the eye of law and is therefore, set aside. The plaintiff's suit, is therefore, dismissed. Let appellate decree be drawn accordingly.

29. Accordingly, the appeal is allowed.

SD/-  
(**Manindra Mohan Shrivastava**)  
**JUDGE**