

AFR

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.201 of 2003

1. Sattar Mohammad S/o Rahmat Miyan, aged about 50 years
 2. Dil Mohd S/o Rahamat Miyan, aged about 55 years
- Appellants No.1 and 2 resident of Village Karwa, Tehsil Surajpur
District Sarguja (CG)

(Defendants)
---- Appellants

Versus

1. Raj Kumar S/o Ram Jatan Panika, aged 40 years, resident of
Village Biharpur, Thana Jai Nagar, Tehsil Surajpur, District Sarguja
(CG)
2. The State of Chhattisgarh, Through Collector Sarguja (CG)

---- Respondents

For Appellants: Mr.Awadh Tripathi and Mr.Vivek Tripathi, Advocates

For Respondent No.1: -

Mr.Sunil Tripathi and Mr.Aproorva Tripathi, Advocates

For Respondent No.2 / State: -

Mr.Adi Raj Surana, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15.11.2018

1. The substantial question of law involved, formulated and to be
answered in the defendants' second appeal is as under: -

“Whether the finding relating to ownership of respondent
No.1 over the property is perverse ?

[For the sake of convenience, the parties would be referred
hereinafter as per their status and nomenclature shown in the suit
before the trial Court]

2. Respondent No.1/plaintiff filed a suit for declaration of title and
permanent injunction against defendants No.1 to 3 stating inter-alia
that he has purchased the suit property by registered sale deed

dated 30.3.92 (Ex.P/1) from defendant No.3 and obtained peaceful possession of the suit land and his name was got mutated by order of the Tahsildar dated 14.8.1982 and challenge made to that mutation order by defendant No.1 in appeal before the Settlement Officer, Surguja was allowed by order dated 2.4.93 vide Ex.P/8 leading to filing of the suit for aforesaid relief. During pendency of the suit, the plaintiff claimed that he has been dispossessed by the defendants, after rejecting his application under Order 39 Rule 1 and 2 of the CPC, plaint was allowed to be amended by order dated 9.7.97 and relief of recovery of possession was claimed to be made by the plaintiff.

3. Defendants No.1 and 2 filed their written statement before the trial Court stating inter-alia that agreement to sell was executed by defendant No.3 in their favour on 2.1.91 (Ex.D/1) and possession was delivered to defendants No.1 and 2 by defendant No.3. Defendant No.3 has also executed two sale deeds dated 6.4.92 in favour of defendants No.1 and 2 respectively vide Ex.D/2 and D/3, as such, they are in possession over the suit land and the plaintiff's suit is liable to be dismissed. It is pertinent to note that name of defendant No.3 has been deleted during course of the trial.
4. The trial Court after appreciating oral and documentary evidence available on record by its judgment and decree dated 18.10.2000 dismissed the suit of the plaintiff, which was appealed by the plaintiff before the First Appellate Court. The First Appellate Court decreed the suit and set aside the decree of the trial Court. Questioning the same, the present second appeal under Section

100 of the CPC has been filed by appellants/defendants No.1 and 2, in which the substantial question of law has been framed by this Court which has been set out in opening paragraph of this judgment.

5. Mr.Awadh Tripathi, learned counsel for the appellants/defendants No.1 and 2, would submit that the First Appellate Court was absolutely unjustified in reversing well merited and well reasoned judgment of the trial Court dismissing the suit and erred in law holding that the plaintiff has title in his favour, as such, the finding recorded by the First Appellate Court holding the plaintiff to be title-holder is perverse and liable to be set aside.
6. Mr.Sunil Tripathi, learned counsel for respondent No.1/plaintiff, would submit that the First Appellate Court has clearly recorded a finding that agreement to sell dated 2.1.91 (Ex.D/1) is forged document and further recorded a finding that defendant No.3 has already sold the suit property in favour of the plaintiff on 30.3.92 (Ex.P/1) and therefore, defendants No.1 and 2 got no title on execution of sale (Exs.D/2 and D/3) in their favour. Such a finding recorded by the First Appellate Court is a finding of fact based on evidence available on record, as such, there is no perversity in holding that the plaintiff is title-holder of the suit land. Therefore, the second appeal deserves to be dismissed.
7. I have heard learned counsel for the parties herein and considered their rival submissions made herein-above and went through the record with utmost circumspection.
8. Execution of sale deed in favour of the plaintiff by defendant No.3

vide Ex.P/1 dated 30.3.92, who was erstwhile owner of the suit land, is not in dispute. Defendants No.1 and 2 have claimed that they had earlier agreement to sell dated 2.1.91 Ex.D/1 in their favour and obtained possession and thereafter sale deeds dated 6.4.92 (Exs.D/2 and D/3) have been executed in their favour by defendant No.3, therefore, the plaintiff is not title-holder of the suit land.

9. It is well settled law that agreement of sale does not of itself create any interest in or charge on such such property and agreement to sell which is not a registered deed of conveyance would fall short of the requirements of Sections 54 and 55 of the Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the Transfer of Property Act).
10. The Supreme Court has explained the scope of agreement for sale in the matter of **Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana and another**¹ and held as under:-

“16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam*² observed: (SCC pp. 254-55, paras 32-33 & 37)

“32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See *Ram Baran Prosad v. Ram Mohit Hazra*³). The fiduciary character of the personal obligation created by a contract for sale is

1 (2012) 1 SCC 656

2 (1977) 3 SCC 247

3 AIR 1967 SC 744

recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership.

* * *

37. ... that only on execution of conveyance ownership passes from one party to another...."

17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra*⁴ this Court held: (SCC p. 619, para 10)

"10. Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

18. It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53-A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its

4 (2004) 8 SCC 614

subject matter.”

11. Similar is the preposition of law laid down by the Supreme Court in the matter of **Balwant Vithal Kadam v. Sunil Baburaoi Kadam**⁵ in which Their Lordships have held that unlike sale, agreement to sell does not create any interest in favour of purchaser in respect of property.
12. The Supreme Court in the matter of **Rambhau Namdeo Gajre** (supra)⁶ while considering the scope and ambit of Section 53-A of the TP Act has clearly held that agreement to sell does not create any interest of the proposed vendor and further held that it has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee.
13. Similarly, the Supreme Court in the matter of **Meghmala and others v. G. Narasimha Reddy and others**⁷ has clearly held that registered sale deed alone conveys valid title and agreement to sell does not create any valid title and remedy of person having agreement to sell in his favour is to be file suit for specific performance of contract. It was observed as under:-

“16. Admittedly, there is a registered sale deed in favour of the appellant/applicant dated 21-5-1980 and there may be an agreement to sell in favour of the society dated 23-1-1976. It is settled legal proposition that an agreement to sell does not create any right, or title in favour of the intending buyer. The Society did not file suit for specific performance against the vendors prior to the execution of sale deed in favour of the appellant/applicant on 21-5-1980.”

5 (2018) 2 SCC 82

6 (2004) 8 SCC 614

7 (2010) 8 SCC 383

14. Likewise, the Supreme Court in the matter of Bishundeo Narain Rai (dead) by L.Rs. and others v. Anmol Devi and others⁸ while considering Section 54 of the TP Act has held as under:-

“11. Apropos the question noted above, a reference to Section 54 of the Transfer of Property Act will be apposite. While defining 'Sale', Section 54 sets out how sale is made. Sale is defined to mean a transfer of ownership in exchange for price paid or promised or part paid or part promised; it says, inter alia, in case of tangible immovable property of value of Rs. 100/- and upward or in case of a reversion or other tangible things, sale can be made only by a registered instrument. Section 8 of the Transfer of Property Act declares that on a transfer of property all the interests which the transferor has or is having at that time, capable of passing in the property and in the legal incidence thereof, pass on such a transfer unless a different intention is expressed or necessarily implied. A combined reading of Section 8 and Section 54 of the transfer of property Act suggests that though on execution and registration of a sale deed, the ownership and all interests in the property pass to the transferee, yet that would be on terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of the sale, deed, the ownership title and all interests in the property pass to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that title has not passed on registration of the sale deed. Such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject, of course, to the provisions of Section 92 of the Evidence Act.”

15. Reverting to the facts of the present case in the light of distinction carved out by the Supreme Court between agreement to sell and sale, it is quite vivid that in the instant case, defendant No.3 (original holder) has executed sale deed dated 30.3.92 (Ex.P/1) in favour of the plaintiff and has conveyed the title to the plaintiff.

8 AIR 1998 SC 3006

Defendants No.1 and 2 are claiming that defendant No.3 has executed sale deeds Exs.D/2 and D/3 in their favour on 6.4.92 though the First Appellate Court has not found those sale deeds established, but if facts available on record are considered, it is only and only agreement to sell executed by defendant No.3 in favour of defendants No.1 and 2 on 2.1.92 (Ex.D/1) and it has not conveyed any title to defendants No.1 and 2 and defendants No.1 and 2 did not file suit for specific performance of contract against defendant No.3 prior to execution of sale deed in favour of the plaintiff on 30.3.92 (Ex.P/1) on the strength of agreement to sell Ex.D/1, as such, once the title has been duly transferred by execution of valid sale deed dated 30.3.92 (Ex.P/1) in favour of the plaintiff by defendant No.3, on the basis of agreement to sell, if any, defendants No.1 and 2 cannot claim any title over the suit land, particularly, when defendant No.3 has already executed sale deed in favour of the plaintiff and that execution of agreement to sell by defendant No.3 in favour of defendants No.1 and 2, would not debar defendant No.3 to transfer the suit land in favour of the plaintiff, as such, the First Appellate Court is absolutely justified in holding that the plaintiff is title-holder of the suit land upon purchase by Ex.P/1 from defendant No.3, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding.

16. As a fallout and consequence of the above-stated discussion, substantial question of law is answered in favour of the plaintiff and against defendants No.1 and 2 and in consequence, the second

appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

17. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-