

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.4971 of 2011 (O&M)

Date of Decision:29.8.2018

Manjit Singh @ Mohini

...Appellant

Versus

Ram Kumar Goel and another

...Respondents

RSA No.4993 of 2011 (O&M)

Manjit Singh Sandhu

...Appellant

Versus

Ram Kumar Goel and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ashok Singla, Advocate for the appellant.
Mr.Ashish Gupta, Advocate for respondent No.1.
Mr.Mayank Mathur, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.4971 and 4993 of 2011 shall stand disposed of as both these appeals are arising out of two suits, one filed by the appellant Manjit Kumar Sandhu and another suit filed by Ram Kumar Goel. These two suits were consolidated as the dispute between the parties was inter connected and disposed of by the common judgment by the learned trial court as well as by the first appellate court.

In the considered opinion of this Court, question which needs determination is whether any right, title or interest in the immovable property worth more than Rs.100/- can be created by an unregistered

document.

Although, in the pleadings, complete facts have not been disclosed, however, to the advantage of this Court, a previous judgment inter parties is available as Ex.DW/1 dated 31.1.1979 which provides in-depth facts.

The dispute is with regard to some part of land comprised in Khasra No.229 (1-9). Originally Gurcharan Singh was owner to the extent of half share, whereas Karnail Singh, the predecessor-in-interest of appellant Manjit Singh Sandhu was owner to the extent of 1/4th share and Smt.Balbir Kaur was owner to the extent of remaining 1/4th share. Out of the land comprised in Khasra No.229, a road was carved out and land measuring 601 sq. yards went in road, which is not the subject matter of dispute in the present case. There was partition between the owners. Smt.Balbir Kaur sold her 1/4th share in favour of Satinder Kumar Aggarwal vide sale-deed dated 8.10.1970, wherein she stated that she has delivered only symbolic possession to her vendee namely Satinder Kumar Aggarwal, who thereafter transferred this piece of land in favour of Smt.Sharbati Devi, mother of the plaintiff in one suit namely Ram Kumar Goel. Smt.Sharbati Devi filed a suit No.4-T of 31.8.1977/12.6.1974, seeking possession of land measuring $\frac{34 + 27}{2} \times 26$ square feet. She claimed that she is owner pursuant to a sale-deed dated 30.1.1973 executed by Satinder Kumar and defendant has encroached upon the same. In this case, defendant was Karnail Singh, father of appellant Manjit Singh Sandhu. In the aforesaid suit, property was got demarcated and inspected from revenue official. The trial Court framed the following issues:-

- (i) Whether the plaintiff is the owner of the property in disputed? Whether the defendant has encroached upon the suit land as alleged in para 2 of the plaint? OPP.
- (ii) Whether the suit is bad for non-joinder of necessary parties? OPD.
- (iii) Relief.

The learned trial court, after appreciating the evidence, held that Sharbati Devi is owner of area measuring 350 square yards pursuant to sale deed dated 30.1.1973, however, while deciding issue No.2, the trial court found that Karnail Singh, father of the appellant, is in possession of area measuring 332 square yards, according to his own entitlement, which is part of his residential house for the last more than 20 years and a boundary wall around the residential house has already been constructed 20 years back.

The trial court on the basis of local commissioner further found that out of land comprised in Khasra No.229, Smt.Kauri Devi is in possession of area measuring 350 square yards, whereas Smt.Sharbati Devi is in possession of area 220 square yards. Karnail Singh is in possession of 332 square yards area, Mahant Gurmukh Dass is in possession of 265 square yards area and remaining land measuring 601 square yards is under the road laid by Municipal Committee. In the aforesaid proceedings, Gurnam Singh, husband of Smt.Balbir Kaur, a retired revenue official, appeared and admitted partition between the parties and also admitted that Karnail Singh has already constructed his residential house alongwith the

boundary wall, covering his entire area of 332 square yards.

The court further noticed that since Balbir Kaur was not in possession of 357 square yards which was sold by her, therefore, in her sale-deed executed in favour of Satinder Kumar Aggarwal was specifically mentioned that only symbolic possession was being given. The court also found that Smt.Sharbati Devi, who is plaintiff in the previous suit, has no right to complete her land by taking the land of his neighbourers and Karnail Singh, predecessor-in-interest of appellant Manjit Singh Sandhu has not encroached upon any piece of land of Smt.Sharbati Devi. The court concluded that once a road was carved out and partition has been effected, therefore, Balbir Kaur was in possession of 220 square yards and not in possession of area measuring 357 square yards, actual possession whereof was transferred to Satinder Kumar, which was in turn transferred in favour of Smt.Sharbati Devi.

The appeal filed by Smt.Sharbati Devi against the aforesaid judgment was dismissed by the learned District Judge vide judgment and decree dated 10.3.1980. Smt.Sharbati Devi died on 9.4.1984. Her son Ram Kumar Goel, Advocate, claims that an agreement took place on 1.1.1981 between Smt.Sharbati Devi and Karnail Singh father of Manjit Singh Sandhu and according to the aforesaid agreement, the land, which was subject matter of judgment Ex.DW/A, was relinquished in favour of Smt.Sharbati Devi. This document has been styled as compromise. Smt.Sharbati Devi is alleged to have executed a Will in favour of plaintiff Ram Kumar Goel on 20.12.1984.

Ram Kumar Goel filed Civil Suit No.596-T dated 15.5.1995 for

permanent injunction against Manjit Singh Sandhu, the appellant, claiming that he is owner in possession of land measuring $\frac{34 + 27}{2} \times 26$ on the basis of the alleged compromise/agreement dated 1.1.1981. Manjit Singh Sandhu-appellant also filed Civil Suit No.352-T97 on 25.5.1995, claiming relief of permanent injunction, restraining the defendant in the aforesaid suit, from interfering in his possession. It was pleaded that originally father of the plaintiff namely Karnail Singh had purchased the land comprised in Khasra No.866 (1-12), 228 (5-19) and 229 (1-9) from Tara Singh son of Kartar Singh vide registered sale-deed dated 23.2.1942.

During the pendency of the suits, Ram Kumar Goel sold the land measuring 119 square yards to defendant No.2-Surjit Singh vide sale-deed dated 23.6.1999. Manjit Singh Sandhu-appellant, who was the plaintiff in the second suit amended the plaint challenged the sale-deed dated 23.6.1999 and impleaded Surjit Singh as defendant No.2.

It will be significant to note here that Surjit Singh, while filing the written statement, has taken a stand that he has purchased 119 square yards land from Ram Kumar Goel towards northern side in dispute and has not purchased any part of the disputed property. Even in this Court, counsel appearing representing Surjit Singh has made a statement to the same effect noticed in the order dated 21.8.2018.

Both the courts after appreciating the evidence have held that since agreement/compromise dated 1.1.1981 is proved with the help of statement of one of the attesting witness who has appeared as PW-1, therefore, Ram Kumar Goel, plaintiff in the first suit, is entitled to be declared owner in possession.

Although, Manjit Singh Sandhu, who is plaintiff in the one suit and defendant in the another suit, has disputed signatures of his father on the agreement to sell, however, in the considered opinion of this Court, this issue would not be required to be gone into for the reasons which are being recorded hereinafter.

Now the stage is set for considering the question of law.

Question of law

“Whether any right, title or interest in immovable property worth more than Rs.100/- can be created by an unregistered document.”

It is well settled that any right, title or interest in immovable property worth more than Rs.100/- cannot be transferred unless except through a registered document. These words have been used in Section 17 of the Registration Act, 1908 i.e., right, title or interest. Section 17 of Registration Act is extracted as under:-

17. Documents 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, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments 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-testamentary 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) leases 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, exempt from the operation of this sub-section 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.

[(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53-A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document [other than the documents specified in sub-section (1-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883 (19 of 1993); or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

[(x-a) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

On careful reading of Section 17 (1)(b) of the Act makes it mandatory to register any non-testamentary document 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.

In the considered view of this Court, Ex.P1, the document dated

11.11.1981 styled as compromise, otherwise only an agreement being

unregistered does not confer any right, title or interest in favour of Ram Kumar Goel, who is plaintiff in the first suit. Document Ex.P1 is in fact creating right, title or interest in the property measuring $\frac{34 + 27}{2} \times 26$ which is subject matter of suit.

Although, learned counsel representing respondent Ram Kumar Goel, tried to salvage his client by submitting that by way of agreement-comprise only the deficiency in possession of Sharbati Devi was acknowledged and relinquished in her favour and therefore, the document was not required to be registered, however, on careful examination of the previous judgment between the parties Ex.DW/A, it is apparent that Karnail Singh, the father of appellant Manjit Singh Sandhu, was found to be in possession of his own share. It was also found that he did not encroach upon any share of Smt.Sharbati Devi. These findings of the trial court were upheld by the first appellate court and became final between the parties. Litigation between the parties came to an end with the judgment of the first appellate court on 10.3.1980. Thereafter no litigation was pending.

A competent court of jurisdiction in inter party litigation had found that Karnail Singh was owner in possession of land, which fell to his share i.e. 322 square yards and the aforesaid land is the part of his residential house constructed more than 20 years before filing of the suit in the year 1974. Thus Ex.P1. is a document which amounts to conferring a right in the land described in the plaint i.e. $\frac{34 + 27}{2} \times 26$. A document Ex.P1 cannot be said to be only acknowledging or relinquishing $\frac{34 + 27}{2} \times 26$ area which had been unauthorisedly occupied by Karnail Singh. Although learned counsel for the appellant has submitted detailed arguments,

disputing that Ex.P1 was not signed by their father while referring to a report of Fingerprint and Handwriting Expert, however, since on a fundamental question Ex.P1 is neither admissible in evidence nor it results in creation of any right, title or interest being unregistered document, this Court is of the opinion that there is no necessity to venture into the aforesaid dispute.

Hence, question of law as framed earlier is answered in favour of the appellant.

It will be noted that the second civil suit bearing No.352-T of 25.5.1995, subject matter of RSA No.4971 of 2011 filed by the appellant shall stand dismissed as infructuous in view of stand taken by subsequent vendee. Whereas RSA No.4993 of 2011 arising out of Suit No.596-T of 15.5.1995 is allowed and consequently the Suit No.596-T of 15.5.1995 shall stand dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

29.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No