

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

Date of Decision: 28.05.2019

1) RSA no.4190 of 2018 (O&M)

Krishan Kumar ...Appellant

Vs.

Mahesh Chander and another ...Respondents

2) RSA no.4071 of 2018 (O&M)

Krishan Kumar ...Appellant

Vs.

Mahesh Chander and another ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Raj Kumar Gupta, Advocate,
for the appellant.

Mr. P. K. Mutneja, Advocate,
for the respondents.

Amol Rattan Singh, J.

1. These two second appeals before this Court eventually arise out of two suits filed by the parties to the *lis*, against each other. The first suit (from which RSA no.4071 of 2018 arises), was instituted by Krishan Kumar and Mahabir Singh (Krishan Kumar being the appellant in both these two appeals, with Mahabir Singh having been impleaded as a proforma respondent in both of them).

Vide that suit Krishan Kumar and Mahabir Singh sought a

decree of permanent injunction restraining Mahesh Chander (respondent in these appeals), from interfering in their possession of the disputed property, further seeking that he be restrained from alienating the property.

2. The 2nd suit, from which RSA no.4190 of 2018 arises, was instituted by Mahesh Chander against the two plaintiffs in the first suit. In his suit, he sought a recovery of Rs.3 lakhs, alongwith interest thereupon, from Krishan Kumar and Mahabir Singh, on the ground that it was part of the sale consideration that had been agreed to be paid for the property, but remain unpaid, in respect of which a separate agreement was drawn up immediately after a sale deed dated 11.05.2007 was executed (with the agreement having been executed on the same date itself).

As Mahesh Chanders' case, though instituted later, was decided first, and in fact the issue of whether or not any extra consideration still remained unpaid despite the execution of the sale deed, is a question that would affect the decision in the appeal arising from the suit instituted by Krishan Kumar and Mahabir Singh also, the appeal arising from Mahesh Chanders' suit is being taken up for consideration first, i.e. RSA no.4190 of 2018.

RSA no.4190 of 2018

3. As per the case of plaintiff Mahesh Chander, KK and Singh purchased a shop from him measuring 35 sq. yds. on 11.05.2007, vide sale deed no.1424, the property being situate at Old Jhajjar Road, Bahadurgarh, with possession also having been delivered by him to the vendees on the

same date, but with his contention being that at the time of execution of the sale-deed, Rs.5 lacs were paid less than the amount settled, despite which he, in good faith, got the sale deed registered in their favour. It was further stated that in respect of the shortfall of Rs.5 lacs, a written agreement was also executed on the same date after execution of the sale deed, with both the parties having signed this agreement in the presence of a witness, and they were therefore bound by it.

It was next contended that the said amount was to be paid up to 11.05.2009, i.e. by the end of two years from the date of the sale, and if it was not so paid, interest @ 24% per annum would be paid to Mahesh Chander by KK and Singh.

It was contended to have been further agreed upon, that upon the amount not being paid within those two years, then Rs.1,000/- per month would also be payable as rent by KK and Singh, for the shop sold to them, (with only the ground floor having been purchased by them, and they having no concern or connection with the first floor of the shop, Mahesh Chander remaining the owner thereof).

Further, electricity/water bills, house tax, sewage cess etc. were to be paid by KK and Singh, who would have no right to alienate the shop in any manner to any other party, till Rs.5 lacs were paid to Mahesh Chander.

Next it was stated in the plaint, that after execution of the agreement, only 'two payments' were made in favour of Mahesh Chander,

the first being of Rs.1 lac on 19.03.2009, with another Rs.1 lac paid on 21.03.2009; the balance still remaining to be paid therefore being Rs.3 lacs.

4. The factum of the civil suit instituted by KK and Singh against Mahesh Chander on 17.04.2010 was also disclosed in the suit filed by Mahesh Chander, as that suit was pending before a different Court within Bahadurgarh.

 Thus the plaintiff in the latter suit, i.e. Mahesh Chander, contended that an amount of Rs.3 lacs, with interest thereupon, was to be recovered from KK and Singh.

5. Notice of the suit having been issued, the defendants, i.e. KK and Singh, filed their written statement taking the usual preliminary objections on non-maintainability thereof, lack of cause of action, estoppel, *locus standi* etc.

 On merits, all the facts contended in the plaint were denied except to the extent that a registered sale-deed no.1424 had been executed on 11.05.2007 by Mahesh Chander in favour of KK and Singh, with possession of the shop also handed over to them, along with two rooms constructed on the roof, their stand being that full consideration had been paid at the time of the execution of the sale deed, which is why it had been executed and registered.

 As regards the agreement of the same date relied upon by Mahesh Chander, it was contended by the defendants that the plaintiff was taking undue advantage of a document that was tampered with and

unregistered.

It was next contended by them that they had given the aforesaid two rooms to Mahesh Chander on rent on 01.06.2007, in the presence of a witness, with the rent settled being Rs.1500/- per month, which Mahesh Chander had paid.

It was further averred that the tampering in the agreement dated 11.05.2007 had been made for extending the limitation for filing the suit for recovery.

6. Upon a replication having been filed, the following issues were framed by the learned trial court:-

“1. Whether the plaintiff is entitled to the decree for recovery of Rs.3,00,000/- along with costs, *pendente lite* & future interest, if so to what effect?OPP

2. Whether the suit of the plaintiff is not maintainable in the present form?OPD

3. Whether the plaintiff has no cause of action and locus standi and cause of action to file the present suit?OPD

4. Whether the plaintiff is estopped from filing the present suit due to his own act and conduct?OPD

5. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court?OPD

6. Whether the plaintiff is entitled for special costs under Section 35A CPC?OPD

7. Relief.”

7. Plaintiff Mahesh Chander examined himself as PW-1, further relying upon the agreement of sale dated 11.05.2007 as Ex.P-1, with the sale deed of the same date bearing no.1424 having been produced only as Mark 'A', it not having been shown as an exhibited document (by him), the site

plan relied upon by the plaintiff (Mahesh Chander) also only being Mark 'B' in the documents.

The other witnesses examined were one Parveen Nagpal and a hand writing expert by the name of V.B. Kashyap, as PWs-2 and 3 respectively, who also tendered their affidavits in their evidence. The report of the hand writing expert and photographs produced by him, were also exhibited documents.

8. In their defence, KK and Singh examined KK as DW1 and one Lal Bahadur as DW-2, he being the person who brought the record from the Registrars' office, pertaining to the sale deed dated 11.05.2007, which was exhibited as DW-2/A by them. They further relied upon a site plan as DW-2/B and thereafter also examined one Jai Narain as DW-3 and Jai Parkash, Draftsman (*Naksha Navis*), as DW-4, who had prepared the site plan.

9. Upon considering the aforesaid evidence, the learned trial court came to a conclusion that plaintiff Mahesh Chander had been able to prove that KK and Singh had purchased a shop measuring 35 sq. yds. vide the afore mentioned registered sale deed dated 11.05.2007 and that the contents of the sale deed (Ex.DW-2/A before that Court), showed that it was only a shop measuring 35 sq. yds. that was sold, with no mention of any rooms on the first floor having been sold.

It was also found that recitals in the sale deed stood fully corroborated from the site plan DW-2/B, as was in fact attached with the deed relied upon by the defendants-vendees, KK and Singh themselves, the

sale deed having been proved by the deposition of their witness, DW-2 Lal Bahadur, and the site plan also proved by their witness, DW-4 Jai Prakash.

10. Further, as regards the amount of Rs.5 lacs less claimed to have been paid at the time of execution of the sale deed, the trial court recorded that plaintiff Mahesh Chander had admitted in his testimony that he had received Rs.11 lacs from the said vendees, with the sale consideration for the shop having been settled at Rs.16 lacs, and therefore a written agreement of the same date as the sale deed, i.e. 11.05.2007, was executed for payment of the remainder amount, the said agreement having also been duly proved as Ex.P-1.

Referring to Section 54 of the Transfer Property Act, 1882, defining a sale to be a transfer of ownership in exchange for a price paid or promised to be paid or partly paid, that court held that the intention of the parties being that the property should pass to the vendees on registration of the deed, the sale actually stood completed as soon as the deed was registered, even if the full price had not been paid.

It was further held that even if the full price was not paid, the seller could not repudiate the sale; the only remedy being to sue for recovery of the balance amount unpaid, which plaintiff Mahesh Chander had done by way of the suit instituted, he having admitted that subsequently Rs.2 lacs were paid to him, and consequently, Rs.3 lacs remained unpaid, with of course him claiming interest also thereupon.

In the context of Rs.2 lac paid (Rs.1 lac each on two different

dates), a finding was recorded that the attesting witness to the agreement, Parveen Nagpal, had deposed to the effect that Mahesh Chander had taken a sum of Rs.1 lac from KK and Singh, he being a witness to that receipt of money.

Even though the said witness expressed having no knowledge of the other contents of the agreement, but he having admitted to Rs.1 lac being paid to Mahesh Chander by KK and Singh, therefore, even though the agreement (P-1) was an unregistered document, it was held to be still forming a part of the basis of a suit for specific performance, which could therefore be accepted as such.

11. Further, Krishan Kumar (KK), during his cross examination, having admitted his signatures on the sale deed but having denied them on the agreement qua the remaining consideration to be paid, the finger print expert/hand writing expert examined by the plaintiff, Mahesh Chander, was found to have deposed in terms of his report, Ex.PW-3/B, to the effect that the signatures of KK matched with his admitted signatures on documents Exs.A-1 to A-8, with the signatures on Ex.D-1 also having matched the disputed signatures of the other plaintiff, i.e. Mahabir Singh.

Consequently, it was held that with Rs.1 lac proved to have been paid on 19.03.2009 by KK and Singh to Mahesh Chander, it was obvious that the agreement Ex.P-1 had been acted upon by the parties, with the site plan, Mark 'B', actually also having been admitted to by KK during his cross-examination.

12. It was further held that as per the site plan Mark-B, which was put to the present appellant Krishan Kumar, he admitted it to be correct during his cross-examination and admitted that two shops adjacent to the shop purchased, are also constructed, and there is a separate stair case going to the rooms on the first floor. Hence, though no issue had been framed (in the suit seeking recovery), as regards the rooms on the first floor, it was held by the trial court that with the sale deed dated 11.05.2007 not reflecting that there were two rooms on the first floor that were sold to the appellant herein, and the rooms being on a different floor altogether, it could not be held that the said rooms had been purchased alongwith the shop.

Obviously, the said finding was given in view of the fact that one of the contentions of the appellant (and his co-defendant in the said suit, Mahabir Singh), in their written statement, was to the effect that the possession of the said rooms had also been handed over to them alongwith the shop.

Therefore, with the sale deed also not reflecting that two rooms on the first floor were sold alongwith the shop, all evidence put together was held to have proved the case of plaintiff Mahesh Chander, for recovery of Rs.3 lacs, with the allegation of a fraud played upon them not having been proved by KK & Singh.

13. Holding as above, plaintiff Mahesh Chander was held entitled to such recovery of Rs.3 lacs, along with interest @ 9% per annum thereupon, running from the date of the filing of the suit till realization of

the amount, with both the defendants, i.e. KK and Singh, held jointly and severally liable to pay the amount.

14. The principal issue of recovery of the amount claimed having been held in favour of the plaintiff, as regards the remaining issues on maintainability of the suit, lack of cause action, estoppel, the plaintiff not having come with clean hands and he being entitled to special costs under Section 35A of the Code of Civil Procedure, 1908, it was recorded by the trial court that they were not 'addressed upon'.

Therefore, on the aforesaid findings, the suit of the plaintiff, Mahesh Chander, was decreed in his favour.

15. An appeal having been filed by the defendants, KK and Singh, against that judgment, the learned first appellate court (District Judge, Jhajjar), after noticing the pleadings, the issues framed by the trial court and the evidence led before that Court, also came to the same conclusion as the trial court, further noticing that a perusal of the sale deed dated 11.05.2007 showed that plaintiff Mahesh Chander had sold “*Ek Kitta Dukaan*” measuring 35 sq. yds., i.e. one shop only, to the defendants for a sale consideration of Rs.7,52,500/-.

That court also recorded the same finding as the trial court had, to the effect that there was no mention in the sale deed of the rooms constructed on the first floor of the shop sold, though plaintiff Mahesh Chander had admitted in his cross-examination that he too had not mentioned in the sale deed that Rs.5 lacs remained to be paid to him, the

explanation being that he had executed the sale deed in good faith after the defendants and vendees had bought the stamp papers for the agreement (Ex.P-1).

16. As regards the recitals in the agreement, the learned lower appellate court also recorded the same finding on what was contained therein as had the trial court, with the finding as regards the denied signatures having been proved from the report of PW-3 also being the same as had been recorded by the Civil Judge.

Similarly, the defendants not having been able to prove the allegation of any fraud played upon them, that was again a finding identically recorded by the first appellate court.

17. As regards the argument raised before that Court that Ex.P-1 was an unregistered document and the plaintiff therefore not entitled to the recovery sought, the learned District Judge noticed that Section 17 (1A) of the Registration Act, 1908, requires registration of a document containing a contract for transfer of an immovable property even for the purposes of Section 53A of the Transfer of Property Act, 1882, and the consequences of such non-registration would be that the document would have no effect for the purposes of Section 53A.

However, a judgment of the Supreme Court in **S.Kaladevi v. V.R. Somasundaram and others** (2010) 5 SCC 401, was referred to by that Court, holding that in the said judgment, after considering the provisions of Sections 17 and 49 of the Registration Act, the Supreme Court had held that

an unregistered document could be used for a collateral purpose in terms of the proviso to Section 49 of the said Act and such a document could be admitted as evidence of a contract entered into, in a suit for specific performance.

Hence, it was held by the lower appellate court (in the present *lis*) that even though Ex.P-1, i.e. the agreement qua payment of Rs.5 lacs, was not a registered document, it could be looked into by way of evidence.

18. Holding as above, the judgment and decree of the learned trial court was upheld, with the first appeal filed by the present appellants dismissed.

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19. Coming then to the suit filed by Krishan Kumar and Mahabir Singh (KK and Singh), prior to the suit for recovery filed by the respondent, Mahesh Chander.

The prayer of the plaintiffs in that suit (instituted on 20.07.2010), was a decree of permanent injunction which they sought to be issued against the respondent in both these appeals, i.e. Mahesh Chander, to the effect that he be restrained from interfering in the possession of the plaintiffs over the disputed property or from dispossessing them therefrom; and further, that he also be restrained from alienating the property.

The case of KK and Singh was that they are not only owners in possession of the aforementioned shop measuring 35 sq. yds. situated at Old Jhajjar Road, they having acquired the property vide a registered sale deed

executed in their favour by Mahesh Chander on 11.05.2007, but also owners of the rooms constructed over the shop (on the floor immediately above).

The shop was shown to be marked as EFGH, with the rooms constructed thereupon shown to be marked as ABCD, in the site plan attached with the plaint, with the plaintiffs further contending that Mahesh Chander had sold the shop to them along with the rooms so constructed, with all roof rights also given to them, upon him having received the sale consideration and with the peaceful possession thereof also having been handed over to them.

It was further their contention that after the date of purchase they had remained owners in possession of the shop and the rooms constructed thereupon, but in the last week of May 2007 (i.e. about two weeks after the sale deed was executed), Mahesh Chander requested them that they give the rooms constructed over the shop to him on rent for two years, which request was acceded to by them.

It was further contended by KK and Singh that Mahesh Chander had promised that he would vacate the rooms after the expiry of two years, but with the other shops of Mahesh Chander being adjacent to the shop purchased by KK and Singh, he (Mahesh Chander) was threatening to dispossess them from the shop itself, which he wanted to alienate along with the rooms constructed thereupon. The request of KK and Singh to desist from such act allegedly having been refused, the suit came to be filed.

20. Upon notice issued to him, Mahesh Chander appeared and filed a written statement, also taking the usual preliminary objections as to the

maintainability of the suit, *locus standi* of the plaintiffs, estoppel and lack of cause of action and concealment of true and material facts.

On merits, he denied all the contents of the plaint except to the extent that vide sale deed no.1424 dated 11.05.2007, he had sold the shop to the plaintiffs, but not the plot or the rooms constructed on top of the shop.

He also denied having handed over the possession of the rooms on the first floor at any stage and consequently also denied any title or interest vesting in KK and Singh over the first floor.

It was next contended in the written statement that the size of the shop sold was not the same as the rooms constructed on top of the shop, as could be seen from the site plan relied upon by him, which was the same as had been “passed” by the Municipal Committee, Bahadurgarh.

Next, Mahesh Chander contended in his written statement that on the ground floor there were in fact three shops, out of which one was sold to the plaintiffs (KK and Singh), with him (Mahesh Chander) remaining the owner in possession of two shops and of the entire first floor and the construction over all the shops.

Still further, it was contended that there was no separate staircase to reach the rooms in dispute, and therefore the story put forward by the plaintiffs was wholly false, including any tenancy of Mahesh Chander (defendant) in those rooms.

Lastly, it was contended that the plaintiffs merely intended to grab the property of the defendant and therefore the suit should be dismissed.

21. Upon a replication having been filed to the written statement, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiffs are entitled for a decree of permanent injunction on the grounds as alleged?OPP
2. Whether the plaintiffs have no cause of action to file the present suit?OPD
3. Whether the suit is maintainable in the present form?OPD
4. Whether the plaintiffs have not come to the court with clean hands?OPD
5. Relief.”

22. Thus, as regards the pleadings of the parties, they were essentially the same as in the suit for recovery instituted by Mahesh Chander, though with the roles of the parties obviously reversed, the defendants being the plaintiffs in the suit seeking perpetual injunction and the plaintiff in the suit for recovery, i.e. Mahesh Chander, becoming the defendant in this suit.

23. To prove their case, the plaintiffs, KK and Singh, examined 6 witnesses, including (Krishan Kumar (KK) himself), Clerk Jagbir Singh, Vishnu Dev (Registry Clerk), Dharampal (Deed Writer), one Jai Narayan and J.P. Mehndirata, as PWs-1 to 6 respectively.

They also relied upon the following documentary evidence:

Copy of assessment register:	Ex.P1
Payment receipt:	Ex.P2
Payment receipt:	Ex.P3
Payment receipt:	Ex.P4
Sale deed no.1424 dated 11.05.2007:	Ex.P5

Site Plan: Ex.P6

Certified copy of statement of Mahesh: Ex.P7

Site plan: Ex.PX

The defendant, Mahesh Chander, on the other hand, examined himself as DW-1 and Jai Parkash, Draftsman, as DW-2 and tendered the following documents in evidence:-

Site Plan: Ex.D1

Copy of judgment dated: Ex.D2

Copy of decree sheet: Ex.D3

Copy of Ex.PW3/B: Ex.D4

Proposed plan: Mark A

Agreement to sell dated 11.5.2007: Mark B

Receipts of payment: Mark C to Mark E

24. The learned trial court (a different Presiding Officer to the one that had decided the suit of Mahesh Chander, seeking recovery), after considering the pleadings and evidence led by the parties, came to the same conclusion as had the learned trial court in the other suit, that only one shop was sold by Mahesh Chander to KK and Singh vide sale deed no.1424 dated 11.05.2007, the trial court in this *lis* also referring to the same clause in the sale deed as was referred to by the lower appellate court in the other suit, i.e. “*Ek Kitta Dukaan*” (translating as 'a single shop').

An argument having been raised before that Court that sale of land includes the sale of things attached to the land, was rejected on the ground that plaintiff KK had admitted the site plan annexed by defendant

Mahesh Chander to be the correct site plan, with the said plan clearly showing the dimensions of the shop on the ground floor, as also the width of the rooms constructed on the first floor.

Thus, it was held that it was clear that the width of the rooms on the first floor was approximately 2.7 ft. wider than the width of the shop sold on the ground floor, which again was admitted by the said plaintiff (KK) during his cross examination.

Hence, observing that with the rooms constructed on the first floor being wider than the shop admittedly sold on the ground floor, it would be highly improbable that the rooms were sold along with the shop, with there also being no independent passage/stair case going from the shop sold to those rooms, and instead the stair case to 'access them' in fact going from the corner most shop owned by defendant Mahesh Chander.

It was therefore held that very obviously two shops out of three as also the construction on the first floor (which was found by that court to be a residential accommodation including a kitchen, toilet etc.), all belonged to the defendant.

Finally, holding that it was the duty of the buyers, i.e. the plaintiffs in the suit (KK and Singh), to get any recital on purchase of the disputed rooms incorporated in the sale deed, which was not done, the primary issue was decided against them.

25. That having been done, the remaining issues, on lack of cause of action, non-maintainability of the suit, the plaintiffs not having come

with clean hands, were observed to be not pressed and therefore were decided against the defendant, but in view of the findings on the first issue, the suit of KK Singh & Singh was dismissed.

26. That judgment and decree having been appealed against, it came up before the same appellate court as the judgment and decree in the other suit, i.e. the learned District Judge, who vide a separate judgment, (recorded on the same date as the other appeal before him), again come to the same conclusion as he had come to while deciding that appeal.

Consequently, the appeal in the suit filed by KK and Singh was also dismissed.

27. The said judgments and decrees of those learned courts thus have been challenged before this Court by way of these two regular second appeals.

28. Mr. Raj Kumar Gupta, learned counsel for the sole appellant in each appeal (Krishan Kumar, his co-plaintiff Mahabir Singh not having filed any second appeal), first submitted that the sale deed DW-2/A not having stated anything at all with regard to any remaining sale consideration to be paid, with the total sale consideration shown to be Rs.7,52,500/-, the learned courts below wholly erred in going beyond what was contained in the said document.

He next submitted that even a perusal of the plaint filed in the suit for recovery by Mahesh Chander, would show that his contention was that Rs.5 lacs less had been paid to him and that being so, even if the said

amount is added to Rs.7,52,500/-, the total amount would come to Rs.12,52,500/- and not Rs.16 lacs as Mahesh Chander had contended in his testimony.

Thus, he submitted, the plaint being the touch stone on which any claim of a plaintiff is to be decided, a reading thereof would show that the total consideration amount so claimed in respect of the property sold, is not given anywhere therein.

Hence, with nothing beyond what is pleaded being acceptable in an oral testimony, the learned courts below, as per Mr. Gupta, wholly erred in ignoring that fact.

29. Learned counsel then submitted that what this court had observed at the time when notice of motion was issued in these appeals on July 09, 2018, would be correct, to the effect that the decretal amount of Rs.3 lakhs would seem to be money to be paid for two rooms on the first floor of the premises in question and not for the ground floor which was sold vide the aforesaid sale deed.

In that context he reiterated that the appellant would be willing to pay the decretal amount of Rs.3 lakhs on transfer of two rooms on the first floor of the premises.

30. He next submitted that the agreement relied upon by Mahesh Chander, to seek recovery of Rs.3 lakhs as balance consideration remaining to be paid, is also not an agreement seen to be signed by the same witnesses as had witnessed the sale deed on the same date, i.e. 11.05.2007 (the

agreement being Ex.P1, which he submitted was in fact not actually attested by any witness, but only shown to be so).

He further submitted that the only witness examined by the plaintiff was one who stated that only Rs.1 lakh had been paid in his presence, with him not stating anything else with regard to any amount remaining to be still paid.

31. Further, as regards the said agreement, Mr. Gupta contended that it having been executed admittedly after the sale deed was executed, even though on the same date, in any case it could not be relied upon, with even the witnesses shown therein (shown to be Mamta Rani and Parveen Nagpal), not examined on the contents of it, with no scribe who had prepared the document also having been examined.

Mr. Gupta then submitted that even as per the cross examination of plaintiff Mahesh Chander (in the suit seeking recovery), as PW-1, he admitted to not knowing who the scribe of the said document was, further having admitted that he had received Rs.11 lacs from KK and Singh by way of two cheques for amounts of Rs.2,30,000/- and Rs.8,70,000/-.

Hence, he submitted that it is very obvious that nothing testified to by Mahesh Chander even in his testimony in his own suit for recovery, was actually in consonance with his pleaded case, and hence the suit for recovery was wholly misconceived, and for that reason too, the agreement Ex.P-1 was 'not executable', if at all it is to be accepted to have been entered into.

32. Mr. Guptas' contention therefore was that the findings of the courts below are wholly perverse because the statements of the witnesses were not noticed, with those courts only having gone on the evidence of the expert witness, i.e. the hand writing expert, as regards the signatures of Krishan Kumar having been found to be matching on the agreement Ex.P-1.

33. In respect of his argument that evidence beyond pleadings cannot be accepted, Mr. Gupta relied upon the following judgments:-

- i) **S. Saktivel (dead) by LRs. v. M. Venugopal Pillai**, 2000(4) RCR (Civil) 93 and
- ii) **Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite (D) through LRs**, 2008(2) RCR (Civil) 403.

34. He further submitted that the agreement dated 11.05.2007 in any case not being a registered document, even though it was one which laid down a condition precedent to transfer of immovable property valued at more than Rs.100/-, it could not have been looked into by way of evidence.

35. Mr. Gupta next referred to Sections 91 and 92 of the Indian Evidence Act, to submit that once the terms of a contract have been reduced to writing, then any oral agreement to the contrary would not be acceptable.

36. Lastly, as regards two rooms on top of the shop admittedly purchased by KK and Singh also having been purchased by them vide the same sale deed dated 11.05.2007, Mr. Gupta relied upon Section 8 of the Transfer of Property Act, 1882, to contend that the rooms constructed on top of the shop as is on the ground floor (as has been admittedly purchased by KK and Singh), being an integral part of the ground floor, attached to the

shop immediately below them, despite such rooms not having been specifically referred to in the sale deed, they nevertheless form a part of the property purchased.

37. *Per contra*, Mr. P.K. Mutneja, learned counsel for the respondent in these two appeals, i.e. Mahesh Chander, submitted that even in the written statement filed by the present appellant, Krishan Kumar, in reply to the suit for recovery, there is no denial of the agreement Ex.P-1, the only contention being that it not being a registered document it was not admissible in evidence, though of course in the reply on merits it was also alleged that the document itself was tampered with, without that allegation proved in any manner.

38. Mr. Mutneja next submitted that the papers used for the agreement of sale were in fact shown to be purchased by the proforma respondent in these appeal, i.e. Mahabir Singh, co-defendant/co-plaintiff (in one suit and the other) of the present appellant. Hence, once they were purchased by Mahabir Singh, the appellant in any case cannot deny the agreement.

39. Learned counsel next referred to the 4th proviso to Section 92 of the Indian Evidence Act, 1872, to submit that even in the face of documentary evidence pertaining to any agreement entered into between two parties, any subsequent oral agreement, rescinding or modifying the contract, could be proved, except in cases in which such contract was required by law to be in writing or had to be registered in terms of the

statute requiring registration of documents.

Thus, he submitted that when even an oral contract can be proved, showing that a written contract had been modified, then, even though the written agreement (Ex.P1) had not been registered, it could be still admitted in evidence in terms of the aforesaid provision, read with the proviso to Section 49 of the Registration Act, which postulates that even an unregistered document affecting immovable property may be received as evidence of any collateral transaction of a contract, in a suit for specific performance.

Mr. Mutneja submitted that therefore the learned courts below had not erred in relying upon Section 49, to hold that the suit for recovery instituted by the present respondent, Mahesh Chander, being essentially one seeking specific performance of a contract (the agreement dated 11.05.2007, Ex.P-1), it was very much admissible in evidence, which document stood duly proved by even upon a comparison of the signatures of appellant Krishan Kumar, with his admitted signatures.

40. Learned counsel next submitted that the respondent herein had come absolutely clean to the trial court in his suit, because he had fairly accepted that he had received Rs.2 lacs after the said agreement was entered into and that only Rs.3 lacs remained to be paid in terms of that agreement.

41. Consequently, Mr. Mutneja submitted that the learned courts below not having erred in either appreciating the evidence or in recording the findings that they did, both the appeals deserve to be dismissed.

42. In rebuttal, Mr. Gupta submitted that in the written statement filed by the appellant and his co-defendant, in the reply to the plaint in the suit instituted by respondent Mahesh Chander seeking recovery of Rs.3 lakhs, the agreement Ex.P1 was never admitted by them.

 He further submitted that the suit seeking recovery having been filed after the suit filed by KK and Singh (seeking a decree of perpetual injunction), it is very obvious that the second suit was simply a counter blast to the first one.

 On that, he pointed out that after the sale deed was executed on 11.05.2007, the appellants' suit was instituted on 20.07.2010, whereas Mahesh Chander instituted his suit on 06.09.2010, i.e. about one and a half months later.

43. Consequently, he submitted that both the appeals should be allowed and the judgments and decrees passed by the courts below in both the suits reversed, thereby allowing the suit instituted by the appellant and his co-plaintiff, while dismissing the suit instituted by respondent Mahesh Chander.

44. Before adjudicating upon the matter, the various questions of law framed in these two appeals filed by the appellant need to be noticed, which essentially are the same in both the appeals though with some small changes made from one to the other.

 The said questions of law are as follows:-

 “i) Whether the impugned judgment/decreed passed by the

courts below are totally illegal, perverse, misreading and non-appreciation of evidence and are not sustainable in the eyes of law.

- ii) Whether the property in dispute sold by the defendant/respondent to the plaintiff/appellant vide registered sale deed includes selling of rooms constructed on the first floor in the facts and circumstances of the case.
- iii) Whether the case set up is totally false on the face of record and is barred by the provision of section 91 and 92 of the Indian Evidence Act, 1872.
- iv) Whether the immovable property includes all rights in the immovable property unless, otherwise expressly provided as per requirement of Section 8 of the Transfer of Property Act in the facts and circumstances of the case.
- v) Whether the judgment/decree passed by the courts below are the result of non application of mind and non appreciation of matter in controversy in right perspective.
- vi) Whether grave and manifest injustice is being caused to the defendant/respondent in the facts and circumstances of the case.”

45. As a matter of fact, the question at sr. no.(ii) hereinabove is wholly a question of fact decided by all learned courts below against the present appellant and his co-litigant, i.e. KK and Singh, and is not a substantial question of law at all.

The essential questions of law are actually at Sr. no.(iii) and (iv), with the other remaining questions simply being the consequences of

the findings on those questions, as also dependent upon whether the finding of fact as regards question no.(ii) is found to be perverse by this court, or not.

The other essential question of law that is to be adjudicated upon in these appeals, is as follows:-

“Whether the agreement relied upon by Mahesh Chander, could have been accepted by way of evidence or not?”

Hence, the 3 questions of law to be adjudicated upon are:-

- “1. Whether the case set up is totally false on the face of record and is barred by the provision of section 91 and 92 of the Indian Evidence Act, 1872.
2. Whether the immovable property includes all rights in the immovable property unless, otherwise expressly provided as per requirement of Section 8 of the Transfer of Property Act in the facts and circumstances of the case.
3. Whether the agreement relied upon by Mahesh Chander, could have been accepted by way of evidence or not?”

46. To consider the matter, it is thus first necessary to determine as to whether or not, on the basis of the agreement dated 11.05.2007, respondent Mahesh Chander is entitled to recovery of Rs.3 lakhs on account of lesser payment made to him than the total sale consideration settled between the parties, for the sale of the shop as was conveyed to the appellant and Mahabir Singh vide the sale deed dated 11.05.2007 (such sale deed in any case not being disputed by either side).

Therefore, again RSA no.4190 of 2018 is being taken up for

consideration first.

47. Mr. Gupta is obviously right on the factual aspect, that the said sale deed does not contain even a whisper about any consideration remaining to be paid, other than the Rs.7,52,500/- that were admitted to have been received by the vendor, i.e. Mahesh Chander, as per the recital contained in the deed itself (from which Mr. Gupta actually read out, it being a part of the record of evidence summoned by this court from the learned courts below).

[It may be stated here that though in a second appeal this court would not otherwise look into concurrent findings of fact recorded, yet the entire issue being as to whether any sale consideration remained to be paid, with that being the essential issue to be decided even as a part of the question of law on the validity of the agreement Ex.P1, it was considered necessary to hear learned counsel for the parties as regards the recitals contained in the sale deed.]

Naturally, Mr. Mutneja, learned counsel for the contesting respondent, could not refute that factual position, to the effect that the aforesaid amount of Rs.7,52,500/- was shown to have been received prior to execution and registration of the sale deed, from appellant KK and Mahabir Singh, by respondent Mahesh Chander.

The question then is as to whether Mr. Gupta is correct in submitting that once a registered sale deed shows the sale consideration to be a particular amount, with nothing mentioned therein as to any payment

remaining to be paid by the vendee, and to be received by the vendor, would a subsequent unregistered agreement, even stated to be executed on the same date, be acceptable, with the possession of the shop also having been admittedly handed over to the vendees (as per a further recital in the sale deed itself).

48. As already noticed, Mr. Gupta had referred to Sections 91 and 92 of the Evidence Act to contend that once the terms of a contract have been reduced to writing, then any oral agreement contended to have been reached to the contrary, cannot be accepted. He had contended that in the present case, though the agreement relied upon by Mahesh Chander is a written agreement, however, it not being a registered document despite containing conditions precedent to final transfer of an immovable property of a value of more than Rs.100/-, it cannot be accepted by way of evidence; and that being so, it cannot also be accepted to be a collateral transaction to any written or oral agreement, contrary or supplemental to a registered document of transfer of immovable property.

Thus, the argument is that if the said written agreement cannot be accepted as evidence, an oral agreement contrary to what is contained in the registered sale deed, would not be acceptable in any case.

49. The argument of Mr. Mutneja, learned counsel for the respondents on the other hand, was that the agreement entered into immediately after the execution of the sale deed, being a written document, it can be accepted as evidence of a collateral transaction, both in terms of

the 4th proviso to Section 92 of the Indian Evidence Act, as also Section 49 of the Registration Act.

50. To examine both contentions, the relevant parts of all three provisions are reproduced hereinbelow:-

Indian Evidence Act, 1872

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. -When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exceptions 1 and 2. xxxxx xxxxx xxxxx

Explanation 1. This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2. Where there are more originals than one, one original only need be proved.

Explanation 3. The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

92. Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due

execution, want of capacity in any contracting party, ¹ [want or failure] of consideration, or mistake in fact or law.

Proviso (2). The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) and (6) xxxxx xxxxx xxxxx

Registration Act, 1908

“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.]”

Section 17 of the Registration Act would also therefore need to be referred to, in terms of what is contained in Section 49 of that Act, and

consequently the relevant extract thereof is also reproduced hereinbelow:-

“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) XXXXX XXXXX XXXXX

(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) & (e) XXXXX XXXXX XXXXX

[(1A)] The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A 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 53A.]

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

(i) to (iv) XXXXX XXXXX XXXXX

(v) [any document other than the documents specified in sub-section (1A)] 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) to (xii) xxxxxx xxxxxx xxxxxx

[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) XXXXX XXXXX XXXXX

(All emphasis applied in the statutory provisions, are in this judgment only).

51. Considering the aforesaid provisions, though Mr. Mutneja, learned counsel for the respondents, would be correct in his submission that an oral agreement subsequent to an existing contract, is still admissible in evidence, to either rescind or modify the original contract, in terms of Proviso (4) to Section 92 of the Evidence Act, however, the proviso itself carves out an exception to the effect that it would not apply “in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents”. (As is in the present case vide the sale deed dated 11.05.2007).

Thus, the transfer of immovable property of a value more than Rs.100/-, being by law required to be a transaction that is to be in writing which is required to be registered in terms of Section 17(1) (b) & (c) of the Registration Act, no such subsequent oral agreement can actually override the registered document by which a property has been disposed of.

52. Hence, when admittedly the sale deed (by which the property was disposed of/transfer to KK and Singh by Mahesh Chander), does not contain any recital to the effect that any part of the consideration settled was

still to be paid or that there were any terms and conditions attached to such sale, that document very clearly stating that Rs.7,52,500/- had been already received as consideration for the sale of the shop measuring 35 sq. yards, possession of which had also been handed over to KK and Singh, any other oral agreement laying down any conditions to the contrary, in my opinion cannot be accepted, even in terms of proviso (4) of Section 92 of the Evidence Act.

That principle would also flow not only from proviso (4) but also from what is contained in proviso (2) of the said provision, as reproduced hereinafore.

Hence, as regards Mr. Mutnejas' contention that even if the written document, Ex.P1, is not considered to be admissible in evidence for any reason, it would still be a reflection of an oral agreement which could qualify/limit the condition of sale, that is not an argument that can be accepted in my opinion (with due appreciation of the attempt made by him).

53. Coming then to his argument that in fact it is actually an agreement which has been proved to have been signed by both KK and Singh, even as per the report of the hand writing expert who was examined by Mahesh Chander, though I would find no reason to disagree with that contention with no evidence to the contrary led by KK and Singh to disprove their signatures, but with them not otherwise specifically admitting the document, the question would be whether that document (agreement of sale dated 11.05.2007), could have been accepted in evidence at all by the

learned courts below?

54. In that context, to repeat, both the courts (in Mahesh Chanders' suit), have held that since by his suit he was seeking a recovery of Rs.3 lakhs, the suit was actually one seeking specific performance of a contract, and therefore the agreement of sale could be read in evidence, as proof of such contract having been entered into, even in terms of Section 49 of the Registration Act.

In the opinion of this court, the aforesaid interpretation is also not possible to be accepted, in the face of clauses (b) & (c) of sub-section (1) of Section 17 of the Registration Act, read with sub-section 1-A thereof.

The aforesaid provisions specifically stipulate that any non-testamentary instrument, either creating or limiting or extinguishing a right (including a future right), in immovable property above a value of Rs.100/-, is a compulsorily registrable document.

This would be so even so considering clause (v) of sub-section (2) of Section 17, as also the explanation following the last clause of the sub-section thereof.

Clause (v) of sub-section (2) does stipulate that any document that by itself does not create/declare/assign/limit/extinguish any right in such property but only creates a right to obtain another document that would then so create etc. such right, does not require to be registered.

However, that clause would not be applicable, because though the agreement Ex.P1 is not a document by itself creating a right to

immovable property, it is definitely one limiting the right already created earlier in the property in the form of the sale deed and further, in any case Ex.P1 is not simply a document creating a right to obtain another document.

The explanation following sub-section (2) of course is only as regards an agreement of sale, i.e. a document purporting or operating to effect a contract for the sale of immovable property, which document does not require compulsory registration as per the said explanation.

However, to again repeat, the agreement, Ex.P1, is not one purporting or operating to effect a contract for sale of immovable property, but is one limiting the right already created in the property, by virtue of a registered sale deed.

Hence, in the opinion of this court, it would be a document that was required to be registered and cannot be simply taken to be, even in terms of Section 49 of the Registration Act, to be an instrument not requiring registration and one being evidence of a collateral transaction, because the said instrument (Ex.P1) actually limits a right already created in immovable property, thereby specifically coming within the ambit of clause (b) of sub-section (1) of Section 17 of the Act of 1908.

55. That issue having been settled, the 1st & 3rd questions of law, as shown to be framed in paragraph 45 hereinabove, are answered to the effect that the agreement, Ex.P1, as relied upon by respondent Mahesh Chander in the suit instituted by him seeking recovery of Rs.3 lakhs, could not have been admitted in evidence by the learned courts below, it being an

unregistered document which was necessarily required to be registered in terms of clauses (b) and (c) of sub-section (1) of Section 17 of the Registration Act, it not being a document covered by clause (v) of sub-section (2) of the said provision, or even by the explanation to sub-section (2) of Section 17 or by Section 49 of the said Act.

56. Even having held as above, it may be appropriate to notice that very obviously there seems to have been some kind of agreement that took place between the appellant and his co-vendee on the one side and Mahesh Chander on the other, on the same date that the sale transaction took place on 11.05.2007.

Whether that agreement was actually one providing for sale of the rooms on top of the shop already sold, subject to certain payment being made in addition to the payment already made for the shop sold vide the registered sale deed, or it was an agreement to supplement the sale consideration shown in the sale deed executed, thereby trying to avoid stamp duty, would remain a moot question that actually does not require to be answered because the subsequent agreement itself has been held to be inadmissible in evidence hereinabove.

However, the obvious question is still being looked at further, simply to “complete a loose end”.

57. If it was an agreement for the sale of two rooms on top of the shop sold on 11.05.2007, then the agreement should have been actually explicit to that effect, which obviously it is not, as it does not say so.

If it was an agreement executed for payment of consideration as was not shown in the registered sale deed and was therefore an agreement to avoid stamp duty, it has to be treated to be a void agreement even in terms of Sections 23 and 24 of the Indian Contract Act 1872, which read as follows:-

“23. What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— —

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

24. Agreements void, if considerations and objects unlawful in part.—

If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.”

(The illustrations given at the bottom of Section 23 have not been referred to, they only being illustrations and not an exhaustive depiction of the applicability of the provision).

Hence, any which way, the agreement relied upon by Mahesh Chander to seek recovery of Rs.3 lakhs, cannot be “used” by him to prove any unpaid/short paid consideration, in the opinion of this court.

No doubt, the beneficiary of stamp evasion would be the vendees, i.e. KK and Singh in the present case, as stamp duty is almost always to be paid by the purchaser unless specified otherwise; but even so,

whether the plaintiff or the defendant is eventually a beneficiary of a contract, which is otherwise void in law, it is still an inexecutable contract.

58. It having been held as above, RSA no.4190 of 2018, eventually arising from Civil Case RBT No.183 of 2010 instituted by respondent Mahesh Chander in the court of Civil Judge (Junior Division), Bahadurgarh, on 06.09.2010, is to be allowed, with the judgments and decrees passed by the learned courts below in that suit to be set aside, thereby dismissing the suit.

59. Coming next to the appeal arising from the suit instituted by the appellant and his co-vendee Mahabir Singh, seeking a decree of permanent injunction restraining the respondent herein, Mahesh Chander, from interfering in the peaceful possession of the plaintiffs in the suit property as described in the plaint, i.e. RSA no.4071 of 2018.

60. In this appeal, I see no reason to interfere with the judgments of the courts below at least as regards what is claimed by the appellant to be also a part of the sale transaction made in his and his co-vendees' favour as per the sale deed dated 11.05.2007 (i.e. two rooms constructed above the shop that was admittedly sold to them).

Other than the fact that both the courts below have come to a concurrent finding of fact that the said two rooms are not shown to be a part of the sale deed in any manner, very clearly, also before this court, with the sale deed referred to by learned counsel for the appellant himself in the context of the recovery of Rs.3 lakhs sought by respondent Mahesh

Chander, it is obvious that the said document refers to the sale of only a single shop measuring 35 sq. yards, duly describing the shop not just with regard to its immediate boundaries, but also referring to the property as “*Ek Kitta Dukaan*”, meaning one single shop.

Further more, the learned courts below also having come to a finding of fact that there was no access by way of any staircase, from the shop sold to the appellant, to the rooms constructed on the first floor of the building owned by respondent Mahesh Chander, and the access in fact being from the side of the shops still owned by Mahesh Chander; and yet further, the constructed rooms being of a dimension wider than the shop sold (thereby obviously going beyond 35 sq. yards sold on the ground floor), the contention raised by Mr. Gupta before this court in that context cannot be accepted, it not having been shown in any manner that those findings of fact are perverse.

61. Mr. Guptas' contention also was that the appellant is willing to pay Rs.3 lakhs to the respondent if the said shops are transferred to the appellant. Again obviously, that virtually admits the fact that the shops were not part of the sale transaction registered vide the sale deed dated 11.05.2007 (Ex.P5 in one suit and Ex.DW2/A in the other).

Even if that is to be taken as an alternative argument of Mr. Gupta, the fact that the sale deed only refers to a single shop, giving its exact measurement and does not refer to any rooms constructed on it, belies the contention of the appellant as regards his claim to those rooms.

62. Coming to the contention of Mr. Gupta as regards the applicability of Section 8 of the Transfer of Property Act, 1882, with his contention being that the rooms on top of the shop purchased by the appellant are necessarily “a part of easement”, being “attachments” to the shop purchased, that contention is rejected outright, even in the face of what is contained in Section 8 of the Act of 1882, as is relied upon by him, with that provision reproduced hereinbelow:-

“8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

Thus, what is necessary to be taken to be a part of landed property purchased/sold are the easements annexed thereto, such as paths, staircases etc., leading to the property or providing access to the property, and not any construction made on top of the property, which if it is a part of

the sale, has to be specifically shown to be so.

In the opinion of this court, even if there was a staircase leading to the rooms on top of the shop purchased by the appellant, from the side of the shop of the appellant, the rooms would still have to be described as a part of the property purchased/sold in the instrument of transfer; however, in the present case, even that is not so as already seen hereinabove, on a concurrent finding of fact recorded by the learned courts below not shown to be perverse in any manner, to the effect that the staircase granting access to the rooms constructed partly on the top of the shop purchased by the appellant, is actually on the side on which the shops still owned by respondent no.1 are situate.

Hence, Section 8 of the Transfer of Property Act has no applicability to the suit property in question. The 2nd question of law framed, on that aspect, is accordingly answered.

63. However, even so, RSA no.4071 of 2018, eventually arising out of the suit instituted by Krishan Kumar and his co-vendee Mahabir Singh on 20.07.2010 (bearing Civil Suit No.RBT-464/2010/2012), has to be partly allowed, with the observation that as regards the shop itself described in the said sale deed, on the ground floor of the building shown to be owned by respondent Mahesh Chander, admittedly sold by him, the appellant and his co-plaintiff would be entitled to a decree of permanent injunction restraining the said respondent from interfering in their possession (of that shop), it already having been held by this court that the respondent cannot seek to recover Rs.3 lakhs from the appellant (or his co-plaintiff) as part

consideration of the sale transaction, both on account of the fact that the sale deed itself does not show any remaining sale consideration to be paid, as also the fact that the agreement (Ex.P1 in the suit filed by respondent Mahesh Chander), could not have been accepted by way of evidence. Thus, with the said shop sold vide a registered sale deed, not showing any consideration or encumbrance to such transfer of the property, the purchasers thereof are held entitled to a decree of perpetual injunction, restraining their vendor from interfering in their peaceful possession of the shop, also restraining him from further alienating the said shop.

However, as regards their prayer for a similar injunction qua any rooms constructed above that shop, that is to be rejected, as has been correctly done by the learned courts below, vide the judgments and decrees impugned in RSA no.4071 of 2018.

64. Consequently, that appeal is partly allowed to the extent that as regards the shop itself measuring 35 sq. yards or the ground floor, purchased by the appellant and his co-vendee from respondent no.1 vide sale deed no.1424, dated 11.05.2007, the decrees issued by the learned courts below are ordered to be partly modified to the extent that the appellant would be entitled to the decree of perpetual injunction sought by him qua the said shop alone, but not qua the rooms constructed thereupon on the first floor.

65. RSA no.4190 of 2018 is allowed, with the judgments and the decrees issued by the learned courts below as have been impugned in the said appeal, set aside, and the suit instituted by respondent no.1, Mahesh

Chander bearing Civil Case RBT No.183 of 2010 in the court of the Civil Judge (Junior Division), Bahadurgarh, on 06.09,2010, dismissed.

The parties are left to bear their own costs throughout.

A separate decree sheet in each appeal be prepared accordingly.

May 28, 2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes