

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.264 of 2008

1. Pyare Lal, S/o Suddhu Ram Yadav, aged about 61 years,
2. Mangal Ram (Died and deleted)
3. Smt. Kailash Bai, D/o Suddhu Ram Yadav, aged about 48 years,

All R/o Sarojni Chowk, Kurud, Tahsil Kurud, District Dhamtari
(C.G.)

(Plaintiffs)
---- Appellants

Versus

Ram Gopal (Dead) Through Legal Representatives

(Defendant)

- (a) Vijiya Bai Yadav, W/o Ram Gopal, aged about 65 years
- (b) Jagdish, S/o Ram Gopal, aged about 50 years
- (c) Jai Kumar Yadav, S/o Ram Gopal, aged about 35 years
- (d) Laxmi Narayan, S/o Ram Gopal, aged about 32 years

All residents of Sarojni Chowk, Kurud, Tehsil Kurud, District
Dhamtari (C.G.)

- (e) Smt. Shashi, W/o Babla Yadav, aged about 38 years, D/o Ram
Gopal Yadav, R/o Samtarai, Dhamtari (C.G.)

---- Respondents

For Appellants/Plaintiffs: -

Mr. Shobhit Koshta, Advocate.

For Respondents / Defendants: -

Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/02/2020

1. This second appeal under Section 100 of the CPC filed by the plaintiffs was admitted for hearing by formulating the following substantial question of law: -

“Whether the respondent does not acquire any title over the property on the basis of unregistered sale deed dated 20-3-68 which requires compulsory registration?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit property was originally held by one Suddharam Yadav – father of the plaintiffs who is said to have purchased the suit property vide registered sale deeds dated 21-7-1953 (Ex.P-1) and 25-6-1957 (Ex.P-2). It is the case of the plaintiffs that the plaintiffs’ father – Suddharam Yadav had a widowed sister namely Subha Bai and on account of her poor financial condition, the plaintiffs gave a part of the suit property with one room for stay to their father’s sister and her son Ramgopal – original defendant, but when the plaintiffs asked the original defendant to vacate the suit premises due to addition in their family, the original defendant refused and started assaulting the plaintiffs and started illegally occupying over the other part of the suit property which compelled the plaintiffs to send legal notice dated 9-7-1996 to the defendant and to file suit for declaration of title, permanent injunction and damages in which original defendant Ramgopal setup a plea that an unregistered sale deed dated 20-3-1968 has been executed by Suddharam Yadav in his favour for a sale consideration of ₹ 200/-, as such, the plaintiffs’ suit deserves to be dismissed.

3. The trial Court after evaluating oral and documentary evidence available on record, dismissed the suit holding that the defendant has perfected his title by way of adverse possession, as the defendant is in possession of the suit land and in possession of the unregistered sale deed since 20-3-1968. The first appeal preferred by the plaintiffs also suffered the same fate, but partly modified and it was held that the plea of the defendant is permissive and the unregistered sale deed dated 20-3-1968 is a thirty years old document, therefore, by virtue of Section 90 of the Evidence Act, presumption would be available to the defendant that it is executed validly.
4. Challenging the judgment & decree of the first appellate Court, the plaintiffs have filed this second appeal under Section 100 of the CPC in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Shobhit Koshta, learned counsel appearing for the appellants herein / plaintiffs, would submit that both the Courts below have concurrently erred in ignoring Section 54 of the Transfer of Property Act, 1882 which clearly provides that in order to transfer title, if it is more than ₹ 100/-, it must be registered and presumption would be available under Section 90 of the Evidence Act only with regard to the extent of authenticity of any handwriting contained in or execution or attestation of a document, but there is no presumption of registration under Section 90 of the Evidence Act, as such, the judgments & decrees of both the Courts below deserve to be set-aside and the suit deserves to be decreed in toto.

6. Mr. D.N. Prajapati, learned counsel appearing for the respondents herein / legal representatives of the original defendant, while vehemently opposing the submission of learned counsel for the plaintiffs, would submit that though the agreement to sale dated 20-3-1968 is unregistered, yet the defendant tried to get it registered, but it was not registered, therefore, it could not be formally registered, but the fact remains that the defendant is in possession since the date of sale deed dated 20-3-1968 (Ex.D-12) and presumption under Section 90 of the Evidence Act is rightly held to be available to the defendant with respect to Ex.D-12. Therefore, both the Courts below are justified in dismissing the suit of the plaintiffs.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. It is the case of the plaintiffs that the plaintiffs' father Suddharam was title holder of the suit land as he had purchased the same by registered sale deeds dated 21-7-1953 (Ex.P-1) and 25-6-1957 (Ex.P-2), but he had given some part of the suit property to the defendant pursuant to the agreement to sale dated 20-3-1968 (Ex.D-12) and the defendant setup the plea of adverse possession in his written statement. The trial Court has found the adverse possession to be proved on the basis of Ex.D-12, but the first appellate Court rightly held that possession pursuant to the agreement to sale (unregistered) Ex.D-12 is permissive in nature, therefore, the plea of

adverse possession is not established, but further held that since unregistered sale deed dated 20-3-1968 is a thirty years old document, therefore, presumption under Section 90 of the Evidence Act would be available.

9. It is well settled law that presumption under Section 90 of the Evidence Act with regard to thirty years old document is available and extends merely to the extent of authenticity of any handwriting contained in or execution or attestation of a document. Section 90 of the Evidence Act nowhere provides that in terms thereof the authenticity of the recitals contained in any document is presumed to be correct.

10. In the matter of Gangamma and others v. Shivalingaiah¹, it has been held by their Lordships of the Supreme Court that,

“A bare perusal of the aforementioned provision would clearly go to show that in terms thereof merely a presumption is raised to the effect that signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting and in case a document is executed or attested, the same was executed and attested by the persons by whom it purports to be executed and attested.”

11. Ex.D-12 is an unregistered sale deed for a consideration of ₹ 200/-.

The question is, whether without its registration, is it admissible and whether it would confer title to the defendant?

12. Section 54 of the Transfer of Property Act, 1882 enacts that the sale of immoveable property can be made only by a registered instrument, if the consideration amount is more than ₹ 100/- and an agreement

¹ (2005) 9 SCC 359

of sale does not create any interest or charge on its subject matter.

13. The Supreme Court in the matter of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana and another² has clearly held 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 immoveable property can be transferred. It has been observed as under: -

“11. 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 and Anr.* (1977) 3 SCC 247 : (AIR 1977 SC 774), observed:

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 *Rambaran Prosad v. Ram Mohit Hazra* [1967] 1 SCR 293 : (AIR 1967 SC 744). The fiduciary character of the personal obligation created by a contract for sale is 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.”

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

In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614 : (AIR 2004 SC 4342 : 2004 AIR SCW 5110)] this Court held:

"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."

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 immoveable property can be transferred.

12. 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 53A 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 immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

14. Reverting to the facts of the present case in light of the provision contained in Section 54 of the Transfer of Property Act, 1882 and decision of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd. (supra), it is quite vivid that admittedly, the plaintiffs are title-holders of the suit land and the original defendant is claiming the suit land by way of sale deed dated 20-3-1968 (Ex.D-12) which is an unregistered sale deed and its value is of more than ₹ 100/- and thus, it was required to be registered in terms of Section 54 of the Transfer of Property Act, 1882, in absence of that no title has been conveyed

in favour of the defendant by the said sale deed. Therefore, both the Courts below have committed legal error in holding that by virtue of Ex.D-12, the defendant has right, title and interest over the the suit land. As such, the unregistered sale deed Ex.D-12 is inadmissible in evidence for want of its compulsory registration under Section 49 of the Registration Act, 1908.

15. As a fallout and consequence of the aforesaid discussion, judgment & decree of the trial Court as well as the first appellate Court are set-aside and the plaintiffs' suit is decreed directing that the defendants will deliver the peaceful possession of the suit land situated in Village Sarojini Chowk, Kurud, District Dhamtari shown in the suit map in green colour "*da, ka, kha, ga, gha, sa, kha, cha and chha*" to the plaintiffs within 60 days from today. The suit map be made part of the decree. However, the plaintiffs are not entitled for damages. The substantial question of law is answered accordingly.

16. The appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

17. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge