NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 754 of 2019

Sudarshan Halwai S/o Late Gokul Prasad Halwai Aged About 60 Years R/o Bus Stand, Pandariya, P.S. And Tahsil Pandariya And District- Kabirdham, Chhattisgarh.

---- Petitioner/ Plaintiff

Versus

1. Jivrakhan Lal Gupta S/o Late Kamal Narayan Gupta Aged About 65 Years R/o Ward No. 15, Durjaband Para, Pandariya, Tahsil Pandariya, District- Kabirdham, Chhattisgarh.
2. State Of Chhattisgarh Through The Collector, District- Kabirdham, Chhattisgarh.

---- Respondents/ Defendants

For the Petitioner	:	Shri Ravindra Agrawal, Advocate.
For Respondent No.1	:	Shri Prafull N. Bharat, Advocate with Shri Harshal Chauhan, Advocate.
For Respondent No.2/ State	:	Shri D.P. Singh, Dy. A.G. with Shri B.P. Banjare, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-04-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 18.6.2019, on the ground that the learned trial Court has failed to exercise jurisdiction by not allowing the petitioner to present unregistered document in evidence.
2. It is submitted by counsel for the petitioner, that the petitioner is plaintiff in civil suit pending before the trial Court. Suit has been filed for relief of declaration in favour of the petitioner/ plaintiff, on the basis of the exchange deed dated 9.4.1979 and other reliefs. The exchange deed was executed with the consent of both the parties and the parties were

in possession of the land which they had received in exchange but defendant No.1 – Jivrakhan Lal Gupta has raised dispute on the property which was received by the petitioner in exchange and moved an application under Section 250 of the Chhattisgarh Land Revenue Code 1959 by which the petitioner/ plaintiff had been dispossessed, hence, the suit was filed. Respondent No.1 – Jivrakhan Lal Gupta in his written statement has made admissions regarding the deed of exchange but he is raising dispute with respect to the survey number and description of the suit property. The exchange deed being unregistered cannot be brought as evidence of any transaction of the suit property but according to the proviso to Section 49 of the Registration Act, 1908, it can be received as evidence of collateral transaction.

3. Reliance has been placed on the judgments of Supreme Court in the case of **Thulasidhara and Another vs. Narayanappa and Others**, reported in **(2019) 6 SCC 409** and in the case of **Ameer Minhaj vs. Dierdre Elizabeth (wright) Issar and Others**, reported in **(2018) 7 SCC 639**, in which it has been held by the Supreme Court that an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale and the contract between the parties. It is submitted by counsel for the petitioner that the learned trial Court has not given proper consideration on this point and held erroneously that even though collateral purposes the exchange deed is required and impounded under Section 33 of the Indian Stamp Act, the order of impounding is illegal which is not sustainable. It is prayed that the petitioner be granted relief.

4. Learned counsel for respondent No.1 opposes the submissions and submits that the learned trial Court has not committed any error and it is

clear that the exchange deed on which the plaintiff relies, is an unregistered document. Such an exchange deed is required to be compulsorily registered under Section 17 of the Registration Act, 1908. It is further submitted that although the petitioner/ plaintiff can present the exchange deed in evidence for the purpose of proving collateral transactions, but even for the same necessary stamp duty is prescribed. It is also submitted that the case-law cited by the petitioner i.e. **Thulasidhara** case (supra) is related to family settlement matter which is not applicable in this case.

5. Reliance has been placed on the judgment of Supreme Court in the case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra**, reported in (**2009) 2 SCC 532**, in which it has been clearly held that even in case of bringing any instruments for proof of any transaction between the parties under the proviso to Section 49 of the Registration Act, the same shall be required to be impounded if the stamp leviable is not paid, hence, the learned trial Court has not committed any error and the petition be dismissed.

6. In reply, it is submitted by counsel for the petitioner that there is a dispute regarding the identification of the property, therefore, for the purpose of identification of the same the impounding of the exchange deed is not at all required and the impugned order is liable to be quashed.

7. Heard counsel for both the parties and perused the documents produced alongwith the petition.

8. Considered on the submissions. The case of the petitioner/ plaintiff is clear that he is seeking declaration and other reliefs on the basis of unregistered exchange deed. The exchange deed is an instrument of transfer of immovable property in consideration of another immovable

property, therefore, it 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. Hence, it is compulsorily registrable under Section 17 of the Registration Act.

9. The proviso to Section 49 of the Registration Act provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 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 or as evidence of any collateral transaction not required to be effected by registered instrument. The wordings in this provision are very clear that the transaction effecting the transfer of title or the property cannot be proved through an unregistered document. This is not a suit for specific performance of contract, therefore, the case of the petitioner/ plaintiff falls in the other part of the proviso, that it may be received as evidence of any collateral transaction not required to be effected by the registered instrument. What is such collateral transaction which is not required to be effected by registered instrument is another issue. In the case of **SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited**, reported in (**2011) 14 SCC 66**, paragraphs 6 and 7 are as follows:

> ‘6. Section 17(1)(d) of Registration Act and section 107 of TP Act provides that leases of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Section 49 of the Registration Act, 1908, sets out the effect of non-registration of documents required to be registered. The said section is extracted below :

"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 (1 of 1877) as evidence of any collateral transaction not required to be effected by registered instrument."

Section 49 makes it clear that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registrable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to section 49 of the Registration Act.

7. When a contract contains an arbitration agreement, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract. It is as if two

contracts -- one in regard to the substantive terms of the main contract and the other relating to resolution of disputes -- had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract.

Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the transfer or transaction affecting the immovable property. It is as if two documents - one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registerable - are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer. These principles have now found statutory recognition in sub-section (1) of section 16 of the Arbitration and Conciliation Act 1996 which is extracted below :

> "***16. Competence of Arbitral Tribunal to rule on its jurisdiction.*** -- (1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,--
>
> (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
>
> (b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."

Clearly the unregistered exchange deed cannot be produced in evidence for the proof of the transaction of the exchange of land between the parties, however, it is the plea of the petitioner that he has to bring this document in proof of collateral purposes. What are those collateral purposes and whether they are covered in the proviso to Section 49 of the Stamp Act is not a question which is required to be left for determination of the trial Court itself. Even in case the exchange deed has to be referred to as some sort of agreement then there shall be a requirement for payment of stamp duty on such agreement.

10. Learned trial Court has ordered for impounding the exchange deed directing payment of stamp duty on exchange deed. It is not a correct proposition of law for the simple reason, that impounding of the exchange deed by payment of complete stamp duty and penalty for the same will not validate to exchange deed for its production as evidence for the transfer of property between the parties and that is not the collateral purpose, but on the contrary that is the main intention of the document which is inadmissible in evidence due to non-registration. Hence, only such kind of agreement apart from the transaction of transfer of property between the parties, which may be brought as proof under collateral parties shall be the agreement apart from the transaction effecting the transfer of property. Hence, that can be only a simple agreement between the parties. The direction in the impugned order regarding payment of stamp duty and penalty for the exchange deed is improper and against the law which is unsustainable. Hence, the petition is disposed off at motion stage. The impugned order is modified. The order impounding of the document is not interfered with, however, it is modified and ordered that the petitioner/ plaintiff shall be required to make payment of stamp duty with respect to the agreement

between the parties other than the exchange deed, which may be permissible under proviso to Section 49 of the Registration Act alongwith the other penalties payable and the proceeding be completed accordingly under the provisions of Stamp Act, 1899.

11. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi