

Court No. - 34

Case :- FIRST APPEAL No. - 515 of 1980

Appellant :- Ram Lal

Respondent :- Chhotey Singh & Another

Counsel for Appellant :- Rishikesh Tripathi

Counsel for Respondent :- Nishant Mehrotra,Pranjal Mehrotra,S.K. Singh

Hon'ble Sudhir Agarwal,J.

1. Heard Shri Rishikesh Tripathi, learned counsel for appellant and Shri M.K. Maurya, Advocate, holding brief of Shri Nishant Mehrotra, learned counsel appearing for respondents.

2. In this matter, original record has not been found traceable but learned counsel for parties stated that only a legal question of law, based on admitted facts is involved, therefore, appeal may be decided on the documents available on record of this appeal including memo of appeal. They request that appeal may be heard on the basis of record of this appeal, hence, I proceed, accordingly.

3. This is plaintiff's appeal filed under Section 96 of Civil Procedure Code (herein after referred to as 'C.P.C.'), arising from judgment and decree dated 4.8.1980, passed by Shri Ghanshyam Dass, IV-Additional District & Sessions Judge, Bulandshahr, in Original Suit No. 139 of 1978 (Ramlal vs. Chhotey Singh and another).

4. The suit was filed by plaintiff-appellant for specific performance with a prayer that defendant-respondents be directed to put their signature on the sale-deed dated 27.6.1978, filed along with plaint and complete its registration before Sub-Registrar after receiving balance amount of consideration of Rs. 21,000/- from plaintiff-appellant and if defendant failed to

execute sale-deed, the same be executed through process of Court.

5. The plaint case, set up by plaintiff-appellant, is that there was an oral agreement between the parties on 27.6.1978, pursuant whereunto a draft sale-deed was scribed through Durga Prasad, whereunder defendant-respondents had to execute sale-deed in respect of land in dispute for a total consideration of Rs. 46,000/-.

6. Court below, after recording statement of parties under Chapter X, Rule 2 C.P.C., formulated following four issues:

"1. Whether defendant No. 1 agreed to execute sale-deed for Rs. 36,000/- on 27.7.1978 and received Rs. 15,000/- as part of the sale price from the plaintiff?"

2. Whether the plaintiff was ready and willing to get the sale-deed executed on 27.6.1978?"

3. Whether the defendant No. 2 is bona fide purchaser for value without notice?"

4. To what relief, if any, is the plaintiff entitled?"

7. Issue-1 was decided by Trial Court holding that defendant agreed to execute sale-deed for the land in dispute for a consideration of Rs. 46,000/-. It was an oral agreement which took place about 15-20 days earlier to 27.6.1978, pursuant whereunto Rs. 15,000/- was paid by plaintiff-appellant to defendant on 27.6.1978. Issue-2 was also answered in favour of plaintiff holding that he was ready to get sale-deed executed. However, in respect to Issue-4, Trial Court held that in view of amendment made in Section 17 and 49 of Indian Registration Act, 1908 (hereinafter referred to as "Act, 1908) by U.P. Civil Law (Amendment) Act, 1976 (hereinafter referred to as "Act, 1976"), which came into force on 1.1.1979, an agreement to sell was required to be written and compulsorily registrable and since no such agreement was in existence, suit for specific performance of an agreement, which was not written and

registered, was not maintainable.

8. Only point for determination in this appeal is “whether alleged oral agreement executed between the parties could have been enforced in State of UP and Trial Court in taking another view in view of amendment made in Act, 1908 by Act, 1976, is justified.”

9. Shri Tripathi, learned counsel for appellant, has placed reliance upon two judgements of Supreme Court in ***K.Nanjappa (Dead) by L.Rs. vs. R.A. Hameed @ Ameersab (Dead) by L.Rs. and another, 2016 (130) RD 278*** and ***Kollipara Sriramulu (dead) by his legal representative vs. T. Aswatha Narayana (dead) by his legal representative and others, AIR 1968 SC 1028 (V 55 C 200, para 3)***, which relate to States of Karnataka and Andhra Pradesh, respectively, wherein there was no similar amendment in Indian Registration Act as it was made effective on 1.1.1977 in State of U.P.

10. Learned counsel for parties did not dispute that this appeal which has to be considered in the light of law as applicable in State of U.P.

11. Amendment made in State of U.P. makes it very clear that an agreement to sell has to be written and registered. Any agreement for sale of immovable property more than Rs. 100/- is unenforceable, if it is not written and registered.

12. The aforesaid decisions of Apex Court considered a case arising from the State of Karnataka and Andhra Pradesh, where there was no provision requiring even a contract for sale to be compulsorily registered. Therein, an oral agreement for sale of an immovable property was pleaded and to prove it an unregistered sale-deed was sought to be relied and to fortify that there was an oral agreement between parties which ought to

have been enforced. The Court held that an unregistered sale-deed in view of proviso to Section 49 of Registration Act, 1908 (hereinafter referred to as “Act, 1908”) could have been admitted in evidence as an evidence of a contract in a suit for specific performance of contract. It also held that such an unregistered sale-deed can also be admitted in evidence of proving any collateral transaction which is not required to be effected by registered **document**. The Court said:

“When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.”

(emphasis added)

13. The Court also noticed the principles culled out in this regard in its earlier decision in **K.B. Saha and Sons Private Limited Vs. Development Consultant Limited (2008) 8 SCC 564** as under:

“1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

(emphasis added)

14. In the present case, therefore, the aforesaid decision has no application for the reason that there is a U.P. Amendment in Section 54 of Transfer of Property Act, 1882 (hereinafter referred to as "Act, 1882") vide Section 30 of U.P. Act No. 57 of 1976 which came into force on 1.1.1977, which makes registration of a contract of sale obligatory. Section 54 of Act, 1882, as applicable in State of U.P., in view of aforesaid amendment reads as under:

"54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

Such transfer, in the case of tangible immovable property or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Contract for sale.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument."

(emphasis added)

15. Since in the State of U.P. even a contract for sale is required to be registered, unless it is registered, no suit for enforcement of such an agreement for sale, which is not registered, would lie since it cannot be held to be a contract in law, enforceable. Such unregistered document would not be admissible for the purpose of relying its own stipulations, as discussed above. The decision, therefore, relied on by Shri Tripathi, does not help appellant in respect to matter where it is governed by Section 54 of Act, 1882 as amended in U.P.

16. So far as the argument that money ought to have been directed to be refunded, again it was alleged to be part of oral contract though it was required to be written and compulsorily

registered under Section 54 of Act, 1882, as amended in State of U.P. In that view of the matter, even stipulation of payment made by plaintiff, as per oral agreement, could not have been taken in evidence and no relief could have been granted.

17. Hence, the point for determination formulated above is answered against appellant. No other argument has been advanced.

18. In the result, appeal lacks merit and is, accordingly, **dismissed** with costs.

Order Date :- 12.4.2018

LN Tripathi