

RAJASTHAN HIGH COURT

Naryan

Vs.

Madan

Civil Revn. Petn. No. 896 of 1999

(J.C. Verma, J.)

27.07.2001

ORDER

J.C. Verma, J.

1. The revision petitioner was plaintiff in the suit for specific performance and has come up against the order dated 12-5-1999 passed by the Additional District Judge, Gangapur City whereby the order dated 23-11-1998 passed by the trial Court was confirmed in interim injunction application.

2. As per the facts the petitioner plaintiff has filed a suit for specific performance against the respondents in regard to the land khasra No. 1180 measuring 1.19 Hectors situated in village Gadhi Gopalpura and other land as mentioned in the suit. It was stated that earlier this land was in the Khatedari of one Ram Swaroop and the land was purchased by the present petitioner-plaintiffs on 20-3-1992 from respondent No. 2 Ram Swaroop and were also put in possession. The defendant Madan was also having half share in the land Khasra No. 1180. Even though the agreement is said to have been entered into between the parties., but sale-deed was not executed for certain reasons and, therefore, suit for specific performance of contract was filed by the present petitioners along with the application for temporary injunction. The defendants had denied the execution of agreement to sell. Even the so called seller Ram Swaroop had also opposed the suit on the ground of limitation. The temporary injunction application was dismissed by the trial Court vide order dated 23-11-1998. On appeal having been filed the Additional District Judge also dismissed the same on 12-1-1999.

3. It is the contention of the petitioner that even the suit filed by the other defendants before the SDO had also been dismissed and for the reason that the possession had

already been proved to be in the hands of the petitioner-plaintiff and the matter of legality of agreement to sell was still to be gone into and for the reason that the plaintiff had already parted with the consideration amount as mentioned in the alleged agreement to sell, the petitioner submits that in such situation and as per the settled law, the plaintiff ought to have been granted the stay order and for the proposition relies on a judgment of this Court in the case of *Smt. Pushpa Kanwar v. Suraj Prasad Gupta*,¹ wherein it was held that unregistered agreement to sell land is admissible in evidence under proviso of Section 49 of the Registration Act, 1908.

4. Reliance is also placed on the judgment reported in the case of *Deenanath v. Chuni Lal*,² wherein it was held that there was no necessity to determine the question of vendor's title and the fact that the title which the purchaser may acquire might be defeasible by sons of defendants was no ground for refusing specific performance if the purchaser was willing to take such title as the vendors had.

5. Counsel for the respondent defendants relies on the judgment of this Court in the case of *Smt. Devi v. Banwari Lal*,³ on the fact that Section 53-A of the Transfer of Property Act does not confer right on transferee to move application for temporary injunction in a suit for specific performance of contract on the basis of unregistered agreement for sale of agriculture land. It only creates estoppel against transferor from enforcing any right in respect of the property against transferee. It was further held that under section 17(f) of the Registration Act, the transferee does not get any right to claim possession or any other right in the property on the basis of an unregistered agreement for sale. Such unregistered agreement for sale conferred a statutory right on a transferee to defend his possession in a suit for recovery of possession filed by transferor any other person claiming under him.

6. Yet in another judgment of this Court in the case of *Smt. Jamna Bai v. Tulsi Ram*,⁴ it was held that production of unregistered document is not eligible for evidence even for collateral purposes.

7. Reliance is also placed in the judgment of the Apex Court in the case of *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad v. Ajit Prasad Tarway*,⁵ wherein it was held that the High Court had no jurisdiction to interfere with the order of the first appellate Court even if the order is right or wrong or in accordance with law or not, unless it has exercised its jurisdiction illegally or

with material irregularity. To the same effect is the judgment of the Apex Court in the case of *Pandurang Dhondi Chougule v. Maruti Hari Jadhav*.⁶

8. From the submission of the parties, the following facts are admitted;

- (i) that unregistered document was created on the stamp paper for the sale of land in question and according to the plaintiff the possession was also delivered;
- (ii) that documents were unregistered whereas Section 17(f) of the Registration Act, 1908 as applicable to the State of Rajasthan specifies that any agreement effect of which is to hand over the possession becomes admissible only if it is registered.

9. Both the Courts below had rejected the application for interim injunction for not dispossessing the plaintiff petitioner from the land in dispute only on the ground that the agreement to sell was not registered and, therefore, confer no right on the plaintiff to ask for interim injunction.

10. Section 49 of the Registration Act, 1908 provides that no document which is required to be registered under Section 17 shall affect any immovable property comprised therein or confer any power to adopt or be received as evidence of any transaction affecting such property. But it is provided in the proviso that unregistered document affecting immovable property can be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act or as evidence of any collateral transaction not required to be effected by registered instrument.

11. Section 49 along with proviso reads as under :-

"49. Effect of non-registration of documents required to be registered - No document required by Section 17 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, 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 part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not required to be effected by registered instrument."

12. In view of the specific provisions as incorporated in Section 49 and under proviso of Section 49, it is clear that for a suit of specific performance under certain conditions, a reference can be made to the unregistered document.

13. In view of the above-quoted authorities it is true that it is the sale- deed registered under the Act which confers the right or title in the purchaser but the agreement to sell does give a right to the purchaser to compel the respondent for specific performance of the contract/agreement through the Court. If in the agreement of sale mentions the fact of handing over the possession, the admissibility of agreement is to be seen at the time of leading of evidence but in case the agreement is unregistered, the so called purchaser party to the agreement can use the same for collateral purposes to show the nature of possession or other like questions; even the purchaser can compel the respondent by taking appropriate steps for registration of the agreement as well.

14. In view of the above-said discussion and the reason, I am of the opinion that the document in question can be relied upon for the collateral purpose in regard to possession or even estoppel etc. by the plaintiff petitioner.

15. For the reasons mentioned above, I intend to modify the order of interim injunction by ordering that status quo in regard to possession and alienation as to day shall be maintained by the parties till the decision of the suit.

16. The revision petition is accordingly disposed off.

Ordered accordingly.

Cases Referred.

1. 1977 WLC (Raj) (UC) 377
2. 1974 WLN 769

3. (1998) 1 Raj LR 680
4. 1996 DNJ (Raj) 717
5. AIR 1973 SC 76
6. AIR 1966 SC 153