

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR
ORDER

S.B. Civil Writ Petition No.19580/2013

Nandpal Versus Murari and others

Date of Order :: 29th November, 2013

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr.Dhruv Atri on behalf of Mr. Harendra Singh Sinsinwar, for the petitioner.

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BY THE COURT:

This writ application is directed against the order dated 4th of September, 2013 passed by the learned Trial Court whereby application moved on behalf of the petitioner/defendant (Nandpal) under Section 35, 2(14) of the Stamps Act, 1899 (hereinafter referred to as 'the Act of 1899') has been dismissed.

2. Essential material facts and particulars necessary for adjudication of the controversy raised are that in a civil suit for specific performance of contract and for permanent injunction instituted by the plaintiffs/non-petitioners, the petitioner/defendant moved an application under Section 35, 2(14) of the Act of 1899 with a request to send the agreement for sale to the Stamp Collector for recovery of stamp duty and further objected to its admissibility in evidence for the document was not sufficiently stamped. The learned Trial Court dismissed the application of the petitioner/defendant relying upon the law declared by this Court in the case of Jagdish v. Smt. Deep Shika

Garg : AIR 2013 Rajasthan 89.

3. I have heard the learned counsel for the petitioner/defendant and also perused the material available on record as well as the impugned order dated 4th of September, 2013.

4. The learned counsel for the petitioner/defendant vehemently argued that since the agreement for sale was not executed on a document sufficiently stamped, therefore, the same may be sent to the Stamp Collector to make good the deficiency and further if the document was not sufficiently stamped, the same is inadmissible in evidence. This Court while examining somewhat identical controversy in the case of Jagdish (supra) held thus:-

“18. On the other hand, counsel for the plaintiff respondent submitted that the same is admissible in evidence. In support of the aforesaid submission, counsel for the plaintiff respondent has placed reliance on paragraph nos. 11,12 and 13 of the judgment in the case of S.Kaladevi (supra), and paragraph 4 of the judgment in the case of Javer Chand & Ors. (supra). The relevant paragraphs of the aforesaid judgments are as follows:-

“11. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:-

“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), or as evidence of any collateral transaction not required to be effected by registered instrument. (emphasis supplied)

12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to be contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. 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 the 1908 Act.(emphasis supplied)

13. Recently, in KB Saha and Sons (P) Ltd. V. Development Consultant Ltd. (2008) 8 SCC 564 this Court

noticed (SCC pp. 576-77, para 33) the following statement of Mulla in his Indian Registration Act (7th Edn., at p. 189):

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir, the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

This Court then culled out the following principles; (K.B. Saha case SCC P.577 para 34)

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 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."

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."

5. In view of the settled position of law, the matter is no more *res-integra*, in my opinion, the learned Trial Court committed no error or illegality in dismissing the application under Section 35, 2(14) of the Act of 1899 filed by the petitioner/defendant.

6. In the result, writ application fails and is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

7. In view of the final adjudication on the writ application, the stay application stands closed.

(VEERENDR SINGH SI RADHANA), J.

Sunil/ P.A.

All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(Sunil Solanki)
P.A.

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