

**HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.49 of 2022

Sri Pranesh Chandra Bhowmik,
S/o. Late Pramatha Chandra Bhowmik,
Vill. & P.O. Bhagabannagar,
P.S. & Sub-Division-Kailashahar,
District-Unakoti Tripura.

.....Appellant.

Versus

1. Sri Partha Bhowmik,
S/o. Late Pratap Chandra Bhowmik
of Vill. Kalipur, P.O. Paitur Bazar,
P.S. & Sub-Division-Kailashahar,
District-Unakoti Tripura, PIN-799279

2. Smt. Khela Rani Bhowmik,
W/o. Late Pratap Chandra Bhowmik
of Vill. Kalipur, P.O. Paitur Bazar,
P.S. & Sub-Division-Kailashahar,
District-Unakoti Tripura, PIN-799279

4. Smt. Papiya Bhowmik,
D/o. Late Pratap Chandra Bhowmik,
W/o. Sri Nirmal Datta
Vill. Paitur Bazar at present Durgapur,
P.O. Paitur Bazar, P.S. & Sub-Division-Kailashahar,
District-Unakoti Tripura, PIN-799279.

.....Respondents.

For Appellant(s)	:	Mr. H. Deb, Adv.
For Respondent(s)	:	Ms. R. Purkayastha, Adv.
Date of Hearing	:	19.01.2024
Date of delivery of Judgment and Order	:	31.01.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The appellant Pranesh Chandra Bhowmik is before
the High Court. He has preferred this Second Appeal under

Section 100 of CPC challenging the judgment and decree dated 25.08.2022 passed by Learned District Judge, Unakoti District, Kailashahar in connection with Title Appeal No. 05 of 2021 allowing the Title Appeal and by setting aside the judgment and decree dated 07.12.2020 passed by Learned Civil Judge, Senior Division, Court No. 1, Kailashahar, Unakoti Tripura, in connection with case No. T.S.(P) 35 of 2018.

02. The gist of the appeal in brief is that the respondent plaintiffs filed one suit for partition before the Court of Learned Civil Judge, Senior Division, Unakoti District, Kailashahar against the present appellant as defendant alleging inter alia that one Pratap Chandra Bhowmik, predecessor of the present respondent-plaintiff and present appellant-defendant got allotment of suit land on 25.05.1984 from the Government of Tripura and Khatian bearing No.437 was created in their name jointly and they started possessing the suit land jointly. The respondent-plaintiffs issued to reside at Kalipur, Kailashahar with their predecessor Pratap Chandra Bhowmik and after his death on 13.10.1995 the respondent-plaintiffs have been residing at Kalipur, Kailashahar. The appellant-defendants and the respondent-plaintiffs were/are in joint possession of the suit land and on 12.11.2016 the respondent-plaintiffs requested the appellant-defendant for partition of the suit land but he

refused to make the same. After that the respondent-plaintiffs filed the suit. In the said suit before the Learned Court below, the appellant-defendant after receipt of summons appeared and contested the suit by filing written statement and took the plea that the suit land had already been partitioned amicably in between the present appellant-defendant and said Pratap Chandra Bhowmik, the predecessor of the respondent-plaintiff and said Pratap Chandra Bhowmik(since dead) by executing an unregistered deed of sale agreement (sharan Lipi) on 11.02.1987 as part performance of contract had handed over his share in the suit land to the appellant-defendant on 11.02.1987 receiving Rs.5000/-(rupees five thousand only) as full construction of his share with condition to execute registered deed of sale after obtaining necessary sale permission from the Government. The suit of the respondent-plaintiff was registered by the Learned Trial Court vide case No. T.S.(P)35 of 2018 and after trial the Learned Trial Court dismissed the suit.

03. Challenging the dismissal, the respondent-plaintiffs had preferred an appeal before the Learned District Judge, Unakoti District, Kailashahar and the Learned District Judge, after hearing both the parties allowed the appeal and by his judgment pleased to set aside the judgment and decree passed by the Learned Trial Court on the ground that

the deed of agreement (sharan Lipi) executed by the predecessor of the respondent-plaintiffs was not registered as per Section 17(1A) of the Registration Act. As the Learned First Appellate Court did not consider the said deed of sale agreement (sharan Lipi) on 11.02.1987 and in the amended Act the provision regarding compulsory registration of sale agreement was enacted with effect from 24.09.2001, so, the present appellant-defendant by challenging the judgment has preferred this appeal before the Court. At the time of admission of second appeal the following substantial question of law was formulated by order dated 19.01.2023:

"(i) Whether the finding of the learned first appellate Court is contrary to Section 17(1A) of Registration Act, 1908 and Section 53A of the Transfer of Properties Act, 1882? "

04. Learned Trial Court in deciding the suit framed 4 nos. of issues which are as follows:

ISSUES

(i) Whether the suit is maintainable?

(ii) Whether the suit land is joint property?

(iii) Whether predecessor or plaintiffs executed any 'Sharanlipi' and sold his share in favour of defendant on 11.02.1987 and handed over possession of his share over the suit land to defendant?

(iv) Whether the plaintiffs are entitled to any relief as prayed for and or any other relief/reliefs in this suit?

05. And both the parties of the appeal have adduced oral/documentary evidences on record before the Learned Trial Court which are as follows:

(A) Plaintiffs' Exhibits:-

Ext.-1:- Khatian No.437.

Ext.-2:- Another Khatian No. 437.

Ext.-3:- Attested copy of survival certificate of deceased Pratap Chandra Bhowmik.

Ext.-4:- Death certificate of deceased Pratap Bhowmik.

(B) Plaintiffs' Witnesses:-

PW.-1 Partha Bhowmik.

PW.-2 Smt. Minu Bhowmik (Dey)

(C) Defendant's Exhibits:-

Ext.A- Agreement for sale dated 11.02.1987.

(D) Defendant's Witnesses:-

DW.-1 Sri Nanigopal Deb.

DW.-2 Sri Pradesh Bhowmik.

DW.-3 Md. Abdulla.

DW.-4 Pranesh Roy.

Finally, by judgment and order dated 07.12.2020 Learned Trial Court dismissed the suit of the respondent-plaintiffs on contest with costs. The order of Learned Trial Court is as follows:

**"In the result, the suit of the plaintiffs is dismissed on contest with cost.
The case is disposed on contest.
Make necessary entry in the relevant Trial Registrar & CIS.
Prepare decree accordingly and put up before me for signature within 15 (fifteen) days from today latest on 21.12.2020.
Consign the record to the record room after due compliance."**

06. But the Learned Court below at the time of deciding issue Nos. 1 and 4 gave the following observation in last para.

"Thus, therefore, considering all, I find the defendant is entitled to get benefit under Section 53(A) of T.P. Act and possession of the defendant is protected under said possession and the suit of the plaintiffs for partition is not maintainable and plaintiffs are not entitled to get any relief in this suit. Accordingly, issue Nos. 1 and 4 are decided in negative and against the plaintiffs."

07. Challenging that judgment the plaintiffs of the original suit as appellants preferred First Appeal before the Learned Court of Learned District Judge, Unakoti District, Kailashar which was numbered as T.A. 05 of 2021 and the Learned District Judge, Unakoti District, Kailashar by judgment dated 25.08.2022 allowed the appeal by setting aside the judgment and decree of the Learned Court below. The operative portion of the judgment and order of the Learned First Appellate Court is as follows:

"In the result, the appeal filed by the plaintiffs-appellants is allowed. Consequently, the judgment and decree passed by the learned trial court are set aside.

Prepare appellate decree accordingly.

Send down the LCR along with a copy of this judgment.

The case stands disposed of accordingly."

08. Thereafter, the defendants as appellant has preferred this appeal as already stated. In course of hearing, Learned Counsel for the appellant confined his argument only on the point that the disputed Sharan Lipi(Exhibit-A) executed on 11.02.1987 was not required to be registered in

view of the provision provided under Section 17(1A) read with Section 49 of the Registration Act and submitted that the said provision was introduced by way of amendment of the Registration Act in the year 2001, and (Exhibit-A) was executed in the year 1987, so, there was no scope to place any reliance on the finding of Learned First Appellate Court that Sharan Lipi (Exhibit-A) was proved to be unregistered one. So, according to Learned Counsel, the judgment of the Learned First Appellate Court was perverse, as the Learned First Appellate Court did not consider the relevant provision of law and was pleased to set aside the finding of Learned Trial Court and relied upon one citation reported in **(2023) 2 TLR SC 32** wherein in para 13 of the said judgment, Hon'ble the Apex Court observed as under:

"13. Under the circumstances, as per proviso to section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, however, subject to section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/Agreement to Sell in question would fall under the category of document as per section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to section 49 of the Registration Act that the unregistered document in question, namely, unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific

performance and the proviso is exception to the first part of section 49.”

Relying upon the said citation, Learned Counsel for the appellant submitted that Learned First Appellate Court did not consider the aforesaid principle of law laid down by the Hon'ble Apex Court and came to an erroneous finding and prayed before the Court to set aside the judgment of the Learned First Appellate Court upholding the judgment of the Learned Trial Court below.

09. On the contrary, Learned Counsel, Ms. Purkayastha at the time of hearing fairly submitted that the citation referred by Learned Counsel for the appellant supports the case of the respondent-plaintiffs and according to her the principle of law laid down by the said judgment/citation is applicable in a suit for specific performance of contract. She further submitted that the provision of Section 17(1A) and Section 49 of the Indian Registration Act is not supporting the case of the appellant-defendant and furthermore, Section 53(A) of the Transfer of Property Act will also not be applicable in the present case, since Exhibit-A was not duly registered as required by law under Section 17(1A) and Section 49 of the Registration Act.

10. Further, Learned Counsel also relied upon one citation of the Hon'ble Supreme Court of India in Ameer Minhaj vs. Dierdre Elizabeth (Wright) ISSAR and Ors dated 04.07.2018 reported in **(2018) 7 SCC 639** wherein in para

nos. 10 and 12 of the said citation Hon'ble the Apex Court observed as under:

"10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In *S. Kaladevi v. V.R. Somasundaram*:(2010) 5 SCC 401 this Court has restated the legal position that 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 as 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.

11. Section 49 of the 1908 Act 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."

"12. In the reported decision, this Court has adverted to the principles delineated in *K.B. Saha and Sons (P) Ltd. V. Development Consultant Ltd.*:(2008) 8 SCC 564, and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment: *Dierdre Elizabeth (Wright) Issar v. Ameer Minhaj*, 2016 SCC

OnLine Mad 31541 that the sale agreement dated 09-07-2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence."

11. Learned Counsel further submitted that even if the appellant-defendant wants to get any benefit under Section 53(A) of the T.P. Act in that case also in view of the provision laid down by the Hon'ble Apex Court the said document i.e., Exhibit-A was supposed to be registered but here in the given case Exhibit-A was proved to be unregistered, so, legally no reliance can be placed upon said Exhibit-A and finally submitted the said document may be used in a suit for Specific Performance of Contract and urged before the Court for dismissal of the appeal.

12. I have heard submission of Learned Counsels of both the sides at length and gone through the records of the Learned Courts below. This present appeal is preferred challenging the judgment of the Learned First Appellate Court who by the judgment was pleased to set aside the judgment passed by Learned Trial Court. The respondent-plaintiffs claimed for partition of the suit land on the basis of joint possession. On the other hand, the defendant-appellant

took the plea that the suit land was already been handed over to him in pursuance of Exhibit-A on 11.10.1987. So, question of partition does not arise but the Learned Court below, dismissed the suit of the respondent-plaintiffs but made an observation that in view of Section 53(A) of the T.P. Act the possession of the appellant-defendant was protected.

13. Now, here I would like to refer herein below the relevant provision of Section 17(1A) of the **Registration Act** which provides as under:

"[(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.]"

14. Further, Section 49 of the **Registration Act** provides as under:

"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.]"

From the aforesaid provisions of law it appears that Exhibit-A as relied upon by the defendant-appellant may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

15. Now I would like to refer herein below the provision of Section 53(A) of the **Transfer of Property Act**, which provides as under:

"[53-A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty: and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that [*], where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]"**

From the conjoint reading of the aforesaid provisions of law it appears that unless the purported document is registered under Section 17(1A) or Section 49 of the Registration Act then Section 53(A) shall have no effect for the proposed purpose.

16. Thus, finding of the Learned Trial Court that the appellant defendant is entitled to get protection under Section 53(A) of the T.P. Act was perverse not binding upon the respondent-plaintiffs.

17. In view of the principle of law laid down by the Hon'ble Apex Court, the citation as referred by Learned Counsel for the appellant-defendant is based on suit for a specific performance of contract cannot be applied in this case. Rather the citation as referred by Learned Counsel for the respondent-plaintiffs is very much applicable for the just decision of this case. There was/is also no contrary evidence on record from the side of the appellant-defendant that he was adversely possessing the suit land denying the right, title, interest of the present respondent plaintiffs.

18. So, after hearing both the sides and after going through the judgments of the Learned Court below it appears that Learned First Appellate Court after considering all aspects has rightly and reasonably delivered the judgment setting aside the judgment of the Learned Trial Court below and after going through the same it appears to me that there is no scope on the part of this Court to interfere with the judgment passed by Learned First Appellate Court. The substantial question of law as formulated by the Court is accordingly answered in negative against the present appellant-defendant of this appeal.

19. In the result, the appeal filed by the appellant-defendant is hereby dismissed on contest with costs. The judgment and decree dated 25.08.2022 passed by Learned District Judge, Unakoti District, Kailashahar allowing the Title Appeal No. 05 of 2021 by setting aside the judgment and decree dated 07.12.2020 passed by Learned Civil Judge, Unakoti District, Kailshahar in connection with case No. T.S.(P) 35 of 2018 is hereby upheld and accordingly it is affirmed. Pending application, if any, also stands disposed of.

Prepare decree accordingly and send down the LCRs along with copy of the judgment.

JUDGE



**MOUMITA
DATTA**

Purnita

Digitally signed by
MOUMITA DATTA
Date: 2024.02.05
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