

(2006) 12 P&H CK 0121

High Court Of Punjab And Haryana At Chandigarh

Case No: Appeal No. 1 of 2006

Chanan Singh Mehar Singh

APPELLANT

Vs

Sham Lal Ramji Dass and
another

RESPONDENT

Date of Decision: Dec. 4, 2006

Acts Referred:

- Evidence Act, 1872 - Section 91
- Registration Act, 1908 - Section 48, 49, 50
- Transfer of Property Act, 1882 - Section 10, 17, 53A

Citation: AIR 2006 P&H 34

Hon'ble Judges: Teja Singh, C.J; Chopra, J

Bench: Division Bench

Advocate: L. Ram Karan Dass, for the Appellant; L. Jagan Nath Kaushal, for the Respondent

Judgement

Chopra, J.

This second appeal arises out of a suit brought by Chanan Singh appellant for possession of a house sold to him by one Nihal Chand by a registered deed dated 26-8-2003 for Rupees 2000. Sham Lal the contesting defendant is also a vendee of the house from the same Nihal Chand by an unregistered sale-deed dated 27-1-2002 for Rupees 900. The suit was resisted on the basis of this unregistered sale deed followed by possession and it was inter alia pleaded that the defendant had made certain improvements which had not been objected to by the vendor or his subsequent vendee, the plaintiff. The trial Sub-Judge holding that the possession of the defendant under the unregistered sale deed which was compulsorily registrable, did not pass any title and that a subsequent vendee even with notice would be entitled to oust him, decreed the suit subject to payment of Rs. 255 as costs of the improvements. Both the parties went in appeal. The District Judge was of the opinion that the proviso added to S. 49, Registration Act by XXI [21] of 1929

made the prior unregistered sale deed admissible in evidence of part performance of the contract for purposes of S. 53A, T. P. Act, and holding that the plaintiff had notice of the prior sale non-suited him under S. 53A, T. P. Act. This is defendant's appeal.

2. The facts of the case stated above are admitted by the counsel of the parties and it is further conceded by the learned counsel for the respondent that the proviso added to S. 49 by the Amending Act of 1929 and the Transfer of Property Act were not enforced in the erst while Patiala State to which this case belongs. The District Judge was thus not right in basing his conclusions on the proviso to S. 49, Registration Act, and S. 53A, T. P. Act, and the case has to be decided on the law as it stood before the amendment made in 1929. It may be remembered that S. 53A, T. P. Act, and the proviso to S. 49, Registration Act, were added by S. 10, T. P. Act (Amendment) Supplement Act of 1929 which has not so far been enforced in the State or in the Union. The cases, therefore, on which reliance has been placed by the District Judge and which were decided by applying these provisions of law would not be of any help in deciding this case.

3. It cannot be denied that the prior sale deed which affected immovable property worth more than Rs. 100 was compulsorily registrable under s. 17, Registration Act, and, therefore, under S. 49 could not affect the property transferred nor could be received as evidence of the transaction. The learned counsel for the respondent at the first instance tried to make a futile attempt to avoid this strict provision of the Law of Registration by contending that the defendant was holding the property under an oral sale, completed by delivery of possession and that the sale deed in his favour was only to confirm the oral sale that had already been completed. A simple reading of Ex. D-A, the sale-deed in question, shows that it was by itself a dispositive document and did not make mention of any previous sale. The written statement of the defendant also makes no mention of any such oral sale and the point has been taken up for the first time in this appeal. In cl. 1 (g) of the written statement the defendant stated that he had become owner of the house by the sale deed dated 27.1.2002 executed in his favour by Nihal Chand for Rs. 900, which clearly means that this sale deed was pleaded to be the origin of his title. The moment an oral contract is reduced to writing it is not open to any of the parties thereafter to prove the terms of the contract by referring to any original oral agreement. Section 91, Evidence Act, would stand in his way and he would be precluded from proving the terms of the transaction otherwise than by the deed itself.

4. Now taking the unregistered sale deed which required registration to be the origin of title of the defendant it has to be seen as to how far his possession for about a year or so would help him in resisting the plaintiff's title based on a subsequent registered sale for consideration. As already observed, the defendant is unable to substantiate his title because the writing embodying the contract of sale on which he relied, could not be admitted in evidence. He thus cannot say that he

was in possession of the property as an owner and his possession has to be considered as that of a trespasser. Since his possession has to be considered as that of a trespasser [and ?] since his possession has lasted only for less than two years, it has not matured into ownership by prescription and he, therefore, cannot resist the suit of the plaintiff whose claim is based on an undisputed sale on behalf of the original owner.

5. It is stressed by the learned counsel for the respondent that the defendant being in possession of the property ought to have put the plaintiff on his guard to enquire from the defendant as to the cause and origin of his claim. The plaintiff who must, therefore, be presumed to have purchased with notice of the title of the defendant should be given no priority. I am, however, of the opinion that as the prior deed required registration and by being not registered did not affect the property the question of notice does not arise. Even if the plaintiff knew of the existence of the unregistered sale he did not know of any existing legal right of the defendant. He could quite well ignore the unregistered sale which did not in fact create any valid title. He cannot be legally held to have acted fraudulently in taking his own subsequent conveyance when he knew that the defendant could not claim to be its owner under the eye of law. The result would have been totally different if the defendant was possessing the property on the basis of a valid and completed title derived from an oral sale or by a deed that did not require registration. The subsequent purchaser with notice of such a sale could claim no priority under S. 48 or S. 50, Registration Act. These conclusions irresistibly follow from the stringent provisions of the Registration Act as it stood before the amendment of 1929 and I am supported in this view by a series of authorities decided before the amendment. As far back as 1885, a question referred to a Full Bench of the Punjab Chief Court was as to whether a person purchasing immovable property with notice of a prior mortgage on the same property for over Rs. 100 in writing but unregistered could take more than the remaining interest of the vendor, on the ground that the mortgage being unregistered could not affect the property. The decision of the Full Bench reported in *Harman Dass v. Hira*, 90 P.R. 1886 was that under such circumstances the purchaser was entitled to oust the mortgagee although he had notice that he was holding as mortgagee, and to take the property free of any charge on it. In *Uttam Singh v. Basanta*, 19 I. C. 236 : (203 P. L. R. 1913), a Division Bench of the same Chief Court decreed the suit of the owner against a person who was holding the property under an unregistered exchange deed on the ground that the title of the person in possession being defective for want of registration of the deed, he must be regarded as a trespasser. In *Uttam Chand v. Janji A.* I. R. 1919 Lah. 296 where the suit of a subsequent vendee of a registered sale deed was resisted by a previous vendee of an unregistered sale the following observation was made by Shah Din J.:

The possession of a vendee who claims title under a sale deed which for want of registration is inadmissible in evidence is that of a trespasser, and until such

possession matures into ownership by prescription, such vendee is liable to be ejected from the property by a subsequent vendee under a registered deed of sale.

A similar view was expressed by a Division Bench of the Madras High Court in *Zackaraya Sett V. Chunnu*, 9 I. C. 55 : (9 M. L. T. 270), where it was observed that

an unregistered deed of sale in respect of immovable property does not create any interest in the purchaser and a subsequent purchaser by registered deed is entitled to priority even if he had notice of the abortive purchase by unregistered deed.

In [Kuppuswami Goundan Vs. Chinnaswami Goundan and Others](#), the defendant was holding property by a sale deed which required registration under the Transfer of Property Act. The suit of a subsequent purchaser by a registered sale deed was decreed by the Division Bench on the ground that the previous vendee held no valid title on which he could successfully resist the suit.

6. Their Lordships of the Privy Council in AIR 1931 79 (Privy Council) were considering a case under the Transfer of Property Act as it stood before the amendment of 1929 in which the defendant was holding the property under an oral lease which was compulsorily registrable according to the Transfer of Property Act. Their Lordships while discussing the application of the English equitable principle of part performance to the stringent provision of an Indian Statute expressed the view that no equitable doctrine could be used to over-ride the specific term of a statute. Their Lordships of the Privy Council in *John II, Arseculeratne v. J. B. M. Perera*, A. I. R. 1928 P. C. 273 : (111 I. C. 351) were considering another case in which a contract for the purposes of effecting a transfer of immovable property was required to be registered under the Ceylon Ordinance 7 of 1840, but was not in fact registered. Their Lordships held that the doctrine of part performance had no application to the stringent provisions of the Ordinance by which the agreement was of no force or avail in law unless registered. This dictum of their Lordships and the one given in AIR 1931 79 (Privy Council) clearly show that principle of equity could not override the stringent provisions of the Registration Act.

7. Before statutory recognition was given to the equitable principle of part performance by enactment of S. 53A, T. P. Act and addition of a proviso to S. 49, Registration Act, divergent views were held by the Courts in India as regards the applicability of the doctrine and it was to set at rest this conflict that Transfer of Property (Amendment) Act, 1929 (xx [20] of 1929) was enacted. As already observed, the consensus of opinion prior to that, however, was that a subsequent transferee for consideration would have priority over a vendee who was in possession of the property under an unregistered sale deed which was compulsorily registrable. It is no doubt unfortunate for the respondent that I am here precluded from taking into consideration the present law that is in force all over India but the Courts are only to interpret law as it is and are not to be guided by the hardship that it might cause to the persons affected by it, or the results that might follow. It is only in the province

of the Legislature to take these matters into consideration,

8. The authorities cited by the learned counsel for the appellant which were decided after the said amendment are not of much avail while deciding the present case as they were based on the proviso added to S. 49, in the provinces where the Transfer of Property Act was not in force, and on S. 53A, T. P. Act in the provinces where the latter Act applied. The only authority cited by the learned counsel for the respondent before this amendment is Akbar v. Prem Singh 2 P. R. 1885. Certain observations made in the judgment, no doubt, support the contention of the respondent but that case was subsequently considered by the same Chief Court in Gujarmal v. Ilaichi Ram, 19 P.R. 1885 and by the Full Bench in Harnam Dai v. Hira, 90 P. R. 1885. The view expressed in that case was not looked at with approval in the subsequent case AIR 1929 500 (Lahore) was a case under S. 48, Registration Act. It was a case of an oral sale accompanied by possession and it was held that a subsequent transferee having notice of the completed sale would have no priority over the oral sale. In Shankar Das v. Sherzaman, 56 P. R. 1900 : (26 P. L. R. 1900), Juman v. Mohd. Nabineoas, 41 I. C. 779 : (A.I.R. 1918 cal. 828) and AIR 1933 600 (Lahore) the facts were similar to those in AIR 1929 500 (Lahore) . These cases cited by the learned counsel for the respondent are, therefore, distinguishable from the facts of the present case. The facts in Ibrahim v. Yusuf, A. I. R. 1938 Lah. 39 : (171 I. C. 265) decided by Jai Lal J. were no doubt almost similar to the facts of the present case. But as already stated the observations made in this case would not be helpful in deciding the present case for the simple reason that the decision was based on the proviso added to S. 49, Registration Act. The decision of the Full Bench of the Lahore High Court in Milkha Singh v. Mt. Shankari, A. I. R. 1947 Lah. 1 : (I. L. R. (1947) Lab. 449 F. B.) was again based on the same proviso and on the interpretation of the phrase "for purposes of S. 53A, T. P. Act" used in that proviso. The following observation made by Mahajan J. at p. 7 of the judgment may particularly be referred to :

The whole scheme of the proviso was to reduce the rigour of the section and to permit use of an invalid instrument of title in a limited number of cases where defence of part performance was available and lastly cases in which the document was sought to be used for a collateral purpose.

This observation clearly means that in places where the original rigour of S. 49 still continues, a sale deed which required registration could not be used to affect the property nor could it create any valid title, even though possession had been delivered under it.

9. For all these reasons, I do not agree with the conclusion arrived at by the learned District Judge. The appeal is, therefore, accepted and setting aside the judgment and decree of the District Judge I restore the decree granted by the trial Sub-Judge. Taking into consideration the contentious nature of the points involved the parties are left to bear their own costs through-out.

Teja Singh, C. J.

I concur in the order proposed.