

## Arun Bhusan Guha and Others Vs Amal Roy and Another

**Court:** Calcutta High Court

**Date of Decision:** April 27, 2009

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 151

Constitution of India, 1950 â€” Article 227

Registration Act, 1908 â€” Section 17, 47, 49, 75(1)

**Citation:** 113 CWN 570

**Hon'ble Judges:** Jyotirmay Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Probal Mukherjee and Suhrid Sur, for the Appellant; Jiban Ratan Chatterjee, for the Respondent

### Judgement

Jyotirmay Bhattacharya, J.

This application under Article 227 of the Constitution of India is directed against an order being No. 87 dated

16th November, 2006 by which the opposite party No. 2 was added as co-plaintiff in the suit. By the said order, the defendants" application u/s

151 of the CPC for dismissal of the suit and/or for rejection of the plaintiffs application for temporary injunction, was also rejected by the learned

Trial Judge. The propriety of the said order is under challenge in this revisional application at the instance of the defendants/petitioners herein.

2. Let me now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

3. The opposite party No. 1/plaintiff filed a suit for declaration of his absolute ownership in the suit property. A decree for permanent injunction for

restraining the defendants from taking any water connection underneath the suit premises and also from disturbing the possession of the plaintiff

therein, was sought for.

4. The defendant is contesting the said suit by filing written statement denying the allegations made out by the plaintiff in the plaint.

5. An ad-interim order of injunction was also passed in favour of the opposite party No. 1 /plaintiff herein on his application under Order 39 Rule

1 and 2 of the Code of Civil Procedure.

6. In both the plaint as well as in the application for temporary injunction, the opposite party No. 1/plaintiff claimed his absolute title in the suit

property. The plaintiff filed the said suit on the basis of the cause of action which allegedly had arisen firstly on 18th September, 2003 and interim

injunction was sought for therein on the basis of said cause of action. In fact, ad-interim order of injunction was passed in the said suit on the basis

of the plaintiffs claim for title in the suit property.

7. Long thereafter, an application under Order 1 Rule 10(2) of the CPC was filed by the opposite party No. 2 inter alia praying for her addition as

co-plaintiff in the said suit. The said application was filed on 21st July, 2006. It was stated in the said application that the opposite party No. 1/sole

plaintiff sold and transferred the suit property in her favour by a registered deed of conveyance dated 14th November, 2002. It was further stated

therein that though the said deed of conveyance was executed on 14th November, 2002 but the registration of the said deed was kept in abeyance

till 29th March, 2006 for non-payment of the deficit stamp duty on the said deed of conveyance. Thus, ultimately on payment of the deficit stamp

duty, registration of the said deed was completed and the said deed of conveyance was entered into book No. 1 volume No. 166 being No.

02129 pages 98 to 126 for the year 2006. Thus, the opposite party No. 2 claimed that she has now become the owner of the suit property by

virtue of such transfer, made by the opposite party No. 1/ plaintiff in her favour. The opposite party No. 2, thus, prayed for her addition in the said

suit as co-plaintiff on the basis of her aforesaid claim for title in the suit property.

8. The opposite party No. 1/plaintiff did not oppose such prayer of the said opposite party No. 2. The defendant/petitioner, however, contested

such prayer of the opposite party No. 2 by filing objection. It was stated by the petitioner therein that the opposite party No. 2 is not a pendente

lite transferee as she purchased the suit property from the plaintiff by deed of conveyance dated 14th November, 2002. It was further stated

therein that since the cause of action of the said suit arose on 18th September, 2003 and the suit having been filed on 24th September, 2003, she

cannot be added as plaintiff in the suit in 2006 as on the date when she applied for her addition as party in the said suit, the reliefs claimed in the

suit so far as she is concerned, became barred by limitation.

9. The defendants/petitioners also filed an application u/s 151 of the CPC inter alia praying for dismissal of the suit as well as of the application for

temporary injunction filed by the plaintiff in the suit, by contending inter alia that the plaintiff/opposite party No. 1 obtained the ad-interim order of

injunction by making fraudulent representation before the Court about his absolute ownership in the suit property as on the date of institution of the

suit. Thus, it appears from the proceedings of the plaint as well as from the injunction petition that she claimed reliefs in the suit as well as in the

injunction petition on the strength of his title in the suit property though the plaintiff had no title in the suit property as on the date of filing of the suit.

The petitioners contended therein that since admittedly the suit property was transferred by the opposite party No. 1/plaintiff to the opposite party

No. 2 herein even prior to the filing of the instant suit, the plaintiff/opposite party No. 1 was neither entitled to get any relief in the said suit nor he

was entitled to get any relief in the application for temporary injunction as he ceased to be the owner of the suit property with effect from the date

when the suit property was transferred to the opposite party No. 2. The petitioners further contended therein that the suit itself is not maintainable

as the plaintiff/ opposite party No. 1 admittedly was not the owner in respect of the suit property as on the date of the filing of the said suit. Thus,

the said defendants/petitioners prayed for dismissal of the suit as well as of the plaintiffs application for temporary injunction.

10. After considering the aforesaid applications filed by petitioner and the objection filed by the opposite party herein in connection therewith, the

learned Trial Judge allowed the opposite party No. 2 to be added as co-plaintiff in the said suit and simultaneously rejected the defendants"

application for dismissal of the suit and/or the application for temporary injunction as the learned Trial Judge was of the view that since the

registration of the said deed was completed during the pendency of the suit and since the instant application for addition of party was filed by the

opposite party No. 2 immediately after the completion of registration of the aforesaid deed of conveyance, the presence of the opposite party No.

2 is necessary for complete adjudication of the dispute involved in the suit inasmuch as the said opposite party, by virtue of completion of

registration of the said deed of conveyance during the pendency of the suit property, stepped into the shoes of the plaintiff/opposite party No. 1.

11. Mr. Mukherjee, learned Advocate appearing for the petitioner, criticized the said findings of the learned Trial Judge by relying upon the

provision contained in Section 47 of the Registration Act which provides that a registered document shall operate from the time from which it

would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. Mr. Mukherjee,

thus, submitted that date of completion of registration is immaterial so far as conferment of title of the property in the opposite party No. 2 is

concerned as Section 47 of the said Act makes it clear that by virtue of the sale deed dated 14th November, 2002, the opposite party No. 2

became the owner of the suit property with effect from 14th November, 2002 and not from the date when the registration was allegedly completed

in 2006. In support of such submission Mr. Mukherjee has relied upon the following decisions of the Hon"ble Supreme Court:

1. In the case of Thakur Kishan Singh (dead) Vs. Arvind Kumar, .

2. In the case of Gurbax Singh Vs. Kartar Singh and Others,

12. Mr. Mukherjee further contended that in view of the admitted fact that the suit property was transferred by the opposite party No. 1/ plaintiff

in favour of the opposite party No. 2, the suit itself is not maintainable at the instance of the opposite party No. 1 who admittedly had no title in the

suit property as on the date of filing of the suit. Mr. Mukherjee further contended that since the opposite party No. 1/ plaintiff obtained the order of

injunction by making a fraudulent misrepresentation regarding his title in the suit property before the learned Trial Judge, his application of

temporary injunction should also be dismissed in limini.

13. Mr. Mukherjee further contended that as the cause of action of the suit had arisen on 18th September, 2003, the relief claimed in the said suit

so far as the opposite party No. 2 is concerned, has become barred by limitation on the date when he applied for his addition as plaintiff in the said

suit as the statutory period of limitation for filing such suit which is three years from the date when the cause of action for such suit arose, had

expired before the date of filing of the said application for addition of party in the suit.

14. Mr. Mukherjee, thus, invited this Court to interfere with the order impugned in the aforesaid circumstances.

15. Mr. Chatterjee, learned Senior Counsel appearing for the opposite party, supported the order impugned by submitting that the plaintiff/

opposite party No. 1 did not make any misrepresentation of fact either in the plaint or in the application for injunction. Mr. Chatterjee contended

that though it is true that the deed of conveyance was presented for registration on 14th November, 2002 but the registration of the said deed

could not be completed due to non-payment of deficit stamp duty till 2006 and it is only in March, 2006 the registration of the said deed was

completed upon payment of the deficit stamp duty. Mr. Chatterjee, thus, submitted that the opposite party No. 2 could not claim his title in the suit

property on the strength of the said sale deed so long as the registration of the sale deed was not completed. According to Mr. Chatterjee it is only

the plaintiff who was the erstwhile owner thereof could project himself as the owner of the said suit property until registration of the deed of sale

was completed as per the Registration Act. Mr. Chatterjee further submitted that undoubtedly Section 47 of the Registration Act makes it clear

that once registration is complete, the title of the purchaser relates back to the date of execution of the said document but so long as the registration

is not completed, the purchaser cannot project himself as owner of the said property. Mr. Chatterjee, thus, contended that during this interregnum

period, the vendor/transferor had a duty to protect his title and possession in the suit property so that on completion of the registration of the deed

of sale, the title and possession which the transferor had in the suit property as on the date of transfer, can be vested with the transferee/purchaser

with retrospective effect from the date of execution of the deed of sale.

16. Mr. Chatterjee, thus, contended that in the facts of the instant case the plaintiff/ opposite party No. 1 cannot be accused for making any

misrepresentation regarding his title in the suit property before the learned Trial Judge. Accordingly Mr. Chatterjee submitted that the presentation

of the plaint by which the suit was instituted was not illegal and as such the suit is very much maintainable at the instance of the plaintiff/opposite

party No. 1. Mr. Chatterjee further contended that since the registration of the said deed was completed during the pendency of the said suit, it

cannot be said that the presence of the transferee purchaser is not necessary for complete adjudication of the dispute involved in the suit, as by

virtue of such transfer, the opposite party No. 2 stepped into the shoes of the opposite party No. 1, from the date of execution of the deed of sale

in 2002.

17. Thus, Mr. Chatterjee supported the order of the learned Trial Judge which is impugned in this revisional application.

18. Heard the learned Advocate of the parties. Considered the materials-on-record including the order impugned.

19. In fact, a very interesting question has cropped up in this revisional application before this Court. Admittedly the plaintiff/opposite party No. 1

executed the deed of conveyance for conveying his right, title and interest in the suit property in favour of the opposite party No. 2 on 14th

November, 2002. Fact remains that the registration of the said deed of conveyance was kept in abeyance till March, 2006 due to non-payment of

deficit stamp duty. The registration of the said deed was thus completed in March, 2006 on payment of deficit stamp duty. It is settled law of the

land that in view of the provision contained in Section 47 of the Registration Act, once the registration of the document is completed, the title of the

purchaser relates back to the date of execution of the document. Thus, the purchaser became the owner of the suit property with effect from 14th

November, 2002 though the registration of the said deed was completed in March, 2006.

20. But what is the position in law about the title of the property during the interregnum period between the date of execution of the deed and the

date of completion of registration of the said deed as per the Registration Act.

21. Can the purchaser project himself as owner of the said property during this interregnum period ?

22. Section 17 read with Section 49 of the Registration Act provide that title of the property is conveyed only on registration of the said deed

where registration is compulsory; as such, it is difficult to hold that the purchaser can project himself as owner of the said property prior to the

completion of registration of the deed of sale as per the Registration Act.

23. Neither Mr. Mukherjee nor Mr. Chatterjee could enlighten this Court on the aforesaid question. This Court also could not find out any direct

authority on the aforesaid question of law. Even the Registration Act is also silent on this score.

24. Let me now find out the answer to the said question with reference to various provisions of the Registration Act, 1908.

25. There may be numerous reasons for which registration of a validly executed deed of sale may be ultimately denied by the Registering Authority.

The requirements which are to be fulfilled for registration of a deed of sale are mentioned in Part IV, Part V, Part VI, Part VII and Part XII of the

Registration Act. The Registering Authority may refuse to register any validly executed document for non-fulfillment and/or breach of any of the

conditions as mentioned in those parts of the Registration Act. Say for example, if a validly executed document is presented for registration before

the Registering Authority beyond four months from the date of execution, the Registering Authority may refuse to register the said document.

Again, say for example, if a validly executed sale deed is not presented for registration to the competent Registering Authority having jurisdiction to

register such document, registration of the sale deed may be refused. Again say for example, that in case of forced registration of a deed of sale, if

the sale deed is presented for registration beyond thirty days from the date of passing an order for forced registration u/s 75(1) of the said Act, the

Registering Authority may refuse to register the said deed of sale though it was validly executed. There may be various other reasons for which

registration of a validly executed document may be refused. The consequence of such refusal, is provided in Section 49 of the said Act, which says

that title of the vendor will not pass to the purchaser due to non-registration of the said document.

26. As such, this Court is of the view, that so long as the registration is not completed, the purchasers cannot project himself as the owner of the

property in question, though it is true that all trappings of ownership are traceable from the date of execution of the deed after its registration is

completed.

27. In fact, the Registration Act is silent in this regard. But this Court can find out the answer to the said question from the decision of the Hon"ble

Supreme Court in the case of Thakur Kishan Singh vs. Arbind Kumar reported in AIR 1995 SC page 73, wherein it was held as follows :

Para 3..... Section 47 of the Registration Act provides that a registered document shall operate from the time it would have

commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a

document so long it is not registered, is not valid yet once it is registered it takes effect from the date of its execution.....".

28. The said decision makes it clear that so long the sale deed is not registered or in other words the registration of the sale deed is not completed,

it is not a valid document. Thus, this Court can hold safely that no one can claim title on the basis of such invalid document before completion of its

registration. It is, however, true that once the invalid document gains validity on completion of registration upon fulfillment of the requirements

required for registration thereof, the title of the purchaser will relate back to the date of execution of the document by operation of law but during

this interregnum period i.e. between the date of execution of the document and the completion of registration thereof, the purchaser cannot project

himself as the owner of the said property though his title will relate back to the date of execution of the said deed immediately on completion of

registration of the said document.

29. Now, a question may crop up as to who has a legal and moral duty to protect the title and/or possession of the property during such

interregnum period. In my view, that since the vendor executed the said deed of transfer with an expressed intension to convey his title in the

property in favour of its purchaser from the very date of its execution, either upon receipt of the consideration money for such sale or upon receipt

of the consideration money in part with a promise made by the purchaser to pay the balance amount in future, the vendor has a legal and moral

obligation to protect the title and possession of the property in question until registration of the deed of transfer is completed so that on completion

of such registration, the purchaser can enjoy the fruits of such transfer with retrospective effect from the date of execution of the deed of sale.

30. In the aforesaid circumstances, this Court holds that the suit as framed is maintainable at the instance of the plaintiff/ opposite party No. 1 as he

had the right to project himself as owner of the suit property before the learned Trial Judge as on the date of presentation of the plaint.

Accordingly, this Court cannot hold that the learned Trial Judge committed any illegality in rejecting the defendants' application for dismissal of the

suit and/or the injunction petition filed by the plaintiff/ opposite party No. 1 in the said suit.

31. This Court further holds that since the registration of the said deed of conveyance was completed during the pendency of the said suit, the

opposite party No. 2 became the owner of the suit property and his title no doubt related back to the date of execution of the said deed. Since the

title of the opposite party No. 2 in the suit property was perfected by registration of the said sale deed, during the pendency of the suit, her claim

for addition as co-plaintiff in the said suit, cannot be denied. As such, this Court holds that the learned Trial Judge did not commit any illegality by

impleading the opposite party No. 2 as co-plaintiff in the said suit.

32. Since limitation is a mixed question of law and fact, it will not be wiser for this Court to conclude at this stage by holding that the suit is barred

by limitation so far as the opposite party No. 2 is concerned as she applied for her addition as co-plaintiff in the suit in 2006 though the suit for

declaration and injunction was filed by the opposite party No. 1 on 24th September, 2003 on the basis of the cause of action which had allegedly

arisen on 18th September, 2003. Limitation is computed from the date when cause of action arose and the suit can be declared as not maintainable

on account of bar of limitation, if the suit is not filed within the prescribed period of limitation. If these two dates i.e. the date when the cause of

action arose and the date when the suit was filed are considered herein then it will be found that the suit was filed within the period of limitation. As

such, it cannot be held that the added party will be non-suited simply because of the fact that on the date when she applied for her addition in the

suit, the reliefs claimed in the suit would have been barred, had she filed the said suit on the said date on the basis of the cause of action pleaded in

the plaint. This Court cannot be unmindful of the fact that here is the case where the opposite party No. 2 applied for her addition as co-plaintiff in

the suit which was filed by the opposite party No. 1 within the prescribed period of limitation.

33. This Court, thus, does not find any apparent illegality in the impugned order. The revisional application, thus, stands rejected.

34. It is, however, made clear that the findings which have been arrived at by this Court with regard to the maintainability of the suit due to bar of

limitation, are all tentative findings for the purpose of disposal of this revisional application and as such it is made clear that if the said issue is raised

in the suit, the learned Trial Judge will decide the said issue on its own merit, after taking evidence of the parties in the suit.

35. The revisional application is, thus, disposed of. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously

as possible.