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Suraj Bala Patra Vs Suraj Bala Patra and Others

Second Appeal No. 896 of 1948

Court: Calcutta High Court

Date of Decision: Jan. 3, 1955

Acts Referred:
Registration Act, 1908 â€" Section 47, 77

Citation: (1957) 2 ILR (Cal) 36

Hon'ble Judges: K.C. Das Gupta, J; Guha, J

Bench: Division Bench

Advocate: M.B. Mullick and Sudhir K. Acharyya, for the Appellant;Sachindra Chandra Das Gupta, for Nagendra Mohan Saha and Mahendra K. Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal raises the question of interpretation of Section 47 of the Indian Registration Act which is in these words:

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.

2. One Manmatha Nath Bhakta, father of Defendants Nos. 9 to 12 in the suit out of which this appeal has arisen, held the lands in suit in

occupancy raiyati right. A kabala was executed by Defendants Nos. 9 to 12 of their right in the land on May 13, 1938 but thereafter they refused

to register the kobala upon which the Plaintiff who is the Appellant before us brought a suit u/s 77 of the Indian Registration Act. That suit was

decreed on September 8, 1939 and the actual registration took place on October 8, 1942. In the meantime, Defendants Nos. 1 to 5, who are the

landlords, had brought a suit for arrears of rent against Defendants Nos. 9 to 12 and the suit was decreed ex parte on September 23, 1937. In

execution of that decree the holding was put up to sale on November 17, 1939 and purchased by the landlords.

3. Thus, before the date of sale in the rent execution case the Plaintiff''s suit u/s 77 of the Indian Registration Act had been decreed but the kobala

had not been registered.

4. It is contended on behalf of the Plaintiff that the sale in execution of the decree obtained by the landlords has not affected his rights inasmuch as

he was not impleaded as a party in the execution proceedings even though the holding has passed to him with effect from the date of execution by

virtue of Section 47 of the Registration Act.

5. Assuming for the purpose of the present case that if the holding had been effectively transferred to the Plaintiff before the sale, the Plaintiff''s

interest would not be affected, it is important to remember that though the kobala was executed before the date of the sale in execution

proceedings, registration took place later. It has been held in a number of cases in this Court of which mention need be made of Naresh Chandra

Datta v. Gireesh Chandra Das ILR (1935) Cal. 979 and Gobardhan Bar v. Guna Dhar Bar ILR (1940) Cal. 270, that while as between the

transferor and the transferee a registered document takes effect from the date of execution, as regards third parties, the point of time at which the

deed is to be effective is when it is registered.

6. Mr. Mullick has tried to persuade us that these cases were wrongly decided and that the effect of the decision of the Privy Council in

Kalyanasundaram Pillai v. Karuppa. Mooppanar (1926) 54 I.A. 89, has not been properly considered. It appears that in Naresh Chandra Dutta

v. Gireesh Chandra Das referred to above. Mukherji, J. specifically referred to the decision in Kalyanasundaran Pillai v. Karuppa Mooppanar

(supra), but interpreted it as affirming only the proposition that Incompleteness due to want of registration is not a thing of which the executant can

take any advantage, and that if the instrument is otherwise complete, the executant is to be regarded as having done everything that was in his

power to complete the transfer and to make it effective.

7. Mr. Mullick has argued that before the Privy Council also the contest was between the adopted son of the donor and the donee. It is to be

noticed, however, that their Lordships of the Privy Council do not appear to have addressed themselves to the question as to what the effect will

be of Section 47 of the Registration Act as regards third parties. In the particular facts before their Lordships, they had to consider whether a

person after having made a gift of land could alter the position of the donee by later Act of his own, namely, adoption. That was the way Mukherji,

J. understood that decision and we are unable to see any reason to think that that interpretation is not correct.

8. When the question of the effect of Section 47 of the Registration Act on persons not parties to the document came up for consideration again in

the case of Gobardhan Bar v. Guna Dhar Bar ILR (1940) Cal. 270, Bijan Kumar Mukherjea, J. followed the decision in Naresh Chandra Datta v.

Gireesh Chandra Das''s case (1935) ILR Cal. 979 and held that as regards third parties the point of time at which a deed was to be effective was

when it was registered.

9. Our attention has been drawn to the fact that the Patna High Court has taken a different view in Sadei Sahu Vs. Chandramani Dei and Another,

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10. We consider ourselves bound by the authority of the decision in Naresh Chandra Datta v. Gireesh Chandra Das ILR (1935) Cal. 979 and

Gobardhan Bar v. Guna Dhar Bar (Supra), referred to above, to hold that as against the landlords the deed was effective only from the date of

registration and not from the date of execution. Consequently, it must be held that the landlords acquired in full interest in the holding by their

purchase in the execution sale.

11. Reference was made to the fact that one of the landlords took Rs. 33 from the Plaintiff on account of mutation of Plaintiff''s name on June 30,

1938, that is, a few days after the kobala was executed by Defendant Nos. 9 to 12 and before their refusal to register it. In our judgment this fact

of the taking of some money from the Plaintiff cannot alter the position that in law the Defendants continued full owners of their interest as

occupancy raiyats all through so far as the landlords were concerned.

12. The appeal is accordingly dismissed with costs.