

(2010) 03 AHC CK 0193
In the Allahabad High Court
Case No : Writ Petition No. 1194 of 2008

Braham Devi & Ors.

APPELLANT

Vs

Board of Revenue, U.P. Lucknow & Ors.

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Registration Act, 1908 — Section 47, 60

Citation : (2010) 03 AHC CK 0193

Hon'ble Judges : Narayan Shukla, J

Final Decision : Allowed

Judgement

Shri Narayan Shukla,J.

1. Heard Mr. U.C. Pandey, learned counsel for the petitioners and Mr. N. K. Dwivedi, learned counsel for the party no. 2.
2. Being aggrieved with order dated 21.01.2008 passed by the Board of Revenue the petitioners have filed the present writ petition.
3. Through the order impugned the order passed by Additional Commissioner on 21.04.2007 has been set aside. The Additional Commissioner by means of order dated 20.04.2007 has cancelled the order of mutation dated 12.07.1995 made in favour of opposite party no. 2 and has approved the order of mutation made on 29.05.1995 and 06.06.1995 in favour of the petitioners.
4. Briefly the facts of the case are that one Smt. Rajpati widow of Shiv Prasad executed a registered sale deed of some plot on 28.03.1995. On the basis of the aforesaid sale deed, the Naib Tehasildar, Gonda mutated the petitioners' names in the revenue records in place of Smt. Rajpati by means of orders dated 29.05.1995 and 06.06.1995. Smt. Rajpati also executed another sale deed of the same very land in favour of opposite party no. 2 on 02.07.1994, which was registered on 14.02.2000. Thereafter the names of opposite party no. 2 was also mutated in the revenue records. The petitioners as well as opposite party no. 2 both filed two crossappeals challenging the order of mutation made against each

other. The SubDivisional Officer, Gonda allowed the appeal of opposite party no. 2 and dismissed the appeal of petitioners by means of order dated 19.08.2000. Being aggrieved with the said order, the petitioners preferred a revision before the Commissioner, Devi patan Division, Gonda on the ground that sale deed of the land in dispute was already executed and registered in favour of petitioners on 28.03.1995 and their names had also been recorded in the revenue records under the order passed by the Additional Tehsildar on 07.06.1995. It was also stated that another saledeed of the same land was executed in favour of opposite party no. 2 by Smt. Rajpati on 02.07.1994, but it was registered on 14.02.2000 on the basis of order passed by the District Registrar, Gonda on 29.01.2000. The saledeed executed in favour of the petitioners came in existence just after its registration prior to registration of another saledeed, therefore, the first one executed in favour of the petitioners will prevail over saledeed registered subsequently in favour of opposite party no.2

5. The Additional Commissioner, Devi Patan Division, Gonda accepted the contentions of the petitioners and allowed the revision and set aside the order dated 09.08.2000 passed by the court of appeal. Opposite party no. 2 challenged the order dated 20.04.2007 passed by the Additional Commissioner, Devi Patan Division, Gonda. Through the revision no. 2388/0607 the Board of Revenue considered the sole question of law, whether saledeed executed earlier in favour of opposite party no.2 but registered later to the date of registration of another saledeed executed in favour of the petitioners shall have over riding effect ?

6. Mr. U.C. Pandey, learned Counsel for the petitioners raised objection against maintainability of the revision before Board of Revenue in the light of decision of this Court rendered in the case of Puran Singh Versus Board of Revenue, U.P., Allahabad and Others(204(22)LCD 494 and submitted that the mutation proceeding is a summary proceeding subject to regular suit, therefore, after mutation no further proceeding was permitted before the revenue court but the opposite party had a remedy to file civil suit.

7. For consideration of merit of the case, learned counsel for the petitioners cited a case i.e. Ram Saran Lall and others versus Mst. Domini Kuer and others, AIR 1961 Supreme Court 1747 (V48 C 325). In this case the appellants had their residential house contiguous to the house owned by certain persons called as Pandeys. On January 31, 1946, the Pandeys executed a deed of sale in favour of the respondent purchaser in respect of their aforesaid house. The deed was presented at the registration office for registration by the Pandeys on the day it was executed and it was left with the Registrar in the Registration Office for the necessary entries. On February 2, 1946, the appellants on coming to hear of the execution of the deed of sale made the talabimowasibat. On February 9, 1946, the documents were copied in the Registrar's books and thereupon the registration became complete as provided in Section 61 of the Registration Act. Thereafter The appellants filed their suit for preemption on September 9, 1946. The suit was decreed by the Trial Court and this decision was maintained by the

first Appellate Court. The High Court, however, in second appeal set aside the decision of the Courts below by holding therein that sale became complete on the completion of registration of the instrument of sale which was done on February 9, 1946, when instrument was copied out in the books of the Registration Office. In this view of the matter the High Court came to the conclusion that the appellants were not entitled to enforce their right of preemption because they had not made the preliminary demand after the completion of the sale. Thereafter the matter went before the Hon'ble Supreme Court. The learned Attorney General appeared and argued that the High Court overlooked section 47 of the Registration Act the effect of which was to make a registered document to operate from the time from which it would have commenced to operate if no registration thereof had been required and not from the time of its registration. He further contended that once a document is registered, as the deed of sale in this case was, it begins to operate from the time it would have otherwise operated and therefore, the position in this case is that the sale became operative and hence completed on January 31, 1946.

8. The contention of learned Attorney General was not founded well by the Supreme Court. The Hon'ble Supreme Court interpreted Section 46 of the Registration Act in the manner that it only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this Section is to decide which of two are more registered instruments in respect of the sale property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of section 47 the instrument by which it is effected after it has been registered commences to operate from and earlier date.

9. On the basis of aforesaid construction the Hon'ble Supreme Court has held that "therefore, we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946.

It was majority view of the Hon'ble Supreme Court. accordingly, the Hon'ble Supreme Court upheld the view of the High Court and dismissed the appeal.

10. On the strength of the aforesaid decision, he submits that once the sale deed executed in favour of the petitioners was registered prior to the date of registration of the sale deed executed in favour of opposite party no. 2, the date of execution may be earlier sale made in favour of petitioners became complete only on the date of registration, therefore, the sale deed registered subsequently cannot be permitted to have overriding effect upon the sale deed registered earlier. He further submits that had there not been sale deed registered in favour of the petitioners, undisputedly the sale deed registered in favour of opposite party no. 2 would have become operative from the date of execution, but

keeping in view the circumstances of the present case the sale deed registered subsequently cannot be permitted to operate over the sale deed registered earlier, thus, he submits that Board of Revenue has misinterpreted the law laid down by the Hon''ble Supreme Court. Therefore, the order passed by the Board of Revenue suffers from error and deserves to be quashed.

11. On the other hand, Mr. N. K. Diwedi, learned counsel for opposite party no. 2 cited following decisions to support the case of opposite party no. 2.

12. K.J. Nathan Vs. S.V. Maruthi Rao and others AIR 1965 Supreme Court 430 (V52 C70). The facts of the case are that the first defendant borrowed from the plaintiff from time to time on seven promissory notes. The plaintiff, alleging that the first defendant had created a mortgage by deposit of title deeds in his favour in respect of his half share in the properties. The 3rd defendant alleged that the 1st defendant had executed a security bond in his favour for a sum of Rs. 15,000/ on October 10, 1947, and that, being a bona fide purchaser for value, he had priority over the plaintiff's security, even if it were true. The learned Subordinate Judge and, on appeal, the High Court held on the evidence there was no such deposit of titled deeds with the requisite intention on maintain, 1947.

13. Admittedly, on July 5, 1947, the titled deeds were in possession of the plaintiff. If on that date the first defendant had expressed his intention that from that day he would consider the titled deeds as security for the loans already advanced to him, all the necessary conditions of a mortgage by deposit of titled deeds would be present, namely, (i) debt, (ii) constructive delivery; and (iii) intention. The fact that he had such an intention from an earlier date could not make any difference in law as the intention expressed was a continuing one. On July 5, 1947, according to the 1st defendant, the mortgage by deposit of titled deeds was in existence and therefore on that date the said three necessary ingredients of a mortgage by deposit of title deeds were present. We, therefore, hold that even if there was no mortgage by deposit of title deeds on May 10, 1947, it was effected on July 5, 1947. The Hon''ble Supreme Court has held that though the documents were registered on June 22, 1948 under section 47 of the Act the agreement would take effect from July 5, 1947. With the aforesaid observation the Hon''ble Supreme Court set aside the decree passed by the Subordinate Judge and of the High Court.

14. Mahadeo Singh Vs. Mian Din and others A.I.R. 1938 Allahabad 431, in which this court has held that a sale deed is completed when it is executed by the vendor. The registration is no part of the execution, though it is necessary under law for making the deed valid. After executing the deed, it is not open to the executant to go back on his agreement and revoke it. The mere fact that the deed has not been registered does not affect the completion of the execution because even if the executant be not willing or agreeable to get the deed registered, the person in whose favour the deed has been executed has a right under the registration law to get the deed forcibly registered. Registration does not depend on the consent of the executant, but is the act of an officer appointed

by law for the purpose who, if the deed has been executed, must register it if it is presented by a person having the necessary interest within the prescribed period.

15. In K.R. Varadaraja Iyengar (Deceased by L.Rs.), Vs. T. Lakshminarayana Setty, AIR 1985 Karnataka 245, the High Court relying upon the decision rendered in the case of K.J. Nathan(Supra) held that the provision of Section 47 of the Registration Act shall apply in the case.

16. Gurbax Singh, Petitioner Vs. Kartar Singh and others AIR 2002 Supreme Court 959. In this case respondent no. 2 executed two documents of sale (Ex.P2 and D1) on November 25, 1991. Having regard to the findings of the Courts below that Ex P2 was executed earlier than Ex. D1 and having noted that Ex. P2 in favour of the first respondent was executed at 10.00 a.m. and it was not shown when Ex. D1 was executed in favour of the petitioner, the High Court confirmed the concurrent findings of court below holding that Ex. P2 prevails over Ex. D1. The matter went to Hon''ble Supreme Court through Special Leave Petition. The Hon''ble Supreme Court held that in view of the provision of Section 47 of the Registration Act, 1908 it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently and accordingly upheld the order of High Court.

17. Through the supplementary affidavit the opposite party no. 2 has brought on record the facts that the District Registrar, Gonda by means of order dated 29.01.2000 has cancelled the order passed by the Sub Registrar, Gonda on 30.08.94 and issued direction to the Registrar to register the sale deed executed in favour of opposite party no. 2. It has also been informed that thereafter the petitioners filed a Regular Suit No. 685 of 2000 and another Regular Suit No. 687 of 2000 for cancellation of sale deed executed in favour of opposite party no. 2. Both the suits have been dismissed on 05.03.08. The petitioners moved an application for restoration of the suits which have also been rejected on 17.02.2010.

18. For determination of question the relevant provisions of sections of Registration Act, 1908 (hereinafter referred to as the Act) are necessary to be considered which are reproduced hereinunder:

47.?Time from which registered document operates 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.?

60. ?Certificate of registration. (1) After such of the provisions of sections 34,35,58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate

containing the word 'registered', together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

75. 'Order by Registrar to register and procedure thereon. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

2.If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and there upon shall, so far as may be practicable, follow the procedure prescribed in Sections 58,59 and 60.

3.Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

4.The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the code of Civil Procedure, 1908 (5of 1908).

19. From perusal of Section 60 of the Act it is evident that after registration of the documents and its certification had become material evidence to prove that document has been duly registered in manner provided by this Act; whereas Section 47 speaks 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.

20. Section 75(3) speaks that when the document is registered under the order of Registrar such registration shall take effect as if the document had been registered when it was first duly presented for registration.

21. Upon perusal of the order of the Registrar it is evident that after execution of saledeed in favour of opposite party no. 2 on 02.07.94 it was presented before sub Registrar on the same date but since the executor of deed of sale disappeared from the office of Sub Registrar, the deed could not be registered. Thereafter the opposite party no. 2 moved an application under Section 36 of Act, which was rejected on 30.08.1994 by the SubRegistrar. But the Registrar issued the order on 29.01.2000 under Section 73 of the Registration Act to register the deed.

22. The learned Commissioner has recognized the saledeed executed and

registered in favour of petitioners on the ground that it was registered earlier to the sale deed registered in favour of opposite party no. 2. Relying upon Section 60 of the Act he observed that the sale deed shall be treated as registered as when the certificate is issued under Section 60 of the Act and endorsement is made as well as copy thereof is issued under Section 61. He has considered the decision rendered in the case of Ram Saran Lall (Supra). It has been observed by him on 02.07.94 that the sale deed was not legally in existence in favour of opposite party no. 2 as the deed was registered under the order passed by the District Registrar on 29.01.2000, therefore unless the deed is registered it has no affect for the purpose of mutation. Accordingly he held that the mutation in the revenue records made in favour of opposite party no. 2 on 12.07.95 on the basis of sale deed executed on 02.09.1994 is ineffective and void, and he set aside the order passed by the subordinate authorities for mutation of the revenue records in favour of opposite party no. 2 which has been set aside by the Board of Revenue.

23. Upon perusal of the order passed by the Board of Revenue, I find that the Board of Revenue has relied upon paragraphs 16 & 18 of the decision rendered in the Case of Ram Saran Lall(Supra), whereas he failed to appreciate that it is minority view of the Hon''ble Supreme Court. The majority of the Hon''ble Supreme Court is otherwise.

24. The dispute raised before this Court is related to order passed for mutation on the revenue record on the basis of sale deed executed in favour of parties.

25. The provisions of the Sections 47 as well as 75 (3) of the Act is not disputed that the registration shall take effect as if the document registered when it was first duly presented for registration and it shall operate from the time from which would have commenced to operate if there had been made.

26. In the case of K.J. Nathan (Supra) the Hon''ble Supreme Court has held that once the intention is clear to execute the deed it will be operative from the date of expression of such intention i.e. in the form of execution of deed, whereas in the case of Ram Saran Lall(Supra) the majority view of three judges of Hon''ble Supreme Court is that The object of this Section is to decide which of two or more registered instruments in respect of the sale property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of section 47 the instrument by which it is effected after it has been registered commences to operate from and earlier date. Thus the Hon''ble Supreme Court has clearly held that the sale became complete only after the registration of document of sale. It may be given effect to from the date of its execution, but the facts remains that till the date of its registration there was no complete sale in favour of opposite party no. 2; whereas in the meantime, another sale came into play, which

documents were registered in favour of petitioners prior to the date of registration made in favour of opposite party no. 2.

27. Thus, once the sale deed executed in favour of petitioners became complete after its registration prior to the sale deed registered in favour of opposite party no. 2, it cannot be said that the sale deed executed in favour of opposite party no. 2 shall be operative from the date of its execution. So far as the dismissal of suit for cancellation of sale deed filed by the petitioners is concerned, that is not relevant for the purpose of mutation of the names in the revenue records. Therefore, I am of the view that the mutation made in the revenue records in favour of the petitioners holds good till the existence of the sale deed executed in their favour. Therefore, I hereby quash the order dated 21.01.2008 passed by the Board of Revenue.

28. In the result, writ petition is allowed.