
(1982) 08 AHC CK 0046
In the Allahabad High Court
Case No : Second Appeal No. 443 of 1975

Girdhari Yadava

APPELLANT

Vs

Ram Naik

RESPONDENT

Date of Decision : 19-08-1982

Acts Referred:

Registration Act, 1908 — Section 17(1)
Transfer of Property Act, 1882 — Section 54

Citation : (1982) AWC 706

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : S.N. Sahai, for the Appellant; G.P. Bhargava and A.N. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—This is a Plaintiff's second appeal. A suit was filed by the Plaintiff for cancellation of a sale deed dated 9th August 1968 executed by him in favour of the Defendant for a consideration of Rs. 10,000/- A sum of Rs. 4,500/- was paid at the time of registration of the sale deed and it was agreed as a term of the deed that the remaining amount of Rs. 5,500/- shall be paid by the Defendant by 30th March 1969. In the event of default, the sale deed would be deemed to be cancelled. The allegation of the Plaintiff was that the Defendant had prepared a forged receipt in token of the payment of the balance consideration of Rs. 5,500/-, though in fact no payment had been made to him. It may be noted that the plaint had been amended and alongwith the relief for cancellation of the sale deed the relief for possession was also added.

2. The Defendant contested the suit and pleaded that the remaining sum of Rs. 5,500/- as per direction in the sale deed, had been paid to the Plaintiff on 13th November 1968 in the presence of the witnesses. The Defendant also alleged that he has got his name entered over the disputed land as Bhumidhar. The claim of the Plaintiff was baseless and the suit was liable to be dismissed.

3. The trial court dismissed the suit of the Plaintiff. The Civil Judge Jaunpur has by his order dated December 3, 1974 dismissed the appeal filed by the Plaintiff. Hence this second appeal.

4. I have heard learned Counsel for the parties and have also perused the impugned orders. I have also examined the sale deed and the receipt dated 13th November 1968.

5. Counsel for the Appellant has submitted that the receipt dated 13-11-1968 was compulsorily registerable under the provisions of Section 17(1)(c) of the Indian Registration Act. Since it has not been registered it was inadmissible in evidence and the court below has erred in law in relying upon it. He has also submitted that oral evidence cannot be led to prove the payment of the balance consideration contained in the sale deed and here again the court below has acted illegally in taking oral evidence into consideration and in holding that the balance amount of Rs. 5,500/- had been paid to the Plaintiff,

6. In support of this submission learned Counsel has referred to Section 17(1)(c) of the Indian Registration Act which runs as follows:

(c) non-testamentary instrument which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

7. A reading of the quoted section indicates that in order that a receipt may be compulsorily registerable under this section, it must satisfy the following conditions:

(a) it must be the receipt of a consideration,

(b) it must on the face of it be an acknowledgment of payment of some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of Rs. 100/- or upwards in immovable property.

In order to strengthen his submission the Appellant's counsel has relied upon the following cases, which I shall deal with hereafter.

8. *Sher Khan v. Muzajfar Khan* AIR 1920 Lah 321. In that case a receipt, for the balance of the purchase money on account of the immovable property, reciting an oral sale was compulsorily registerable under Clause (c) of Section 17(1). The Lahore Court held that even though that receipt was not itself a sale-deed, yet unless it was registered, it could not be received in evidence. It was further held in that case that payment of consideration may be proved aliunde.

9. In *Wadhawa Singh v. Kunj Lal* AIR 1938 Lah 497, it was held that a receipt which records the receipt of the consideration for a mortgage on the date of the execution of the document, requires registration u/s 17(1)(c), to be admissible in evidence as a receipt.

10. The next case relied upon was Baldeva and Others Vs. Dip Chand Bhag Mal Jat, . Where the vendor made a receipt in favour of the vendee stating that on receipt of the consideration money he had sold the land to the vendees, it was held that the receipt fell within Section 17(1)(b) and (c) of the Indian Registration Act, as it evidenced a transfer of immovable property. Thus the receipt was not provable by oral evidence and was compulsorily registerable.

11. On scrutiny of these three cases, I am of the opinion that the facts mentioned therein are clearly distinguishable from the instant case. The sale deed in the instant case by which title in the property was transferred by the Plaintiff in favour of the Defendant was dated 9th August 1968. Part consideration of Rs. 4500/- had been received and part consideration of Rs. 5500/- had to be paid by 30th March 1969. This sale deed created a right, title and interest in the vendee. As such, it was compulsorily registerable u/s 17(1)(b) of the Indian Registration Act.

12. Section 54 of the Transfer of Property Act defines sale of immovable property thus:

Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of one hundred and upwards....can be made only by registered instrument.

In the instant case all the ingredients of a sale as contemplated by Section 54 of the Transfer of Property Act were present in the transaction dated 9th August 1968 and therefore, the sale deed of that date was compulsorily registerable.

13. It is true that one of the clauses of the sale deed was that if the amount of Rs. 5500/- was not paid by 30th March, 1969 then the sale-deed would be considered to be null and void. But the receipt which has been executed by the Plaintiff in favour of the Defendant on 13th November 1968 did not create or extinguish any right, title or interest in the property. It was the sale deed which had created such rights in the vendee and if there had been a disregard of any of the terms of the sale deed, then a remedy could be availed of by the vendee in accordance with the law but it could not be said by any stretch of imagination that such rights in the vendee were either created or extinguished by the execution of the receipt dated 13th November 1978.

14. Counsel for the Respondent has cited a number of cases also in support of his submission that the receipt in question did not require registration. He places reliance upon Lala v. Sardara AIR 1934 Lah 472. There the sale of mortgagee rights took place two months before the execution of the receipt for the consideration received. It was held that the receipt could not be regarded as a contract of sale. It merely evidenced the payment of consideration for a contract that had been completed two months previously and was admissible in evidence without registration.

15. *Chamroo Sahu and Others Vs. G.B. Stephen*, is a case nearer home. At the time of the execution of the mortgage the consideration was agreed that in the event of the mortgagees failure to pay the promised amount on the date fixed, the mortgagor would be entitled to realise it with interest thereon. It was held that the payment of this promised sum had nothing to do with the creation, declaration, or extinction or limitation of the mortgage. The unpaid balance of the mortgage money was to be considered as a debt due from the mortgagee to the mortgagor with a stipulation to carry interest from after the specified date. In these circumstances the receipt granted by the mortgagor did not require registration u/s 17(1)(c) of the Indian Registration Act.

16. In *Phaggumal and Others Vs. Baru Lal and Another* the facts were that certain amount was left in the hands of the vendees for payment to a creditor named by the vendor. The vendee did not pay the amount to the creditor but paid it to the vendor and produced a receipt signed by the vendor acknowledging payment. In the receipt there were no words which could indicate that any charge or lien created by operation of law was to be extinguished or limited. In those circumstances it was held that the receipt was merely a receipt acknowledging payment of amount and nothing more. Hence it did not require registration.

17. The law, therefore, appears to be quite clear that where an instrument evidences creation, declaration, assignment, limitation or extinction or any present or future right, title or interest in immovable property, or where any instrument acknowledges the receipt of payment of consideration on account of the creation, declaration, assignment, limitation or extinction of such right or interest, in those cases alone the instrument or receipt would be compulsorily registerable u/s 17(1)(b) or (c) of the Indian Registration Act. But where such rights as mentioned hereinbefore are not created etc. by such an instrument or receipt, then such a document would not be compulsorily registerable. In the instant case the title had passed on to the vendee on the basis of the sale deed dated 9th August 1968, which had been executed by the Plaintiff in favour of the Defendant for which consideration was partly paid and partly promised to be paid. The sale deed dated 9th August 1968 required registration. The subsequent receipt of payment of the consideration promised to be paid in future would not require registration and has thus been correctly taken as admissible in evidence by the courts below. Both the subordinate courts have arrived at a finding of fact, that this receipt was a genuine document which evidenced payment of Rs. 5300/- by the Defendant to the Plaintiff. This is a finding of fact, which cannot be assailed in second appeal.

18. I, therefore, agree with the courts below that the entire sale consideration of Rs. 10,000/- for the property in question had been paid by the vendee to the vendor and as such the suit of the Plaintiff for cancellation of the sale deed and compensation had been rightly dismissed.

19. This second appeal, for the reasons given above, is dismissed with costs

throughout.