

(2016) 05 SC CK 0107

In the Supreme Court Of India

Case No : Civil Appeal No. 7725 of 2011.

Guman Singh and Others

APPELLANT

Vs

Manga Singh (D) by Lrs. and Others

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 53A

Citation : (2016) 2 ApexCourtJudgments(SC) 670 : (2016) 3 CivCC 427 :
(2016) 4 ICC 180 : (2016) 4 LawHerald 3008 : (2016) 3 LawHeraldSC 2383 :
(2016) 3 RCRCivil 592 : (2016) 3 RecentApexJudgments(RAJ) 691

Hon'ble Judges : A.K. Sikri;R.K. Agrawal, JJ.

Bench : Division Bench

Advocate : H.P. Raval, Sr. Advocate, Brijender Chahar, Sr. Advocate, Ms. Jyoti Chahar, Vinay Garg, Advocates, for the Appellant; Mukul Kumar, Manoj Swarup, V.K. Jhanji, Sr. Advocate, Ms. Jyoti Mendiratta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal challenges the judgment dated 22.08.2006 rendered by the High Court for States of Punjab and Haryana at Chandigarh in RSA No. 1131 of 1987.

2. The proceedings were initiated by the appellants herein in the form of Civil Suit No. 162 of 1983 which was filed in the Court of Senior Sub Judge, Karnal, praying for a declaration that they were entitled to continue in possession as prospective vendees of the suit land and further praying for permanent injunction against respondent Nos. 1 and 2 by restraining them from dispossessing the appellants or interfering with their possession. The suit was dismissed by the trial court. In the first appeal that was filed by the appellants against the judgment and decree of the trial court, the appellants succeeded as the Additional District Judge vide his judgment and decree dated 12.11.1986 reversed the decree passed by the trial court and decreed the suit in favour of the appellants. Against that judgment, respondent No. 1 had filed the aforesaid RSA No. 1131 of 1987 which has been allowed by the High Court vide the impugned judgment dated

22.08.2006 thereby setting aside the order passed by the trial court.

3. The facts which are necessary for deciding the present appeal can be recapitulated at this stage.

4. One Birkha Singh was the owner of agricultural land to the extent of ? share of 361 kanals and 10 marlas. The particulars whereof are as under: -

"Land comprising in Khewat No. 365, Khatoni No. 728, Rect.No. 65, Khasra Nos. 16/2(1-13), 24(2-10), 25(8-0) Rectangle No. 66, Khasra No. 21/2(5-16), 22/1(1-8), Rectangle No.102 Khasra Nos. 1(7-11), 2(7-10), 3/1(4-9), 4/1(0-11), 6(3-7), 7(7-9), 8(7-12), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 13(7-10), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(7-12), 19(8-0)m 20(8-0), 21(8-0), 22(8-0), 23(7-12), 24(8-0), 25(8-0), Rectangle No. 103, Khasra Nos. 4(4-12), 5(8-0), 6(8-0), 7(6-4), 14(6-12), 15(8-0), 16(8-0), 17(5-16), 23/2(1-3), 24(7-11), 25(8-0), Rectangle No. 107, Khasra Nos. 3/2(1-4), 4/2(5-0), 5(7-16), 6/1(1-18), Rectangle No. 108, Khasra Nos. 1(7-11), 2(7-11), Rectangle No. 108, Khasra Nos. (8-0), 10(7-10), 11/2(2-8), 12(8-0), 19/2(2-16), 20(7-4), 3(7-4), 4(8-0), 5(8-0), 8(7-12), (56 Kittas), situated in village Gondar, Tehsil and District Karnal."

(hereinafter referred to as "suit land")

5. After the death of Birkha Singh, his widow Smt. Rumali and four minor daughters inherited the aforesaid half share in the suit land. Smt. Rumali executed a General Power of Attorney in favour of Kehar Singh (Respondent No.2 herein) giving him authority to act on her behalf as well as on behalf of her minor daughters to deal with the suit land of which she and her minor daughters were owners. On the basis of this Power of Attorney, respondent No. 2 entered into lease deed dated 03.07.1965 of this suit land in favour of one Shri Santokh Singh, predecessor-in-interest of appellant Nos. 4 to 11.

6. According to the appellants, respondent No. 2, thereafter, (during subsistence of the said lease deed) entered into sale deed dated 02.05.1966 for the sale of the suit land in favour of appellant Nos. 1, 2 and 3 and Santokh Singh, predecessor-in-interest of appellant Nos. 4 to 11. It is the further case of the appellants that the said factum of the sale deed was duly scribed on appropriately valued stamp paper and also signed and witnessed by the parties. It is also their case that the entire sale consideration of Rs. 9000/- was paid and pursuant thereto the appellants were put in possession. However, admittedly this sale deed was not registered. Though the appellants have their version about the same inasmuch as, according to them, the parties had gone to the office of the Sub-Registrar for the registration of the said sale deed on 04.05.1966 when Power of Attorney holder-respondent No. 2 had gone there in connection with the registration of the sale deed in his favour for a land which he had got from one Lachmann Singh but respondent No. 2 avoided to execute the sale deed on some pretext, though on that date he had received the consideration of Rs. 9,000/-. On the other hand, the version of respondent No. 2 is that no such sale consideration was ever paid and the appellants were not present in the office of

the Sub-Registrar for registration of the said sale deed on 04.05.1996 or any time thereafter, as no such document was executed.

7. It transpires from the record that respondent No. 1 herein viz., Shri Manga Singh had entered into the sale deed dated 11.02.1971 in respect of the same suit land of which sale deed was executed in his favour for a consideration of Rs. 90,000/- and the said document was duly registered on 15.02.1971. On the basis of this sale deed, respondent No. 1 claimed that he had become the owner of the land in question. Since the land is an agricultural land governed by the Punjab Land Revenue Act, on the basis of the said sale deed, respondent No. 1 filed an application under the provisions of the Punjab Land Revenue Act seeking partition of the land measuring 361 Kanals and 10 marlas. As pointed out above, the said land was co-owned by Birkha Singh and the other co-owner was Manga Singh. Birkha Singh had half share in the said 361 Kanals and 10 marlas which half share was bought by Manga Singh on the basis of sale deed dated 15.02.1971. It is for this reason, he sought partition of the land and the application was filed before the Revenue Officer. According to the appellants, they had purchased other half share of the suit land which belonged to Manga Singh from him vide sale deed dated 30.01.1969 and therefore, they were now in possession of the entire land since then. The further case of the appellants is that when respondent No. 1 applied for partition of the suit land, only then the appellants came to know that the half share which belonged to Smt. Rumali and her daughters and was sold to them on 02.05.1966 had again been sold by respondent No. 2 dishonestly and mischievously to Manga Singh. On these pleadings, the appellants filed Civil Suit No. 162 of 1985 in the court of Senior Sub Judge, Karnal, with the prayers already indicated above.

8. Respondent Nos. 1 and 2 contested the said suit. The defence put by respondent No. 2 was that he had not sold the land in question on 02.05.1966 to the appellants as alleged by them. Respondent No. 1 pleaded that he was bona fide purchaser of the land which was not sold to any other person earlier.

9. Smt. Rumali and her four daughters were also impleaded as defendants in the suit. In the written statements filed, Smt. Rumali and her three daughters, however, accepted the averments made in the plaint filed by the appellants. They accepted that consideration of Rs. 9000/- was received from the appellants by respondent No. 2, their Power of Attorney holder, and handed over to them and the sale deed was executed.

10. The appellants in support of their case, examined few witnesses, notably among them Darbara Singh (PW-2) and Nidhan Singh (PW-4) who supported the case pleaded by the appellants asking that the consideration of Rs. 9000/- for the sale of the land in question was paid by the appellants to respondent No. 2 in their presence outside the office of the Sub-Registrar and the sale deed was also executed. They also testified on the same lines as stated in the plaint because of which the sale deed could not be registered as respondent No. 2 had refused to do the same by raising the plea that Tehsildar was insisting that the entire sale

consideration be paid before him. Respondent Nos. 1 and 2 led their evidences. Thereafter, the trial court heard the arguments and rendered judgment dated 17.09.1985 disbelieving the version of the appellants herein and dismissing their suit. Learned trial court, inter alia, held that the appellants were in possession only as lessees and not on the basis of purported sale deed dated 02.05.1966. He also reiterated the findings to the effect that sale consideration of Rs. 9000/- was not proved. Another finding recorded by him was that the appellants, in any case, were never ready and willing to perform their part of the contract and, thus, the provisions of Section 53A of the Transfer of Property Act (hereinafter referred to as "Act") were not applicable in the instant case.

11. In the appeal, the aforesaid findings were reversed by the learned Additional District Judge resulting into the grant of decree in favour of the appellants herein. The specific finding recorded was that the appellants were able to prove the sale consideration of Rs. 9000/-. It was also held that it is pursuant to the sale deed dated 02.05.1966 executed between the parties that the possession of the suit land was taken by the appellants from respondent No. 2. Learned Additional District Judge also held that joint written statement filed by respondent Nos. 1 and 2 showed that they acted in collusion. According to him, the conditions mentioned in Section 53A of the Act stood established and satisfied in the instant case and therefore, the appellants were entitled to the benefit thereof. On that basis, further findings given by the first appellate court was that respondent No. 1 was not a bona fide purchaser of the suit property. There was a dishonest sale by respondent No. 2 in favour of respondent No. 1 who are related to each other.

12. The High Court, while upturning the judgment of the Additional District Judge, has recorded the findings that there was no evidence led to the effect that sale consideration was proved; no part of the contract had been acted upon; agreement at best could be termed as agreement to sell; the appellant were not in possession as prospective vendees but only as lessees; and the appellants were not entitled to the benefit of Section 53A of the Act. The High Court has also held that respondent No.1 is a bona fide purchaser and, therefore, protected under Section 41 of the Act.

13. It is argued by Mr.H.P. Raval as well as Mr. Brijender Chahar, learned senior counsel appearing for the appellants, that the entire approach of the High Court is erroneous and, in fact, there is no question of law involved. The findings of the High Court pertained to findings of facts which was not the province of the High Court in exercise of its powers under Section 100 of the Code of Civil Procedure as the second appeal is maintainable only on substantial question of law. It is further submitted that the High Court re-appreciated the entire evidence and dislodged the well reasoned findings recorded by the first appellate court which was not permissible as the first appellate court was the last court insofar as the findings of fact are concerned.

14. To some extent, learned senior counsel for the appellants may be justified in

their submissions. However, we find that there is one question of law which categorically arose and is dealt with by the High Court in the impugned judgment and the decision thereon, as given by the High Court, is sufficient to dislodge the appellants.

15. From the facts narrated above, it becomes manifest that the purported sale deed dated 02.05.1966 was never registered and remained an unregistered document. Even as per the appellants, consideration for the suit land was Rs. 9000/-, i.e., more than Rs. 100. The transaction pertains to immovable property. Such a sale deed was compulsorily registrable under Section 17 of the Indian Registration Act. The consequence of non-registration are provided in Section 49 thereof. Such document cannot be led into evidence and no rights indicated in the said document can be pressed and claimed. The document can be seen only for collateral purposes. In the instant case, on the basis of the said document, the appellants are claiming ownership which cannot be countenanced. Thus, the appellants cannot claim that they had become owners of the suit land on the basis of document dated 02.05.1966. Insofar as rights claimed on the basis of Section 53A of the Act are concerned, that deals with only part-performance. It has been held by this Court in '*Ranchhoddas Chhaganlal v. Devaji Supdu Dorik*' [1977 (3) SCC 584] that the plea of Section 53A of the Act can be taken only in defence. It is a sword and not a shield. In the present case, suit was filed by the appellants and we are not dealing with a situation where suit is filed against the appellants and on the allegations of the said part-performance, their claim had to be their defence. In order to get the reliefs claimed by them, they were required to show their ownership in the suit land, in which attempt they have failed may be because of the reason that the sale deed in question on which they rely upon is an unregistered document.

16. In view of the aforesaid position in law, we could not go into the findings of facts either recorded by first appellate court or the High Court in the second appeal. The appeal fails and is dismissed on the aforesaid grounds.