

(1981) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4478 of 1976

Jangi

APPELLANT

Vs

The Board of Revenue, U.P. and Others

RESPONDENT

Date of Decision : 09-01-1981

Acts Referred:

Registration Act, 1908 — Section 47

Citation : AIR 1981 All 191 : (1981) RD 47

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : C.P. Srivastava, for the Appellant; Gajadhar Bhargava, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the petitioner has prayed for quashing the order of Sri P. C. Saxena, IAS, Member, Board of Revenue dated 26-4-1976 in Second Appeal No. 537 of 73-74 (District Jaunpur) Jangi v. Raia Ram.

2. Brief facts giving rise to the present writ petition are that Pheral was the tenure-holder of the disputed land. He executed a sale deed in favour of the plaintiffs-opposite parties on 21-9-1964 and he executed a sale deed in favour of the defendant petitioner on 15-9-1964, but the sale deed was registered on 23-10-1964. The contention of the plaintiff-respondents was that the defendant-petitioner had illegally trespassed over the disputed land, hence they had prayed for declaration and possession under Sections 229-B/209 of the U. P. Zamindari Abolition and Land Reforms Act.

3. The claim of the plaintiff-respondent was contested by the defendant-petitioner on the ground that his possession was lawful and he was not liable to ejectment as claimed in the plaintiffs' suit, and various other pleas were taken. All the revenue courts have negated the claim of the defendant-petitioner.

Aggrieved by their judgments the petitioner has approached this Court under Article 226 of the Constitution.

4. The learned counsel for the petitioner has contended before me that the second appellate court has patently erred in holding that the sale deed registered on 23-10-1964 in favour of the petitioner being subsequent sale deed is invalid. According to the learned counsel for the petitioner the sale deed in his favour was executed on 15-9-1964, hence after the registration it would relate back to the date of the execution and his possession cannot be termed as the possession of a trespasser and he could not be evicted from the disputed land at the instance of the plaintiff opposite parties.

5. The learned counsel for the contesting opposite parties has tried to refute the contentions raised on behalf of the petitioner and has justified the reasoning given by the second appellate court.

6. I have examined the contentions raised on behalf of the parties. It is proper to quote the following finding contained in paragraph 5 of the impugned judgment:--

"Under the Transfer of Property Act a sale transaction of the type of the instant case is not valid unless registration has been effected. The transaction in favour of Jangi must be deemed to have been completed on 23-10-1964 whereas in favour of plaintiffs on 21-9-1964. On this ground alone, the first sale deed must be held as legally valid and the (sic).

7. To my mind the second appellate court has not approached the problem from correct angle. In this connection it is necessary to mention the ruling reported in Mahadeo Singh Vs. Mian Din and Others, , wherein a learned single Judge of this court has held as below :-

"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 an 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. Neither death nor express revocation by the executant is a ground for refusing registration, if the other conditions are complied with."

8. In Chander Singh and Others Vs. Jamuna Prasad Singh and Others, a learned single Judge of that Court has also made the following observations:--

"In my opinion a sale is complete when a sale deed is executed by the vendor and the vendor has no right in law to rescind or revoke the sale, registration or

no registration. After a sale is completed by execution of a deed, registration comes as a matter of course and is not dependent upon the volition of the vendor. It can be brought about compulsorily in the event of refusal by the vendor to assent to the registration."

9. In 1973 R D 354: 1973 All LJ 412 Gayatri Prasad v Board of Revenue a Division Bench of this Court has observed in paragraph 17 of the judgment as below:--

"The subsequent transferee stands in no better position. The sale deed executed in her favour stood completely nullified and the title which it purported to pass stood defeated by the compulsory registration of the sale deed in favour of the plaintiff, because that deed had been executed earlier, and u/s 47 of the Registration Act, it operated to transfer title with effect from an earlier date. Of the two completed sale deeds the one which is earlier takes priority after registration."

(The emphasis is mine)

10. In view of the aforesaid rulings I think that the second appellate court has not examined the claim of the defendant-appellant from correct angle. It would be in the ends of justice to quash the impugned judgment and ask the second appellate court to examine the claim of the defendant-appellant in accordance with law.

11. In this connection it would be also necessary to mention the provisions of Section 47 of the Registration Act, 1908 which reads as below:--

"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."

12. Since the second appellate court has not addressed itself to the provisions of Section 47 of the Indian Registration Act, I think that it has not examined the claim of the defendant-petitioner from correct angle.

13. In the result, the writ petition succeeds and the impugned judgment of the second appellate court dated 26-4-1976 in Second Appeal No. 537 of 73-74 (District Jaunpur) Jangi, appellant v-Raja Ram, opposite parties, is hereby quashed, and the second appellate court is directed to decide the Second Appeal in the light of the observation made above. Parties are directed to bear their own costs.