
(2019) 03 UK CK 0130
In the Uttarakhand High Court
Case No : Second Appeal No. 38 Of 2019

Naruli Devi And Others

APPELLANT

Vs

Jeet Ram Alias Jaitram And Others

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, Order 7 Rule 3
Registration Act, 1908 — Section 17, 49
Uttar Pradesh Land Revenue Act, 1901 — Section 32, 32(a), 32(b), 32(c), 32(d),
33(3), 40, 41, 42, 44
Transfer Of Property Act, 1882 — Section 17

Citation : (2019) 03 UK CK 0130

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Sarvesh Agarwal, Bharat Bhushan Tewari

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This is plaintiffs' Second Appeal. An admitted position, which is reflected from the pleadings and the findings which has been recorded concurrently by both the Courts below, concurrently by their impugned judgements dated 19.12.2017 as rendered by Civil Judge (Senior Division), Ram Nagar, District Nainital in Original Suit No. 20 of 2013, Smt. Naruli Devi and others v. Jeet Ram and others. The said judgement, further on a challenge being given in a regular Civil Appeal, preferred under Section 96 of the Code of Civil Procedure by the plaintiffs (appellants herein) which was registered as Civil Appeal No. 8 of 2018, Smt. Naruli Devi and others v. Jeet Ram and others stood affirmed by the judgement dated 13.12.2018 which has also been put to challenge by the present plaintiffs/appellants.

2. The factual backdrop, as borne out from the records of the second appeal are that the late husband of the plaintiff No. 1 and father of the plaintiff Nos. 2 and 3

is said to have purchased 10 biswas of land from the defendant(s) over which admittedly he had raised a construction of his residential house. The said purchase, as reflected from the record is said to have been made as back as on 25.07.1977. So far as this purchase is concerned, pertaining to 10 biswas of land made on 25.07.1977 admittedly is a fact which is admitted by the defendants on the records of the case before the Court below, where they have admitted the fact that the plaintiffs are in possession of 10 biswas of land after the sale being made in their favour on 25.07.1977. Hence so far as 10 biswas land is concerned over which there exists construction of plaintiff, the defendants have got no right or concern over it, nor they are raising any type of claim over it.

3. In fact, now as the controversy boils down is with regards to the remaining part of the property which is subject matter of controversy in the suit in question which was a land having an area of 1 bigha, which was taken on mortgage by the predecessors of the plaintiff late Mr. Govind Ram, husband of the plaintiff on the payment of an advance of Rs. 800/- to the defendants. This mortgage which was created in favour of the plaintiffs was of 25.04.1977, admittedly, as per the evidence on record i.e. the document which was creating a right in relation to an immovable property, which according to the finding which has been recorded by both the Courts below, it was mandatorily required to be registered under Section 17 of the Registration Act, which was not shown or proved to have been registered under the Act, hence it wouldn't have transferred a valid legal title.

4. Besides this, there was another piece of land having an area of 2 bighas, which the plaintiffs contend that it was sold to them on 14.06.1976, by Fakram on a payment of Rs. 3500/- This theory of the purchase of 2 bighas of land too was not accepted by both the Courts below on the same legal pretext that said document too since once again was creating a right in relation to an immovable property since not being registered, it cannot be considered and taken as to be a proof of a title vested with the plaintiffs. Its registration too was also never proved by the plaintiff.

5. The argument which has been extended by the learned counsel for the plaintiffs/appellants is that both the judgements cannot be sustained for the reason that both the Courts below have erred at law in failing to consider the factum of possession, which according to the plaintiffs he contends that the aforesaid dispute portion of land of total 3 bighas remained in his possession because of the failure on part of the defendants to get the mortgage recorded despite of their best efforts which they have pleaded in their written statement.

6. As far as the aspect pertaining to the non registration of the mortgage deed of 25.04.1977 and pertaining to the possession being granted to the plaintiffs on the basis of alleged sale said to the plaintiff which have been made on 14.06.1976. The defendants in support of their case had produced paper No. 27 (ga) which was the khatauni which is admittedly a legally recognized piece of a document to show that the right over the property stood vested with the defendants and secondly, the paper No. 28 (ga) which is relevant to be

considered to answer the argument of the appellants is with regard to the claim of possession, which could be Paper No. 28 (ga), admittedly, was khasra pertaining to Gram Gaujani, Tehsil Ramngar, District Nainital, which related to the property in dispute i.e. 1 bigha and 3 bighas of land as referred above, which was subject matter of the mortgage of 25.04.1977 and the sale deed dated 14.06.1976.

7. The factum of the entries made in the khasra paper No. 28 (ga) was not a disputed question nor which was incontest by the plaintiffs before the Courts below nor they have questioned the validity of document or its entries of possession of the defendants at any stage of proceedings before the competent court. Consequently, the learned trial Court, while deciding issue No. 1 pertaining to the question with regard to the title and possession has held that in view of the assertions made in the pleadings and the evidences led by the plaintiffs by placing on record paper No. 8 ga/5 to paper No. 8 ga/7 i.e. paper pertaining to the mortgage dated 25.04.1977 and paper no. 8 ga/8 and paper No. 8 ga/10 dated 14.06.1976 document in relation to the alleged sale of the land.

8. The argument extended by the learned counsel for the appellant has also to be visualized in the light of the provisions contained under Section 44 of the Uttar Pradesh Land Revenue Act, 1901, which reads as under:-

"44. Presumption as to entries; and decisions binding on Revenue Courts. - All entries in the annual register made under sub-section (3) of Section 33 shall be presumed to be true until the contrary is proved; and subject to the provisions of sub -section (3) of Section 40, all decisions under Section 40, 41 and 42 shall be binding on all Revenue Courts in respect of the subject -matter of the dispute; but no such entry or decision shall affect the right of any person to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers prescribed by clauses (a) to (d) of Section 32."

9. In fact, as per the aforesaid provision of law, once the revenue entries made in the revenue records, which in the instant case happens to be by way of paper No. 27 (ga) i.e. the Khatauni and paper No. 28 (ga), which is the khasra, a document of possession, since both these entries were not put to challenge nor has been set aside, thus the presumption could be drawn from the provisions contained under Section 44 of the Land Revenue Act that the these entries are to be presumed to be true and if that be so, then admittedly the factum of possession of defendants/respondents stood established.

10. These two documents, admittedly, as per the findings concurrently recorded by both the Courts below were not registered in accordance with the provisions contained in the Registration Act and hence the bar as created by Section 49 of the Registration Act, 1908, will come into play and the same cannot be treated as to be a valid transfer of right in pursuance of the provisions contained under the Transfer of Properties Act.

11. In order to meet out the argument extended by the learned counsel for the

plaintiffs/appellants in relation to the findings which has been recorded by both the Courts below regarding the effect of Section 49 of the Registration Act, 1908, it would be necessary to refer to Section 49 of the Act which reads as under:-

"49. Effect of non-registration of documents required to be registered.-No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

12. It rather provides that no documents of title dealing with an immovable property which confers a right or title and which is mandatorily required to be registered under Section 17 of the Act will confer any power or right to the person in whose favour the said document is said to have been executed. Even the case at hand do not fall to be within the exception clause also as provided under Section 49 of the Act which carves out an exception that an unregistered document, though can be taken into consideration as an evidence in a suit of specific performance. Hence, no right was created in favour of the defendants in pursuance of the documents on which the reliance was placed by them.

13. Considering the concurrent findings of facts as recorded in relation thereto and also the finding recorded by the appellate Court to the effect that in order to prove the possession in relation to the property which the plaintiffs claim to be in possession in pursuance of the mortgage dated 25.04.1977 and the so-called purchase of 2 bighas of land made on 14.06.1976, the plaintiffs have utterly failed to prove its identification of the property, its title and possession and hence there was a non-compliance of the provisions contained under Order 7 Rule 3 of the Code of Civil Procedure.

14. In view of the concurrent findings of facts as recorded by both the Courts below, regarding title and possession of the plaintiffs, this Court is of the view that there is no apparent error which has been apparently committed by both the Courts below in accordance to the findings because for the grant of a decree of permanent injunction, the plaintiffs have not been able to prove their undisputed title in relation to the 3 bighas of land which was the subject matter of mortgage dated 25.04.1977 and the sale made on 14.06.1977. Hence, as such the argument pertaining to the possession and its impact since stood concurrently decided against the plaintiffs by the interpretation given to the entries made in khasra which is a document of possession, this Court is of the view that the Second Appeal is concluded by concurrent finding of facts which do not call for any interference by this Court, hence this Second appeal fails and is accordingly dismissed.

15. However, there would be no order as to costs.