
(2016) 02 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil Writ Petition No. 927 of 2016.

Smt. Saroj and Others

APPELLANT

Vs

Smt. Kiran Kanwar and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Registration Act, 1908 — Section 17

Citation : (2016) 2 DNJ 581

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Govind Suthar, Advocate, for the Appellant; Shardul Bishnoi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J. - This writ petition has been filed by the petitioners aggrieved against the order dated 8.1.2016 passed by the trial court, whereby the application filed by the respondents challenging the admissibility of the agreement to sale dated 15.3.1999 has been accepted by the trial court.

2. The petitioners filed a suit for specific performance of contract dated 15.3.1999. During the recording of evidence of plaintiff - Smt. Saroj, an application was filed by the respondents, inter-alia, contending that the agreement to sale dated 15.3.1999 was compulsorily registrable and as the same has not been got registered, the same is inadmissible in evidence and therefore, cannot be marked as exhibit.

3. A response was filed by the petitioners-plaintiffs, inter-alia, indicating that the plaintiffs are in possession of the land in question, the suit has been filed under the provisions of Specific Relief Act, 1963 ("the SR Act") and the Hon'ble Supreme Court and High Court have held that document can be sent to the Sub-Registrar for registration and determination of deficient stamp duty and therefore, the application is liable to be rejected.

4. After hearing the parties, the trial court passed the following order :-

"mHk; i{kksa ds rdksZa ij euu fd;k x;k ,oa lacaf/kr fof/k ,oa i=koyh dk v/;;u fd;k x;kA bl laca/k esa ekuuh; mPpre U;k;ky; }kjk ;g loZekU; fl)kUr izfrikfnr fd;k x;k gS viathd`r bdjkjukek lk{; esa xzkg; ugha gSA vr% ekuuh; mPpre U;k;ky; }kjk izfrikfnr fl)kUr dh jks"kuh esa vf/koDrk izfrokn dh vkifRr Lohdkj fd;k tkus ;ksX; gSA vr% izfrokn dk ;g vkifRr vkosnu Lohdkj fd;k tkdj vf/koDrk okfnuh dks viathd`r bdjkjukek ij izn"kZ Mkyus dh vuqefr iznku ugha dh tkrh gSA"

5. A perusal of the order of the trial court reveals that the trial court without even considering and/or referring to any judgment of the Hon"ble Supreme Court or this Court, based on its assumption has accepted the application that an unregistered agreement to sale cannot be admitted in evidence in a wholly cursory manner, which approach cannot be approved.

6. The trial court has not even cared to look into the provisions of Section 49 of the Registration Act, 1908 ("the Act"), which reads as under:-

"Section 49. Effect of non-registration of documents required to be registered.- No document required by section 17 or by any provision of the Transfer of Property Act, 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:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument."

(emphasis supplied)

7. A bare reading of the provisions of Section 49 of the Act would have revealed that an unregistered document affecting immovable property and required by the Act or the Transfer of Property Act to be registered can be received as evidence of a contract in a suit for specific performance and admittedly, the present suit is a suit for specific performance of contract.

8. A look at the document dated 15.3.1999 reveals that under the document, the possession has been handed over to the petitioners. Section 17(f) of the Act provides for compulsory registration of such an agreement. However, as noticed herein above, as the suit pertains to specific performance, the fact that the agreement has not been registered, is of no consequence.

9. Learned counsel for the respondents relied on judgment in the case of Smt. Indu v. Narsingh Das and Ors., 2013 (5) WLC (Raj.) 615.

10. However, the said judgment has no application to the facts of the present case as the suit in the case of Smt. Indu pertained to possession and document was a relinquishment deed and therefore, the reliance is wholly misplaced.

11. In view of the above discussion, the writ petition is allowed. The order dated 08.01.2016 passed by the trial court is quashed and set-aside. The application filed by the respondents-defendants is dismissed. No order as to costs.