(1978) 01 CAL CK 0057

In the Calcutta High Court

Case No : A.F.A.D. No. 2248 of 1965

State of West Bengal APPELLANT

Vs

Nimai Chand Kundu RESPONDENT

Date of Decision : 30-01-1978

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26F, 59, 60, 61, 61(1)
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 54
West Bengal Estates Acquisition Act, 1953 — Section 5A

Citation : AIR 1978 Cal 347 : 82 CWN 963

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Amar Nath Banerjee and Amal Kumar Basu Chowdhury, for the Appellant; Saradindu Samanta, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal from a decree of reversal. The plaintiff respondent''s case is that he acquired by purchase from the recorded owners the suit lands in raiyati sthitiban interest measuring 11.97 acres by a registered kobala dated April 9, 1956 which was registered on Aug. 8, 1956. The suit lands did not vest in the State as the total area was less than the ceiling prescribed under the West Bengal Estates Acquisition Act, 1953. He could not be present to have his name recorded in the record of rights at the time of survey, as the suit lands were far away from his home and as a result the names of his vendors were recorded therein in respect of the suit lands, who did not, as obviously they could not, retain the lands, The State of West Bengal treated the lands as vested and threatened to issue rent receipts to the plaintiff''s bhagchasis of the said lands. The plaintiff thereupon instituted the suit praying for confirmation of his possession on declaration of his title and for injunction restraining the State from interfering with his possession.

2. The State contested the suit by filing a written statement. It was stated that

the plaintiff''s purchase deed was a collusive, sham and paper transaction made for the purpose of illegal retention of lands. In any event the lands not having been retained by the owners had vested in the State which was thus entitled to take possession thereof u/s 10(2). It was further stated that at the time of vesting the plaintiff acquired no title to the lands by his kobala, and he had no cause of action in the suit.

3. On a trial on evidence; the learned Munsif held that as the deed was not registered at the time of vesting but on a subsequent date, the plaintiff did not acquire any title when the lands vested in the State, The suit was accordingly dismissed.

4. On appeal the appellate court held that though the registration took place after vesting, it took effect from the date of execution. So that the plaintiff had acquired his vendors'' interest with effect from the date of execution of his kobala and accordingly there was no question or occasion for vesting the lands in the State. The appeal was accordingly allowed and the plaintiffs suit was decreed. This appeal is by the State against this decision.

5. Mr. Banerjee appearing for the State referred to Section 54 of the T. P. Act, 1882 which provides that in the case of a tangible Immovable property of the value of one hundred rupees or upwards, the transfer can only be made by a registered instrument. No transfer of such land is effective without registration and it was accordingly contended that as the date of vesting of raiyati interest (April 14, 1956) the deed of sale was not admittedly registered or even presented for registration, no title in suit lands passed to the plaintiff on the material date. As a corollary, it was obvious that the plaintiff had no locus standi to institute the suit in absence of his acquisition of title to the suit lands. It was further contended relying on authorities that Section 47 of the Registration Act, 1908 applies only in cases where there is a competition between two or more documents. In considering which document should prevail over the other document or documents, the effective date will be the date of execution and not the date of registration of such documents. The section hag no application when there is statutory vesting of interests of intermediaries or raiyats by operation of law and an unregistered document will be completely ineffective against vesting while the State was not claiming through the vendor.

6. Mr. Samanta on the other hand contended that the provisions of Section 47 of the Registration Act are wholly applicable to all transactions as are thereby affected and it can be said to apply only in case of a conflict between two or more documents.

7. Both parties relied on various authorities which will be presently considered.

8. In Ponnayya v. Muttu ILR 1894 Mad 146, it was held that a registered transfer without delivery of possession will pass any interest in land, and the registration constitutes sufficient delivery of the deed to pass such interest otherwise the object of registration would be defeated, the object being to let all the world

know in whom the title to property lies. In this case the court upheld the trial court''s decision cancelling the second sale deed executed on a later date. In Ganesh Prasad v. Bhaiyalal Gillelal AIR 1938 Nag 253 the court held that in the case of a sale the date on which the transfer takes effect is the date of the instrument and not the date of registration of the instrument. If the deed of sale on the date of execution was a nullity on account of absence of permission of the Collector the deed will not be valid even if on the date of registration no such permission was necessary as the property ceased to be in the management of the Collector,

9. In AIR 1927 42 (Privy Council) the Privy Council approved the view in Atmaram Sakharam Kalkye Vs. Vaman Janardan Kashelikar, to the effect that when the donor of Immovable property has handed over to the donee an instrument of gift duly executed and attested and the gift has been accepted by the donee, the donor has no power to revoke it prior to the registration of the instrument. The Privy Council further observed that they were unable to see how the provision of Section 123 of the Transfer of Property Act could be reconciled with Section 47 of the Registration Act except upon the view that while registration is a necessary solemnity in order to the enforcement of a gift of Immovable property, it does not suspend the gift until registration actually takes place. Further the registration does not depend upon the consent of the donor and neither death nor an express revocation by the donor is a ground for refusing registration if other conditions are complied with

10. In Gobardhan Bar Vs. Gunadhar Bar, in a pre-emption case, it was noted that the new Section 26-F which gave the right of pre-emption to co-sharer was not retrospective. It was held that in a case where the kobala was executed when the old section was in force but it was registered after the new section had come into operation, the new section would apply and the right of preemption would be not in the landlord but in the cosharer tenants, as the material date is the data of completion of transfer by registration.

11. This Court in Gosto Behari Das Vs. Smt. Rajabala Dei and Another, held that Section 47 of the Registration Act has been construed as limited to successive transfers of the same property and not to different properties or where the contest is with a third party. When there is a competition between two documents executed on different dates but concerning different properties or with third parties each document should be taken as taking effect from the date of its registration, Section 26-F of the Bengal Tenancy Act justified the view that a person claiming to pre-empt on the basis of himself having become a cosharer by a recent purchase, can do so only after his own document has been registered. Chakravartti, C. J. speaking for the court however noted that Section 47 in terms is sufficiently wide to cover transfers of different properties, as well against third parties and difficulty so created by the language of the section remains still unresolved.

12. In Basant Lal Vs. Bala Misra and Others, , the Court held that a purchaser

from an auction purchaser was a necessary party in sale set aside proceedings even though at the material time, his purchase deed though executed was not registered since, as soon as the registration was completed the document took effect from date of execution,

13. Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , the Supreme Court by a majority judgment held in a pre-emption matter where the Muslim law of preemption prevailed, that registration under the Registration Act is not complete till the document to be registered has been copied out in the records of the Registration office as provided in Section 61 of that Act. Section 47 has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one for sale. The Court further held that, since pre-emption depended on completion of sale and demand thereafter, it could not be said to have been completed earlier by reason of Section 47 of the Registration Ad though thereunder the instrument commences to operate from earlier date.

14. In K.J. Nathan Vs. S.V. Maruty Reddy and Others, it was held that a mortgage executed on July 5, 1947 and registered on July 22, 1948 took effect from date of execution and prevailed over a subsequent mortgage created on Oct. 10, 1947.

15. The latest decision is in the case of Purtabpore Company Ltd., etc. Vs. The State of Bihar and Others, where certain sale deeds were executed and registered by the company during Aug. 8, 1959 to Oct. 6, 1959 but the sale deeds were not copied out by the Registration office till Dec. 1 and 9, 1959. In the meantime, Sub-section (1) (iii) of Section 5 was incorporated in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 by the amendment Act of 1973. The Company was given notice under provisions thereof as to why the aforesaid transfers which were effected after Oct. 22, 1959, be not annulled and the transferred lands be not treated as the lands belonging to the company for the purpose of fixation of the ceiling area under the Act. It may be mentioned here that under Clause (iii) of Section 5 (1), the Collector has been given power to make enquiries in respect of any transfer of land by a landholder made after Oct. 22, 1959 and if he is satisfied that the transfer has been made with the object of defeating the provisions of the Act or retaining lands in excess of the ceiling area, he may after giving reasonable notice to parties concerned and hearing them, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purpose of determining the ceiling area he may hold under this Section. The Court held, relying on authorities, that the transfer is effected as between the transferor and the transferee on the date the document is executed, full consideration is paid and the document is handed over to the purchaser or filed for registration and execution is admitted and the rest of the formalities are for the registering authority in which parties have no hand, and accordingly the transfer must be held to have been made before Oct. 22, 1959.

16. The ratio of the decisions cited above indicates the following propositions of law though with reference to particular cases.

(i) Provisions of Section 47 of the Registration Act will apply where the successive transfers relate to the same property and there is no contest against any third party.

(ii) When the right of pre-emption as in Muslim law or u/s 26-F of the Bengal Tenancy Act, arises only out of a valid, complete and bona fide sale, provisions of Section 61 and not of Section 47, will be attracted. The registration of the document, which is essential to complete a valid sale, will be complete when on presentation for registration of the document and admission of execution thereof, the formalities enjoined under Sections 59, 60 and 61(1) are complied with.

(iii) In cases where after the date of execution of a document of transfer but before its registration, there are subsequent deeds of transfer in respect of the same property, such documents even if registered earlier than the transfer deed referred to above, will not prevail over such earlier deed which takes effect from its execution.

(iv) Similarly on the execution of a transfer deed in respect of a property but before its registration, there is an attachment of the same property, and the transfer deed is subsequently registered attachment will not prevail over the said deed which also takes effect from its execution.

(v) A deed of gift duly executed and accepted by the donee cannot be revoked by the donor as absence of registration during the permissible period does not suspend the gift.

17. In Section 3 of the T. P. Act "registered" means registered in a Province under the law for the time being in force regulating the registration of documents. u/s 54, sale has been defined as a transfer of ownership and can only be effected in respect of a tangible Immovable property of a value of rupees one hundred and upwards by a registered instrument. Similar provisions for registration have been made in respect of mortgages, leases, exchanges, gifts and actionable claims in the said Act. The provisions for registration are comprised in the Indian Registration Act 1908 which is operative in this State. The position accordingly is that the provisions of these Acts are complementary and must be given their full effect in determining the rights of parties in respect of transactions contemplated under the T. P. Act. Section 47 of the Registration Act provides as follows :--

"Section 47. 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."

18. These provisions are clear and unambiguous and there can be no difficulty in holding that in so far as documents relating to tangible Immovable property are concerned in respect of transactions contemplated under the Transfer of Property Act. where registration is compulsory such documents will be operative from the

date of execution and not from the date of completion of registration. This statutory provision is consistent, with the basic concept of ownership of property, as otherwise, since some time is hound to take place between the execution and registration of documents, unless such provision is there, there will be an unsettled state of affairs affecting title and rights to property, apart from fraud and deceit the absence of such provision will inevitably lead to. It may be that by specific provisions of other statutes or the impact thereof, the operation and effect of Section 47 or other provisions of the statutes we are concerned with are modified or varied but until so done, the provisions of Section 47 must have full operation and effect.

19. The difficulty created by the language of Section 47 disappears when it is treated as limited to successive transfers of the same property as observed in Gosto Behari Das Vs. Smt. Rajabala Dei and Another, . But the Court noted that the language of Section 47 is sufficiently wide to cover different properties as well. Again it was observed if the principle of the section is to apply as between the vendor and the vendee, there must be good reason as to why it should not apply as against third parties. In this context it will be of interest to know the view contained in the minority judgment in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, which is Quoted in some detail (at p. 1751) : --

"The principles underlying Sections 61(2) and 47 are not divergent. It is not as if, that any delay by the registering officer which might take place owing to the pressure of work in his office or for other reason, has any effect on the rights of parties, quod their property or the time from when the deed operates, or as regards the effectiveness of the transaction, or the priority of transactions inter se. It is not as if, documents executed on different dates, the parties intending them to operate at different times, have their intentions modified, if not nullified by the action or inaction of the registering officer, or any delay that might take place in his office, A contention that though the Muslim law of sale is superseded by the T. P. Act and the Registration Act, but yet the provision contained in Section 47 of the Registration Act is inapplicable to determine when a sale effected by a registered instrument should be complete could not be sustained on any principle or logic, or of course on any rule of interpretation of statutes.

In our opinion no distinction is possible to be drawn between a sale which is effective and one which is complete since they are merely different forms of expressing the same concept and for the same reason between the time from when a sale becomes effective and when it should be held to be complete. As under Muslim law the talabs have to be performed only immediately after the preemptor receives information of the sale, the view we take of the applicability of Section 47 of the Registration Act, introduces no element of hardship in the exercise of the option. We are, therefore, clearly of the opinion that the time when the sale he-comes complete so as to entitle the preemptor to perform the talabs should be determined by the application of the principle of intention laid down in Section 47 of the Registration Act which is as much a part of the positive law governing the right of pre-emption as the provision of Section 54 of the T. P. Act which requires a registered instrument to effect a sale which gives rise to a right of pre-emption.

If, therefore, Section 47 of the Registration Act should apply to determine the time from which the registered document should have effect or, in other words, the time from which the sale should be held to be complete, the intention of the parties would be the crucial and only test. That has to be gathered by reference to the document itself read in the light of the surrounding circumstances, with however a proviso that if the document were clear and its terms explicit, no evidence to contradict them would be admissible."

20. The difficulty referred to in Gosto Behari Das Vs. Smt. Rajabala Dei and Another, would possibly find a solution if the interpretation set out above had been approved by the Supreme Court which however is not the position.

21. In the case before us, no such question arises as the same property is involved in the appeal and there is no question of completion of sale as in preemption cases. u/s 8 of the T. P. Act unless a different intention is expressed or implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property with all legal incidents thereof. It is no party''s case before us that any such intention, express or implied, was there in the impugned transfer deed. Of course the deed bears the date of April 9, 1956 and it was subject to scrutiny u/s 5-A of the West Bengal Estates Acquisition Act, 1953, This section provides inter alia for cancellation of any transfer made between May 5, 1953 to the date of vesting if it was not bona fide or made with a view to defeating the purposes of Act, namely for retention of lands beyond the ceiling by sham or benami transfers or otherwise. No steps appear to have been taken in respect of the impugned transfer as the case of the State is that in view of the vesting of interest of raiyats before the registration of the document though executed before vesting. There could be no effective transfer of interest of raiyats in the disputed lands.

22. The language of Section 47 Is of widest amplitude and it has been held to apply to subsequent transfers of the same property as also on attachments on such property. On a parity of reasoning it will apply to a case where a Receiver is appointed of the properties belonging to the transferor when his properties and rights therein vest in such Receiver as if he is the owner himself. Same will be the position in respect of liquidator of a company in whom the company''s property and rights therein vest when the Company goes into liquidation under the provisions of the Companies Act, 1956 except for fraudulent or other transfers. There can be no exception in law to vesting of interest of raiyats and intermediaries in the State under the provisions of the statute as vesting is nothing different in effect, from the transfer or devolution of the interest of the raiyats and intermediaries in the State by operation of law in respect of the same properties and it is not the requirement of the statute either that in respect of such transfer by a raiyat or intermediary the registration of the connected

document must be complete as held in the pre-emption cases before the vesting takes place. In this view, the transfer made by the vendor of the respondent prior to the date of vesting will not be subject to vesting, though the registration was effected later as the vendors had no longer any interest in the property which could be vested in the State on the date of vesting.

23. The appeal accordingly fails and is dismissed, with any order as to costs in the circumstances.

