(2015) 08 AHC CK 0077

In the Allahabad High Court

Case No : First Appeal From Order No. 2222 of 2015

Vinod Kumar and Others — APPELLANT

Vs

Sudha Land Ventures and Homes Pvt. Ltd. — RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Registration Act, 1908 — Section 17, 49
Specific Relief Act, 1963 — Section 17, 38, 41, 41(h)
Transfer of Property Act, 1882 — Section 53A

Citation : (2015) 8 ADJ 387 : (2016) 2 ALJ 254 : (2015) 113 ALR 338 : (2015) 5 AWC 5208 : (2016) 130 RD 294

Hon'ble Judges : H.G. Ramesh, J;S.B. Singh, J

Bench : Division Bench

Advocate : Pushkar Srivastava and Arvind Srivastava, for the Appellant; Ankit Saran, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.B. Singh, J—Heard learned counsel for the parties.

2. This first appeal from order is directed by the appellants/defendants against order dated 7.8.2015 by Civil Judge (Senior Division), Jhansi passed in Original Suit No. 452 of 2014 (Sudha Land Ventures and Homes Private Limited Versus Vinod Kumar and others), whereby on a application under Order XXXIX Rule 1 Code of Civil Procedure has been allowed and the appellants were restrained from interfering in the possession of the plaintiff-respondent.

3. The facts leading to the filing of appeal are narrated in nutshell as follows:

"Sudha Land Ventures and Homes Private Limited (in short, respondent-plaintiff) filed aforesaid suit with the averment that late Ghanshyam, father of appellant Nos. 1 to 3 and Smt. Shanti Devi, their mother executed unregistered sale deed on 21.2.2014 in respect of agricultural plot Nos. 1303 and 1299 of Khata No. 00089 to the extent of half share for the consideration of Rs. 7,92,000/-. Late

Ghanshyam also executed another sale deed in respect of agricultural plot Nos. 1304, 1305, 718/2, 719M, 1298 and 1297 ((3/4 share)), Khasra Nos. 00039 and 00026 for sale consideration of Rs. 18,72,000/-. Aforesaid two sale deeds were presented for registration before Sub-Registrar on 26.3.2014. Late Ghanshyam and Smt. Shanti Devi, left the registry office under impression that they will come back after paying call of nature."

4. The appellants filed their written statement and denied the execution of two sale deeds. They stated that late Ghanshyam was a kidney patient and he just received Rs. 10,00,000/- as loan to meet out expenses of treatment and under the pressure of respondent they signed some blank papers under impression that same may be used for collateral purpose as security to the loan so received. On 26.3.2014, they came to know that respondent is fraudulently trying to get registered collateral unregistered security deeds as sale deeds.

5. An application paper No. 6-C under Order XXXIX Rule 1 of C.P.C. was moved by the respondent for grant of temporary injunction and the appellants filed objection paper No. 22-C and 38-C. After hearing learned counsel for the parties, learned Civil Judge (Senior Division), Jhansi opined that two unregistered sale deeds may be read in evidence for collateral purposes. He further opined that possession of aforesaid plots was already delivered through unregistered sale deeds on their date of execution i.e.21.2.2014 and 22.2.2014 and, therefore, respondent being in possession of plots has prima facie made out a case for temporary injunction. With these observations, the impugned order dated 7.8.2015 was passed restraining the appellants to interfere in possession of respondent on aforesaid plots.

6. Aggrieved by the impugned order, the appellants filed this appeal.

7. Learned counsel for the appellants contends that in the suit respondent has prayed permanent injunction restraining the appellants from interfering in possession as well as for mandatory injunction directing the appellants to appear in the office of Sub-Registrar for registration of two sale deeds dated 21.2.2014 and 22.2.2014 and as such without relief of declaration the suit is not maintainable. Learned trial judge has committed palpable error in passing the impugned order on temporary injunction application.

8. Per contra, learned counsel for the respondent submit that sale consideration has been paid by respondent and received by the appellants. Apart from it, he states that possession has been delivered on the date of execution of sale deeds and in case the appellants are not restrained, the respondent will suffer irreparable loss.

9. In the background of aforesaid facts, the point which emerges for consideration is whether suit for permanent and mandatory injunctions can be decreed on the basis of unregistered sale deeds?

10. Section 17 of Registration Act, 1908 reads as under:

"17. Documents of which registration is compulsory;

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:--

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this Sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of Sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

11. Section 49 of Registration Act gives teeth to Section 17 by providing the effect of non-registration of document required to be registered.

12. Section 49 reads as under:

"49. Effect of non-registration of documents required to be registered:

No document required by section 17 or by any provisio 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 part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

13. By way of State Amendment w.e.f. 1.2.1977 in the proviso the words "as evidence of contract in suit for specific performance under Chapter II of Specific Relief Act, 1877 has been omitted".

14. In the case of K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., (2008) 5 CTC 260 : (2008) 9 JT 12 : (2008) 8 SCC 564 , the Hon''ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner''s Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

15. The Apex Court culled out the following principles:

1. "A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

16. The word, "collateral transaction" has been interpreted as transaction in itself not required to be effected by a registered document, i.e. a transaction creating any right, title or interest in immovable property of the value of Rs. 100/- and onwards.

17. Learned counsel for the respondent contends that even if the two sale deeds

were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned counsel tried to justify the impugned order.

18. This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.

19. In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State Amendment in Order XXXIX Rule 2, Sub-rule (2) proviso (a) C.P.C., a bar has been created w.e.f. 1.2.1977.

20. In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment:

"Provided that no such injunction shall be granted -

(a) where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Relief Act, 1963."

21. A bare perusal of Order XXXIX Rule 2, Sub-rule (2) proviso (a) C.P.C. reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of Sections 38 and 41 of Specific Relief Act, 1963.

22. Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and Section 41 deals with provisions when injunction can be refused.

23. Provisions of Section 41 of Specific Relief Act is as under:

"41. Injunction when refused.--An injunction cannot be granted-

"(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(I) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter."

24. A perusal of provisions of Section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction.

25. Further in the case of Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, AIR 1999 SC 1125 : (1999) 1 CTC 710 : (1999) 2 JT 136 : (1999) 1 SCALE 689 : (1999) 3 SCC 161 : (1999) 2 UJ 904 : (1999) AIRSCW 780 : (1999) 2 Supreme 436 , Hon''ble Apex Court has held that if plaintiff has proved possessory right and also permissive possession then the plaintiff would be entitled to temporary injunction. Para 12 of aforesaid judgement reads as under:

"12. A reading of the judgement of the trial Court shows that through the agreement of sale executed in favour of the plaintiff was, according to the said Court, invalid because of its being in breach of the Tenancy act still, in view of the compromise decree and the subsequent admission of Defendants 1 to 14 and report of the Court Commissioner in Special Suit No. 293 of 1996, the trial court held that the plaintiff was in "permissive possession" as this was accepted by the owners. It held that a possessory right was sufficient to permit the plaintiff to have an order of temporary injunction in his favour."

26. In appeal before us, execution of two unregistered sale deeds is admitted to the extent that signature of late Ghanshyam and Smt. Shanti Devi were obtained under the impression that it is collateral security document against the advancement of Rs. 10,00,000/- as loan as late Ghanshyam was a kidney patient. A huge amount was spent on his treatment and he was in dire need of money to meet out further treatment expenses. Late Ghanshyam and Smt. Shanti Devi never admitted execution of sale deed in the mode and manner as averred by the respondent-plaintiff in the plaint and further the appellants have not admitted the delivery of possession of plots in suit. Cumulative effect of provisions of Sections 17 and 49 of Registration Act as well as proviso (a) of State Amendment in Order XXXIX Rule 2 Sub-rule (2) C.P.C., suit for permanent as well as specific performance could not be decreed as no title passes in favour

of vendee in absence of registration of sale deed/agreement to sale. Aforesaid statutory provision creates bar on the grant of permanent injunction on the basis of unregistered sale deed or agreement to sell.

27. In view of above, the impugned order dated 7.8.2015 has no legs to stand and deserves to be set aside.

28. The appeal is allowed. The impugned order dated 7.8.2015 passed by Civil Judge (Senior Division), Jhansi in Original Suit No. 452 of 2014 (Sudha Land Ventures and Homes Private Limited Versus Vinod Kumar and others) is set aside.

29. No order as to costs of this appeal.

