

SUPREME COURT OF INDIA REPORTABLE

Bench: Justices Vikram Nath and Rajesh Bindal

Date of Decision: 01 November 2023

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1598 OF 2023

SHAKEEL AHMED

...APPELLANT

VERSUS

SYED AKHLAQ HUSSAIN

...RESPONDENT

Legislation:

Code of Civil Procedure, 1908

Sections 17, 49 of the Registration Act, 1908

Section 54 of the Transfer of Property Act, 1882

Subject:

The subject of the judgment is a civil appeal related to a suit for possession and mesne profits. The appeal challenges the High Court's judgment that affirmed the Trial Court's decree in favor of the respondent. The primary issue revolved around the validity of the suit, which was based on unregistered documents, and the contention regarding Hiba (oral gift).

Headnotes:

Civil Appeal – Suit for possession and mesne profits – Appellant contests judgment and order of High Court affirming Trial Court's decree in favor of the respondent – Suit based on unregistered documents – Issue of Hiba (oral gift) raised – Appellant's contention that unregistered documents do not confer ownership rights supported. [Para 1-10]

Property Ownership – Requirement of compulsory registration for transferring title to immovable property – Reference to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act – No right, title, or interest in immovable property can be conferred without a registered document – Judgment in Suraj Lamps & Industries (supra) and other relevant judgments cited. [Para 10-13]

Maintaining Suit – Respondent’s argument that the judgment in Suraj Lamps & Industries (supra) is prospective is rejected – Suit could not have been maintained on the basis of unregistered documents – Suit dismissed. [Para 14-15]

Referred Cases:

- Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC)
- Ameer Minhaj Vs. Deirdre Elizabeth (Wright) Issar and Others (2018) 7 SCC 639
- Balram Singh Vs. Kelo Devi Civil Appeal No. 6733 of 2022
- M/S Paul Rubber Industries Private Limited Vs. Amit Chand Mitra & Anr. SLP (C) No. 15774 of 2022

ORDER

VIKRAM NATH,J.

1. This appeal assails the correctness of the judgment and order dated 23.08.2018 passed by the High Court of Delhi in RFA No.191 of 2013 between Shakeel Ahmed and Syed Akhlaq Hussain, whereby the appeal was dismissed and the judgment and decree of the Trial Court decreeing the suit for possession and mesne profits has been affirmed.
2. The appellant is defendant in the suit for possession and mesne profits instituted by the respondent with respect to the property in question. The suit was filed on the basis of a Power of Attorney, an agreement to sell, an affidavit and a will executed in favour of the respondent. The appellant, admittedly, was in possession of the property in question. The suit was contested on several grounds that the appellant was the owner of the property having received the same on the basis of a *Hiba* (oral gift) from its owner Laiq Ahmed his own brother. Secondly, that the suit was not maintainable as none of the documents on the basis of which the suit was filed were neither admissible nor enforceable under law. Both parties led evidence - oral and documentary. The Trial Court framed as many as eleven issues, which read as follows:
“1. Whether the plaintiff has locus-standi to file the suit? OPP
2. Whether it is collusive suit of the plaintiff and the defendant’s brother, if

so, its consequences? BPD

3. Whether the suit is bad for non-joinder of necessary party, if so, whom and its consequences? BPD
4. Whether the suit is barred by provision of Order II Rule 2 CPC for want of suit for declaration? OPP
5. Whether the plaintiff came to Court without clean hands by suppressing material facts, if so, its consequences? OPD
6. Whether the defendant was licensee in the suit property and it was terminated by notice dated 23.01.2008 by plaintiff's predecessor in interest? OPP
7. Whether the plaintiff is entitled for decree of possession of suit property, as prayed in prayer clause (a), against the defendant? OPP
8. Whether the plaintiff is entitled for decree of permanent injunction, as prayed in prayer clause (b), against the defendant? OPP
9. Whether the plaintiff is entitled for decree of recovery of damages of Rs.2,10,000/- as prayed in prayer clause (c), against the defendant? OPP
10. Whether the plaintiff is entitled for decree of damages @ Rs.10,000/- per month, as prayed in prayer clause (c), against the defendant, if so, for what period? OPP
11. Relief."

3. Findings recorded by the Trial Court were that all the issues were decided against the appellant and in favour of the respondent except issue no.8 and decree for possession along with mesne profits was granted.
4. While in regular appeal filed under section 96 of the Code of Civil Procedure, 1908, the High Court confirmed the finding with regard to the claim of the appellant regarding *Hiba* in his favour and held that the appellant had failed to prove the same. With respect to the other argument regarding suit being maintained on the basis of an unregistered document, the High Court, although in principle agreed but proceeded to uphold the decree of possession on the ground that the respondent had filed the suit as an Attorney for and on behalf of its owner Laiq Ahmed and that Laiq Ahmed was not

objecting to the respondent seeking possession of the suit property. On this sole ground, it confirmed the decree of possession and dismissed the appeal.

5. The learned counsel for the appellant made the following submissions:
 - 5.1. The Court below erred in decreeing the suit for possession and mesne profits on the basis of unregistered documents namely Agreement to Sell, Power of Attorney, Affidavit and a Will.
 - 5.2. The Will, although filed, would be of no relevance in as much as it will come into force on the death of the testator i.e. Laiq Ahmed, who was said to be still alive at the time of the presentation of the suit. The other documents like Agreement to Sell and General Power of Attorney would not confer any ownership right on the respondent nor could he derive any title thereunder.
 - 5.3. The affidavit would also not confer any title. The unregistered agreement to sell by itself is a document which is not enforceable in law. However, its only admissibility would be for collateral purposes and not for claiming any rights thereunder of ownership in a Court of law.
6. Further argument advanced on behalf of the appellant is that the appellant had successfully proved the *Hiba* (oral gift) by his brother Laiq Ahmed in his favour by adducing reliable and cogent evidence. However, the courts below wrongly discarded the same and decided the issue against him.
7. Further, he referred to the reasoning given by the High Court that even though the documents relied upon by the respondent were not of any help but still the respondent could have maintained the suit for possession or mesne profits as an Attorney and on behalf of Laiq Ahmed, the owner of the property. This reasoning, it was submitted, was untenable in as much as a reading of the plaint would clearly indicate that the suit was not filed by the respondent as Attorney for Laiq Ahmed. It was in the individual capacity of the respondent claiming his own right, title and interest under the unregistered documents referred to above. On such submissions, learned counsel for the appellant submitted that the impugned judgment be set aside and the suit be dismissed.
8. On the other hand, learned counsel for the respondent submitted that all the documents relied upon by the respondent as basis for the suit were the

customary documents and they conferred full title on the respondent to be the owner of the property in question and, therefore, he can maintain the suit.

9. It was also submitted that there was a prohibition of registration of documents of transfer/conveyance with respect to the area where the property in question is situate and, therefore, the transfers affected under the customary documents was sufficient to confer title on the respondent. It was also submitted that the judgment in the case of **Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC)**, which was of the year 2011, had prospective application and would not have any bearing on the title of the respondents which came to him under the customary documents executed in the year 2008 much prior to the judgment in the case of **Suraj Lamps & Industries** (supra).

10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of **Suraj Lamps and Industries**(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of **Suraj Lamps & Industries** (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:
 - (i). **Ameer Minhaj Vs. Deirdre Elizabeth (Wright) Issar and Others (2018) 7 SCC 639**

(ii). **Balram Singh Vs. Kelo Devi Civil Appeal No. 6733 of 2022**

(iii). **M/S Paul Rubber Industries Private Limited Vs. Amit Chand Mitra & Anr.**
SLP (C) No. 15774 of 2022

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

13. The argument advanced on behalf of the respondent that the judgment in **Suraj Lamps & Industries** (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in **Suraj Lamps & Industries** (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view.

14. In case the respondent wanted to evict the appellant treating him to be a licensee, he could have maintained a suit on behalf of the true owner or the landlord under specific instructions of Power of Attorney as landlord claiming to have been receiving rent from the appellant or as Attorney of the true owner to institute the suit on his behalf for eviction and possession. That being not the contents of the plaint, we are unable to agree with the reasoning given by the High Court in the impugned order.

15. For all the reasons recorded above, the impugned judgment deserves to be set aside and the suit deserves to be dismissed. Accordingly, the appeal is allowed. The impugned judgment is set aside and the suit is dismissed.

16. There shall be no order as to costs.

17. Pending application(s), if any, stand disposed of.

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