

# Kanwar Raj Singh (D) Th:Lrs . vs Gejo (D) Th:Lrs . on 2 January, 2024

**Author: Abhay S. Oka**

**Bench: Pankaj Mithal, Abhay S. Oka**

2024 INSC 1

NON REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9098 OF 2013

KANWAR RAJ SINGH (D) TH. LRS.

...APPELLANT(S)

VERSUS

GEJO. (D) TH.LRS & ORS.

...RESPONDENT(S)

JUDGMENT

ABHAY S. OKA, J.

## FACTUAL ASPECTS

1. Unsuccessful defendants have preferred this Civil Appeal for taking exception to the judgment and order dated 16th March 2010 passed by the Punjab and Haryana High Court. The respondents are the legal representatives of Smt. Gejo. She was the plaintiff in a suit for declaration. She claimed a declaration of ownership over the land measuring 71 kanals 8 marlas (“suit property”) based on the sale deed executed on 6th June 1975 and registered on 23rd July 1975. The first defendant, Kanwar Raj Singh (predecessor of the present appellants), executed the sale deed. Subsequently, the first defendant executed a gift deed regarding a 2/3rd share in respect of the same property in favour of the eighth defendant – Smt. Ravinder Kaur. The eighth defendant is the first defendant’s wife. According to the case of the original plaintiff – Smt. Gejo, before registration of the sale deed, an interpolation was made in the sale deed by the first defendant by adding that only 1/3rd share measuring 23 kanals and 8 marlas was being sold. The suit was contested by the first defendant, contending that what was sold was the area of 23 kanals and 8 marlas, which was his 1/3rd share in the suit property.

2. The Trial Court decreed the suit and held that what was sold to the original plaintiff was the entire land measuring 71 kanals 8 marlas. The first and eighth defendants preferred an appeal before the District Court. On 23rd August 1984, the Additional District Judge allowed the said appeal and held that the correction made in the sale deed was bona fide and was not fraudulently made. The plaintiff preferred a second appeal before the High Court. The plaintiff died during the pendency of the second appeal. Respondent nos. 1(i) & 1(v) are the legal representatives of the original plaintiff. By the impugned judgment, the appeal was allowed, and the decree of the Trial Court was restored.

## SUBMISSIONS

3. Learned counsel appearing for the appellants submitted that as the price of the property subject matter of the sale deed was only Rs. 30,000/-, it is impossible that a vast area of 71 kanals 8 marlas was sold under the sale deed. The learned counsel submitted that the sale took effect from the date on which the sale deed was registered and not from the date on which it was executed. He submitted that what is conveyed by the sale deed is what is mentioned in the registered sale deed. He submitted that even the agreement for sale executed before the execution of the sale deed refers to the sale of 1/3rd share of the first defendant and not the entire property. He submitted that the entry of the name of the original plaintiff in the revenue records as the owner of the whole area would not confer any title as what is relevant is the description of the property in the registered sale deed. The learned counsel relied upon a decision of the Constitution Bench in the case of Ram Saran Lall v. Domini Kuer<sup>1</sup> and submitted that in view of the said decision, the sale would be completed when the sale deed was registered and, therefore, the description of the property recorded in the registered sale deed will prevail. The respondents are not represented.

## CONSIDERATION OF SUBMISSIONS

4. We have perused the judgments of the Trial Court, District Court and the impugned judgment of the High Court. The first Appellate Court recorded that it is the case of the defendants that before registration of the sale deed, the first defendant incorporated a change in the sale deed stating that it was in respect of 1/3rd share in the area of 71 kanals and 8 marlas. The first Appellate Court noted that the original first defendant's evidence was that the correction was made by him AIR 1961 SC 1747 with his own pen in the sale deed before its registration. The appellants are the legal representatives of the first defendant. In this case, it is an admitted position that while executing the sale deed, the area of the land sold was shown as 71 kanals and 8 marlas and subsequently, the area was altered to 1/3rd of the said area by the first defendant before the sale deed was registered.

5. The High Court, in the impugned judgment, has relied upon Section 47 of The Registration Act, 1908 (the Registration Act), which reads thus:

“47. Time from which registered  
document operates.—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.”

6. On plain reading of Section 47, it provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof was required. Thus, when a compulsorily registerable document is registered according to the Registration Act, it can operate from a date before the date of its registration. The date of the operation will depend on the nature of the transaction. If, in a given case, a sale deed is executed and the entire agreed consideration is paid on or before execution of the sale deed, after it is registered, it will operate from the date of its execution. The reason is that if its registration was not required, it would have operated from the date of its execution.

7. Now, we come to the decision of the Constitution Bench in the case of Ram Saran Lall (Supra). In paragraph 8 of the judgment, the Constitution Bench held thus:

“8. We do not think that the learned Attorney- General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It 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 of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in *Tilakdhari Singh v. Gour Narain* [AIR (1921) Pat 150] . We believe that the same view was expressed in *Nareshchandra Datta v. Gireeshchandra Das* [(1935) ILR 62 Cal 979] and *Gobardhan Bar v. Guna Dhar Bar* [ILR (1940) II Cal 270].” (underline supplied)

8. The Constitution Bench held that Section 47 of the Registration Act does not deal with the issue when the sale is complete. The Constitution Bench held that Section 47 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale. It was also held that once a document is registered, it will operate from an earlier date, as provided in Section 47 of the Registration Act.

9. Section 54 of the Transfer of Property Act, 1984 (the Transfer of Property Act) reads thus:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or

in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

10. Every sale deed in respect of property worth more than Rs. 100/- is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered document would operate.

11. Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of its execution. Thus, the sale deed as originally executed will operate. The corrections unilaterally made by the first defendant after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. Only if such changes would have been made with the consent of the original plaintiff, the same could relate back to the date of the execution. It is not even the first defendant's case that the subsequent correction or interpolation was made before its registration with the consent of the original plaintiff.

Therefore, in this case, what will operate is the sale deed as it existed when it was executed.

12. Therefore, we find no error in the view taken by the High Court.

13. As held in the case of *Satyender and Ors. v. Saroj and Ors.*<sup>2</sup>, the second appeal in the present case will be governed by Section 41 of the Punjab Courts Act, 1918. Under clause (a) of sub-Section (1) of Section 41, a decision being contrary to law is a ground for interference. The decision of the first Appellate Court was contrary to Section 47 of the Registration Act. The High Court was justified in interfering with the decision of the first Appellate Court in a second appeal under Section 41 of the Punjab Courts Act.

14. Accordingly, the appeal is dismissed with no order as to costs.

.....J. (Abhay S. Oka) .....J. (Pankaj Mithal) New Delhi;

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