



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3523-2011 (O&M)

Sunil Kumar and Others

. . . . **Appellants**

Vs.

Ashok Kumar and Others

. . . . **Respondents**

**Reserved on: 15.01.2025
Pronounced on: 16.01.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Vikram Singh Punia, Advocate
for the appellants.

Mr. Ashwani Gaur, Advocate and
Ms. Shivangi Sharma, Advocate
for the respondents.

DEEPAK GUPTA, J.

Plaintiff (*now represented through his LRs*) is in this Regular Second Appeal against the reversal, inasmuch as suit filed by him seeking decree for declaration with consequential relief of permanent and mandatory injunction regarding property in dispute, was decreed by the trial Court but accepting the appeal of defendant No.1 Ashok Kumar (*respondent No.1 herein*), the suit was dismissed.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court. Trial Court record was called. Same has been perused.

3. Admittedly, one Jug Lal was owner of a plot measuring 280 sq. yds. situated within the Abadi Deh of Village Mukimpur, Tehsil and District Sonapat. After his death, the said plot was inherited by his four daughters namely Bhagwani, Parmi, Nahni and Nahanti to the extent of $\frac{1}{4}$ share each. It is also the conceded position that defendant No.2 Jog Raj (*respondent No.2 herein*) purchased

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140 sq. yd. of the total plot (southern portion) from Nahni and Nahanti; whereas plaintiff Ram Singh purchased remaining 140 sq. yd. shown by letter ABCD in the site plan attached with the plan (northern portion) from Bhagwani and Parmi by virtue of registered sale deed dated 15.05.1979.

4. It was alleged by the plaintiff that though defendant No.2 was owner of the Southern portion of plot measuring 140 sq. yd. only, but he sold the entire plot measuring 280 sq. yd. to defendant No.1 Ashok Kumar (*respondent No.1 herein*) by virtue of a sale deed dated 15.12.1998. Plaintiff challenged the said sale deed to the extent of his share of plot i.e. 140 sq. yd. shown by letters ABCD.

5. The stand taken by the defendants is that after purchasing disputed property i.e. portion ABCD measuring 140 sq. yd. from Bhagwani and Parmi by virtue of sale deed dated 15.05.1979, plaintiff Ram Singh had sold the same to defendant No.2 Jog Raj by virtue of a sale receipt dated 07.10.1985 [*Mark 'J'*] and had delivered actual physical possession thereof and this way, at the time when defendant No.2 Jog Raj executed the sale deed dated 15.12.1998 in favour of defendant No.1 Ashok, said Jog Raj was exclusive owner in possession of the entire property.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court upheld the case of the plaintiff and decreed the suit. However, the Appellate Court found that by virtue of a receipt dated 07.10.1985 Mark 'J', plaintiff Ram Singh had already sold the disputed property i.e. plot measuring 140 sq. yd. shown by letter ABCD in site plan to defendant No.2 Jog Raj and as such, was left with no right therein. Although the Appellate Court found that receipt Mark 'J' was unstamped and unregistered document but it was noticed that no objection was raised by the plaintiff regarding the receipt being insufficiently stamped at the time of its admission in evidence and that though the document Mark 'J' was unregistered and could not convey title but the same could be looked into for collateral purposes in view of proviso to

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Section 49 of the Registration Act. Appellate Court further found, based upon the evidence produced on record, that it is defendant No.1 Ashok Kumar, who was in actual physical possession of the suit property. It was also found that possession of the disputed plot measuring 140 sq. yd. shown by letters ABCD had been delivered by Ram Singh to Jog Raj way back in 1985. With all these findings, the judgment and decree passed by the trial Court was reversed and accepting the appeal of defendant No.1, the suit was dismissed.

7. Assailing the decision of the first Appellate Court, it is contended by learned counsel for the appellant – plaintiff that receipt dated 07.10.1985 Mark 'J' relied by the defendants has not been proved on record in accordance with law; that plaintiff had emphatically denied the execution of said receipt; that the said receipt being an unregistered document, could not convey any right title or interest in favour of defendant No.2 and so, the said document could not have been taken into consideration. It is contended that well-reasoned judgment passed by the trial Court has been wrongly reversed by the Appellate Court.

8. I have considered submissions of both the sides and have perused the record carefully.

9. The entire dispute is centered around the document dated 07.10.1985 Mark 'J', by virtue of which plaintiff Ram Singh is purported to have sold a plot measuring $3\frac{1}{4}$ Biswa, which he had earlier purchased from Bhagwani Devi and Parmi Devi daughters of Jog Lal, in favour of Jog Raj i.e. defendant No.2 and delivered possession thereof. It is also stipulated in this document that this receipt was executed in the presence of Members of the Gram Panchayat. The receipt is not only purported to be signed by plaintiff but it is purported to be attested by numerous witnesses namely Dharam Singh, Sarpanch of Gram Panchayat, Mukimpur; Mehar Lal, Panch; Begh Raj, Member Panchayat; Hukam Chand, Ran Singh and Ram Singh. Although plaintiff in his testimony has denied to have sold the suit property to Jog Raj in 1995 but he has not disputed the fact

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that Dharam Singh was the Sarpanch at the relevant time in 1995 and used to thumb mark. The document has been placed on record by the defendant in his testimony. Appellate Court also noticed that even Anil Kumar, the son of plaintiff Ram Singh had also executed an affidavit Ex.D6 so as to corroborate the version of the defendants that plot in question had been purchased by his father from Bhagwani and Parmi by virtue of sale deed dated 15.05.1979 and that later on, he had sold the same to Jog Raj on 07.10.1985 for consideration of ₹8,000/- and at that time, possession was delivered to Jog Raj. This fact is not disputed before this court by Ld. Counsel for the appellant.

10. It has been rightly observed by the Appellate Court that though this document Mark 'J' purports to convey title in respect of an immovable property valuing more than ₹100/- and so it cannot be taken into consideration for the purpose of conveying the title being an unregistered document but it can certainly be looked into for collateral purposes in view of proviso to Section 49 of the Registration Act, which reads as under:

“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 (4 of 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 (4 of 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 (3 of 1877) **or as evidence of any collateral transaction not required to be effected by registered instrument.]”**

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11. In "*S. Kaladevi v. V.R. Somasundaram and Others*" 2011(1) LJR 712, it has been held by Hon'ble Supreme Court that unregistered document can be looked into for collateral purposes, as per Section 49 of the Registration Act. It was held as under:

11. The main provision in [Section 49](#) provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the [Transfer of Property Act, 1882](#) to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to [Section 49](#) of 1908 Act.

12. Recently in the case of *[K.B. Saha and Sons Private Limited v. Development Consultant Limited \(2008\) 8 SCC 564](#)*, this Court noticed the following statement of 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 at 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....."



This Court then culled out the following principles:-

- "1. A document required to be registered, if unregistered 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 immovable 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."

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

12. It is, thus, clear from the legal position that though an unregistered document is not admissible into evidence, but it can be used as an evidence of collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act. The collateral transaction must be independent of, or divisible from, the transaction to effect which, the law required registration. Thus, a collateral transaction must be a transaction not itself required to be effected by a registered document, i.e., a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

13. Since in order to deliver possession of immovable property, the document is not required to be registered as per law, therefore, an unregistered sale deed can be taken into consideration for collateral purpose i.e., delivery of possession.

14. Apart from above, learned Appellate Court also referred to other



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overwhelming evidence on record showing the possession of Jog Raj on the suit property, which he later on delivered to defendant No.1 Ashok Kumar after execution of the sale deed dated 15.12.1988. Learned counsel for the appellant could not assail the finding of the Appellate Court as far as possession of defendant on the suit property is concerned. He has also failed to convince this Court that in case plaintiff had not sold the property to defendant Jog Raj in 1985, how defendant was in possession thereof as was proved during evidence. Plaintiff was unable to prove his possession over the suit property as per evidence duly discussed by the Appellate Court.

15. In the aforesaid facts and circumstances, the Appellate Court did not commit any error in coming to the conclusion that document Mark 'J', could have been looked into for collateral purposes in view of proviso to Section 49 of the Registration Act.

16. In "*Ude Singh and Ors. v. Ram Chander*" 2009 (1) RCR (Civil) 41, it has been held by this Court that plaintiff is estopped from reclaiming possession on the ground that there was no valid sale deed, when sale deed was an unregistered receipt. It was also held that no title could be conferred on the basis of such an unregistered deed but Section 115 of the Evidence Act estopped the plaintiff from claiming possession in lieu thereof.

17. On account of the entire discussion as above, this Court does not find any reason to interfere in the well-reasoned findings as recorded by the first Appellate Court. As such, holding the present appeal to devoid of any merit, the same is hereby dismissed.

**(DEEPAK GUPTA)
JUDGE**

16.01.2025

Neetika Tuteja

Whether speaking/reasoned?	Yes
Whether reportable?	Yes