

## Rana Vidya Bhushan Singh vs Ratiram on 28 January, 1969

### Equivalent citations: 1969(1)UJ86(SC)

#### JUDGMENT

Shah, J.

1. Rana Vidya Bhushan Singh is the owner of Khasra No. 331 Khala 22 katauni 27 village Mehana and his sister Dev Lata is the occupant, of that land. Rana Vidya Bhushan Singh and his sister Dev Lata instituted suit No. 401/1 of 1957 in the Court of the Subordinate Judge, Theog for a decree in ejectment against Rati Ram (respondent in this appeal) in respect of that land and for Rs. 500/- as compensation for wrongful use and occupation for the period Kharif season 1955 to Rabi season 1957 and for future mesne profits. It was the case of the plaintiffs that the defendant was a trespasser in the land. The defendant contended that he was a tenant of the land under a lease for fifteen years granted by the plaintiffs' mother during their minority, and the civil court had no jurisdiction to entertain and try the suit. He tendered in evidence a copy of an unregistered agreement of lease dated August 21, 1951 in which the terms of the agreement were recorded. The Trial Court upheld the contention raised by the defendant that he was in possession as a tenant of the lands in suit. The learned Judge accordingly, returned the plaint for presentation to the proper court, for, in his view, the suit was not maintainable in the civil court because of Section 111 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953.

2. In appeal, the District Court, Mahasu, agreed with the finding of the Trial Court that the defendant was a tenant of the first plaintiff. But the learned Judge modified the decree and ordered that the plaintiffs' suit be dismissed.

3. In second appeal to the Court of the Judicial Commissioner, Himachal Pradesh, the decree passed by the Trial Court was restored. The Judicial Commissioner agreed with the Courts below that the defendant was a tenant of the first plaintiff. This appeal is filed with special leave granted by this Court.

4. Three contentions are raised in support of the appeal by counsel for the plaintiffs :

(1) that there was no concluded agreement of lease between Rani Vidya Vatimother of the plaintiffs-and the defendant;

(2) that the agreement of lease being unregistered was inadmissible in evidence; and

(3) that Rani Vidya Vati had no authority to grant the lease to the defendant.

In our view all the contentions are without substance.

The agreement of lease recited:

"Whereas the parties have agreed to lease out the lands as entered in the Schedule to be annexed hereunto and duly approved and signed by either of the Senior or Junior Rani Saniba for a period of fifteen years and on the consideration of Rs. 500/- (five hundred) per bigha for ghasni or waste lands, it is therefore mutually settled as follows :"

The original lease agreement which was in the possession of the plaintiffs was not tendered in evidence. The defendant tendered in evidence a copy of the agreement of lease. It was urged on behalf of the plaintiffs that there was no concluded agreement of lease, because the schedule of lands" was not incorporated in the agreement. But the defendant had stated before the Trial Court that an extract from Jamabandi relating to Khasra No. 331 was handed over to the Senior Rani Sahiba soon after the execution of the agreement. That evidence was accepted by the Trial Court, the District Court and the Judicial Commissioner. On the findings recorded by the Courts below it is clear that an extract from Jantabandi relating to Khasra No. 331 was handed over to the Senior Rani for annexing it to the agreement of lease pursuant to the covenants contained therein. In our judgment, the finding of the Judicial Commissioner that there was a concluded agreement must be accepted.

5. The agreement was unregistered. It could not create in favour of the defendant the right of a tenant for a period of fifteen years. The agreement was on that account inadmissible in evidence to support that claim. But in support of the plea that his possession was that of a tenant the defendant was entitled to rely upon the recitals contained in that agreement of lease. Section 49 of the Indian Registration Act, 1908, insofar as it is relevant to this appeal provides :

"No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall-

(a) affect any immovable property comprised therein, or

(b) x x x x x

(c) be received as evidence of any transaction affecting such property for x x x x 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 x x x x x of any collateral transaction not required to be effected by registered instrument.

A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other

than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th En., at p. 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."

It may be sufficient to refer to the judgment of this Court in Padma Vithoba Chakkavva v. Mohd. Multani (1). In that case one R executed a usufructuary mortgage of certain lands in favour of M. He later executed a sale deed of the same lands in favour of Rajanna. Rajanna found it difficult to obtain possession. Rajanna, R & M entered into an arrangement under which the sale deed was cancelled by making endorsements on the deed and the lands were thereafter sold by R to M. After the death of Rajanna his legal representative filed a suit against M for possession of lands. M pleaded that the sale deed of 1923 was cancelled. The plaintiff urged that the endorsement was ineffective, as it was not registered and the sale deed in favour of M passed no title to him. In dealing with the question that the endorsement of cancellation was inadmissible in evidence, Venkatarama Aiyar, J. observed at p. 236 :

"The endorsement of cancellation on the back of the sale deed in favour of Rajanna dated December 21, 1923, has been held .... to be inadmissible in evidence as it is not registered. The result of it is only that there was no retransfer of title by Rajanna to the second defendant, and the family would in consequence continue to be the owner, and that is why the appellant is entitled to redeem. But the endorsement taken along with the sale deed by the second defendant in favour of the first defendant is admissible in evidence to show the character of possession of the latter."

In support of these observations the learned Judge referred to Varatha Pillai v. Jeevanatkammal (2).

6. The contention that Rani Vidya Vati mother of the plaintiffs had no power to enter into an agreement of lease and to induct the defendant into the land was never argued before the District Court and the Court of the Judicial Commissioner. The authority of Rani Vidya Vati to deal with the property of the minor plaintiffs was not challenged. We cannot pursue this matter in this Court, because according to our settled practice we do not allow questions not raised before the High Court, to be raised if they require investigation of facts.

The appeal fails and is dismissed with costs.