

S.Kaladevi vs V.R.Somasundaram & Ors on 12 April, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1654, 2010 AIR SCW 2569, 2011 (1) AIR JHAR R 277, 2010 (2) AIR KAR R 758, (2010) 2 CIVILCOURT 808, (2010) 2 ALL RENTCAS 1, (2010) 2 LANDLR 259, (2010) 4 CIVLJ 154, (2010) 3 CIVLJ 914, (2010) 2 CGLJ 305, (2010) 2 ORISSA LR 182, (2010) 5 MAH LJ 320, (2010) 80 ALL LR 295, (2010) 2 RAJ LW 1796, (2010) 2 ICC 721, (2010) 89 ALLINDCAS 97 (SC), (2010) 2 RECCIVR 824, 2010 (3) SCALE 641, 2010 (5) SCC 401, (2010) 1 WLC(SC)CVL 672, (2010) 3 ALLMR 477 (SC), (2010) 1 CLR 851 (SC), (2010) 110 REVDEC 427, (2010) 4 ALL WC 3339, (2010) 3 MPLJ 500, (2010) 4 MAD LJ 529, (2010) 4 MPHT 211, (2010) 2 KER LT 441, AIR 2011 SC (CIVIL) 2170, (2010) 3 SCALE 641

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Bench: R.M. Lodha, R.V. Raveendran

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3192 OF 2010
[Arising out of SLP (C) No. 1451 of 2009]

S. Kaladevi

.... Appellant

Vs.

V.R. Somasundaram & Ors.

.... Respondents

JUDGMENT

R.M. LODHA, J.

Leave granted.

2. The short question is one of admissibility of an unregistered sale deed in a suit for specific performance of the contract.

3. The appellant and the respondents are plaintiff and defendant nos. 1, 2 and 3 respectively in the suit presented in the Court of Subordinate Judge, Gobichettipalayam. The plaintiff in the suit claimed for the reliefs of directing the defendants to execute a fresh sale deed with regard to the suit property in pursuance of an agreement for sale dated 27.02.2006 on or before the date that may be fixed by the court and failing which execution of the sale deed by the court. She also prayed for grant of permanent injunction restraining the defendants from disturbing with her peaceful possession and enjoyment of the suit property.

4. According to the plaintiff, 1st defendant for himself, as the guardian father of 3rd defendant and 2nd defendant jointly entered into an oral agreement with her on 27.02.2006 to sell the suit property for a consideration of Rs. 1,83,000/-. It was agreed that the sale deed, in pursuance of the oral agreement for sale, would be executed and registered on the same day. The plaintiff purchased the stamp papers; paid the entire sale consideration to the defendants; the defendants put the plaintiff in possession of the suit property and also executed a sale deed in her favour. On 27.02.2006 itself, the said sale deed was taken to the Sub- Registrar's office. The Sub-Registrar, however, informed that in view of an order of attachment of the suit property the sale deed could not be registered. The sale deed, thus, could not be registered. The defendant nos. 1 and 2 then promised the plaintiff that they would amicably settle the matter with the concerned party who had obtained attachment of the suit property and get the sale deed registered no sooner the attachment was raised. The plaintiff averred that she called upon the defendants to get the sale deed registered, but the defendants avoided the same by putting forth the reason that attachment in respect of the suit property was subsisting. On 04.02.2007 however, the plaintiff called upon defendant nos. 1 and 2 to cooperate in getting the sale deed registered, but instead of doing that the defendants attempted to interfere with her possession and enjoyment of the suit property necessitating action by way of suit.

5. The 1st defendant filed written statement and traversed plaintiff's case. He denied having entered into an oral agreement for sale with the plaintiff for himself and as a guardian father of 3rd defendant and the 2nd defendant jointly on 27.02.2006 as alleged. He also denied having delivered physical possession of the suit property to the plaintiff. The 1st defendant set up the defence that he had taken loan from one Subramaniam and when Subramaniam demanded the repayment thereof, he approached plaintiff and requested her to lend Rs. 1,75,000/- as loan. Upon plaintiff's insistence that 1st defendant should execute an agreement for sale in her favour, he and the 2nd defendant signed the document believing that to be agreement for sale on 27.02.2006 and went to the office of Sub-Registrar for getting the agreement for sale registered. However, when the Sub-Registrar asked the 1st defendant whether the consideration has been received and sale deed could be registered, he and the 2nd defendant learnt that plaintiff had fraudulently obtained the signatures on sale deed by falsely stating that it was only an agreement for sale and hence they went away refusing to agree for the registration of the said document.

6. On the basis of the pleadings of the parties, the issues were struck. It appears that on 05.12.2007 at the time of examination of PW. 1, the unregistered sale deed dated 27.02.2006 was tendered for being marked. The counsel for the defendants objected to the said document being admitted in evidence being an unregistered sale deed. The trial court by its order dated 11.12.2007 sustained the objection and refused to admit the sale deed in evidence.

7. The plaintiff unsuccessfully challenged the order of the trial court dated 11.12.2007 by filing revision petition before the High Court and hence this appeal by special leave.

8. After having heard Mr. K. V. Vishwanathan, learned senior counsel for the appellant and Mr. T.S.R. Venkatramana, learned counsel for the respondents, we are of the opinion that having regard to the proviso to Section 49 of the Registration Act, 1908 (for short, '1908 Act'), the trial court erred in not admitting the unregistered sale deed dated 27.02.2006 in evidence and the High Court ought to have corrected the said error by setting aside the order of the trial court.

9. Mr. T.S.R. Venkatramana, learned counsel for the respondents, however, strenuously urged that 1908 Act is a complete code by itself and is a special law and, therefore, any dispute regarding the registration, including the refusal to register by any party, is covered by the provisions of that Act and the remedy can be worked out under it only. He referred to Sections 71 to 77 of the 1908 Act and submitted that refusal to register a document by a party is exhaustively dealt with by the said provisions and the provisions of the Specific Relief Act, 1963 (for short, '1963 Act') cannot be and should not be invoked in a case of failure to register a document which is complete in other respects, except for want of registration. Learned counsel for the respondents submitted that the defendants refused to admit execution of the said document before the concerned Sub- Registrar because of the fraud played by the appellant (plaintiff) inasmuch as instead of writing an agreement to sell, she got executed a full fledged sale deed contrary to the agreement and understanding. The defendants accordingly walked out of the office of Sub-Registrar without admitting the execution of the sale deed and under these circumstances the only remedy available to the appellant was to get an endorsement "registration refused" and then file an application before the Registrar under Section 73 of the 1908 Act. He also referred to Section 3 of 1963 Act and submitted that the provisions of 1963 Act would not override the provisions of 1908 Act.

10. Section 17 of 1908 Act is a disabling section. The documents defined in clauses (a) to (e) therein require registration compulsorily. Accordingly, sale of immovable property of the value of Rs. 100/- and more requires compulsory registration. Part X of the 1908 Act deals with the effects of registration and non- registration. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:

"S.49.- 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

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(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."

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 Limited¹, 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....."

(2008) 8 SCC 564 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.

13. In *Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy*², the question presented before this Court was (1999) 7 SCC 114 whether a decree to enforce the registration of sale deed could be granted. That was a case where respondent therein filed a suit for specific performance seeking a direction to register the sale deed. The contention of the appellant, however, was that decree for specific performance based on unregistered sale deed could not be granted. This Court noticed the provisions contained in Part XII of 1908 Act, particularly Section 77, and difference of opinion between the various High Courts on the aspect and observed:-

"The difference of opinion amongst the various High Courts on this aspect of the matter is that Section 77 of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but for the special provision of that section could not be maintainable. Several difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the Specific Relief Act and the Registration Act may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in Section 77 of the Act has reached and no other relief except a direction for registration of the document is really asked for, Section 77 of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for specific performance is of a wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession

and mesne profits or damages, a suit under Section 77 of the Act is not an adequate remedy."

14. This Court then held that the first appellate court rightly took the view that under Section 49 of the 1908 Act, unregistered sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. It was held:

".....The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated under Section 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The first appellate court rightly took the view that under Section 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property.....".

15. The issue before us is only with regard to the admissibility of unregistered sale deed dated 27.2.2006 in evidence and, therefore, it is neither appropriate nor necessary for us to consider the contention raised by learned counsel for the respondents about the maintainability of suit as framed by the plaintiff or the circumstances in which the sale deed was executed. If any issue in that regard has been struck by the trial court, obviously, such issue would be decided in accordance with law. Suffice, however, to say that looking to the nature of the suit, which happens to be a suit for specific performance, the trial court was not justified in refusing to admit the unregistered sale deed dated 27.2.2006 tendered by the plaintiff in evidence.

16. The argument of learned counsel for the respondents with regard to Section 3(b) of 1963 Act is noted to be rejected. We fail to understand how the said provision helps the respondents as the said provision provides that nothing in 1963 Act shall be deemed to affect the operation of 1908 Act, on documents. By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of 1908 Act is affected; rather court acts in consonance with proviso appended to Section 49 of 1908 Act.

17. The result is that appeal is allowed, the order of the High Court dated 13.11.2008 and that of the trial court dated 11.12.2007 are set aside. The trial court shall mark the unregistered sale deed dated 27.2.2006 tendered by the plaintiff in her evidence and proceed with the suit accordingly. The parties shall bear their own costs.

.....J. [R.V. RAVEENDRAN]J. [R.M. LODHA] NEW
DELHI APRIL 12, 2010.