

Prem Narain vs Mahabir Jain on 7 May, 2018

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved on : 26.04.2018

Delivered on:07.05.2018

Case :- SECOND APPEAL No. - 2 of 1990

Appellant :- Prem Narain

Respondent :- Mahabir Jain

Counsel for Appellant :- S.D. Pathak,Dinesh Pathak,Rakesh Pathak

Counsel for Respondent :- B.N. Agarwal,Ayub Khan,Vinod Kumar

Hon'ble Siddharth,J.

Heard Sri Dinesh Pathak, learned counsel for the appellant and Sri Vinod Kumar, learned counsel for the respondent.

This is plaintiff's Second Appeal against the Judgment and Decree dated 26.10.1989, passed by Ist Additional District Judge, Jhansi in Civil Appeal No.106 of 1986 and the dismissing the Appeal and confirming the Judgment and Decree dated 16.05.1986 passed by Civil Judge, Jhansi in Original Suit No.35 of 1985 (Prem Narain Vs. Mahavir Jain Uchchattar Madhyamik Vidhyalaya Ranipur, Jhansi).

The plaintiff- appellant instituted an Original Suit No.35 of 1985 before the learned Trial Court, praying for cancellation the sale deed dated 25.11.1974. Plaintiff's case is that he and defendant nos. 2, 3 and 4 belong to the same family, Shajra whereof is attached with the plaint; that the plaintiff and defendant nos. 2, 3 and 4 lived jointly till 1960; that the moveable and immoveable properties were divided between the parties in 1960 and they are accordingly in possession; that the plaintiff was entitled to half share and defendant nos. 2 to 4 were entitled to half share; that there was a plot in Mohalla Jhandapura Mauranipur area 20400 sq.ft. which was also partitioned in 1960; that the plaintiff got half of the same and the defendant nos.2 to 4 also got half area of the same; that the defendant nos. 2 and 3 sold an area of 69 feet x 42 feet in favour of Dayaram Kachi in 1965; that an area of 7302 sq. ft. remained but defendant nos. 2 and 3 have sold 17200 sq. ft. in favour of defendant no.1 on 25.11.1974 including the land belonging to the plaintiff; that the defendant nos. 2 and 3 have no right to sell out the land of the plaintiff without his consent and even without partition the defendant could have not sold more than half of their share in the land.

The defendant nos. 2 to 4 did not filed any written statement in the suit, despite service of notice.

One Sunder Lal submitted written statement on behalf of defendant no.1, stating that the in the partition in 1960, the defendant nos. 2 to 4 got 20400 sq.ft. of land; that the suit is barred by limitation and Section-34 of the Specific Relief Act and the defendant no.1 is entitled to protection of Section-41 of the Transfer of Property Act as he is bonafide purchaser for value without notice.

The learned trial court on the basis of the pleadings of the parties framed the following issues, (1). Whether the defendant nos.2 and 3 did not had right to execute the sale deed of the disputed property?

(2). Whether the plaintiff is the owner of the disputed property and has possession over the same?

(3). Whether the suit of the plaintiff is barred by time?

(4). Whether the suit of the plaintiff is barred by Section-34 of Specific Relief Act?

(5). Whether the suit of the plaintiff is bad for non joinder of necessary parties?

(6). Whether the defendants are bonafide purchaser for value without notice?

(7). To what relief is the plaintiff entitled to?

(8). Whether the Court Fees paid in the suit is insufficient?

The trial court first of all decided the issue no.8 in negative holding that the court fees is paid sufficient.

Regarding issue no.1, the trial court held that the defendant nos. 2 and 3 had right to execute the disputed sale deed but the question remains whether they executed the sale deed in excess of their

share or not.

Issue no.2, regarding ownership and possession of the plaintiff over the land in dispute, the trial court recorded the finding that the defendant nos. 2 and 3 did not execute the sale deed in excess of their share in favour of defendant no.1.

Issue no.4 was decided against the plaintiff holding that his suit is barred by Section-34 of the Specific Relief Act since he has not prayed for any consequential relief of possession. It is not clear who is in possession over the land in dispute.

Issue no.5 was decided in favour of the plaintiff that there is no defect in the suit of non-joinder of the necessary party.

Issue no.6 was decided holding that the defendant no.1 was not the bonafide purchaser for value without notice and they can not be presumed of not having knowledge of dispute regarding the title of the property.

Issue no.3 regarding limitation was decided by the trial court holding that the sale deed was executed on 25.11.1974 and suit was filed on 22.09.1978. The registration of the sale deed was done on 21.04.1977. The limitation of 3 years for instituting suit for cancellation of sale deed, as per Article -59 of the Limitation Act, will be reckoned from the date of knowledge of the execution of the sale deed which was in January, 1975. The plaintiff has admitted this date of knowledge in his written statement and that he filed his objection in the Registry Office thereafter. Relying upon Section-47 of the Registration Act, the trial court held that the suit of the plaintiff is beyond 3 years period of limitation and therefore barred by time.

The learned trial court by the judgment and decree dated 16.05.1986 dismissed the suit of the plaintiff. A Civil Appeal No.106 of 1986 was preferred by the plaintiff before the lower appellate court which did not framed any issue of determination and decided the issue of limitation, against the plaintiff. The finding of the trial court regarding the defendant no.1 not being bonafide purchaser for value without notice was confirmed. Suit was held as not barred by non-joinder of necessary party and the theory of partition of the property set up by the plaintiff was accepted as correct and finding was recorded that the disputed sale deed is invalid to the extent, it includes the share of the plaintiff's land. The finding of the trial court was not set aside regarding this issue. However the appeal of the plaintiff was dismissed on the ground of being barred by limitation.

Aggrieved by the Judgments and Decrees of both the courts below, this second appeal has been preferred by the plaintiff.

The learned counsel for the appellant has argued that the lower court has reversed all the findings of the trial court recorded against the plaintiff, except the finding of the suit being barred by limitation and therefore the only issue for determination in the second appeal is whether the suit of the plaintiff was barred by law of limitation or not.

This appeal was admitted on 06.02.1990 on the following substantial questions of law, (1). Whether the point of limitation for the decree of cancellation of transfer deed, should commence from the date of knowledge, starting from the date of registration of the document or from the date of execution of the document?

The learned counsel for the appellant has argued that the findings of the court below suffers from manifest error of law since as per Section-54 of the Transfer of Property Act sale of tangible immoveable property can only be made by a registered instrument. He has further relied upon Section-60 and 61 of the Registration Act, 1908 which provide for the manner of endorsement of a document and when and how the registration of the document shall be deemed to be complete. His submission is that unless the registration of the documents gets completed and the document is returned to the person who presented the same for registration it will have no legal effect regarding the creation or extinguishment of title. He has submitted that w.e.f., 01.01.1977 the sale deed executed in the State of U.P. became compulsorily registerable. Therefore, after the registration of the disputed sale deed on 21.04.1977 it got legal force and sanctity.

It has been argued further by the learned Counsel for appellant that Section-47 of the Registration Act only provides for the effect of Registration of the document. A joint reading of Sections, 47, 48 and 49 of the Registration Act, makes it clear that the instrument which purports to transfer title of the property is required to be registered, the title does not passes till the registration is affected. The registration by itself does not creates a new title. It only affirms a title that has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. He has clarified that under Section 49 (c) of the Registration Act, provides that an unregistered document affecting immoveable property and required to be registered under the Registration Act or the Transfer of Property Act can not be received in evidence of any transaction affecting such property or conferring such power, unless it is registered. The natural corollary of the section is that the suit for cancellation of such a sale deed will not lie before the competent court, unless the document is registered as per the requirements of law. The suit of the plaintiff would not have been maintainable unless the disputed sale deed got registered and acquired legal force. Since the cancellation of the document was prayed, it was required to be produced in evidence and without registration it could not have been received in evidence due to bar of Section 49 (c) of the Registration Act. His argument is that the starting point for limitation for filing suit for the plaintiff was the date when the document got registered i.e., 21.04.1977 since prior to that date, the admissibility of the sale deed was barred by law aforesaid. The Apex Court in the case of Mst. Kirpal Kaur Vs. Bachan Singh, AIR 1958 SC 199, held that to admit and unregistered document to prove the nature of possession in suit would really amount to getting round the statutory bar imposed by Section-49 of the Registration Act. The only exception to this Rule is the unregistered agreement to sale in the suit for Specific Performance of Contract of Sale, where the unregistered agreement to sale can be received in evidence by virtue of only proviso to Section-49 of the Registration Act.

The Counsel for the appellant has relied upon the Judgment of in case of Nabir Ganai Vs. Mohd. Ismail Ganai, AIR 1960 J & K 112, wherein it was held that as between parties, registered document takes effect from, the date of its execution but as between third parties it takes effect from the date of registration. He has contended that since the sale deed was executed in favour of third party,

therefore the starting point of limitation for instituting the suit for the plaintiff was the date of registration of the document i.e., 21.04.1977.

Further reliance has been placed on paragraph no. 33 of the Judgment of Chaturbhuj Sharma Vs. Durga Dayal, 1974 Law Suit (All) 218 (DB) (LB): 1976 AIR (All), as follows:-

33. To avoid the possibility of any misunderstanding it may be mentioned that departure from the scope of Section 47, Registration Act may be made in exceptional cases involving a question of limitation but not where the effect of the document and the rights of the transferor and the transferee have to be determined. In such a case Section 47 must be interpreted as it is, that is, no restrictions not contemplated by the section be imposed.

Lastly reliance has been placed on paragraph nos. 5, 6, 7, 8, 17, 18, 19 and 20 of the Judgment of the Apex Court in the case of Ram Saran Lal and others Vs. Mst. Domini Kuer and others, MANU/SC/0280/1961: AIR 1961 SC 1747, as follows:-

5. The Mohammedan law of preemption is stated in Mulla's Principles of Mohammedan law in these terms: "The right of preemption arises only out of a valid, complete and bona fide sale." This statement of the law is accepted by both the parties and there is no question that it is not correct. There is furthermore no dispute that the sale to the respondent purchaser was valid and bona fide. It is also agreed that one of the requisites before the right of pre-emption can be exercised is the preliminary demand by the preemptor and that such demand must be made after the completion of the sale. The case has been argued before us on behalf of the appellants on the basis that the sale was governed by the Transfer of Property Act, 1882. We will also proceed on that basis.

6. Section 54 of the Transfer of Property Act provides that sale of tangible immovable property of the value of rupees 100 and upwards, which the house with which we are concerned is, can be made only by a registered instrument. Section 3 of this Act defines "registered" as registered under the law for the time being in force regulating the registration of documents. This, in the present case, means the Registration Act of 1908. It is not in dispute that the registration under the Registration Act is not complete till the document to be registered has been, copied out in the records of the Registration Office as provided in s. 61 of that Act. It was therefore contended in the High Court that when a sale had to be made by a registered instrument it became complete only on the instrument of sale being copied in the books of the Registration Office. The High Court accepted this view and held that the sale in the present case, therefore, became complete on the completion of the registration of the instrument of sale which was done on February 9, 1946 when the instrument was copied out in the books of the Registration Office. In this view of the matter, the High Court came to the conclusion that the appellants were not entitled to enforce their right of preemption because they had not made the preliminary demand after the completion

of the sale as the law required them to do, but before, that is, on February 2, 1946.

7. In answer to this view of the High Court, the learned Attorney-General appearing for the appellants says that the High Court overlooked s. 47 of the Registration Act the effect of which was to make a registered document operate from the time from which it would have commenced to operate if no registration thereof had been required and not from the time of its registration. His contention is that once a document is registered, as the deed of sale in this case was, it begins to operate from the time it would have otherwise operated and therefore, the position in this case is that the sale became operative and hence complete on January 31, 1946. The learned Attorney-General further contends that the proper construction of the deed of sale was that it became operative from the day it was executed and that if it was not so, it was not a sale but could only be an agreement to sell in which latter case his clients, though this present suit might fail, would be entitled, if they so desired, to enforce their right of preemption when the sale was completed in pursuance of that agreement. As authority in support of his contention that in view of s. 47 of the Registration Act the sale in the present case must be deemed to have been completed on the day the instrument was executed, the learned Attorney-General relied on *Bindeshri v. Somnath Bhadry* (1) and *Gopal Ram v. Lachmi Misir* (2). (1) A.I.R. (1916) All. 199. (2) A.I.R. (1926) All. 549.

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 A 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 s. 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 s. 47, to have been completed on January 31, 1946. The view that we have taken of s. 47 of the Registration Act seems to have been taken in *Tilakdhari Singh v. Gour Narain* A.I.R. (1921) Pat.150. We believe that the same view was expressed in *Nareshchandra Datta v. Gireeshchandra Das* I.L.R (1935).62 Cal. 979 and *Gobardhan Bar v. Guna Dhar Bar* (I.L.R (1940) II Cal.270.).

17. Turning now to the provisions of the Transfer of Property Act, in the case of a sale of immovable property of the value of Rs. 100 or over (as in the case before us) s. 54

of the Act enacts that it could be effected only by a registered instrument; sale itself being defined as "transfer of ownership in exchange for a price paid or promised or part paid and part promised". In other words, the essence of a transaction of sale consists in the transfer of ownership and this transfer has to be effected by "a registered instrument". The Transfer of Property Act while prescribing the formalities of writing and Registration, does not itself determine the point of time when a sale becomes complete. "Registered" under the Transfer (1) I.L.R. 16 All. 344. (2) [1961] 1 S.C.R. 248 of Property Act means: "registered under the law for the time being in force regulating the registration of documents" (s. 3). When one turns to the Registration Act, provision is made, inter alia for the time within which after its execution a document could be presented for registration, the persons who could so present, the office in which the document could validly be presented and registration effected and sub-Part B of Part 11 starting from s. 58 deals with the procedure on admitting documents to registration.

Section 60(1) enacts:

"After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word registered', together with the number and page of the book in which the document has been copied."

and s. 61 which follows makes provision for the copying of documents in Public registers from which the word "registration" is derived and enacts:

"61. (1). The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

(2)The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52."

18. Much reliance has been placed by learned Counsel for the respondent and, indeed, in the judgment of the High Court, on the words the "registration of the document shall thereupon be deemed complete" occurring in sub-s. (2) of s. 61. But in the context of the fasciculus of sections in which it appears it is clear that it refers to the fact that the registering officer had completed his duty and had no more to do with the document presented to him, beyond returning the original to the party entitled to receive the same. In our opinion, these words have nothing to do with the time from which the transaction covered by the registered document operates or with reference to the present context, when the sale evidenced by the deed, becomes complete. Specific provision is made for these in s. 47 of the Registration Act which reads:

"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."

19. The principles underlying ss. 61(2) and 47 are not divergent. It is not as if, that any delay by the registering officer which might take place owing to the pressure of work in his office or for other reason, has any effect on the rights of parties, quod their property or the time from when the deed operates, or as regards the effectiveness of the transaction, or the priority of transactions inter se. It is not as if, documents executed on different dates, the parties intending them to operate at different times, have their intentions modified, if not nullified by the action or inaction of the registering officer, or any delay that might take place in his office. A contention that though the Muslim law of sale is superseded by the Transfer of Property Act and the Registration Act, but yet the provision contained in s. 47 of the Registration Act is inapplicable to determine when a sale effected by a registered instrument should be complete could not be sustained on any principle or logic, or of course on any rule of interpretation of statutes. In our opinion no distinction is possible to be drawn between a sale which is effective and one which is complete since they are merely different forms of expressing the same concept and for the same reason between the time from when a sale becomes effective and when it should be held to be complete. As under Muslim law the talabs have to be performed only immediately after the preemptor receives information of the sale, the view we take of the applicability of s. 47 of the Registration Act, introduces no element of hardship in the exercise of the option. We are, therefore, clearly of the opinion that the time when the sale becomes complete so as to entitle the preemptor to perform the talabs should be determined by the application of the principle of intention laid down in s. 47 of the Registration Act Which is as much a part of the positive law governing the right of preemption as the provision of s. 54 of the Transfer of Property Act which, requires a registered instrument to effect a sale which gives rise to a right of preemption.

20. If, therefore, B. 47 of the Registration Act should apply to determine the time from which the registered document should have effect or, in other words, the time from which the sale should be held to be complete, the intention of the parties would be the crucial and only test. That has to be gathered by reference to the document itself read in the light of the surrounding circumstances, with however a proviso that if the document were clear and its terms explicit, no evidence to contradict them would be admissible. Paragraph 4 of this document of the sale-deed Ex. 'A' dated January 31, 1946 recites the consideration for the same. This was to consist of Rs. 2,000. Out of this, it states that the vendors had received Rs. 400 in cash at the time of the execution of the document, and that Rs. 200 had been left with the purchaser for payment to a previous possessory mortgagee. In regard to the balance of Rs. 1,400 the recital reads:

"and received the remaining sum of Rs. 1,400 in cash at the time of exchange of equivalents, (that is) at the time of handing over of the receipt of this deed. In this manner we have received the entire amount of consideration money for this vended property from the claimant and brought the same to our possession and use."

The learned Counsel for the respondents has argued that the provision of Section 47 of the Registration Act is very clear and it clearly provides that 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. The registration of a document on subsequent date will take effect from the time when it was executed and not from the time of its registration.

He has also relied upon the Judgment of this Court in the case Chaturbhuj Sharma (supra) but on paragraph nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 35 and 36 as follows:-

23. The object of an enactment is often judged from the contents thereof and it is not necessary that the object of any enactment or a provision thereof is only one and not more. Where any provision has been worded generally, we would not be justified to restrict its scope. As Section 47 has been worded generally, its scope can be, as mentioned above, when it is considered along with Section 48 of the Transfer of Property Act. But if we have to find out from which date the document shall operate in so far as the parties to the document are concerned, Section 48 does not come into operation and a finding shall have to be recorded on consideration of the provisions of Section 47 alone. In other words, we would not be justified to restrict the scope of Section 47 of the Registration Act and to hold that its object is only what is detailed in Section 48 of the Transfer of Property Act. If such was the intention of the Legislature, Section 47 would not have been incorporated in the Registration Act and instead a more comprehensive Section 48 would have been incorporated in the Transfer of Property Act.

24. In this connection it may be observed that the Supreme Court had made the observations in connection with the right of pre-emption governed by the Mohammedan Law where such right arose only out of a valid, complete and bona fide sale. There the Supreme Court was considering the effect of a demand made before the sale was complete, i.e., after the execution of the sale deed and before the registration thereof. In substance, the rights claimed by the pre-emptor and the rights of the transferee were in issue. The Supreme Court were not considering from which date the rights of a transferee can be enforced irrespective of whether there has or has not been any other demand or transaction. The above observation made in the Supreme Court case cannot, therefore, be regarded to be applicable to all the situations.

25. Section 61(2) of the Registration Act lays down that the registration of a document shall be deemed to be complete after the endorsements and certificate referred to and mentioned in Sections 59 and 60 have been copied into the margin of the Register Book. Under Section 54 of the Transfer of Property Act, the transfer by sale of immovable property of a value of Rs. 100/- and more can be made only by registered document. On reading Section 54 of the Transfer of Property Act along with Section 61 of the Registration Act, it can be said that the sale is complete after the compliance of Sections 59, 60 and 61 has been made and not when the document has been executed or presented for registration. Title to the property may pass when

the transaction is complete, that is, after the necessary endorsements have been made in the Register Book. But the transferee can, if permissible under the law, acquire right in the property from an earlier date. Section 47 of the Registration Act, in one way, gives a retrospective effect to a document after it has been duly registered. Like the retrospective enactments, a document having retrospective effect from the earlier date and not necessarily on the date when the transaction is complete. When the matter is considered in this light the transaction of sale may not be complete before registration, but after registration it takes effect from the date of execution namely, that the purchaser can assert his rights of ownership from the date of execution even though his title became complete on a later date-When the owner can assert his rights of ownership from an earlier date, his possession during the period prior to the registration shall after the registration of the document be as owner and not as a licensee or an outsider. On a careful consideration of the provisions of the Registration Act. we are of opinion that a document registered on a subsequent date operates from the date of its execution even though it can be said that the title of the transferee is not complete till the registration.

26. Our attention has been drawn to a few decisions of the Supreme Court, the Privy Council. Allahabad High Court and also the other High Courts and we find that the consensus of opinion is in favour of the view that we are adopting. In *Ram Saran Lall v. Domini Kuer*, AIR 1961 SC 1747 (Supra) the point for consideration was when was the sale complete and not the date from which it operates. In paragraph 8 it was observed that;

"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." On the other hand, the above makes it evident that even though the sale is complete on a subsequent date it operates by virtue of Section 47 of the Registration Act from the date of execution. The transferee can thus enforce his rights of ownership from the date of registration.

The case of *K.J. Nathan v. S. V. Maruthi Rao*, (AIR 1965 SC 4301 contains a similar observation, namely, that:

"Though Ex A-19 was registered on June 22, 1948, under Section 47 of the Registration Act the agreement would take effect from July 5, 1947" (July 5, 1947 is the date of execution of the document).

27. In *Alapati Venkataramiah v. Commr. of Income-Tax*, (AIR 1966 SC 115) it was observed that till a conveyance was executed and registered no title could pass to the transferee. This is what we have already indicated above. This ease nowhere lays down that a conveyance when executed and registered shall take effect from the date of registration and not from the date of execution.

28. *T.V. Kalyanasundaram Pillai v. Karuppa Mooppanar*, (AIR 1927 PC 42) and *Venkat Subba Srinivas Hegde v. Subba Rama Hegde*, (AIR 1928 PC 86) relate to a gift deed and not a sale deed. However, the principles laid down therein will clearly establish that the rights and benefits under the document can be exercised from the date of execution. It was held that once a gift is executed and has been delivered to the donee, the donor cannot revoke the gift even before its registration on the ground that the gift is not completed until the deed is register-ed. When the donee can claim under the document even though not registered, there is no reason why a transferee cannot assert his rights as owner of the property even though his title is not complete and would become complete after the registration of the document.

29. In *Mohammad Bashir Khan v. Mt. Kulsum Bibi*, (AIR 1927 All 545) Preemption Act of 1922 was held to be inapplicable because the sale deed had been executed before 17th February, 1923, the date from which the provisions of the Act were applicable. This view was taken even when the deed of transfer was registered after that date. In other words, the transfer was deemed to have been made on the date of execution, and not on the date of registration. In *Mahadeo Singh v. Mian Din*, (AIR 1938 All 431) it was held that after executing the sale deed it is not open to the executant to go back on his agreement and revoke it. The observation that the sale deed is completed when it is executed by the vendor is however, contrary to the provisions of Section 61 of the Registration Act and the law laid down in *Alapati Venkataramiah v. Commr. of Income-tax*. AIR 1966 SC 115 (Supra). The view taken in *Raja Ram v. Girraj Kishore*, (AIR 1964 All 369) supports the view that we are taking. The material observation is:

"unless a sale deed is registered, the mere fact of its execution does not make it operative, but by reason of Section 47 once registration has been effected the sale deed becomes operative retrospectively from the date of execution."

30. *Hira Lall Burman v. The District Board, Aligarh*. (ILR (1966) 2 All 784) is not very helpful as it proceeds on a different ground, namely, from which date the transferee becomes the owner of the property. It may, however, be observed that the observations in this case appear to be contrary to the law laid down in *Alapati Venkataramiah v. Commr. of Income-tax*, AIR 1966 SC 115 (Supra).

31. Cases of other High Courts in which a document registered subsequently was held to take effect from the date of execution are: Faiyazuddin Khan v. Mt. Zahur Bibi, (AIR 1938 Pat 134), Bhagawathula Kameswara Rao v. Doddaku Veera Raghavulu, (AIR 1960 Andh Pra 616), Champat Rao Mahadeo v. Mahadeo Bajirao Kunbi, (AIR 1937 Nag 143) and Nabadwip Chandra Das v. Loke Nath Roy. (AIR 1933 Cal 212).

On the application of this principle, sale deed executed before the filing of the suit but registered thereafter was held not to be affected by the doctrine of lis pendens. See Akki Guru Basappa v. Valuvathi, (AIR 1925 Mad 710).

32. A contrary view has, however, been expressed in Nabir Ganai v. Mohammad Ismail Ganai, (AIR 1960 J & K 112). Therein it was held that as between parties, registered document takes effect from, the date of its execution but as between third parties it takes effect from the date of registration. In case it was desired to lay down an inflexible rule applicable to all cases, we would with respect differ. The Supreme Court has clearly laid down in Ram Saran Lall v. Mst. Domni Kuer, (AIR 1961 SC 1747) that the object of Section 47 of the Registration Act is to determine the priority of various transactions pertaining to the same immovable property, parties to the various instruments shall not be the same. The transferees would invariably be different persons. Consequently, the observation that a document takes effect as between third parties from the date of registration is contrary to the law laid down by the Supreme Court.

33. To avoid the possibility of any misunderstanding it may be mentioned that departure from the scope of Section 47, Registration Act may be made in exceptional cases involving a question of limitation but not where the effect of the document and the rights of the transferor and the transferee have to be determined. In such a case Section 47 must be interpreted as it is, that is, no restrictions not contemplated by the section be imposed.

34. One of the cases in which, in our opinion also, departure can be made from the strict scope of Section 47 is that of Paritala Narasimham v. Ayinampudi, (AIR 1957 Andh Pra 535). It was held therein that the transfer cannot be antedated for the purpose of Section 54 of the Insolvency Act. Also see Venkadari Samappa v. Official Receiver. (AIR 1938 Mad 801).

35. From the above it shall be evident that except for the Jammu and Kashmir High Court, every High Court, has taken the view that by virtue of Section 47 of the Registration Act, a registered document takes effect from the date of its execution and this, in our opinion, is the only view that can be taken of the provisions of Section 47 of the Registration Act.

36. Once the document takes effect from the date of execution, the transferee can assert his rights under the document from the date of the execution. Once the transferee can assert his rights from that date, his possession of the property under transfer shall be as owner and in no other capacity.

He has further argued that as per Article 59 of the Limitation Act, there is 3 years period provided for instituting the suit for cancellation of the sale deed. The aforesaid article provides that the limitation for filing such a suit shall start from the date of knowledge of the instrument. It has not

been provided that the period of limitation will start running from the date of registration/ date of enforceability of the document. Therefore, when the plaintiff acquired the knowledge of the execution of the unregistered document in January, 1975, he ought to have instituted the suit within 3 years. In view of the express provision in the statute in this regard normal rule of construction will apply and the reliance upon Section 49(c), 60 and 61 of the Registration Act and Section 54 of the Transfer of Property Act will not help the appellant, in view of Section 47 of the Registration Act.

After hearing the rival contentions and the material placed before this Court, the substantial questions framed in this appeal is being considered. First of all look at Article -59 of the Limitation Act, 1963 is necessary, Art. 59. To cancel or set aside an instrument or decree or for the rescission of a contract.

Three years When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

The dispute is when the facts entitling the plaintiff to have the instrument cancelled first became known to him. The dispute is whether the starting point of limitation would be reckoned from the date of execution of the sale deed (i.e., 25.11.1974) or from the date of its registration (i.e., 21.04.1977). Another important date involved is 29.11.1975, when the plaintiff objected before the Registrar against the registration of the sale deed dated 25.11.1974. The Counsel for the respondents has pointed out that the plaintiff, who deposed as P.W.1 in the suit, has admitted the knowledge of execution of the disputed sale deed 25.11.1974 in January, 1975. Therefore, the above 4 dates are vital for deciding the fate of this appeal.

While the learned Counsel for the appellant relies on Section 49(c), 60 and 61 of the Registration Act, 1908, the Counsel for the respondents relies upon Section-47, thereof.

A perusal of Section-49 provides that Registered document shall operate from the time of its execution and not from the time of registration, if no registration thereof had been required or made. But if the document is not registered and is compulsorily registerable, it is duly executed, it has no legal effect and it does not affects the immoveable property comprised in the said document in view of Section-49 of the Act. It is to be borne in mind that under Section 54 of the Transfer of Property Act, transfer of tangible immoveable property can only be made by registered instrument. Without registration, there is no transfer of ownership of the property. Therefore, it is clear that the act of registration is not a mere instance of collecting revenue by the State as Registration Fee and providing authenticity to the document. It is by act of registration, that the title of the property passes to the transferor from the date of execution of the deed of transfer.

Now the question arises as to what would be the interpretation of the phrase employed in Article-59 of the Limitation Act, "When the facts entitling the plaintiff who have the instrument or decree cancelled or set aside or the contract rescinded first became known to him."

"Facts entitling the plaintiff" speak about the point when entitlement of the plaintiff first became effective for instituting the suit. In the present case, the plaintiff's own

admission is that he came to know about the fact of execution of unregistered sale deed in January, 1975. Thereafter, he filed objection before the Registrar on 29.11.1975 against the registration of the deed and the deed which was executed on 25.11.1974 got registered on 21.04.1977. As per Section- 49(c) of the Registration Act read with Section-54 of the Transfer of Property Act, the suit could not have been instituted by the plaintiff without producing in evidence the registered sale deed. Further without registration the sale deed did not evidenced any transfer of title by virtue of the unregistered sale deed dated 25.11.1974. The suit filed for cancellation of unregistered document, whereby no title passed to the defendants, as per Section -54 of the Transfer of Property Act would not have been maintainable. Therefore for the purpose of instituting the suit and for reckoning the starting point of limitation for challenging the sale deed would be, as per Article 59 of the Limitation Act, the knowledge of the fact of registration of the document which created entitlement of the plaintiff to institute the suit. Prior to registration of document, the plaintiff was legally disentitled to challenge the sale deed before the competent Civil Court, being unregistered document not receivable in evidence as per Section 49(c) of the Registration Act, 1908.

There is no quarrel with the proposition that the effect of the document relates back to the date of execution once it is registered and therefore the reliance of the Counsel for the respondent on the ratio laid down in the case of Chaturbhuj Sharma (supra) is well founded. However, the facts of the case were different, there was no dispute regarding the starting point of limitation for instituting the suit as per Article-59 of the Limitation Act, 1963. The reliance of the Counsel for the appellant on the Judgment of the Apex Court in paragraph no.8 of Ram Saran Lall & others (supra), and paragraph 33 of Chaturbhuj Sharma (supra) is well founded. Section 47 of the Registration Act does not states when a sale would be deemed to be complete for the purposes of Limitation for instituting suit. It only permits a document when registered, to operate from a certain date which may be earlier then the date when it was registered. The object of the 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 registration and therefore nothing to do with completion of a sale, when the instrument is a sale deed. A sale is not completed until the registration of the instrument of sale is completed (as per Section 60 and 61 of the Registration Act), therefore it can not be said that the sale has been completed earlier because by virtue of Section 47 of the Registration Act, the instrument commences to operate from an earlier date.

It is clear that the entitlement of the plaintiff to institute the suit arose only when he got the knowledge of the registration of the sale deed dated 25.11.1974 on 21.04.1977.

Therefore, the suit of the plaintiff instituted on 22.09.1978 can not be said to be barred by time. It has been instituted within period of 3 years of the execution of the

registered sale deed dated 21.04.1977 as per Article 59 of the Limitation Act, 1963.

Hence the substantial question of law is answered in favour of the plaintiff holding that the starting point of limitation for instituting the suit for cancellation of transfer deed would commenced from the date of knowledge of the registration of the document and not from the date of execution of the same.

Consequently, the Judgment and Decree dated 26.10.1989 passed by the lower appellate court and the Judgment and Decree dated 16.05.1986 passed by the trial court are hereby set aside. The suit of the plaintiff is decreed.

The Second Appeal is allowed with costs throughout.

Order Date :- 07.05.2018 SS