

of the gravity of situation and considering the adverse effects of smoking on the actual smokers and passive smokers, has prohibited smoking in public places and issued directions to the Union of India and State Governments to take effective steps to ensure prohibition of smoking in public places namely, auditoriums, hospital buildings, health institutions, educational institutions, libraries, Court buildings, public offices, public conveyances including Railways.

In *M.C. Mehta v. Union of India and others*,¹³ the Court held that rights accorded and provided in the Article 21 of the Constitution would override provisions of every statute including the Motor Accident Vehicles Act, if they militate against the constitutional mandate of Article 21.

In *K.M. Chinnappa, Applicant in T.N. Godavarma Thirumulpad v. Union of India and others*,¹⁴ the apex Court of land categorically stated that the duty is castigated upon the Government under Article 21 of the Constitution to protect the environment under any cost and the Government must adhere to two salutary principles with regard to the protection of the environment like the sustainable development and precautionary principles must be observed.

These above cases have a tip of the iceberg in the environmental jurisprudence interpreted and innovated by the apex Court. The apex Court has passed or passing innumerable remarkable judgments from time to time due to which only our country ecology and environment have not gone to haywire, otherwise we would be in most horrible situation. From last 25 years or so we have observing that the apex Court of the land became the harbinger of protector of the environment and ecology in India. There is also a lot of criticism from some quarters that in guise of environmental protection jurisprudence the apex Court is stepping into the shoes of Legislature and Executive, this argument some extent sounds valid but the Court is forced to enter when these two constitutional authorities have shrieked off their responsibilities of protection of the environment. The people have no other option to approach the judicial bodies for their own survival. The social and environmental activities like *Sunder Lal Bahaguna, M.C. Mehta, Medha Patkar etc.*, for their untiring, daring and dashing efforts to save the environment in India have got universal recognition and their contribution will be appreciated and recognized by generations to come.

**WHEN DOES TITLE IN IMMOVABLE PROPERTY PASS TO
THE TRANSFEREE ? IS IT ON EXECUTION OF THE DEED OR WHEN
THE REGISTRATION OF THE SAID DEED TAKES PLACE OR
AT WHAT POINT OF TIME ?**

By

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1. There seem to be some difference of opinion on this aspect. The general impression is that with the registration of the deed executed the title passes to the vendee, *i.e.*, the

right, title and interest in the property passes to the vendee.

2. On this aspect, recently two cases are decided by the A.P. High Court and are reported. In the decision in 2008 (3) ALT 760 = 2008 (4) ALD 545 *K.V. Sudharani and*

13. AIR 2001 SC 1948 (1950 to 1952)

14. AIR 2003 SC 724

others v. The Vijayawada – Guntur – Tenali – Mangalagiri Urban Development Authority (VGTMUDA) Vijayawada, represented by its Vice-Chairman and others, His Lordship Sri C.V. Nagarjuna Reddy, J., rendered judgment on 24.3.2008 in a batch of writ petitions. The observations of His Lordship in this decision after considering the provisions of Transfer of Property Act contained in Section 5 (Transfer of Property); Section 6 (What property can be transferred); Section 7 (who can transfer property); Section 8 (What passes on a transfer of property); Section 54 (defining sale); Section 55 (Rights and liabilities of a buyer and seller); and Section 17 of The Registration Act specifying the documents of which registration is compulsory; and Section 31 of The Specific Relief Act (providing remedies to a person in regard to void or voidable documents), are as follows :

“From the above mentioned provisions of the various enactments, it is quite evident that when once sale deeds were registered in favour of the Vendee, transfer of property to the Vendee forthwith and along with it all the interest which the transferor was then capable of passing in the property and the legal incidents thereof also pass to the Vendee”.

3. Therefore it is the view of this Learned Judge Hon’ble Sri C.V. Nagarjuna Reddy, J., that when the registration takes place, the title and right passes to the Vendee.

4. Very shortly after this decision, another case has been decided by His Lordship Hon’ble Sri N.V. Ramana, J., on 29.4.2008. This decision is reported in 2008 (6) ALT 227 = 2008 (6) ALD 818 (*Tummalachetti Builders and Developers Pvt. Ltd. v. Commissioner and Inspector General of Stamp and Registration, A.P., Hyderabad and others*).

5. In this decision, His Lordship observed as follows :—

“Mere registration of a document transferring immoveable property would not confer any new title. It merely records the transaction and gives information to people regarding legal rights and objections arising or affecting a particular property to prevent playing of fraud in future. Registering

authority does not decide title of persons executing the document by registering it.”

Para 9 of decision :

*“The normal understanding of the General Public is that once a document is registered under the provisions of the Registration Act, 1908, they get title to the property. But that is not so. The execution of or registration of a document by itself will not create any new title and the execution of or registration of such document covering immoveable property is governed by the principle *nemo dat quod non habet*, which means ‘no man can transfer/pass a better title than what he possesses in the property so transferred’. Given the fact that transfer of immoveable property is governed by this principle, the registering authority when he receives a document and registers it, does not decide title to the person executing the document. Therefore mere registration of a document will not confer any new title, and in the case of any title dispute arising out of such registration, they are subject to and decided under the provisions of various other Laws governing transfer of property.”*

6. Therefore it is to be seen as to when title passes from the transferor to the transferee ? Is it from the date of execution of the deed, or is it from the time of registration of the deed ? One thing is clear, *i.e.*, a document cannot be valid unless it is validly stamped and registered.

7. One position, *viz.*, that a document not registered on the date of its execution but registered subsequently, takes effect from the date of execution of that document and not from the date of registration, is very clear and established. On this aspect there are several decided cases. *Vide* AIR 1995 SC 73; AIR 2002 SC 959; AIR 2003 All. 198 and AIR 2005 Cal. 60.

8. The Patna High Court in AIR 1958 Pat. 193, examined the purport and effect of Sections 54 and 48 of Transfer of Property Act and Section 47 of The Registration Act and held in Paras 7 and 8 of the judgment :

- (a) *“A sale is complete when sale deed is executed by the Vendor and the Vendor has no right in Law to rescind or revoke the sale, registration or no registration. After a sale is completed*

by execution of a deed, registration comes as a matter of course and it is not dependent upon the volition of the Vendor because a sale deed can be got registered by compulsory registration."

- (b) "On a proper construction of this section it appears that a transfer of ownership takes place immediately on the sale. A registration is only a statutory mode of making the sale and it does not affect the creation of title by the sale. Section 47 of the Registration Act provides that a registered document shall operate from the time from it would have commenced to operate if no registration thereof had been required or made, and not from date of registration. Section 47 Registration Act does not purport to create a new title but only affirms the title which was created by the sale deed."
- (c) "It follows from the above that the title of the plaintiffs was complete on 3.11.1930. The question is what is the consequence of this. If they had title about which there can be no doubt, then the possession of the appellants (defendants) which commenced on 10.11.1930 became adverse to the plaintiffs. ... absence of registration did not disentitle the plaintiffs to institute a suit for possession against the defendants. ... there can be little doubt that the plaintiffs had a right to institute a suit for possession immediately after the execution of the sale deed when there was an illegal invasion of their title. The position that emerges is this; the plaintiffs acquired a good title by purchase on 3.11.1930"

9. Some of the principles laid down in the following cases are as follows :

(a) AIR 2001 Ker. 184.

(in Paras 22 and 23 of judgment).

"Sale can be effected only by a registered document. Without such a registered document, ownership over tangible immovable property cannot be transferred. Where sale deed requires registration, title does not pass until the sale deed is registered even though the transfer of possession as well as payment of consideration take place before registration of the document. ... On a reading of Section 54 Transfer of Property Act, it is manifest that title of the Vendor passes to the

Vendee only on registration of the sale deed irrespective of the fact that the sale deed was actually executed on an anterior day."

(b) AIR 2005 Cal. 60

"Transfer of property cannot be governed and/or controlled by The Registration Act, 1908". Registration will relate back to date of transfer."

(c) AIR 2008 NOC 2774 (Kar.) = 2008 (5) AIR Kar. 120

"Registration by itself does not create a new title. It only affirms a title that has been created by deed. Effect of registration is to make it unquestionable and absolute. Registration of such a duly executed documents comes into operation not from date of registration, but from the date of execution of said document."

10. In a very recent judgment delivered on 28.2.2009, the Honourable Supreme Court – AIR 2009 SC 2122 (*Kaliaperumal v. Rajagopal and another*), considered this aspect as to when title and ownership in the property passes to the purchaser. In this case the sale deed was executed and it was also signed by the Vendor. The Vendor received some amount and with regard to the balance, some dispute arose between the Vendor and Vendee. Admittedly some amount remained unpaid even according to the Vendee. When the Vendor, who already signed the document did not co-operate for registration, claiming more amount the Vendee filed the document for compulsory registration and had it. But the Vendee did not get possession of the property. After registration, the Vendee filed a suit for declaration of title and for possession. The trial Court granted decree as prayed for observing that for the unpaid money the Vendor has to file a suit against the Vendee. In appeal, the Appellate Court modified the judgment of the trial Court and held that on account of execution and registration of the document by the Vendor, and registration thereof, title in the property passed to the Vendee but held that some amount as claimed by the Vendor remained as unpaid purchase money, the Vendee would be entitled to possession only on his depositing into Court the said unpaid purchase money.

Title of the Vendee on the basis of that document was declared. Against this decree of the District Judge in appeal, the Vendor preferred second appeal in Madras High Court. The High Court held from the facts of the case that title in the property did not pass to the Vendee because the full consideration was not paid and dismissed the second appeal. Then the matter was taken before the Supreme Court. After considering the facts and particularly the factum of non-payment of full sale consideration by the Vendee, the Apex Court observed as follows in Para 8 of the judgment.

1. "Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the property sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the rate of Rs.100/- or more and this is a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale for passing of title, as Section 54 of T.P. Act defines sale as a transfer of ownership in exchange for a price paid or promised or part paid and part promised or part paid and part promised.

2. "If the intention of the parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance as the case may be), the remedy of the Vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Normally ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true task of passing of property is the intention of parties. Though registration is *prima facie* proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for

passing the property. The answer to the question whether the parties intended that transfer of ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place only after the receipt of the entire consideration, would depend on the intention of the parties. Such an intention is primarily to be gathered and determined from the recitals, of the ale deed. When the recitals are insufficient or ambiguous, the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitation placed by Section 92 of Evidence Act."

Ultimately the apex Court in this case decided on the basis of the recitals in that sale deed that the parties intended to transfer ownership to the Vendee on payment of the entire consideration.

11. Therefore the principles now deducible from the above discussion are that :

- (i) in cases of payment of full consideration under the deed and delivery of possession of the property, title passes to the vendee on execution and registration of the deed. Even if registration takes place subsequent to date of execution, the deed operates from date of execution. That means title vests in the buyer from date of the sale deed itself;
- (ii) in other cases, *i.e.*, whether the price is not received by the seller either in full or in part, and possession is not delivered by the seller to the buyer, then title will not automatically pass with the execution and registration of the deed and it will be subject to the intentions of the parties to the deed and the spirit of the recitals of the deed.

12. Therefore both the views expressed in the above two decisions of the A.P. High Court do not seem to be fully correct. In these two decisions, whether the price was fully paid away and possession was delivered is not considered. In view of the latest pronouncement of the Apex Court, both the views expressed in the two decisions seem to be requiring reconsideration.