

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/TA/5055/2013/Chittorgarh.

1. Madhu Lal son of Heera Lal
 2. Unkar Lal son of Heera Lal
 3. Ramchandra son of Heera Lal
 4. Ramesh Chandra son of Heera Lal
- All by cate Mali residents of village Pura AHIRAN Tehsil Nimbahera Distt. Chittorgarh.
5. Mst. Sohan Bai daughter of Heera Lal Mali wife of Hemraj Mali resident of Borakheri Tehsil Nimbahera Distt. Chittorgarh.
 6. Mst. Indira Bai daughter of Heera Lal wife Ramnivas Mali resident of Chandkhara Tehsil Nimbahera Distt. Chittorgarh.

...Petitioners.

Versus

1. Hari Ram son of Pyara Mali
 2. Prithviraj son of Pyara Mali
- Both residents of Nimbahera Tehsil Nimbahera Distt. Chittorgarh.
3. State of Rajasthan through Tehsildar, Nimbahera.
 4. Sub-Registrar, Chittorgarh.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Ashok Nath, counsel for the petitioners.

Shri Ishwar Devra, counsel for the non-petitioners No. 1 and 2.

Date: 4.12.2013

J U D G M E N T

The petitioners have filed this revision petition under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Sub-Divisional Officer, Nimbahera on 23.7.2013 in suit No. 51/2009.

2. The brief facts of the case are that the petitioners-plaintiffs filed a regular suit under section 88, 188 and 209 of the Act against the non-petitioners-defendants in the court of Assistant Collector, Nimbahera (Distt. Chittorgarh). One more suit was filed by the non-petitioners No. 1 and 2-plaintiffs under section 53 and 188 of the Act before Assistant Collector, Nimbahera. The trial court consolidated both the suits and framed four issues in the consolidated case on 20.6.2011. During evidence of the plaintiffs an unregistered agreement to sale was to be exhibited by the plaintiff which was strongly objected by the learned advocate for the non-petitioners before the trial court and the trial court passed the impugned order on 23.7.2013 and

allowed the objections raised by the defendants. The trial court opined that the document of agreement to sale cannot be admitted in evidence. Being aggrieved by the order passed by the trial court on 23.7.2013, this revision petition has been preferred before this court.

3. Heard the learned counsels of the parties.

4. Shri Ashok Nath, the learned advocate for the petitioners contended that since the suit filed by the petitioners-plaintiffs and the suit filed by the non-petitioners-plaintiffs have been consolidated by the trial court and this agreement to sale is being exhibited in defence of the petitioners because and they are in possession of the disputed land on the basis of agreement to sale and this is a vital document which can prove their possession so that the decree of perpetual injunction and partition of agricultural holdings cannot be passed in favour of the non-petitioners. He also submitted that this document of agreement to sale is not being used here as a sword but as a shield in this case and on this sole ground it is being exhibited by the witnesses of the petitioners. The learned advocate urged the court that the trial court has committed a serious error while inferring that this document is not admissible in evidence. The learned advocate took support of the judgment rendered by Hon'ble Supreme Court in S. Kala Devi Vs. V.R. Soma Sunderam and others (2010 (2) RRT 819).

5. Shri Ishwar Deora, the learned advocate for the non-petitioners contended that the document under scrutiny is an agreement to sale which is an unregistered document and the petitioners-plaintiffs have filed their suit on the basis of this document only. He further submitted that an unregistered document of agreement to sale is not admissible in evidence nor petitioners-plaintiffs can file a suit on the basis of such a document for declaration of their rights before the revenue court. The learned advocate finally urged the court that the order passed by the trial court is in strict compliance of legal provisions and it does not require any interference at this stage. He took support of the legal pronouncement cited in 2013 (2) DNJ (Raj.) 640.

6. I have given serious consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

7. This court has carefully perused the impugned order passed by the trial court on 23.7.2013. The trial court has passed the following order in this case:-

“पत्रावली पेश हुई। वकील उभयपक्ष उपस्थित। साक्ष्य वादी में गवाह पी.डब्लू-1 रमेश के बयान चले जो वकील प्रतिवादी की इकरारनामा प्रदर्शित कराने पर आपत्ति की कि यह दस्तावेज रजिस्टर्ड नहीं होकर पूर्ण कोर्ट फीस पर नहीं है। अतः यह दस्तावेज इकरारनामा साक्ष्य में ग्राह्य नहीं है। दोनों पक्षों की बहस सुनी गई। वकील प्रतिवादी की आपत्ति को स्वीकार कर वकील वादी द्वारा प्रस्तुत दस्तावेज इकरारनामा को साक्ष्य में अग्राह्य है। इतना लिखने पर वकील वादी ने उक्त आदेश की रिविजन करने बाबत राजस्व मण्डल अजमे में रिविजन कराना चाहते हैं। इसलिए गवाह रमेश के बयान डेफर किये गये हैं। गवाह मांगीलाल, रामरतन, उपस्थित हैं। पत्रावली वास्ते साक्ष्य वादी हेतु दिनांक 26-8-2013 को पेश हो।”

The bare perusal of the impugned order passed by the trial court reveals that the trial court summarily allowed the objections raised by the advocate for the defendants without assigning any plausible grounds and opined that the document of agreement to sale is not admissible in evidence. The trial court had to see that whether the document being exhibited is used in defence of the party or otherwise? The trial court should have considered this aspect that in one of the issues framed by the trial court, the possession of khasra No. 1126 is to be proved by Madhu Lal and others and they can exhibit such a document for collateral purposes in their defence irrespective of the nature of the document. Indisputably the document being exhibited before the trial court is an unregistered document. Since both the cases have been consolidated by the trial court and the issues have been framed and one of the issues is related to possession on khasra No. 1126. Therefore, the petitioners had the right to defend their possession and such a document can be used as a shield by the party.

8. This court is of the considered view that the trial court itself framed issue No. 2 pertaining to the possession of khasra No. 1126 and on the basis of this agreement to sale the petitioners can prove and defend their possession, therefore, in this particular case the petitioners had the right to exhibit the document of agreement to sale.

9. Hon'ble Supreme Court has also held as under in S. Kala Devi Vs. V.R. Soma Sunderam and ors. (2010(2) RRT 819):-

"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 thin, 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 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."

In light of the judgment rendered by Hon'ble Apex Court this court finds it appropriate to accept this revision petition filed by the petitioners and quash and set aside the impugned order passed by the trial court. The trial court is directed to receive this document in evidence and allow the petitioners to get it exhibited.

Pronounced.

(Bajrang Lal Sharma)
Member