

KALAVAKURTI VENKATA SUBBAIAH

A

v.

BALA GURAPPAGARI GURVI REDDY

AUGUST 5, 1999

[S. RAJENDRA BABU AND A.P. MISRA, JJ.]

B

Registration Act, 1908—Section 77—Specific Relief Act, 1963: Suit under-praying for registration of Sale deed alongwith relief for injunction or possession for immovable property—Whether suit lies under Section 77 of Registration Act—Held, If a party is seeking not merely the registration of sale deed, but also recovery of possession and mesne profits or damages, a suit under Section 77 is not adequate.

C

Section 49: Unregistered sale deed—Can be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property—Indian Evidence Act, 1872.

D

A sale deed was duly executed in favour of the respondent by the appellant, which could not be registered since the appellant refused to cooperate. Respondent without presenting the document for registration before Registrar filed a suit for specific performance seeking direction to register a duly executed sale deed and for injunction or possession of the immovable property. The appellant orally asserted to have executed the sale deed.

E

The trial court dismissed the suit on the ground that suit was not maintainable under Specific Relief Act and the remedy was available under section 77 of Registration Act. The appeal was allowed on the ground that in granting decree for specific performance section 77 of Registration Act will not come in the way. A second appeal and the review against the same was dismissed. Hence, this appeal.

F

Dismissing the appeal, this Court

G

HELD : 1.1. If a party seeking not merely the registration of sale deed, but also recovery of possession and mesne profits or damages, a suit under Section 77 is not adequate remedy. The provisions of Specific Relief Act and

H

A 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. In other cases it has no application, inasmuch as a suit for specific performance is of wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. [80-F; 80-E]

Manicka Gounder v. Elumalai Gounder, (1956) 2 MLJ 536 and *Veeran Ambalam v. Vellaiammal*, AIR (1960) Mad. 244, referred to.

C *Ellammal v. Rangaswamy Gounder & Ors.*, 95 L.W. 546; *Mathai v. Joseph*, AIR (1970) Ker. 261 and *Veerappa Naidu v. Venkaiah*, AIR (1961) A.P. 534, cited.

D 1.2. In the case when the vendor declines to appear before the Sub-Registrar the situation contemplated under Section 77 of the Registration Act would not arise. [81-A-B]

E 2. Under section 49 of the Registration 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. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. [81-B-C]

Ramachandra Naidu & Anr. v. Ramaiah Naidu, AIR (1969) Mad 418, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2194 of 1989.

F From the Judgment and Order dated 11.7.88 of the Andhra Pradesh High Court in S.A. No. 93 of 1986.

G R. Sundaravaradan, Ms. Santhi Narayanan and K. Ram Kumar for the Appellant.

K. Subba Rao for A. Subba Rao for the Respondent.

The Judgment of the Court was delivered by

H RAJENDRA BABU, J. The respondent filed a suit for specific performance seeking a direction to register the sale deed dated July 2, 1979

[Exhibit A-6] and for injunction or possession of the immovable property referred to therein. His case is that the appellant had duly executed the sale deed in his favour in respect of the suit premises for a sale consideration of Rs. 3,200 but the appellant did not get the document registered thereafter. The case set up by the appellant is that he signed sale deed dated July 2, 1979 as a result of fraud and misrepresentation by the respondent taking advantage of the fact that he was an illiterate person. The trial court dismissed the suit of the respondent on the ground that the respondent had to avail the remedy under Section 77 of the Registration Act, 1908 [hereinafter referred to as 'the Act'] and not bring a suit for specific performance. The matter was carried in appeal. The First Appellate Court allowed the appeal and decreed the suit on the basis that the relief insofar as the decree for specific performance of the later half of the document could be granted and that Section 77 of the Act will not come in the way. A second appeal was preferred against the judgment and decree of the First Appellate Court and the High Court held that the view taken by the First Appellate Court was correct and dismissed the second appeal. Thereafter review petition was also preferred on the ground that the High Court had proceeded on the view that the judgments of the courts below were concurrent and the matter involves only pure findings of fact. The said review petition was dismissed by the High Court. Thereafter the matter is brought up before this Court under Article 136 of the Constitution and this Court, having granted leave, is now registered it as an appeal.

On the facts admitted the execution of the deed could not be doubted. However, the Trial Court had taken the view that it could not place reliance on the evidence of PWs 2 and 3. The First Appellate Court critically examined the same and held that the direct testimony of PWs 2 and 3 were free from blame and they admittedly witnessed execution of the deed and the payment of purchase money recited in the deed by the plaintiff to the defendant at the time of the execution of the document was clearly proved by the reliable and direct testimony of PWs 2 and 3. The oral assertion of the defendant to sell the suit land to the plaintiff for valuable consideration of Rs.16,000 was to vary or contradict the term of the instrument and, therefore, was not permissible in view of Section 92 of the Evidence Act. The First Appellate Court did not, therefore, agree with the conclusion of the Trial Court and came to the conclusion that the value of the land was received under Exhibit A-6 and the plaintiff was not disentitled to the registration of the said document.

In this appeal the question raised is whether the reliefs sought for by the respondent to enforce the registration of the document particularly when

A the appellant's contention was that document [Ex. A-6] is a deed of sale and, being unregistered, a decree for specific performance based on the same could not be granted.

B On this question, there is sharp cleavage of opinion between various High Courts. Instead of setting a catalogue of cases, we will summarise the views expressed therein. A survey of these decisions would show that a plaintiff has a complete remedy under the Act, and not having chosen to follow it, has only himself to blame himself; that document has no efficacy in law as the same is not registered; that a party to an agreement has no right to seek specific performance of the agreement once the document has been executed in pursuance of the agreement, but the document is not registered and that the party to an agreement is not entitled to compel the other party who has duly executed a document in pursuance of the agreement to go on executing fresh documents, by resorting to a suit for specific performance so long as no document has been registered.

C
D Another line of authority is the decision of the Division Bench of the Madras High Court in *Manicka Gounder v. Elumalai Gounder*, 1956-2-M.L.J. 536, observed as follows :

E "It is true that the purchaser can resort to proceedings under the Registration Act and the special statutory remedy under S.77 of that Act to obtain registration of executed document. But, if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not, however, mean that every such suit should be decreed."

F
G It is also viewed that a court cannot direct registration of a document after expiry of the period mentioned in the Act as such direction will be contrary to law.

H The respondent referred to the decision of Madras High Court in *Ramachandra Naidu & Anr. v. Ramaiah Naidu*, AIR (1969) Mad. 418. In that case, a conclusion was drawn to the effect that in enforcement of the promise made by the defendant to sign and execute all deeds and writings for better securing the estate, the plaintiff is entitled to have a proper deed of conveyance executed by the defendant at the plaintiff's costs and registered and that

there are two parts in such a document, one is merely an agreement to sell and, therefore, there is no objection to a suit for specific performance being based on it and second, that even if it should be deemed to be a sale deed which it is not, it would be admissible in evidence and that the earlier part could be separated from the later part, in which the defendants have agreed to execute a formal deed of conveyance and the agreement to execute a formal deed of conveyance could be specifically enforced.

In *Veeran Ambalam v. Vellaiammal*, AIR (1960) Mad. 244, it was held the lesser remedy provided under Section 77 of the Act cannot take away the larger remedy provided for under the Specific Relief Act and that the Act does not touch or affect the equitable jurisdiction possessed by the civil courts to pass a decree, for specific performance where circumstances exist entitling the plaintiff to pass a decree, and that if the remedy under Section 77 of the Act is not available and even if available, is not effective and it is futile to initiate proceedings, under the Act, the vendee may have his remedy for specific performance. This view was reiterated by the Madras High Court in *Ellammal v. Rangaswamy Goundar & Ors.*, 95 L.W. 546. It may be noticed that in *Mathai v. Joseph*, AIR (1970) Ker. 261, the Kerala High Court agreed with the view expressed in *Veerappa Naidu v. Venkaiah*, AIR (1961) A.P. 534, to hold that a person seeking relief other than bare registration can approach the court by filing a suit and his right to file a suit in civil court is not fettered by Section 77 of the Act. The view taken is that Section 77 of the Act is only a facility available to the aggrieved party and not a fetter on the court's power and whether the plaintiff has already set in motion the machinery for enforcing registration or not is immaterial and cannot inhibit a suit de hors Section 77 of the Act. Now the pendulum appears to have swung from one extreme to another towards the view that a suit for specific performance by way of registration of a document is maintainable notwithstanding the alternative remedy provided under Section 77 of the Act.

We may advert to Section 77 of the Act. Several steps have to be taken before a suit under Section 77 of the Act could be filed and they are :

- (a) document has to be presented for registration within the time prescribed by Sections 23-26 of the Act;
- (b) document has to be presented by a person authorised to do so under Section 32 of the Act;
- (c) the Sub-Registrar has refused to register the document presented

- A to him for registration;
- (d) appeal or application against such refusal has been made under Section 72 or 73 of the Act within 30 days of the order of the Sub-Registrar;
- B (e) the Sub-Registrar has refused to register under Section 76 of the Act; and
- (f) suit is filed within 30 days of the order of the Sub-Registrar.

C 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 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 adequate remedy.

G The analysis of the provisions of Section 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July 2, 1979 in favour of the plaintiff in respect of the plaintiff schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaintiff schedule mentioned property. 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. The said Court noticed that there was an agreement to transfer the immovable property in the suit by the defendant to the plaintiff on the terms stated in the sale deed. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. Therefore, the First Appellate Court was of the opinion that the plaintiff was alternatively entitled to base his claim of specific performance on the pleaded oral agreement to sell and, inasmuch as there are further reliefs sought for, it was a comprehensive suit including a relief for specific performance of a contract contained in the sale deed executed, but not registered and, therefore, held that such relief for specific performance could be granted.

In the circumstances, we are of the opinion that the First Appellate Court and the High Court were justified in upholding the claim of the plaintiff. Thus we find no merit in the appeal and the same, therefore, stands dismissed with costs throughout.

K.K.T.

Appeal dismissed.