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MP-1990-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 2nd OF JULY, 2025MISC. PETITION No. 1990 of 2024*KAMLI AND OTHERS**Versus**IQBAL HUSSAIN*

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Appearance:

Shri Sameer Kumar Shrivastava - Advocate for the petitioners.

Shri Prateek Kumar Waghmare - Advocate for respondent appeared through

V.C.
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ORDER

1. This petition has been filed by the petitioners under Article 227 of the Constitution of India seeking the following reliefs:

"1. A Writ of certiorari or any other appropriate writ, order, or any direction may kindly be issued to quash the order dated 09.01.2024(Annexure P-1).

2. A Writ of certiorari or any other appropriate writ, order, or any direction may kindly be issued to quash the order dated 27.03.2024 (Annexure P-2).

3. An appropriate Writ, order or direction may kindly be issued to hold document Annexure P-6 & Annexure P-7 to be admissible in evidence or in admissible in evidence.

4. Cost of the petition may kindly be awarded to the petitioner.

Any other relief which this Hon'ble High Court deem fit in the facts and circumstances of the case may also kindly be granted."

2. It is submitted by the learned counsel for the petitioners that the learned trial Court vide Annexure P/1 dated 09.01.2024 has admitted the unregistered sale deed in evidence, which is insufficiently stamped for collateral purposes. The



order is erroneous as Section 49 of the Registration Act clearly debars any document that is unregistered for admission in evidence. Provision to Section 49 of the Registration Act, 1908, mandates 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)2, 3[***] or as evidence of any collateral transaction not required to be effected by registered instrument. Therefore, an unregistered sale deed cannot be permitted to be admitted in evidence in a suit for declaration and injunction. In this regard, he has placed reliance in the cases of **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra** reported in [2009 (3) MPLJ, 289, **Gordhan Vs. Dinesh** reported in 2017 (4) MPLJ, 565 and **Mahendra Kumar Vs. Lal Chand Vs. Lalchand** and another reported in [2019 (3) M.P.L.J. 580.

3. Per contra, learned trial Court erred on behalf of the respondent submits that the trial Court has rightly passed the order impugned dated 09.01.2024. The sale deed dated 10.07.1983 can be read for collateral purposes even in absence of its registration.

4. Heard the learned counsel for the parties and perused the record.

5. Section 49 of the Registration Act in this behalf, which is as under:-

"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--

(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)2, 3[***] or as evidence of any collateral transaction not required to be effected by registered instrument].

6. Here, in this case, the document is a sale deed which ought to be compulsorily registered under Section 17 of the Registration Act. Admittedly, the suit is for purpose of the relief of declaration and injunction in respect of subject matter property, therefore, the unregistered sale deed dated 10.07.1983 is not admissible in evidence for any purpose. In this respect, the judgment of co-ordinate Bench of this Court in **Gordhan (supra)** is referable. Paragraphs 10 to 12 are relevant which are as under:-

"10. The Apex Court in the case of *Yellapu Uma Maheswari* (supra) has held that section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and section 49 of the Registration Act imposes bar on the admissibility of an unregistered document in respect of an immovable property and deals with the documents that are required to be registered under section 17 of the Act. It is well settled that nomenclature given to the document is not decisive factor, but the nature and substance of the transaction has to be determined with respect to the terms of the documents and the admissibility of the document. In the suit for declaration of title, an unregistered document can be relied upon for collateral purposes i.e. to prove his possession, payment of sale consideration and nature of possession, but not for primary purpose i.e. sale between the plaintiff and defendant. As stated above, the defendant has clearly set out his defence and the claim in the written statement stating that he has purchased the property by deed dated 1-1-1985 and he wanted to exhibit as sale deed to get the decree of title.

The defendant has also placed reliance over the judgment cited by the respondent in the case of *K.B. Saha* (supra).

11. The Apex Court in the case of *K.B. Saha and Sons Private Limited* (supra) has laid down the principle in respect of the collateral purpose. Para 34 of the judgment is reproduced below:

34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:—

1. A document required to be registered 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 immoveable 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.

12. According to the above judgment, a collateral transaction must be a transaction not itself required to be effected by a registered document. A collateral transaction must be independent of, or divisible from, the transaction to effect which required registration by the law. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence."

7. In this regard, the law laid down in case of **Avinash Kumar Chauhan (supra)** and **Mahendra Kumar (supra)** are also referable.

8. Having regard to the law laid down on aforesaid cases and provisions of Sections 17 and 49 of the Registration Act, 1908, the sale deed dated 10.07.1983 could not be admitted in evidence as it was an unregistered document keeping in view the relief sought in the suit.

9. Consequently, the impugned order dated 09.01.2024 to the extent admitting the sale deed dated 10.07.1983 in evidence for collateral purpose is hereby set aside.

10. Accordingly, the petition stands disposed of.

(RAJENDRA KUMAR VANI)

JUDGE

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