

WRIT PETITION NO. 7381/2016

1.8.2016

Shri Jaideep Sirpurkar, learned counsel for the petitioners.

Shri Bhanu Pratap Yadav, learned counsel for respondent.

With consent of learned counsel for the parties the matter is heard finally.

This petition under Article 227 of the Constitution of India, at the instance of defendants, is directed against the order dated 18.3.2016 passed in Civil Suit No. B/70001B/14, whereby the Trial Court has allowed the plaintiff to lead evidence on insufficiently stamped unregistered agreement of sale for collateral purpose.

Suit at the instance of respondent/plaintiff is for recovery of earnest money said to be paid by the plaintiff at the time executing the agreement for sale dated 23.3.2011. The agreement, as evident from the pleadings was for purchase of land bearing Khasra Nos. 3, 75/31, 4, 5/2, 75/2, 5/1 situated at Mouja Duda Seoni, Chhindwara. As alleged Rs. 4,00,000/- was paid as advance. On the allegation that the petitioners/defendants have failed to abide by the terms of sale, respondent/plaintiff filed a suit for recovery of amount of Rs.4,00,000/-; wherein, in order to establish that an amount of Rs.4,00,000/- as advance

was paid to the petitioners/defendants, respondent/plaintiff sought leave of the Court to tender an evidence of unregistered, insufficiently stamped agreement of sale dated 23.3.2011 to establish the factum as to the advance tendered.

The Trial Court setting aside the objection raised by petitioners/defendants permitted the plaintiff to lead evidence for collateral purpose for establishing that the amount was tendered vide said agreement dated 23.3.2011.

Question, therefore, is as to whether when in the given facts that an instrument regarding transaction of more than Rs.100/- and as such compulsorily registerable under Section 17 of Registration Act, 1908 and insufficiently stamped unregistered advance could have been permitted to be taken as advance for collateral purpose.

The issue is no more res integra and has been settled at rest by the Supreme Court in **Avinash Kumar Chauhan v. Vijay Krishna Mishra** [(2009) 2 SCC 532]; wherein it is held:

“23.The contention of learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In *Bondar Singh v. Nihal Singh* (2003) 4 SCC 161

this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined (SCC p.163, para 5) :-

"5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that

initial possession of the plaintiffs over the suit land was not illegal or unauthorized."

24. In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. [See Pandey Oraon v. Ram Chander Sahu (1992) Supp (2) SCC 77 and Amrendra Pratap Singh v. Tej Bahadur Prajapati and others (2004) 10 SCC 65.] The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads 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 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

26. The view we have taken finds support from the decision of the Privy Council in *Ram Rattan v. Parmananad*, [AIR 1946 PC 51] wherein it was held :- (AIR p.52)

"That the words 'for any purpose' in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms."

The said decision has been followed in a large number of decisions by the said Court.”

In view of the principle of law laid down by the Supreme Court in Avinash Kumar Chauhan (supra), Bondar Singh (supra), Pandey Oraon (supra), Amrendra Pratap Singh (supra) and Ram Rattan (supra), the impugned order when is tested on the said principles cannot be given stamp of approval; even by taking into consideration the fact that, the Trial Court has impounded the document under Section 33 of Stamp Act, 1899.

In view whereof the impugned order is set aside. Petition is allowed to the extent above. No costs.

(SANJAY YADAV)
JUDGE

VIVEK