

Rita Khurana vs Kamla Devi & Ors. on 19 December, 1997

Equivalent citations: 1998IIAD(DELHI)745, 1998(44)DRJ654

ORDER

Anil Dev Singh, J.

1. This is an application moved by the defendants under Order 7 Rule 11 read with section 151 of the Code of Civil Procedure for rejection of the plaint.

2. Briefly stated the facts are that the defendants executed a lease deed dated December 1, 1990 in favour of the plaintiff in respect of commercial premises bearing No. 121 in Indra Prakash Building situate at 21, Barakhamba Road, new Delhi, measuring 431 sq. ft. Under the lease deed the plaintiff was required to pay to the defendants a monthly rental of Rs.12,068/-. The lease was initially for a period of three years commencing from December 1, 1990 and ending on November 30, 1993. Clause 4(a) of the deed makes provision for renewal of the lease on the same terms and conditions subject to the rent being increased on each renewal by 20% over and above which was payable immediately prior to the respective renewal. Clause 8 of the deed contemplates execution of a fresh lease deed in favour of the lessee for the term for which the lease is renewed. The plaintiff before the expiry of the initial period of three years, requested the defendants to renew the lease for a further period of three years. However, the defendants by their notice dated August 6, 1993 called upon the plaintiff to hand over the possession of the demised property on the ground that the lease was to expire on November 30, 1993 by efflux of time. In response to the above said notice, the plaintiff by its reply dated August 24, 1993 clarified that the lease was of a perpetual nature and she was willing to renew the same for a further period of three years. The defendants, however, not acceding to the request of the plaintiff, filed a suit for recovery of possession of the demised premises which is pending before the trial court. On the other hand, the plaintiff filed the instant suit seeking, inter alia, the following reliefs:-

- (i) to direct the defendants to get the lease deed dated December 1, 1990 registered;
- (ii) to direct the defendants to renew the lease deed for a further period of three years from December 1, 1993 to November 31, 1996 and to get the same registered;
- (iii) to direct the defendants to keep on renewing the lease deed dated December 1, 1990 for further period of three years each till the plaintiff desires and to get the same registered. In the alternative, the plaintiff prays for damages to the tune of Rs.10 lacs and declaration that the lease agreement dated December 1, 1990 is of perpetual nature and the defendants are bound to renew the same regularly. The plaintiff also seeks permanent injunction for staying the proceedings of suit instituted

by the defendants against the plaintiff for possession of the premises pending in the court of Additional District Judge, Delhi.

3. It is in this suit that the defendants filed the instant application under Order 7 Rule 11 read with section 151 C.P.C. on the ground that the lease deed dated December 1, 1990 was not a registered document and the suit of the plaintiff founded on the said unregistered document is barred by section 49 of the Indian Registration Act, 1908, read with section 17(1)(d) thereof and section 107 of the Transfer of Property Act, 1882.

4. Learned counsel for the defendants appearing in support of the application submitted that since the lease agreement was for a period exceeding one year it could be made only by means of a registered instrument. The learned counsel contended that the lease deed not having been registered did not affect the immovable property comprised therein and cannot be received as evidence of any transaction affecting such property.

5. Learned counsel for the plaintiff canvassed that the present suit is maintainable and the document falls in the protective umbrella of the proviso to section 49 of the Registration Act, 1908. Drawing support from the said proviso learned counsel submitted that an unregistered document affecting immovable property and required by the Registration Act or Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance of the contract under Chapter II of the Specific Relief Act, 1877, or as an evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act. In the alternative he submitted that the lease agreement was of a perpetual nature and was not liable to be registered as section 107 was not attracted. He contended that the lease for an indefinite period cannot be treated as confined to a specific limit of time so as to exceed one year.

6. It is the admitted case of both the parties that the lease agreement is an unregistered document. The first question to be determined is whether the lease agreement requires registration under section 107 of the Transfer of Property Act. At this stage, it will be convenient to extract the relevant clauses of the lease agreement :-.

"1. The lessors agree to the lessee the premises, shown on the plan hereto annexed, for a period of three years commencing from 1st day of December 1990, and ending on 30th day of November, 1993 subject, however, to the renewal thereof as herein provided at or for the monthly rent of Rs.28/- (Rupees twenty-eight only) per sq. ft. The lessee shall have the right to use and enjoy in common with other persons entitled thereto the entrances, stair-cases, landing, corridors and passages in the building and the right of ingress from the premises so far as the lessee, its servants, agents, sister concerns, visitors and invitees. The lessee shall not subject the premises except for the use by sister concerns and firms belonging to the Director. xx xx xx.

4(a) If the lessee shall be desirous of renewing or extending the lease then in that event the lessors shall renew the lease for further three years each term on the same terms and conditions except that the rent be increased on each renewal by 20% over

that which was payable immediately prior to the respective renewal."

"8. The lessor hereby agrees and covenants that he shall at the request of lessee execute and get duly registered with the appropriate registering authority at Delhi a lease deed in terms hereof all expenses including stamp duty and registration charges for this lease deed shall be borne exclusively by the lessee."

7. As is clear from above, the defendants agreed to lease the demised premises for a period of three years commencing from December 1, 1990 and ending on November 30, 1993 subject, however, to the renewal thereof as provided in Clause 4(a) of the agreement. Section 107 of the Transfer of Property Act provides that a lease of immovable property for a term upto one year or for a term exceeding one year or reserving yearly rent can be made "only" by a registered instrument. Since the initial period of lease is for a period of three years it cannot be urged that the lease granted under the agreement was not for a term exceeding one year. Therefore, the lease deed in question was required to be registered under section 107 of the Transfer of Property Act. Having held so, the immediate and main questions which require to be determined are whether or not under section 49 of the Registration Act the agreement could be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 claiming registration of the same and whether or not suit is not maintainable as the agreement is not registered. At this stage, section 47 of the Registration Act may be noticed :-

"Effect of non-registration of document 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 part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument).

8. Having regard to the principal part of section 49 and the proviso thereto, two points of view emerge and are in vogue. One point of view is that where a document affecting immovable property and required to be registered under section 17 of the Registration Act or Transfer of Property Act is not registered it will not be received in evidence of any transaction affecting such property and

such a document will be wholly inoperative in law except to a limited extent for the purposes of section 53-A of the Transfer of Property Act. The other point of view is that an unregistered document affecting immovable property even though inoperative as a conveyance yet would be admissible in evidence in a suit for specific performance of a contract under Chapter II of the Specific Relief Act for the purpose of securing its registration and for other ancillary and incidental matters. This controversy arises in large number of cases and it needs to be settled by an authoritative decision of a Full Bench of this Court so that the legal position gets crystallised. The two parallel points of view, however, need to be elaborated for their proper appreciation.

Re. first point of view:.

9. Section 17 of the Registration Act lists the documents which require registration. Sub-clause (d) of clause (i) of section 17 includes in the list instruments of lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent. Section 49 of the same Act provides the effect of non-registration of documents which are required to be registered under section 17 of the Registration Act or under any provision of the Transfer of Property Act including section 107 of the Transfer of Property Act. A document which is compulsorily registrable but is not registered cannot affect any immovable property comprised therein or confer any power to adopt. It cannot be received as evidence of any transaction affecting such property or confer such power. In a nutshell such a document will be inoperative in law.

10. In *Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and others*, , the Supreme Court held that if the lease is void for want of registration neither party to the indenture can take advantage of any of the terms of the lease and at best the provision contained in section 53A of the Transfer of Property Act, which incorporates the English equitable doctrine of part performance, if the terms thereof are satisfied, be relied upon to protect possession for the period reserved under such a void lease, but no other term of the indenture which is inadmissible for want of registration can be the basis for relief. A Division Bench of this Court in *State Bank of India Vs. Smt. Pushpa Arora*, 1995 (5) A.D. Delhi 207, relying on *Biswabani Pvt. Ltd. (supra)* held that a lease of immovable property from year to year or for any term exceeding one year or reserving an yearly rent under section 107 of the Transfer of Property Act can be made only by a registered instrument. In that case no registered lease deed was executed by the parties and it was only on the basis of exchange of letters between them that an agreement of lease was sought to be spelled out. In the absence of a registered lease deed the defendant/tenant relied on the terms contained in its letter Ext. D-1 which terms were accepted by the plaintiff/landlord through her letter Ext. D-2 and contended that after the expiry of the initial period of lease, the lease stood renewed in terms of the renewal clause contained in Ext. D-1. Rejecting the submission it was observed that in terms of *Biswabani's case (supra)* renewal clause being a term of an inadmissible document could not form the basis of any relief to the defendant.

11. A connected facet to the above said view is that lease agreement which is upward of one year and is not registered, the tenancy would be created from month to month only. In *Ram Kumar Dass vs. Jagdish Ch. Deo*, , the tenant took settlement of the disputed property for a period of 10 years at an annual rent of Rs.46/- from Receiver by means of an unregistered *Kabuliyat* on December 8, 1924. The tenant paid *salami* and rents for two years, namely, 1925 and 1926. Beyond the payments for

two years, no further payment was made by him. In these circumstances, it was held that the Kabuliyat was not an operative document. The tenancy was created by an implication of law since rent was paid for two years, the tenancy should be held to be from month to month. Following this decision of the Supreme Court, the Calcutta High Court in Durgesh Nandini Devi Vs. Aolad Shaikh, , held that although the parties intended to create a permanent lease, as no operative lease came into existence, for lack of registration of the lease deed, a tenancy from month to month should be presumed.

12. In Punjab National Bank Vs. Ganga Narain Kapur, , their Lordships of the Allahabad High Court relying upon the decision of the Supreme Court & Privy Council in State of U.P. Vs. Singhepa Singh, , and Nazir Ahmad Vs. King Emperor respectively, held that when section 107 of the Transfer of Property Act as well as provisions of Registration Act prescribe a mode for entering into a lease for a period of more than one year or a lease from year to year or reserving an yearly rent no manner other than by entering into the contract of tenancy by a registered lease deed is permissible in law. It was further held that this being the legal position, a lease for a fixed period of one year or more than a year will not be operative, if the same has been entered into by a deed which is not registered and in such a case the presumption about the duration of the lease under section 106 of the Transfer of the Property Act will apply and the lease would be deemed to be from month to month in case of immovable property other than agriculture or manufacturing purpose and in case of lease of immovable property for agri- cultural or manufacturing purposes, the same shall be from year to year. In coming to this conclusion, the Allahabad High Court also relied upon the decision of Supreme Court in Allenbury Engineer Private Limited vs. Ram Krishna Dalmia, . In Pieco Electronics and Electricals Ltd. Vs. Tribeni Devi, , the Calcutta High Court held that the terms of a lease agreement, which is inoperative for lack of registra- tion, cannot be looked at as the terms cannot be termed as collateral to the principal transaction.

13. Thus viewed, the lease in the present case, would be a monthly lease in the absence of the registration of the lease deed and terminable by a notice to quit.

Re. second point of view:.

14. The Registration Act, 1908 provides the procedure for registration of the documents. Sec. 71 lays down that in case where the Sub Registrar refuses to register a document, except on the ground that the property to which it relates is not situate within his sub-district, he shall make an order of refusal and record his reasons therefor in the book prescribed for the purpose. While sections 72 to 75 of the Registration Act deal with the remedy of appeal to the Registrar against the refusal of the Sub Registrar to register a document, section 77 of the Registration Act permits filing of a suit in case of refusal of the Registrar to register the document. The suit is, however, to be filed within thirty days after the making of the order of refusal. Besides, the suit is required to be instituted in a civil court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered. The court is competent to decree the suit directing the document to be registered by the Sub-Registrar if it is duly presented for registration within thirty days after the passing of such a decree. Thus it is evident that the Registra- tion Act itself provides the procedure to secure registration of documents. It also permits a suit to be filed in a civil court for

a decree directing that the unregistered document be registered.

15. Though the Registration Act is a complete code in itself it does not preclude the filing of a suit for specific performance of a contract embodied in a deed affecting immovable property for the purpose of securing its registration. This view has found favour with the various High Courts. In *Jhaman Mahton Vs. Amrit Mahton and others*, AIR 1946 Patna 62, the Patna High Court considered the question. It observed that a litigant can bring a suit under section 77 of the Registration Act merely for the registration of a document and it is equally open to him to have recourse to the fuller and more comprehensive remedy provided by a suit for specific performance of a contract.

16. In *Manicka Goundan Vs. Elumalai Goundan and others*, , the court took the view that an agreement to sell cannot be said to have been fully performed till there is a properly executed document which is registered in accordance with the provisions of the Registration Act. It further observed that the purchaser is always entitled to insist upon his right to have a proper registered instrument, and every vendor is bound to do all that is necessary to perfect the title of the purchaser, which includes the execution and registration of a proper conveyance. The court was also of the opinion that purchaser can resort to proceedings under the Registration Act and in case 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 Registration Act, then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. A word of caution was also sounded by observing that merely filing of a suit will not entitle the vendee for a decree, the remedy being equitable in nature, and a court is not bound to grant specific performance in every case in which an agreement has not been carried out in its entirety. To fully appreciate the decision it will be necessary to extract the following observations of the court :-.

"Taking the case of an agreement to sell, it cannot be said that the contract has been fully performed till there is a properly executed document which is also registered. It cannot be said that the moment a document is executed the contract ceases to be in force. The purchaser is always entitled to insist upon his right to have a proper registered instrument. Every vendor is bound to do all that is necessary to perfect the title of the purchaser, which includes the execution and registration of a proper conveyance.".

17. Again the Andhra Pradesh High Court in *Padala Satyanarayana Murthy Vs. Padala Gangamma and others*, , held that a party's larger right to sue for specific performance should not be nullified by the lesser remedies provided in sections 71 to 77 of the Registration Act even though those remedies were not availed of by him.

18. A similar view was expressed by the Andhra Pradesh High Court in *Gulabsingh Hamirsingh Rajput Vs. Tarabai w/o Sagarsingh Bhilala and others*, .

19. In *Anchuru Veerapa Naidu Vs. Gurijala Venkaiah Chowdari*, , the court while following the decision of the Full Bench in *Padala Satyanarayana Murthy Vs. Padala Gangamma and others* took a similar view and held that when there are two alternative remedies available to a party it is open to

him to exercise his right of election. Since a suit under section 77 has to be confined to the registration of a document alone, the provision cannot afford a full and complete relief which a litigant can claim under the Specific Relief Act. It was also of the opinion that even though a party has not taken prior proceedings under the Registration Act, the remedy for specific performance can be resorted to. It further held that an unregistered document affecting immovable property, in spite of lack of registration, can be received in evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act. In coming to this conclusion it relied upon Full Bench decision of the Madras High Court in N.M.S.S.Subramanian Chettiar Vs. S.M.A.M. Arunachalam Chettiar and others (AIR 1943 Madras 761), which while overruling the view of the Single Judge in Venkadari Somappa Vs. Official Receiver, Bellary (1938 Madras 801) held as follows:-

"This proviso was inserted in the section by the Transfer of Property (Amendment) Supplementary Act 1929, as the result of the decision of the Privy Council in James Skinner Vs. R.H.S.Skinner, AIR 1929 P.C. 269. The proviso makes it perfectly clear that an unregistered document affecting immovable property may be put in evidence in a suit for specific performance. If the document is put in evidence and embodies the contract between the parties, it is sufficient to support the claim. In the judgment in Venkatadri Somappa Vs. Official Receiver of Bellary (AIR 1938 Madras 801) it was said that it is well settled law in this presidency that an unregistered document of a transfer is not of itself sufficient to support a suit for specific performance of an agreement to transfer and stress was laid on the fact that there it was not established that a separate agreement to mortgage was entered into prior to the execution of the mortgage deed in suit. The decisions of this Court which preceded the introduction of the proviso to S. 49, no longer have application, and we do not agree that an unregistered instrument affecting immovable property is not sufficient to support a suit for specific performance. In suit a suit, the production of the document and its proof will be sufficient to support the plaintiff's case if it embodies the whole agreement between the parties and there are no other factors to be taken into consideration. The proviso in express terms says that it may be received as evidence of a contract in a suit for specific performance."

20. The Orissa High Court, while echoing similar views in Rajan Patro Vs. Akur Sahu and others held that where their being a contract for sale the plaintiff is entitled, if the deed conveying title to him is not registered, to enforce the contract and seek registration by way of completing the contract and delivery of title deed in respect to the land which was the subject-matter of contract for sale. It also clarified that a suit for specific performance for the relief will not be barred by section 77 of the Registration act provided such a suit is within time and otherwise permissible in law. Since what the plaintiff seeks in such a suit is an equitable relief, the equitable jurisdiction of the civil court will in no way be affected by the provisions of the Registration Act.

21. The Kerala High Court in Mathai Ouseph Panackal Vs. Joseph and another on review of several authorities of different High Courts, held that a suit for specific performance is wider in its amplitude and is primarily one for enforcement of a contract and for consequential or further reliefs. It further observed that in every case where complete satisfaction cannot be given by a mere

decree directing registration of the document, section 77 is insufficient to provide relief and cannot operate as a bar. If a party is in need of other reliefs along with registration of the deed, section 77 cannot come in its way.

22. In *Uma Jha Vs. Chetu Mander and others* AIR 1926 Patna 89, it was held that though a document which was not registered would be inoperative as a conveyance, yet it would be admissible in evidence for specific performance of a contract which must be deemed to have preceded the execution of the document. In this regard the court observed as follows:-

"The Registration 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 such a decree. This was the view taken by the learned Munsif. the learned Subordinate Judge has taken a different view and has relied upon the decision in *Edun Vs. Mahomed Siddik*, (1883) 9 Cal. 150, in support of his view. That case decided that, independently of S. 77 of the Registration Act, a suit to compel registration of a document will not lie - a decision with which we entirely agree. The question raised in this case is whether the plaintiff is entitled to a decree for specific performance of the agreement to sell the disputed property to him; and on this question the decision of Mukherji, J. in *Suren-dra Nath Nag Chowdhury Vs. Gopal Chunder Ghosh*, (1910) 12 C.L.J. 464, entirely supports the view of the learned Munsif. As was pointed out in that case, it is not a sufficient performance of the contract for the defendant merely to execute a conveyance; for until the kabala is registered, it is inoperative in law. The execution of the kabala by the defendant not having converted the executory contract into an executed contract, the plaintiff is clearly entitled to a decree directing the defendant to carry it into execution. It was contended before us that the agreement between the parties having been reduced into writing, the only evidence of that agreement would be that furnished by the document and that the document is inadmissible in evidence as it was not registered in accordance with law. I know of no authority which decides that an agreement for sale has to be registered under the Registration Act. The true view is that although a kabala which has not been registered is inoperative as a kabala, yet it is admissible in evidence in a suit to enforce specific performance of the contract which must be deemed to have preceded the execution of the kabala.

It was then contended that the plaintiff has not asked for a decree for specific performance and that this Court ought not to convert a suit for registration into a suit for specific performance. The argument, in my opinion, is a technical one, and ought not to weigh with us. All the material facts entitling the plaintiff to a decree for specific performance are pleaded. These facts were found in favour of the plaintiff by the learned Munsif and were not challenged before the Sub-ordinate Judge. That being so, the plaintiff was clearly entitled to succeed before the learned Subordinate Judge.

The decree passed by the learned Munsif, is however not strictly in accordance with law. The learned Munsif directs the Sub-Registrar of Banka to register the kabala. As I have already pointed out, the civil Court has no jurisdiction to pass a decree of this nature independently of S.77 of the Registration Act. The plaintiff is, however, entitled to a decree for specific performance by the execution and registration of a fresh document within three months from the date hereof."

The authority for this decision was displaced by the decision of the Privy Council in *James R.R. Skinner Vs. Robert Hercules Skinner and others* AIR 1929 P.C. 269, in which it was held that since the conveyance affecting immovable property which was not registered would be inoperative, the suit for specific performance for purposes of registration of the document will be barred. Soon after the decision of the Privy Council, section 49 was amended by the legislature and the present proviso was added by the Transfer of Property (Amendment) Supplementary Act, 1929 by which the legal position became exactly the same as stated in *Uma Jha Vs. Chetu Mander and others*, AIR 1926 Patna 89, (supra) by the Patna High Court.

23. In *Nidasanametla Venkata Seshayya Vs. District Board, East Godavari*, AIR 1939 Madras 391, the Madras High Court, interpreting the proviso to section 49, held as follows:-

"The learned counsel for the appellant has urged that the words "document affecting immovable property" were meant to cover the documents containing agreements such as a contract to lease or a contract to sell and were not intended to cover documents which conveyed or purported to convey title to immovable properties. I do not agree with this contention. There is nothing in the language of the Proviso which would justify one to place such a narrow construction. The words are unambiguous and there is no reason why full effect should not be given to them. On the other hand, this interpretation would defeat the very purpose for which the amendment was effected. If the matter were *res integra*, I would have no hesitation in construing the language of the Proviso in a manner which would make all the documents affecting immovable property admissible as evidence of contracts in suits for specific performance, particularly when we find that documents conveying title to immovable property do not ordinarily come into existence without prior contracts."

24. The Supreme Court in *Hamda Ammal Vs. Avadiappa Pathar and others*, , held that on the language of the proviso even an unregistered document can be received as evidence for the purposes mentioned in the proviso to section 49 of the Registration Act.

25. While dealing with point of view favouring the maintainability of the suit for specific performance of a contract for securing registration of a document required to be registered it is important to note that in the case of *Biswabani Pvt. Ltd.* (supra) the Supreme Court was not dealing with a suit for specific performance. Similarly, the Division Bench of this Court in *State of U.P. Vs. Smt. Pushpa Arora* (supra) was also not concerned with a suit for specific performance of an unregistered contract affecting immovable property.

26. Thus, it is seen that there are two strong current of thoughts on the interpretation of section 49 of the Registration Act. Looking to the importance of the matter, its wide ramifications and to lend clarity and certainty to the interpretation of Section 49 of the Registration Act read with section 17 thereof and section 107 of the Transfer of Property Act, I am of the opinion that the matter needs to be decided by a Full Bench of this Court. The matter, therefore, be placed before Hon'ble the Acting Chief Justice for constituting a Full Bench.