

Swarn Singh Vs. Suba Singh and ors.

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Court : Punjab and Haryana

Decided On : Jul-07-2004

Reported in : (2005)141PLR642

Judge : Ashutosh Mohunta, J.

Acts : [Registration Act, 1908](#) - Sections 49

Appeal No. : Civil Revision No. 428 of 1992

Appellant : Swarn Singh

Respondent : Suba Singh and ors.

Advocate for Def. : D.D. Sharma, Adv.

Advocate for Pet/Ap. : R.L. Gupta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ashutosh Mohunta, J.

1. This revision has been filed against order dated 9.10.1991 passed by the Additional Senior Sub Judge, Mansa by which the application of the plaintiff-petitioner for producing the writing dated 25.12.1970 as written in the Bahi in

evidence, was disallowed on the ground that as the writing dated 25.12.1970 was an unregistered document, therefore, it cannot be looked into.

2. The plaintiff-petitioner in order to prove that the land in dispute has been given to him on lease by one Babu Singh, wanted to produce a writing written in the Bahi on 25.12,1970. It was averred by the plaintiff that as the land has been leased out to him for a period of 99 years and an entry to this effect has duly been recorded in the Bahi, therefore, the Bahi be allowed to be produced in evidence to show the nature of possession of plaintiff-petitioner. The production of the Bahi was disallowed by the trial court by holding that as the document, sought to be produced in evidence, was an unregistered and unstamped document, therefore, the same cannot be considered and the nature of possession cannot be deemed to be for collateral purpose.

3. The trial court relied upon the decision in *Delhi Motor Co. v. U.A. Basrukar* : [1968]2SCR720 wherein it was held that where the lease deed is an unregistered document, no right could be enforced thereunder by a party.

4. On the other hand, Mr. R.L. Gupta, counsel for the petitioner has argued that for ascertaining the nature of possession of the plaintiff-petitioner, an unregistered document can be relied upon. He has placed reliance on a decision in *Bhaiya Ramanuj Pratap Deo v. Lain Maheshanuj Pratap Deo and Ors.*, : [1982]1SCR417 , wherein it has been held that proviso to Section 49 of the Registration Act permits the use of a document even though unregistered, as evidence of any collateral transaction not required to be effected by registered document. Thus, according to the learned Counsel, the writings in the Bahi can be looked into for ascertaining the nature of possession. He has also placed reliance on a judgment in *Raj Chand Jain v. Miss Chandra Kanta Khosla*, : AIR 1991 SC744 , Wherein it has been held that the lease deed though unregistered, can be considered for collateral purpose. Reliance has also been placed on *P.M. Anand Babu and Ors. v. Mir Akba Ali Khan and Anr*, : AIR 2004 AP243 wherein it has been held that unregistered sale deed sought to be relied on can be admitted into evidence in the third proviso to Section 49 of the Registration Act.

5. Having perused the aforementioned authorities, it is clear that entries in the Bahi can be considered to show the nature of possession and can be looked into for collateral purpose for ascertaining the nature of possession of the plaintiff-petitioner. It is pertinent to notice here that the authority relied upon by the trial court in Delhi Motor Co. v. U.A. Basrukar, : [1968]2SCR720 does not relate the proviso to Section 49 of the Registration Act. Hence, the same is not applicable to the facts of the present case.

6. In view of above, order passed by Additional Senior Sub Judge, Mansa dated 9.10.1991 is set aside and the petitioner is permitted to lead writing dated 25.12.1970 in the Bahi in evidence. Whatever is its evidentiary value, would be decided by the trial court at the time of final adjudication of the suit. This revision petition is allowed.

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