

Sardar Singh Vs. Smt. Krishna Devi and Another

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Court : Delhi

Decided On : Nov-21-1990

Reported in : AIR1991Delhi178; ILR1991Delhi495

Judge : Leila Seth, Actg. C.J. and; Anil Dev Singh, J.

Acts : [Registration Act, 1908](#) - Sections 17 and 49; [Arbitration Act, 1940](#) - Sections 3, 14 and 17; Indian Registration Act, 1871; Indian Registration Act, 1877; [Transfer of Property Act, 1882](#) - Sections 24 to 26 and 27 - Rules 76-A, 90(15) and 768; [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : R.F.A. No. 206 of 1986

Appellant : Sardar Singh

Respondent : Smt. Krishna Devi and Another

Advocate for Def. : R.K. Makhija, Sr. Adv., ; S.K. Taneja and ; B.J. Nayyar

Advocate for Pet/Ap. : H.K. L. Sabharwal, Adv

Judgement :

ORDER

Anil Dev Singh, J.

1. This appeal is directed against the judgment and decree of the learned Additional District Judge, Delhi, dated May 5, 1986, in Civil Suit No. 2 of 1983 whereby by said suit instituted by respondent No. 1 against the appellant and respondent No. 2 for specific performance of the agreement for sale of house bearing No. 313 Ward No. XVI, built on a leasehold plot, comprised in Khasra No. 180/37/36/33, admeasuring 222 sq. yards, situate in Block AC, Joshi Road, Karol Bagh, New Delhi (hereinafter referred to as 'the property') was decreed in favor of respondent No. 1.

2. The salient facts giving rise to this appeal are:- The property was purchased for a sum of Rs.36,200/- by respondent No. 2, a displaced person, on April 7, 1959 in a public auction held by the Regional Settlement Commissioner, New Delhi in pursuance of the powers conferred upon him under S. 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'the Act'). On January 22, 1963 sale certificate in respect of the leasehold property was issued by the Settlement Commissioner in favor of respondent No. 2 exclusively to the extent of full share, under the provisions of Rule 90(15) of the Displaced Persons (Compensation and Rehabilitation) Rules. 1955 (hereinafter referred to as 'the Rules') in the form specified in Appendix XXIII thereto.

3. By an agreement dated January 15, 1973 ('the 'agreement' for short) respondent No. 2 undertook to sell the property to the husband of respondent No. 1, Shri Joginder Nath for a sum of Rs. 90,000/-. The 'agreement' records the receipt of a sum of Rs. 15,000/- by respondent No. 2 as earnest money from Shri Joginder Nath. According to the terms and conditions of the 'agreement' the sale deed was required to be executed by May 30, 1973. Subsequently, by mutual Consent of the parties to the 'agreement' the time limit for execution of the sale deed was extended up to December 31, 1976. The 'agreement' was followed by another agreement dated December 18, 1974 between the same parties, which further extended the period for registration of the sale deed up to December 31, 1977. After the death of the said Shri Joginder Nath in 1978 another agreement to sell dated December 6, 1978 (herein after called the 'subsequent agreement'). Exhibit P. 7, was executed by respondent No. 2 in favor of respondent No. 1. The 'subsequent agreement' and an endorsement thereon records the payment of a

total sum of' Rs. 29,000/- by respondent No. 1 and her husband to respondent No.2. According to the terms and conditions of the 'subsequent agreement' the parties were required to complete the transactions by December 31, 1979. It is also relevant to mention that the `subsequent agreement' also recites that the house in question was subject-matter of a mortgage in favor of one Smt. Satya Wanti, wife of Shri Ram Lal, and respondent No. 1 had paid a sum of Rs. 10,000/- in cash to respondent No. 2 for redemption of the mortgage. Respondent No. 2 got the property redeemed by payment of a sum of Rs. 10,000 to the mortgage after having received the same from respondent No. 1.

4. After redemption of the property the title deed of the house as also 'redeemed mortgage deed' was handed over to respondent No. 1 by respondent No. 2. According respondent No. 1 she paid a sum of Rs. 6000/- over and above Rs. 29,000/- mentioned in the 'subsequent agreement'. Despite the fact that respondent No. 2 had clearly stipulated in the various agreements referred heretofore to obtain written permission to sell the house from the competent authority at his own cost, and to execute a regular sale deed in favor of respondent No. 1, he failed to fulfill his part of the obligation. Consequently, respondent No. 1 gave a notice dated October 19, 1982 through her Advocate to respondent No. 2 for execution of the sale deed. Respondent No. 2, however, remained unmoved by this notice. It seems that notice sent by respondent No. 1 to respondent No. 2 was passed on to the appellant by the latter. The appellant, who is the brother of respondent No. 2, admittedly sent a letter dated December 6, 1982 to respondent No. 1 claiming to be the owner of one-half share in the property on the basis of an award rendered in arbitration proceedings between the two brothers, followed by an order dated December 28, 1963 of Sub Judge 1st Class, Delhi in Suit No. 299 of 1963 making it a rule of the Court. This led to filing of the civil suit by respondent No. 1 against respondent No. 2 for specific performance of the agreement dated December 1978 in respect of the suit property. In the suit the appellant was also imp leaded as defendant No. 2 since he claimed one-half share in the house, although according to respondent No. 1 the former did not have any interest in or right over the property.

5. The suit was contested by both the appellant as well as respondent No. 2. Respondent No. 2 admitted the execution of the agreement as also the receipt of a total sum of Rs. 29,000/- from time to time. However, he denied having received a sum of Rs. 6000/- which was alleged to have been paid to him over and above a sum of Rs. 29,000/- by respondent No. 1. He alleged that the agreement to sell was incapable of performance as suit property was in possession of the tenants and also that appellant was owner to the extent of one-half share in the house.

6. The appellant also resisted the suit averring that since he was the owner to the extent of one-half share in the property in dispute, the agreement executed by respondent No. 2 in favor of respondent No. 1 was not binding on him.

7. The trial Court struck the following issues :

1. Whether the agreements to sell dated 15-1-1973 and 6-12-1978 with respect to the property in question executed by defendant No. 1 are not enforceable and void as alleged in W/ S? OPD.

2. What amount has been received by the defendant No. 1? OPP.

3. Whether the defendant No. 2 is bound by the acts of defendant No.1 and is bound by the agreements to sell executed by defendant No. 1? OPP.

4. Whether the defendant has committed any breach of the contract and if so to what amount of damages the plaintiff is entitled to?

5. Whether the plaintiff is entitled to specific performance against the defendants? OPP.

6. In case Issue No. 5 is decided in the negative to what relief is the plaintiff entitled to? OPP.

7. Relief.

8. The trial Court decided issues 1 and 3 together as being inter-connected. The learned Court below came to the conclusion that respondent No. 2 was the exclusive owner of the suit property and the appellant was falsely claiming to be

the co-owner to the extent of one-half share. Both these issues were decided in favor of respondent No.1 and against the appellant and respondent No. 2.

9. In so far as issue No. 2 is concerned, the trial Court held that respondent No. 1 had paid a sum of Rs. 35,000/- to respondent No. 2.

10. Remaining material issues 4 and 5 were also decided in favor of respondent No. 1 and against the brothers. The learned trial Court was of the view that respondent No. 2 committed breach of the contract and did not get the sale deed executed in favor of respondent No. 1 on 'flimsy grounds'. Consequently the trial Court decreed the suit of respondent No. 1 for specific performance of the contract against respondent No. 2 as also the appellant. The respondent No. 2 was directed to execute the sale deed and to get it registered within two months after receiving the balance amount of Rs. 55,000/- from respondent No. 1.

11. Aggrieved by the judgment and decree of the trial Court the appellant has filed this appeal. However, respondent No. 2 has not appealed against the order of the trial Court.

12. The appellant in his memo of appeal has asserted that at the time of auction of the property the appellant was posted at Kharakpur and contributed one-half of the price of the property but respondent No. 2 got the sale certificate issued in his own name alone. On coming to know of this fact, he protested against the said action of respondent No. 2. It is maintained that an arbitrator was appointed who gave his award which was made a rule of the Court by judgment and decree passed by Shri P. L. Singla, Sub Judge 1st Class, Delhi, on December 28, 1963 holding, inter alia, that 'the appellant had contributed half share of the price of the house and was owner of the half share'. These facts are, however, not alluded to in the written statement filed before the trial Court. Even a copy of the award was not placed on record of the trial Court. It has been further asserted in the memo of appeal that the property in question was mutated in the name of appellant and respondent No. 2 in the 'Revenue/ Delhi Development Authority's records.'

13. Appearing for the appellant Shri H. K. L. Sabharwal has reiterated the assertions made in the memo of appeal. The contentions of the learned counsel

for the appellant shortly put are :

(i) that respondent No. 2 was not the exclusive owner of property and could not therefore validly execute agreement to sell in favor of respondent No. 1. In fact the appellant was the owner of the property to the extent of one-half, as evidenced by the judgment and decree of Sub Judge, Delhi dated December 28, 1963 ('decree' for short) which was based on the award of the arbitrator;

(ii) that the award having been transferred into a decree was not compulsorily registerable under S. 17(l) of the [Registration Act, 1908](#). In any event a decree of the Court was exempt from registration under S. 17(2)(vi) of the Registration Act. Reliance was placed upon the decisions in *Seonarain Lal v. Prabhu Chand*, : AIR1958 Pat252 and *Moolchand v. Maganlal*, : AIR 1965 MP75

(iii) that the appellant was not bound by the agreements dated January 15, 1973, December 18, 1974 and December 6, 1978 not being a party to the same.

(iv) that respondent No. 1 was not a bona fide purchaser and did not make any inquiries about the ownership of the property in dispute and as such the trial Court was not justified in passing a decree for specific performance.

14. Shri B. J. Nayyar learned counsel appearing for respondent No. 2 has supported the case of the appellant and has adopted the submissions made on latter's behalf.

15. Shri Makhija, learned counsel appearing for respondent No. 1 sought to refute the contentions advanced on behalf of the appellant and respondent No. 2. Learned counsel urged that the decree dated December 28, 1963 on which reliance has been placed by the counsel for the appellant is a nullity and has no existence in the eye of law. He further submitted that the decree was based upon an unregistered award. According to him the award required compulsory registration under S. 17(1)(b) and (e) of the [Registration Act, 1908](#). Shri Makhija also invited our attention to Rule 76(b) of the 'Rules' to emphasize that in case the appellant had associated himself with respondent No. 2 for purchase of the suit property under S. 20 of the Act, in that event the transfer would have been made

jointly in their names. He has also referred to the sale certificate issued by the Managing Director which was exclusively in the name of respondent No. 2. The learned counsel further submitted that since the appellant had no right over the property, the question of his not being bound by the agreements to sell does not arise and is irrelevant. Insofar as the question as to whether respondent No. 1 was a bona fide purchaser, the submission of the learned counsel is that she made all reasonable efforts to ascertain the title of respondent No. 2 and as such the contention of the appellant in this regard is misconceived.

16. We have given our earnest consideration to the submissions made by learned counsel for the parties and have also examined the record.

17. The first two submissions urged on behalf of the appellant, which are the principal planks of his attack on the judgment of the trial Court seem to be devoid of any force. A perusal of the various agreements to sell clearly show that respondent No. 2 made a declaration suggestive of the fact that he was the exclusive owner of the property in question. It would at this stage be apposite to reproduce Cls. 1, 6 and 7 of the 'Agreement' to the extent they are relevant :

'I. WHEREAS the first party is the owner of the Amla of the lease hold property of 222 sq. yds. bearing Municipal No. 16/1313, Khasra No. 180/37-36-33 Block A.C. situated at Joshi Road, Karol Bagh, New Delhi-5

6. That the first party is fully responsible for any defect in the title of the said property and agrees to pay all expenses, damages, with costs.

7. That the 1st party has assured the second party that the said property, if pledged or mortgaged, or gifted with any one shall be got redeemed and or free from any encumbrance before effecting its registration in favor of second party'.

18. Somewhat similar recitals have been incorporated in agreement dated December 18, 1974 and the 'subsequent Agreement' (Ex. P.7). Another significant aspect of the matter is that the 'Subsequent Agreement' records that the house is mortgaged with possession for a sum of Rs. 10,000/- in favor of Smt. Satya Wanti. The mortgage was effected by respondent No. 2 alone. Had the property

belonged to both the brothers, this fact would have found a place in the mortgage deed. Moreover, the mortgage was redeemed by respondent No. 2. The title deed and the instrument of redemption of the mortgage in respect of the property were handed over by respondent No. 2 to respondent No. 1 which fact is expressly recorded in the 'Subsequent Agreement'. Respondent No. 2 appearing as his own witness before the trial Court made very significant admissions in his cross examination which may be summarized as under:

(i) 'Sale deed by the custodian' was in his favor alone and 'there was no associate'.

(ii) It was he who mortgaged the property and redeemed the same by paying off the mortgagee after taking a sum of Rs. 10,000/- from respondent No. 1.

(iii) In 1978 at the time of execution of the 'Subsequent Agreement' he handed over several documents to respondent No. 1 evidencing his title over the 'property'. These documents (marked W`A' to 'N') relating to the 'property' which are on record consist of following amongst others:

(a) Mortgage deed dated October 4, 1968,

(b) two ground rent receipts dated June 18, 1968 and February 2, 1968 and property tax receipt voucher for the year 1967-68 made in favor of Kartar Lal and recording payments by him;

(c) Copy of Jamabandhi of 1964-65 (Mark V) declaring him to be lessee (Pattadar) of the property; and

(d) Copy of Jamabandhi (Mark 'D') recording mutation of the 'property' in his favor.

18A. In view of this position, respondent No. 2 is estopped from claiming to be having only a partial share in the property. He cannot be permitted to alter his position to the prejudice of respondent No. 1.

19. Shri Sabharwal, learned counsel for the appellant, heavily relied upon the 'decree' passed in terms of the award declaring the ownership of property to be of both the brothers. The question which arises for consideration is whether the

decree can be acted upon in view of S. 17(l)(b) of the Registration Act. To determine this question it is necessary to examine Ss. 17(l) and 49 of the Registration Act. The relevant portions of the said sections read thus:

'17. Documents of which registration is compulsory:-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864 or the Indian Registration Act, 1871 (8 of 1871) or the Indian Registration Act, 1877 (3 of 1877) or this Act came or comes into force, namely:

(a) xxx xxx xxx xxx) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(c) to (d) xxx xxx xxx xxx xxx xxx (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees'.

'49. Effect of non-registration of documents required to be registered :- No document by S. 17 or by any provision of the [Transfer of Property Act, 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.

xxx xxx xxx xxx xxx The proviso to this section has not been pressed into service and as such we are not concerned with it.

20. A conjoint reading of Ss. 17(l)(b) and 49 leave no manner of doubt that any award or non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish any right, title or interest in any immovable property of the value of Rs. 100/- and above is required to be registered, otherwise the instrument will not be received in evidence of any transaction affecting such property and the same would be hit by the provisions of S. 49 of the Registration Act. It is not disputed that in the instant case the award of the arbitrator declared that the property belonged to both the brothers viz. 'the appellant as well as respondent No. 2. In such situation it cannot be said that the award did not purport to create any right, title or interest in the immovable property. In fact, it was by virtue of the award that a new right was sought to be created in favor of Sardar Singh, appellant. S. 3 of the Arbitration Act provides that an arbitration agreement, unless a different intention, is expressed therein, shall be deemed to include the provisions set out in the first schedule insofar as they are applicable to the reference. Paragraph 7 of the first schedule is as follows:

'The award shall be final and binding on the parties and persons claiming under them, respectively'.

21. Having regard to the above discussion, we are clearly of the view that the award in question, purported to create rights in the immovable property although it, may be a different thing to say that these rights cannot be enforced unless the award was registered and followed by a decree of the Court validly passed. We are fortified in this view by the judgment of the Supreme Court in *Satish Kumar v. Surinder Kumar*, : [1969]2SCR244 , which held as under:

'9..... In our opinion this judgment lays down that the position under the Act is in no way different from what it was before the Act came into force, and that an award has some legal force and is not a mere waste paper. If the award in

question is not a mere waste paper but has some legal effect it plainly purports to or affects property within the meaning of S. 17(l)(b) of the Registration Act.'

10. We may mention that an appeal was filed in this Court against the decision of the Division Bench of the Patna High Court, which had referred the case of : AIR1958 Pat252 to the Full Bench for opinion on certain questions and which decided the case in accordance with that opinion, and the same was dismissed by this Court in Sheonarain Lal v. Rameshwari Devi, Civil Appeal No. 296 of 1960, D/- 6-12-1962 (SC) in which the judgment was delivered by the same Bench which decided the case of Civil Appeal No. 162 of 1962, D/- 1-10-1962 SC) (reported in 1962 SC (Notes) 369). It is true that this Court in Civil Appeal No. 296 of 1960, D/- 6-12-1962 (SC) did not expressly rule on the validity of the answer given by the Patna Full Bench in : AIR1958 Pat252 that such awards did not require registration, but decided the case on the point whether the award in dispute in that case in fact purported or operated to create a right, title or interest of the value of more than Rs. 100/- in immovable properties. But after holding that the document did not operate to create or extinguish any right in immovable property, this Court observed :

'The position would have been otherwise if the arbitrators had directed by the award itself that this shop would go to Prabhu Chand without any further document. In that case the award itself if would have created in Prabhau Chand a right to these properties. That is not, however, the provision in the award. In the absence of a registered document, Prabhu Chand would get no title on the award and Sheonarain's title would remain in the shop.'

11. In this connection we may mention two other decisions of this Court. In Champalal v . Mst. Samarath Bai, : [1960]2SCR810 , Kapur,J., speaking for the Court, observed as follows:

'The second question that the award required registration and would not be filed by the arbitrators before it was registered is equally without substance. The filing of an unregistered award under S. 49 of the Registration Act is not prohibited; what is prohibited is that cannot be taken into evidence so as to affect immovable property falling Linder S. 17 of the Act. That the award required registration was rightly

admitted by both parties.'

12. Again in *Kashinathsa Tamosa Kabadi v, Narsingsa Bhaskarsa Kabadi* : [1961]3SCR792 , Shah, J., speaking for the Court observed :

'The records made by the Panchas about the division of the properties, it is true, were not stamped nor were they registered. It is, however, clear that if the record made by the Panchas in so far as it deals with immovable properties is regarded as a non-testamentary instrument purporting or operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property, it was compulsorily registrable under S. 17 of the Registration Act and would not in the absence of registration be admissible in evidence.'

13. In view of the above decisions it is not necessary to refute the other reasons given by both the Full benches, but out of respect for the learned Judges we deal with them. We may mention that no comment was made in these cases on the provisions of para 7 of Schedule 1 to the Act. This para provides:

'7. The award shall be final and binding on the parties and persons claiming under them respectively'.

If the award is final and binding on the parties it can hardly be said that it is a waste paper unless it is made a rule of the Court.

14. We are unable to appreciate why the conferment of exclusive jurisdiction on a Court under the Act makes an award any the less binding than it was under the provisions of the Second Schedule of the Code of Civil Procedure. The Punjab Full Bench held that the registration does not in any manner add to its efficacy or give it any added competence. We cannot concur with these observations. If an award affects immovable property over the value of Rs. 100 its registration does get rid of the disability created by Section 49 of the Registration Act.'

Few observations in para 19 are also relevant to the point in controversy and need to be noticed. The said observations are:

'19 The award does create rights in that property but those rights cannot be enforced until the award is made a decree of the Court. It is one thing to say that a right is not created, it is an entirely different thing to say that the right created cannot be enforced without further steps. For the purpose of S. 17(l)(b) of the Registration Act all that we have to see is whether the award in question purports or operates to create or declare, assign, limit or extinguish whether in present or future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property. If it does, it is compulsorily registrable. In the aforementioned Full Bench decisions sufficient attention has not been given to S. 17 of the Registration Act. The focus was entirely on the provisions of the Arbitration Act and there again on the enforcement of the award and not in the making of the award. A document may validly create rights but those rights may not be enforceable for various reasons. S. 17 does not concern itself with the enforcement of rights. That section is attracted as soon as its requirements are satisfied. There is no gainsaying the fact that the award with which we are concerned in this case, it any rate, purported to create rights in immoveable property of the value of rupees more than one hundred. Hence it is compulsorily registrable.'

22. Furthermore, S. 49 of the Registration Act has the effect of robbing an arbitration award or any document of its effectiveness, if it is not registered though required to be registered under S. 17(l) of the Registration Act or under the Transfer of Property Act. The effect of non-registration is that the document cannot be admitted in evidence in view of specific bar of S. 49 of the Registration Act. An award which falls, within the purview of S. 17(l)(b) and (e) of the Registration Act cannot be made a basis for passing a decree of the Court under S. 17 of the Arbitration Act as such an award cannot be received by the Court in evidence. Since in the instant case, as is quite apparent from the 'decree', the award fell within the four corners of S. 17(l)(b) of the Registration Act, the same was required to be registered before the Court could validly look into it for the purpose of passing a decree in terms of S. 17 of the Arbitration Act. Since no decree can be passed on the basis of an award which requires registration as a sequitur such a decree would be non est in the eye of law. It would be a decree which the Court would not be competent to pass.

23. In view of the observations made above, the argument of the learned counsel that since the award was made a rule of the Court, the decree which followed was not required to be registered in terms of S. 17(2)(vi) of the Registration Act is not well founded. This argument also runs counter to the view expressed by the Supreme Court in Satish Kumar's case : [1969]2SCR244 (supra) and various other judgments rendered by the Supreme Court and different High Courts.

24. At this stage it may be advantageous to refer to the observations of Sabyasachi Mukharji, J. (as his lordship then was) in Lachhman Dass v. Ram Lal, : [1989]2SCR250 . In this case the Supreme Court had to consider, inter alia, the effect of non-registration of an award purporting to create rights in immoveable property worth above one hundred rupees. The precise question for resolution was whether unregistered award could be made a basis for pronouncement of judgment in terms thereof. The Supreme Court at page 1930 of the report observed :

'20 It is sufficient to emphasise that an award affecting immovable property of the value of more than Rs. 100/- cannot be looked into by the Court for pronouncement under the award on the application under S. 14 of the Arbitration Act unless the award is registered. S. 14 enjoins that when an award of an arbitrator has been filed; the Court should give notice to the parties and there upon the Court shall pronounce judgment upon the award and make it a rule of the Court. But in order to do so, the Court must be competent to look into the award. S. 49 of the Act enjoins that the award cannot be received as evidence of any transaction affecting immovable property or conferring power to adopt, unless it is registered. In that view of the matter, no judgment upon the award could have been pronounced upon the unregistered award.'

Even in decisions not as recent the Supreme Court has expressed the same view. Ratanlal Sharma v. Purshottarn Harit : [1974]3SCR109 , also is a case of an unregistered award which purported to create rights in immovable property of the value of more than one hundred rupees. The Supreme Court expressed the view that the award being inadmissible in evidence for want of registration, the Court could not pronounce judgment in accordance with it. The relevant observations of

their Lordships are contained at page 1067 of the report, which are as follows:

'3. It is not necessary to express any opinion on the first argument as we are of opinion that the award requires registration and, not being registered is inadmissible in evidence for purpose of pronouncing judgment in accordance with it.'.
'

Again in Champalal v. Mst. Samrathbai : [1960]2SCR810 , it was held:-

'5. The second question that the award required registration and could not be filed by the arbitrators before it was registered is equally without substance. The filing of an unregistered award u/S. 49 of the Registration Act is not prohibited; what is prohibited is that it cannot be taken into evidence so as to affect immoveable property falling u/ S. 17 of the Act'.
'

The position can be better appreciated in the light of a Division Bench decision of the Nagpur High Court in Uttamchand Motllalji v. Wasudeo Deorao Digambar AIR 1946 Nag 311 to which our attention has been drawn by Shri Makhija, learned counsel for respondent No. 1. On the question as to whether an executing court could go into the question of the validity of a decree passed in terms of an award which was compulsorily registerable but was not so registered, the court held as follows :

'5...It is said that the executing court is not entitled to go into the necessarily complicated question whether an award in which a charge is created is registerable or not when a court in which the award was filed has passed a decree in terms of it. When, however, there is a definite decision of a Full Bench of this court, vide 2nd (1939) Nag. 607 AIR 1939 Nag 233 that no decree can be passed on the basis of an award which requires registration it must follow that such a decree in respect of the charge is a nullity inthat it was one which the court was in competent to pass; and in these circumstances it is immaterial whether the fact is deducible from the actual wording of the decree or not, since the absence of jurisdiction can be ascertained without an enquiry into facts, vide'.
'

A Full Bench decision of the Andhra Pradesh High Court in *M. Venkataratnam v. M. Chelamayya*, : AIR 1967 AP257 and a Division Bench decision of the Calcutta High Court in *Aditya Kumar De Chowdhury v. Naravandas De Chowdhury* : AIR1971 Cal65 , need to be mentioned as extensive exploration and exposition of the legal position was made in regard to the same question which encounters us for resolution. It is, however, not necessary to set out the observations of their Lordships. Suffice it to say that the view expressed by them accords with the dictum enunciated in the aforesaid decisions of the Supreme Court.

25. Turning to the decision of the Madhya Pradesh High Court in *Mool Chand* : AIR 1965 MP75 (Supra), relied upon on behalf of the appellant, which lays down that a decree given on the basis of an unregistered award, which required registration, is not a nullity and cannot be questioned in execution proceedings, we regret our inability to accept this view for the reasons already expressed in the earlier part of this judgment.

26. Though learned counsel for the appellant placed strong reliance on the 'decree' pronounced on the basis of the award yet nowhere in the written statement filed by the appellant in the court below any mention was made either of the award or of the 'decree'. In support of his assertion, with regard to ownership of one half share in the house, all that was stated in para 3 at page 2 of the written statement was that 'the defendants No. 1 and 2 had always been admitted and accepted the owners of the house in equal shares in Revenue Record i.e. Jamabhandi, mutation register and all previous litigation on behalf of the defendants as owners and landlords against the tenant'. It is thus apparent from the reading of the written statement that the appellant did not attach much significance to the award or the 'decree' passed pursuant thereto. Be that as it may, we permitted both the parties to address arguments on the question whether the award or the decree created any right, title or interest over the property in favor of the appellant, as we are of the opinion that this question can be raised in appeal as it goes to the root of the matter.

27. Now advertng to the view of the learned trial court that Sardar Singh has not been able to legally prove that he was the owner of one half share of the 'property',

we find that cogent reasons have been advanced in support thereof and the finding is not flawed and we will not let it go. The claim of the appellant, not set up in the written statement but unraveled in his statement, as his own witness, before trial court, is that he had contributed a total sum of Rs. 18,100/- out of which an amount of Rs. 650/- was by way of adjustment of compensation payable in respect of his verified claim as displaced person and remaining amount was paid in cash for the purchase of the property in question. This plea of the appellant falls foul of R. 90(15) of the 'Rules' which provides that where an auction purchaser has associated with himself any other displaced person, having a verified claim, whose net compensation is to be adjusted in whole or in part against the purchase price, the sale certificate shall be made out jointly in the name of all such persons and shall specify the extent of interest of each in the property. The sale certificate (Ex. A.5) belies the contention of the appellant, as the certificate has been issued in favor of respondent No. 2 alone indicating that the 'property' was purchased by Kartar Lal exclusively. His share has also been specified as 'full'. As noticed in the earlier part of this judgment respondent No. 2 admitted in his cross-examination that 'sale deed was in his favor alone and there was no associate'. Had respondent No. 2 associated himself with the appellant for purchase of the 'property' the sale certificate would have been prepared jointly in the name of both the brothers i.e. the appellant and respondent No. 2 specifying the extent of interest of each in the property. No doubt there is an exception to this rule which is provided by R. 768 of the said 'Rules' which is in the following terms :

'76B - Deed of transfer to be made out -Where any person in occupation of a property forming part of the compensation pool has associated with himself any other displaced person having a verified claim whose net compensation is to be adjusted against the purchase price in pursuance of R. 76-A, the transfer shall be made out jointly in the name of all such persons specifying the extent of interest of each in the property :

Provided that where every such displaced person who has so associated himself sends an intimation in writing to the settlement Commissioner that the deed of transfer may be made out in the name of the person in occupation, or the deed of transfer may be made in the name of such person'.

But having regard to the principle embodied in the above proviso, though strict sensu it may not be attracted in the instant case, it is clear that the deed of transfer could be made in the name of Kartar Lal only if his alleged associate Sardar Singh had sent an intimation in writing to the Settlement Commissioner, to the effect that the deed of transfer be made in the name of the former. It does not stand to reason as to why the appellant did not agitate the matter with the authorities specified under the Act for getting his name included in the certificate of sale if he was associated with the purchase of the property. The appellant could have taken proceedings under the various provisions of the 'Act' for rectification of the sale certificate. It appears to us that the 'Act' is a self contained code containing, inter alia, provisions enabling an aggrieved party to effectively challenge the orders of the functionaries appointed under the provisions of the Act, for example S. 24 to 26 of Chapter IV of the 'Act' make elaborate provisions for Appeal, Revision and Review from the orders passed by officers and authorities under the 'Act'. Again S. 27 of the 'Act' provides that save as expressly provided in the 'Act', every order made by any officer or authority under the 'Act' shall be final and shall not be called in question in any court by way of an appeal or revision or in any original suit, application or execution proceeding. Thus it attaches finality to the orders made by officers under the Act. It is well settled that where the statute is a self contained code and gives finality to the orders of authorities appointed under it, the jurisdiction of civil courts is excluded. If any authority is needed for this proposition, the same can be found in the decisions of the Supreme Court in *Anwar v. 1st Addl. District Judge, Bulandshahr*, : [1986]3SCR540 and in *Bata Shoe Co. Ltd. v. Jabalpur Corporation*, : [1977]3SCR182 . However, we desist from expressing categorical opinion in this regard as arguments were not addressed on this aspect of the matter. We have, simply referred to the provisions dealing with Appeal, Revision and Review only for the purpose of judging the correctness or otherwise of the claim of the appellant as also of respondent No. 2 that the sale certificate did not correctly record the ownership of the property in question.

28. Learned counsel for the appellant also relied upon copies of the Jamabandhis for the years 1963-64 and 1972-73 (Ex. D. 3). According to the copy of Jamabandhi of 1963-64 which is a photo copy and has not even been exhibited, a share in the property is said to have been sold to the appellant by respondent No.

2. Again according to a copy of Jamabandhi of 1972-73 property is said to belong to both appellant and respondent No. 2 on the basis of family partition effected between them. It may be observed that as the recitals in these Jamabandhis run counter to the sale certificate and even the decree passed on the basis of the award the same cannot be said to advance the case of the appellant. These mutations cannot be preferred to the sale certificate and other facts and circumstances negating the theory of joint ownership of the brothers over the property. It is also significant that even these documents talk of mortgage which was effected exclusively by respondent No. 2. In case the appellant was owner of the property to the extent of one half share he would have not allowed respondent No. 2 to mortgage the property without his consent. There is nothing on record to show that the appellant questioned the right of respondent No. 2 to mortgage the property by taking resort to any legal proceedings. The appellant simply stood by even though according to his own showing he was armed with the Jamabandhis on which he has based his case before us. The appellant completely failed to advert to the question of mortgage effected by respondent No. 2 in his deposition before the trial-court in spite of the fact that respondent No. 2 in his statement conceded that property was mortgaged only by him. Silence is intolerable where there is a duty to speak and Explanationn is required from a party. There is also no document on record to show or event to suggest that the 'property' was being assessed to property tax as being in the joint name of the appellant and respondent No. 2. Similar is the position with regard to the ground rent. On the contrary, as noticed earlier, ground rent and property tax was being paid by respondent No. 1 alone.

29. In view of the above discussion, we are of the opinion that the appellant cannot claim to be the owner of the property to the extent of one half share. In this view of the matter, the third submission of the learned counsel for the appellant also does not merit any consideration and the same is rejected.

30. The fourth submission of the learned counsel for the appellant is also without any force as is apparent from the 'Agreement' and the 'Subsequent Agreement' where respondent No. 2 claimed himself to be the sole owner of the property. The 'Sale Certificate' was also issued in his name alone. Not only that the mortgage of

the property was also effected by respondent No. 2 but after the redemption of the mortgage several documents (marked 'A' to 'N') as noticed earlier, were handed over by respondent No. 2 to respondent No. 1 showing his exclusive title over the property.

31. In view of these facts, we are not inclined to accept the submission urged on behalf of the appellant that respondent No. 1 did not make any enquiries about the title to the property. Nothing turns on the fact that an eviction suit was filed against the tenants by the appellant and respondent No. 2. There is nothing on record to show that before the execution of the agreement to sell, respondent No. 1 was aware of the fact that Sardar Singh, appellant was also a party to the suit filed against the tenants. Respondent No. 1 in her deposition recorded before the trial court had categorically stated that she did not know that the eviction suit against the tenants was filed jointly by both the brothers.

32. All the contentions of the learned counsel for the appellant thus fail. The appeal is accordingly dismissed. The judgment and order of the trial court is upheld. In the peculiar circumstances of the case, there will be no order as to costs.

Appeal dismissed.