

Surajmal and ors. Vs. Chandmal and ors.

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Court : Rajasthan

Decided On : Jan-29-1969

Reported in : 1969WLN68

Judge : Jagat Narayan, J.

Appeal No. : S.B. Civil Revision No. 607 of 1966

Appellant : Surajmal and ors.

Respondent : Chandmal and ors.

Disposition : Application allowed

Judgement :

Jagat Narayan, J.

1. This is a revision application by the vendors against an order of the Civil Judge, Jaipur City, holding that the agreement Ex. A/6 dated 14-5-1956 is compulsorily registrable and is inadmissible in evidence for want of registration.

2. The material facts are these. The applications sold a portion of their house by means of a sale-deed executed on 2-5-56 and registered on 14-6-56. It was presented for registration on 14-5-56. Respondent No. 1 filed the present suit for pre-emption on 18-4-57. The applicants filed an agreement Ex. A./6 dated 14-5-56 under which the vendees respondents No. 2 and 3 agreed to reconvey the

property. They also filed a registered sale-deed dated 25-3-1957 under which the property was reconveyed by respondents No. 2 and 3 to the applicants.

3. The case of the applicants is that on the date on which the sale-deed dated 2-5-56 was executed they had entered into an oral agreement for reconveying the property with respondents No. 2 and 3 which was reduced into writing subsequently on 14-5-1956.

4. On an application objection raised on behalf of plaintiff - preemptor (respondent No. 1) the trial court held that the agreement dated 14-5-1956 requires registration. Having heard the learned Counsel for the parties I am of the opinion that it falls under Section 17(2)(v) and does not require registration.

5. Before the amendment of the Transfer of Property Act in 1929 it was the practice to mortgage property by conditional sale by executing two documents one conveying the property and the other containing an agreement for reconveyance. The question which used to arise frequently was whether the two documents evidence a single transaction of mortgage by conditional sale or whether the second document which evidences an agreement to recovery is separable from the first sale-deed. In *Harikishandas v. Bai Dhanu* AIR 1925 Bom. 497 a Full Bench of the Bombay High Court held that where the intention of the parties was to constitute a mortgage the agreement to recovery required registration and was inadmissible in evidence without being registered. Where on the other hand the transaction was a bona-fide sale and the agreement to reconvey was an independent transaction the agreement for repurchase came within Section 17(2)(v) and did not require registration. This question has now lost all its importance as after its amendment in 1929 the Transfer of Property Act lays down that unless the condition for reconveyance is embodied in the document which purports to effect the sale the transaction does not amount to a mortgage. So the intention of the parties has become immaterial and an agreement to recovery contained in a separate document is a separate transaction which is exempted from registration under Section 17(2)(v).

I accordingly allow the revision application, set-aside the order of the trial court and direct that the agreement dated 14-5-1956 shall be admitted in evidence. The

cost of this revision application shall abide the final result of the suit.

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