

THAKUR KISHAN SINGH (DEAD)

v.

ARVIND KUMAR

SEPTEMBER 7, 1994

[R.M. SAHAI AND N.P. SINGH, JJ.]

Madhya Pradesh Abolition of Proprietary Rights Act, 1950/Registration Act, 1908/Transfer of Property Act, 1882—Sections 6/47/107,117—Lease of land—Deed executed but registered subsequently—Deemed registration as on the date of execution—Hence property did not vest in State, even though registration was made subsequent to the Abolition Act—Agricultural leases excluded from Transfer of Property Act.

Constitution of India, 1950 :

Article 136—Evidence led by parties before the lower courts—Reappreciation of under special leave jurisdiction—Not permissible.

The respondent-Plaintiff filed a suit for possession of a certain land. It was claimed that the land in dispute was leased to the plaintiff by the lamberdar and the deed was executed in 1949 and registered in 1950; that the appellant who was an agent of the Respondent, was permitted to be set up a brick kiln in the land in 1960-61; and that the appellant had an adjoining land and a trespassed initially on 0.14 acres and made further encroachments on 0.42 acres. Appellant contested the suit. He claimed that the deed having been registered on 3.4.1950, it was void under Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 as the land had vested in the State on 31.3.1950.

The Trial Court held that the lease deed was executed on 5.12.1949 and even if it was registered subsequently, it would have been deemed to have been registered on 5.12.1949 and therefore the provisions of Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 did not stand in the way of the respondent acquiring title to the land. But the suit was dismissed on the finding that the appellant had acquired rights by adverse possession. In appeal the order was set aside and the suit was decreed. The appellate court affirmed the finding on title. The High Court upheld the same. Hence this appeal.

A Dismissing the appeal, this Court

HELD : 1. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the; date of its execution. Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April, 1950 become owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. [202-A to C]

C *Ram Saran Lall and Others v. Mst. Domini Kuer and others*, AIR (1961) SC 1749 and *Nanda Ballabh Gururani v. Smt. Maqbool Begum*, (1980) ILJ (SC) 597, relied on.

D 2. Since under Section 117 of the Transfer of Property Act the agricultural leases are excluded from operation of the Act, the provisions of Section 107 did not apply to it. [202-D]

E 3. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the Appellate Court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse. [202-H]

F 4. Relying on the evidence led on behalf of the parties before the lower courts is not permissible even in second appeal, what to say of the jurisdiction exercised by this Court under Article 136 of the Constitution. Further, the appellant has not suffered any injustice which requires to be remedied by this Court. [203-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2676 of 1977.

G From the Judgment and order dated 18.3.77 of the Madhya Pradesh High Court in S.A. No. 550 of 1970.

B. Sen and S.K. Gambhir for the Appellant.

H S.S. Kanduja for the Respondent.

The following Order of the Court was delivered :

In this defendant's appeal directed against the judgment and order of the High Court of Madhya Pradesh, the question that arises for consideration is if the High Court committed any error of law in upholding the order of the Appellate Court decreeing the suit of the plaintiff-respondent on finding that the defendant-appellant had not acquired any rights by adverse possession.

The suit was filed for possession in respect of an area of approximately 0.56 acres of Khasra No. 526 located in Khurai Tehsil, District Sagar. It was claimed that the land in dispute was leased to the plaintiff by the lamberdar and the deed executed on 5th December, 1949 which was registered on 3rd April, 1950. It was alleged that the appellant was an agent of the Respondent who was permitted to set up a brick kiln in the area in dispute in the year 1960-61. The appellant, however, who had a house in the adjoining Khasra No. 527 trespassed initially on 0.14 acres and made further encroachments on 0.42 acres. The claim was contested by the appellant and it was claimed that the deed having been registered on 3rd April, 1950, it was void under Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 (in brief 'the Act') as the land had vested in the State on 31st March, 1950. In alternative, the plea of adverse possession was raised. The trial court did not find any merit in the claim of the appellant and held that even though the lease deed was registered after 30th March, 1950 but it having been executed on 5th December, 1949, it would be deemed to have been registered on 5th December, 1949 and, therefore, the provisions of Section 6 of the Act did not stand in the way of the respondent acquiring the title in land in dispute. But the suit was dismissed on the finding that the appellant had acquired rights by adverse possession. In appeal the order was set aside and the suit was decreed. The appellate court affirmed the finding on title. And set aside the finding on adverse possession. The High Court did not interfere in second appeal.

The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned senior counsel appearing for the appellant, and it is claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The argument does not

- A appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See *Ram Saran Lall and others v. Mst. Domini Kuer and others*, AIR (1961), SC 1749 and *Nanda Ballabh Gururani v. Smt. Maqbool Begum*, (1980) UJ SC 597). Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April, 1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State.
- C And the courts below did not commit any error in negating the claim of appellant.

- D It is then urged that the lease was not signed by the respondent and it being a unilateral act of the lamberdar, was contrary to the provisions of the Transfer of Property Act. Since under section 117 of the Transfer of Property Act the agricultural leases are excluded from operation of the Act, the provisions of Section 107 did not apply to it. Nor is there any merit in the submission that even if Transfer of Property Act did not apply the principles contained therein would be applicable to agricultural lease. In view of a specific provision in the Transfer of Property Act excluding
- E agricultural leases from the operation of the Act, and the Tenancy Act of the State having provided for execution of the lease which does not contain any provisions like Section 107 of the Transfer of Property Act, the principles of Section 107 cannot be extended to it.

- F As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become
- G adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession. Apart from it, the Appellate Court has gone into detail and after considering the evidence on
- H record found it as a fact that the possession of the appellant was not

adverse. The learned counsel, despite strenuous argument, could not demolish the finding of adverse possession. Attempt was made to rely on the evidence led on behalf of the parties and the evidence of the Commissioner who prepared the map. We are afraid that such an exercise is not permissible even in second appeal, what to say of the jurisdiction exercised by this Court under Article 136 of the Constitution. Further, we do not find that the appellant has suffered any injustice which requires to be remedied by this Court.

In the result, the appeal fails and is dismissed. But there shall be no order as to costs.

G.N.

Appeal dismissed.