

Rajeswari & Ors. Vs. Shanmugam & Anr.

Civil Appeal No. 13835 of 2025 @ SLP (Civil) No. 3532 of 2018 · Supreme Court of India · 2025-11-19 · J.B. Pardiwala · K. V. Viswanathan · F2J-C-1550

Full judgment text

Rajeswari & Ors. Vs. Shanmugam & Anr.

[Civil Appeal No. 13835 of 2025 @ SLP (Civil) No. 3532 of 2018]

K.V. Viswanathan, J.

1. Leave granted.

2. Should a deed assigning a decree for specific performance of an agreement of sale of immovable property, be registered under the provisions of the Registration Act, 1908, is the question that presents itself for consideration in this case.

BRIEF FACTS:-

3. The appellants are the legal heirs of the judgmentdebtor. Their predecessor suffered an ex-parte decree on 13.09.1993 in O.S. No.100/1989 before the First Additional Sub Court, Erode, Tamil Nadu. The first Respondent herein- Shanmugam claims to be the assignee of the decree dated 13.09.1993. The assignment deed is dated 17.07.1995.

4. The first Respondent-assignee filed E.P. No.150/2004 in O.S. No.100/1989 seeking to recognize the assignment and seeking directions to execute the sale deed and deliver possession.

5. On 13.03.2008, the Executing Court ordered the execution of the sale deed in favour of the first respondent.

6. When the matter stood thus, on 31.10.2009, the appellants herein, who were the legal heirs of the deceased judgment debtor filed E.A. No.180/2009 under Section 47 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking to set aside the execution of the sale deed dated 13.03.2008 in favour of the first respondent.

They also prayed for the dismissal of the Execution Petition primarily on the ground that the assignment deed in favour of the first respondent was not registered and, hence, unenforceable in law. By an order of 08.04.2010, the Executing Court allowed E.A. No.180/2009 and on the aspect of the need for registration of the assignment, the Court recorded the following finding, after relying on the judgment of the High Court of Andhra Pradesh in K. Bhaskaram and another vs. Mohammad Moulana (died) and others¹:-

"18. While perusing the above decision, it can be noticed that it is not in dispute that there can be oral transfer of property without writing in every cases in which writing is not exclusively required under law. But if it is an immovable property, the value of which is more than Rs.100/- such transfer deed will have to be reduced in writing and also it requires compulsory registration. After analyzing section 17 of the Indian Registration Act the Hon'ble High Court categorically held that u/s.17(1)(e) and (f) of the Registration Act the assignment and transfer of the decree relating to immovable property of the value of Rs. 100/- and upwards is compulsorily registrable.

Further it was held that the transfer of the right in a decree by way of assignment in immovable properties require stamp and registration and if there is a valid assignment of decree by operation of law, then the assignee is entitled to get the decree executed in his favour after issuing a notice to the transferors and the Judgment-Debtors. Further it was held that the non-compliance with proviso regarding notice under Order 21 Rule 16 C.P.C. renders all subsequent proceedings void. The above decision was also rendered in a case of specific performance relating to immovable property.

Therefore, this court finds that the principles and the decision reported above is squarely applicable to the facts of the present case also. No other decision or the principle laid down in any other case has been pointed out and produced by the respondents so as to reject or overlook the contentions raised by the petitioners herein or the decision reported in 'A.I.R. 2005- Andhra Pradesh- Page 524'.

Therefore, this court has no other go except to accept the principles laid down in the above decision.

19. Since this court comes to the conclusion that the assignment deed executed by the 2nd respondent in favour of the 1st respondent has not been recognised prior to the execution of the sale deed and that the assignment deed Ex. B1 is bad for want of registration as per Section 17(1) of the Registration Act, this court finds that the execution proceedings initiated by the 1st respondent cannot be proceeded further."

7. The first respondent herein filed a Revision Petition before the High Court which was allowed after holding that what has been assigned by the decree holder was only a right to derive benefits from the decree passed by the Court and nothing more and as such the deed of assignment was not compulsorily registrable. The High Court relied on the judgment of High Court of Judicature at Allahabad in *Mumtaz Ahmad and Another vs. Sri Ram and others*².

8. We have heard Mr. Jayanth Muth Raj, learned senior counsel for the appellants and Mr. R. Ganesh, learned counsel for the assignee-respondent No.1. Respondent No.2, though served, is not appearing. We have perused the records, including the original records of the High Court and the Trial Court, which we called for.

CONTENTIONS OF THE APPELLANTS:-

9. Mr. Jayanth Muth Raj, learned senior counsel, after drawing our attention to Section 17(1)(e) of the Registration Act, as amended in 1929, contended that assignment of decree is compulsorily registrable when the decree 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. According to the learned senior counsel, the Executing Court rightly relied upon the judgment of K. Bhaskaram (*supra*) wherein it was held that the assignment and transfer of the decree relating to immovable property of the value of one hundred rupees and upwards is compulsorily registrable and if it was unregistered and unstamped then there is no assignment of the decree in the eye of law.

10. Mr. Jayanth Muth Raj, learned senior counsel, contends that a decree passed in a suit for specific performance of a sale agreement on immovable property creates an interest in the immovable property. Learned senior counsel refers to the Black's Law Dictionary for the meaning of the word "interest" as "a legal share in something; all or part of a legal or equitable claim to or right in property".

11. Learned senior counsel submits that if the assignment of the decree of specific performance is not registrable, parties will get a specific performance decree and instead of executing a sale deed, they will assign the decree multiple times for 12 years thereby they can avoid the registration charges which will defeat the purpose and object of the provisions of the Registration Act, 1908. No other submission has been canvassed before us.

CONTENTIONS OF THE RESPONDENT NO.1:-

12. Mr. R. Ganesh, learned counsel for the assignee, submitted that the decree itself does not create or transfer any right as regards the suit property but only confers a right to obtain sale through the process of law. Hence, it is submitted that the contention of the appellants, that the assignment of decree warrants registration, is incorrect. Learned counsel relied on the judgment of the High Court of Judicature at Bombay in *Amol and others vs. Deorao and others*³, wherein it was held that assignment of a decree for specific performance does not require registration.

13. Learned counsel contends that upon passing of a decree for specific performance the contract between the parties is not extinguished; that the parties to the contract continue to bear their rights and obligations to complete the contract in accordance with the terms and conditions of the contract; that the decree is subject to the further process, upto the stage of execution of the sale deed and its registration.

It is submitted that the grant of specific performance is an equitable relief and merely because a decree for specific performance is passed, it cannot be presumed that a decree-holder is bound to get the sale deed executed in his favour. It is submitted that a decree for specific performance does not elevate the status of a decree-holder to that of an owner since no right, title or interest in or charge on the immovable property is created in favour of the decree holder.

DISCUSSION AND ANALYSIS:-

14. We need to first set out the text of the decree for specific performance obtained by the second respondent which was the subject matter of the assignment. The decree dated 13.09.1993 reads as under:-

"1. The defendant is to receive the balance sale consideration and execute the sale of suit schedule property without any encumbrance in favour of the plaintiff.

2. Failing to do so as aforementioned, the plaintiff can execute and obtain a sale deed through the court.

3. The defendant should pay the plaintiff the costs Rs. 4,317.50.

4. The plaintiff is given a time of 1 month to execute the sale deed."

15. We have also gone through the original records obtained from the High Court and the translated version of the assignment deed (Ex.B1) executed by the second respondent in favour of the first respondent herein. The assignment deed reads as under:-

"Ex.B.1 - Decree Made Over

Decree Made over for Rs.20,000/-

The Decree Made over Deed, that is entered into, by me, K.T.Natarajan, S/o.Thirumalaisamy Gounder, residing at Kanagapuram village, Erode Taluk,

TO AND IN FAVOUR OF

Shanmugam, S/o. Palanisamy Gounder, residing at Murungakaadu Thottam, Poondurai Semur village, Erode Taluk, on 07.07.1995* (sic.), recites as hereunder:-

As the plaintiff, I obtained a decree in O.S. No. 100 of 1989 on the file of the I Additional Subordinate Court, Erode, against the defendant Kuppusamy Gounder, son of Chellappa Gounder, residing at Ayyagoundanpalayam, Elumathur Village, Erode Taluk, stating that according to the sale agreement dated 01.03.1988, the defendant Kuppusamy Gounder received a balance sale consideration of Rs.15,000/- from me in respect of the suit property and agreed to execute a sale deed in favour of me, the plaintiff, free from encumbrances, and to deliver possession thereof and in default of such execution, it was ordered that I, the plaintiff, shall be entitled to have the sale deed executed through court and the defendant was also directed to pay the costs of the suit, amounting to Rs.4,817/-. Also, according to the aforesaid decree, I had deposited the balance sale consideration of Rs.15,000/- before the Hon'ble Court on 03.09.1991. Since the aforesaid Defendant had not executed the sale as per the decree, I was constrained to file an Execution Petition.

In this situation, I am having received from you a total sum of Rs. 20,000/- (Rupees Twenty Thousand only) in cash, being the consideration towards the decree and costs awarded to me in the said suit, had executed the made over, the rights and interests of aforesaid suit, appeal, and decree, in full and absolute manner, into your favour, through this. Henceforth, all rights and interests arising out of the said suit, appeal, and decree shall belong solely to you. Hence, you shall execute the sale deed from the court through the Execution Petition in accordance with the aforesaid decree.

Hereafter, neither I nor my heirs shall have any claim or succession over the said decree. Thus, it is the Made Over Deed executed with my full consent. Henceforth, you shall file the Execution Petition and recover the costs along with the purchase of the property as per the agreement."

NATURE AND CHARACTER OF A DECREE FOR SPECIFIC PERFORMANCE:-

16. As will be seen, what has been the subject matter of the assignment is a decree for specific performance of an agreement of sale. It will be trite at this stage to consider what exactly is the nature and legal character of a decree for specific performance.

17. In Babu Lal vs. M/s Hazari Lal Kishori Lal and others⁴, this Court in the context of examining the question, whether in a suit for specific performance, the relief of possession could be claimed at a subsequent stage, discussed the nature of the decree of specific performance in the following terms:-

"6. It would be appropriate to refer to the state of law as it existed prior to the amendment of the Specific Relief Act in 1963. One view was that the decree-holder does not acquire title or right to

recover possession unless a sale deed is executed, in execution of the decree for specific performance. In *Hakim Enayat Ullah v. Khalil Ullah Khan* [AIR 1938 All 432] a Division Bench of the Allahabad High Court dealing with the question observed:

"A decree for specific performance only declares the right of the decree-holder to have a transfer executed in his favour of the property covered by the decree. The decree by itself does not transfer title. That this is so is apparent from the fact that in order to get title to the property the decree-holder has to proceed in execution in accordance with the provisions of Order 21 of the Code. So long as the sale deed is not executed in favour of the decree-holder, either by the defendant in the suit or by the court, the title to the property remains vested in the defendant and till the execution of the sale deed the decree-holder has no right to the possession of the property. It is only the execution of the sale deed that transfers title to the property."

7. In *Kartik Chandra Pal v. Dibakar Bhattacharjee* [AIR 1952 Cal 362] a Division Bench of the Calcutta High Court, however, after reviewing a number of reported cases, viz., *Ranjit Singh v. Kalidasi Debi* [ILR (1910) 37 Cal 57] *Madanmohan Singh v. Gaja Prasad Singh* [(1911) 14 CLJ 159], *Deonandan Prasad v. Janki Singh* [(1920) 5 Pat LJ 314] and *Atal Behary Acharya v. Barada Prasad Banerji* [AIR 1931 Pat 179], observed:

"It is incontestable that in a suit for specific performance of contract for the sale of land it is open to the plaintiff to join in the same suit two prayers, one for the execution of the deed of transfer and another for recovery of possession of the land in question. We ought to remember in this connection that no special form of decree in a suit for specific performance is supplied by the Civil Procedure Code. Chapter II, Specific Relief Act, deals with the various circumstances under which a contract may be enforced specifically and where it cannot be allowed.

When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually the intervention of the Court is required and the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court. A sale of a property after payment of the consideration and upon due execution of the deed of sale presupposes and requires the vendor to put the purchaser in possession of the property. It cannot be suggested that when a party comes to Court for the specific performance of a contract he is to be satisfied with simply the execution of the document on payment of the consideration money.

The Court when allowing the prayer for specific performance vests the executing court with all the powers which are required to give full effect to the decree for specific performance. By the decree for specific performance, the Court sets out what it finds to be the real contract between the parties and declares that such a contract exists and it is for the executing court to do the rest. It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail all the different steps which are required to be taken to implement the main portion of the order directing specific performance of the contract. The executing court is in such a case vested with authority to issue necessary directions."

21. If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor."

(Emphasis supplied)

18. It will be seen from the above judgment that neither an agreement of sale nor a decree passed on the basis of specific performance of the contract gives any right or title to the decree holder and the right and title passes to him only on the execution of the deed of sale either by the judgment debtor himself or by the Court itself in case the judgment debtor fails to execute the sale deed.

19. Sir Edward Fry in "A Treatise on the Specific Performance of Contracts" (Sixth Edition) graphically captures what specific performance of a contract is, in the following terms: -

"3. The specific performance of a contract is its actual execution according to its stipulations and terms; and is contrasted with damages or compensation for the nonexecution of the contract. Such actual execution is enforced under the equitable jurisdiction vested in the Courts of this country by directing the party in default to do the very thing which he contracted to do, and, in the event of his disobedience, by treating such disobedience as a contempt of Court and visiting it with all the consequences of such contempt, including imprisonment; and in some cases by doing in one way the thing which the defaulter was directed to do in another way, as, e.g., by vesting by an order of the Court an estate which ought to have been vested by conveyance of the party.

To say, as is above said, that the Courts enforce actual execution according to the stipulations and terms of the contract is not quite exact: for the Court rarely, if ever, interferes until the time for performance has passed and default been made: consequently the performance enforced by the Court is almost always behind time as compared with due performance voluntarily yielded."

20. The statutory provisions of the Transfer of Property Act, 1882 also make the same clear. The definition of sale and contract for sale which are relevant are set out hereinbelow: -

"54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

21. Lucidly explaining the distinction between sale and a contract for sale, this Court speaking through (R.V. Raveendran, J.) in *Suraj Lamp & Industries (P) Limited (2) through Director vs. State of Haryana and Another*⁵, held as under:-

"Scope of an agreement of sale

16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam* [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See *Ram Baran Prasad v. Ram Mohit Hazra* [AIR 1967 SC 744]). The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. that only on execution of conveyance, ownership passes from one party to another."

17. In *Rambhau Namdeo Gajre v. Narayan Babuji Dhotra* [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

(Emphasis supplied)

DECREE FOR SPECIFIC PERFORMANCE - DOES NOT EXTINGUISH THE CONTRACT

22. It will be seen that in case of immovable property of value of one hundred rupees and upwards, transfer of ownership will occur only on the execution of a registered instrument.

23. It is also relevant to notice the fundamental principle that with the passing of a decree of the specific performance, the contract between the parties is not extinguished. Section 28 of the Specific Relief Act, 1963, statutorily recognizes this principle with regard to contracts for the sale or lease of immovable property, the specific performance of which has been decreed. Section 28 reads as under:

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"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

24. In *Hungerford Investment Trust Limited (In Voluntary Liquidation) vs. Haridas Mundhra and others*⁶, this Court held as follows:-

"25. We have already indicated that the contract between the parties was not extinguished by the passing of the decree, that it subsisted notwithstanding the decree. It was on implied term of the contract and, therefore, of the decree passed thereon that the parties would perform the contract

within a reasonable time. To put it in other words, as the contract subsisted despite the decree and as the decree did not abrogate or modify any of the express or implied terms of the contract, it must be presumed that the parties to the decree had the obligation to complete the contract within a reasonable time."

SCOPE OF SECTION 17(1)(e) - REGISTRATION ACT

25. Section 17(1)(e) of the Registration Act, 1908 reads 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, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(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."

26. If we analyze Section 17(1)(e) of the Registration Act on which the case of the appellant pivots, it will be clear that what this section prescribes is that registration is mandatory only for 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. In this case, when the decree itself which is for specific performance does not create or purport to create any right, title or interest in any immovable property, the question of registering an instrument assigning such a decree cannot arise.

27. In an erudite judgment which repays study, a learned Single Judge of the Bombay High Court (R.K. Deshpandey J.) in *Amol* (supra), held as under:-

"27. In the light of the aforesaid judgments of the Apex Court, it has to be held that the contract between the parties is not extinguished, upon passing of a decree and it subsists notwithstanding the decree. Passing of the decree does not abrogate or modify any of the express or implied terms of the contract. The parties to the contract continue to bear their rights and obligations to complete the contract in accordance with the terms and conditions of the contract. It does not confer an indefeasible right upon the decreeholder to get the property straightaway in his own name.

The decree for specific performance of contract is in the nature of a preliminary decree and the Court passing the decree continues to retain its control over the entire matter and the suit is deemed to be pending, even after such a decree. Such decree is subject to the further process, upto the stage of execution of the sale-deed and its registration. The Court continues to monitor the further process and may either direct the execution of the sale-deed by the vendor or the execution of the sale-deed through the process of Court or even to refuse the execution of the sale-deed, if it is found that the decree-holder is not ready and willing to abide by his obligations, which are traceable either to the contract for sale or to the terms of such decree.

In a given case, the Court may also order rescission of the agreement, to do equity. Thus, the grant of specific performance and its execution is an equitable relief and he who seeks equity can be put on the terms to ensure that the equity is done to the opposite party. Merely because a decree for specific performance is passed, it cannot be presumed that a decree-holder is bound to get the sale-deed executed in his favour.

28. Thus, a decree for specific performance passed on the basis of an agreement to sale or a contract for sale, merely recognizes a claim for specific performance of contract, which is capable of being specifically enforced at the instance of a decree-holder. It does not elevate the status of a decree-holder, subsisting prior to passing of such a decree, to that of the owner of the property in question. It does not create any right, title, interest in or charge on the immovable property in favour of a decree-holder.

Even in respect of such a decree, the sale would be complete only upon the execution of the sale-deed in favour of the decreeholder either by the vendor/judgment-debtor or through the process of the Court. It is only upon the registration of such sale-deed upon payment of stamp duty under Item 20 of Schedule I of the Stamp Act, that any right, title and interest in such property shall validly pass on to the decreeholder, who is the purchaser of the suit property. Hence, mere passing a decree for specific performance of contract does not result in the transfer of property.

30. Section 17(1)(e) deals with an assignment of a decree of a Court, when such decree 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. What is contemplated by this provision is that the decree passed itself, should 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 immovable property.

As pointed out earlier, the decree for specific performance of contract by itself, does not create right, title or interest in or charge on the immovable property in favour of a decreeholder. Hence, the provision of Section 17(1)(e) is not at all attracted. Though the Executing Court was right in holding that neither the decree nor the Deed at Exhibit 178 required registration, it committed an error in holding that the Deed at Exhibit 114 was required to be registered."

We record our concurrence to the holding in the said paragraphs.

28. What is assigned under Exhibit B1, in the present case, are the rights and interest arising out of the said decree. There is no dispute that such decrees could be assigned and in fact there could not have been any. Order 21 Rule 16 of the CPC permits the assignee of a decree to execute it in the same manner and subject to the same conditions as if the applications were made by such decree-holder. There has been no argument before us about any non-compliance with the proviso to Order 21 Rule 16. Order 21 Rule 16 reads as under:-

"ORDER XXI

EXECUTION OF DECREES AND ORDERS

Application for Execution

16. Application for execution by transferee of decree.- Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

29. We may also notice here that Section 15 of the Specific Relief Act also recognizes that representative-in-interest of a party can obtain specific performance. Relevant portion of Section 15 of the Specific Relief Act reads as under.

"15. Who may obtain specific performance.-

Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a) any party thereto;

(b) the representative-in-interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;"

30. Relying on *Khardah Company Ltd. vs. Raymon & Co. (India) (P) Ltd.*⁷, which elucidated how rights under a contract are assignable subject to certain limitations, this Court, in *Kapilaben and others vs. Ashok Kumar Jayantilal Sheth*⁸, held as under:-

"24. It is well-settled that the term "representative-in-interest" includes the assignee of a contractual interest. Though the provisions of the Contract Act do not particularly deal with the assignability of contracts, this Court has opined time and again that a party to a contract cannot assign their obligations/liabilities without the consent of the other party. A Constitution Bench of this Court in *Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd.* [AIR 1962 SC 1810] has laid out this principle as follows : (AIR p. 1819, para 19)].

"19. An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties."

31. We are not able to countenance the submission of Mr. Jayanth Muth Raj, learned Senior Counsel that a decree passed in a suit for specific performance of the sale agreement on immovable property creates an interest in the immovable property. As held in *Suraj Lamp (supra)* cited hereinabove, the personal obligation created by an agreement of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of a contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

32. Reliance by the learned senior counsel for the appellants on *Satish Kumar and others vs. Surinder Kumar and others*⁹, is again misplaced. The paragraph cited from that judgment dealt with Section 17(1)(b) of the Registration Act which again prescribes for the creation or extinguishment of any right, title or interest in the immovable property.

As held hereinabove, since no interest is created in the immovable property, Section 17(1)(b) also would not be applicable. We are also not able to accept the submission that if multiple assignments are permitted registration can be avoided. If a party after obtaining an assignment deed does not execute the decree, no right will enure to it in the immovable property. Hence, the argument that there will be loss of revenue to the State is not tenable.

33. The holding to the contrary in *K. Bhaskaram (supra)* on the aspect of the need for registration of an assignment deed assigning a decree for specific performance of an agreement for sale, does not lay down the correct law. In that case, it appears that parties proceeded on an admission that the registration was required. Further in that case, the Court faulted the assignment for breach of Order 21 Rule 16 also.

34. In any event, in view of what has been held hereinabove, the assignment deed (Exhibit B1) assigning the decree of specific performance in this case did not require registration. The Executing Court which denied execution of the decree was clearly wrong and the High Court which set aside the judgment of the Executing Court was clearly right. We uphold the judgment of the High Court for the reasons set out hereinabove.

35. For the reasons stated above, the appeal is dismissed. No order as to costs.

.....J. [J.B. Pardiwala]

.....J. [K. V. Viswanathan]

New Delhi;

November 19, 2025

1 AIR 2005 AP 524

2 (1913) 11 A.L.J.R 815

3 2011 SCC OnLine Bom 11

* The assignment deed is undisputedly dated 17.07.1995

4 (1982) 1 SCC 525

5 (2012) 1 SCC 656

6 (1972) 3 SCC 684

7 1962 SCC OnLine SC 28

8 (2020) 20 SCC 648

9 (1969) 2 SCR 244

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