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should disturb the Governor's order. This petition must, therefore, fail and I would dismiss it but, in all the circumstances, not burden the petitioner with costs.

Pandit, J.

PREM CHAND PANDIT,—I agree.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat, A.C.J., and D. K. Mahajan, J.

RATTAN CHAND AND ANOTHER,—Appellants

versus

BAGIRATH RAM AND OTHERS,—Respondents.

Regular Second Appeal No. 82 of 1953.

1962

Sept., 26th

Registration Act (XVI of 1908)—S. 49—Unregistered deed of sale of immovable property—Whether can be ad-duced in evidence as agreement to sell—Suit for damages for breach of contract—Whether can be based on such docu-ment.

Held, that section 49 of the Registration Act, 1908, does not prevent a party from showing from an unregistered document that an agreement to sell immovable property had actually been reached between the parties, even if that document be a deed of sale and consequently useless for proving the sale itself. There is no indication in section 49 of the Registration Act to support the view that every trans- action, which may happen to concern immovable property, is a transaction 'affecting' such property, and it would not in the ordinary sense be so. What is apparently shut out by section 49 is the proof through an unregistered docu- ment of a transaction which has effect, direct and im- mediate, on some immovable property. An agreement to sell immovable property has as such and by itself no effect on the immovable property comprised in the agreement. It is only an agreement and like any other agreement capable of being enforced and equally capable of being the basis of a suit for damages in case breach occurs. It is significant

to note in this connection that section 49, as it is worded, does not make an unregistered document, even if it 'affects' immovable property, wholly inadmissible in evidence but only rules it out for certain specific purposes and the prohibition cannot, of course, be extended by implication. Consequently a suit for damages for breach of contract can be based on a deed of sale of immovable property which is not registered.

Case referred by the Hon'ble Mr. Justice Mahajan, on 20th July, 1962 to a larger Bench, for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Dulat, Acting Chief Justice and Hon'ble Mr. Justice Mahajan, on 26th September, 1962.

Second Appeal from the decree of the Court of the Shri Jawala Singh, District Judge, Hoshiarpur, Division Camp, Dharamsala, dated the 15th day of December, 1952, modifying that of Shri Sham Lal, Senior Sub-Judge, Kangra at Dharamsala, dated the 27th July, 1951 (granting the plaintiffs a decree for Rs. 1,200 and costs against defendants 1 and 3 and dismissing the suit against defendants Nos. 2 and 4 and leaving the parties to bear their own costs) to the extent of granting the plaintiffs a decree only for Rs. 200 against defendants Nos. 1 and 3 and dismissing the rest of the suit and leaving the parties to bear their own costs.

F. C. MITTAL ADVOCATE with K. K. CHOPRA, and G. P. JAIN, ADVOCATE, for the Appellants.

D. N. AGGARWAL, with R. N. AGGARWAL, ADVOCATES, for the Respondents.

JUDGMENT

DULAT, J.—This second appeal came before one of us sitting alone and was referred to a Division Bench because of some conflict of judicial opinion attaching to the question of law arising in it. That question is short and arises in this way. A document was executed on the 26th February, 1946 by Bhagirath Ram and Jagan Nath in favour of Rattan Chand stating that a piece of land, 43

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kanals and 19 *marlas* in area, had been sold by the first two to Rattan Chand for Rs. 3,000 out of which Rs. 200 had been paid in cash at that time and the balance of Rs. 2,800 would be paid at the time of the mutation. A few days later, on the 20th of March 1946, Bhagirath Ram and Jagan Nath, having found a better customer, proceeded to sell the same property to him for Rs. 4,500. That new customer was also named Rattan Chand. The first Rattan Chand then brought a suit for the possession of the land in question claiming that there had been completed sale in his favour and the same property could not have been sold to the second Rattan Chand, because of the second sale he asked for a decree for specific performance in his favour. In the alternative he claimed damages to compensate him for the unlawfull loss caused to him by the second sale and he estimated the damage at Rs. 1,200. The suit was resisted on a number of grounds but the one that now concerns us was that the document dated the 26th February, 1946 and called Exhibit P. 5 was a sale deed and not being registered as it necessarily should have been, it could not be looked at either for establishing the sale or as the basis of any claim for damages. That particular objection was not accepted by the trial Court, but since that court found that the second sale in favour of the second Rattan Chand had been made without his knowing about the first transaction and because the second sale-deed was registered and therefore had priority over the first transaction, it was not possible to grant a decree for specific performance. The Court, however, held that the plaintiff was entitled to prove, and had succeeded in proving, that there was an agreement to sell the disputed land to the plaintiff which agreement had been broken and the plaintiff had suffered loss and he was consequently entitled to a decree for damages.

In the result, the Court granted the plaintiff a decree for Rs. 1,200 and costs against Bhagirath Ram and Jagan Nath. Those two appealed and the learned District Judge allowed the objection raised in connection with the unregistered sale-deed (Exhibit P. 5) and he held largely on the authority of a decision of the Lahore High Court that the document in question, being un-registered, could not be the basis of a claim for compensation nor the basis of any suit for damages for the breach of any agreement, and on this view he allowed the appeal and set aside the decree. The present appeal is directed against the decision of the learned District Judge.

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Mr. Mittal does not dispute the view adopted by the Courts below that the document (Exhibit P.5) is a deed of sale and he agrees that because of section 49 of the Registration Act the document in question cannot be permitted to affect the property sought to be sold under the document. Further, he agrees that the document cannot be used as evidence 'of any transaction affecting that property' which, according to learned counsel, means that as evidence of the sale the document is useless. He submits, however, that short of proving the sale, he is entitled to prove every other fact, and that he is not precluded from showing from the document itself that the two respondents, Bhagirath Ram and Jagan Nath, had agreed to sell the land in question to the appellant, Rattan Chand, which agreement of course those two persons deliberately declined to carry out and instead sold the property to another person. Mr. Aggarwal for the respondents agrees that if these submissions are acceptable, then a decree for damages would follow, for, if there was an agreement to sell which was broken by the respondents and damage caused, a decree awarding compensation to the aggrieved party will have to be granted.

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About the damage itself and its extent, again there is no serious dispute, for damage has been assessed according to the difference in the agreed price and the price at which the property was actually sold within a month. The only dispute that remains thus is whether the appellant is in spite of non-registration entitled to use the document (Exhibit P. 5) as evidence of an agreement to sell the property in order to sustain a claim for damages. Mr. Mittal contends that the transaction he is seeking to prove, that is, the agreement to sell, is not a transaction 'affecting' the immovable property at all, and section 49 of the Registration Act is, therefore, no hindrance in his way. Mr. Aggarwal, on the other hand, maintains that the agreement to sell the immovable property in question would be a transaction affecting the property in its proof, therefore, is barred by section 49 of the Registration Act. In the alternative, he urges that the document (Exhibit P. 5) is only a deed of sale and nothing else, and if it is to be looked at at all, it has to be looked at only as a deed of sale which, of course, is barred under section 49, and that it cannot be looked at for any other purpose. The second contention is really a slight elaboration of the first, the argument here being that if the law prohibits a particular document being looked at in a straight forward manner, then the same law cannot be intended to permit looking at the same document in a roundabout manner.

To take up the first contention first, I find difficult to agree with Mr. Aggarwal's view that 'proof' by a document to sell any immovable property would be proof of any transaction affecting such property in the sense in which section 49 mentions such a transaction. The words of the section are these—

"49. No document required by section 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.”

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If the section had stopped there, we might have had some foundation for the view advanced by Mr. Aggarwal but the section does not stop there. It is instead followed by a proviso which was deliberately added to the section by the Legislature in 1929 after certain Courts including the Judicial Committee of the Privy Council had expressed opinions much like Mr. Aggarwal's submission. The proviso runs thus—

“Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.”

It is clear that the first part of the proviso expressly contemplates a situation where a document required to be registered by law but not so registered may still be received as evidence of a contract if specific performance of the contract is

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sought, so that it is not at all right to say that an unregistered document can never be looked at for any purpose connected with the property mentioned by the unregistered document. It is also clear from the third part of the proviso that as evidence of a collateral transaction an unregistered document is equally admissible in evidence. It is common ground now that an agreement to sell immovable property is not required by law to be registered and although there may have been some doubt about this matter prior to 1927, no doubt is left in that connection by the Explanation to section 17 of the Registration Act which was put into the Act in 1927, and that expressly provides that an agreement to sell immovable property is not required to be registered. Mr. Aggarwal's argument in substance is that an agreement to sell immovable property is a transaction affecting that property because it refers to and deals with the property. There is, however, no indication in section 49 of the Registration Act to support the view that every transaction, which may happen to concern immovable property, is a transaction 'affecting' such property and it would not in the ordinary sense be so. What is apparently shut out by section 49 is the proof through an unregistered document of a transaction which has effect, direct and immediate, on some immovable property. An agreement to sell immovable property has as such and by itself no effect on the immovable property comprised in the agreement. It is only an agreement and like any other agreement capable of being enforced and equally capable of being the basis of a suit for damages in case breach occurs. It is significant to note in this connection that section 49, as it is worded, does not make an unregistered document, even if it 'affects' immovable property, wholly inadmissible in evidence but only rules it out for certain specific

purposes and the prohibition cannot, of course, be extended by implication. As I read section 49 in the light of the proviso, there is, I find nothing in it to prevent a party from showing from an unregistered document that an agreement to sell immovable property had actually been reached between the parties, even if that document be a deed of sale and consequently useless for proving the sale itself.

The learned District Judge took a contrary view, as he felt bound by a decision of the Lahore High Court, *Bahawal v. Amrik Singh* (1), in which case Jai Lal J. sitting alone held that a suit to recover damages for breach of an agreement relating to immovable property was a suit which affected immovable property and was not covered by the exception mentioned in the Act. He came to that conclusion as he thought that a collateral purpose mentioned in the proviso to section 49 was a purpose which excluded all reference to the contract relating to immovable property. It seems to me extremely difficult to agree with either statement, for, as I see it, a suit to recover damages for breach of an agreement concerning immovable property has, and can have, no effect on such immovable property. Nor am I willing to agree that a collateral purpose must be one in which no reference is made to the immovable property or the contract concerning it. Jai Lal J. relied to a great extent on a decision of the Madras High Court in *Narayanan Chetty v. Subbaya Servai* (2) which had differed from a previous decision of the same Court in *Raja of Venkatagiri v. Narayana* (3). In a more recent decision of the Madras High Court, *Muruga Mudaliar v. Subba Reddiar* (4) five Judges sat to consider those two previous decisions, and four

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(1) A.I.R. 1932 Lah. 655.

(2) I.L.R. 35 Mad. 63.

(3) I.L.R. 17 Mad. 456.

(4) A.I.R. 1951 Mad. 12.

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of them were of opinion that the view adopted in *Narayanan Chetty v. Subbayya Servai* (2), was not correct and thus overruled that decision. The authority, therefore, on which Jai Lal J. relied, has not been accepted as correct in the Madras High Court, and much of the force of the decision in *Bahawal v. Amrik Singh* (1) thus disappears. One of the five learned Judges in *Muruga Mudaliar v. Subba Reddiar* (4) dissented, and it is on the reasoning of that dissenting judgment that Mr. Aggarwal largely depends, suggesting, of course, that we are not bound by the majority view. We have been through the whole reasoning, and it appears to me that the matter has been very fully considered in the judgment of Satyanarayana Rao J. in the light of the previous decisions and the later amendments of the Registration Act and the Transfer of Property Act, and with most of his conclusions I find myself in entire agreement. Considering this particular question, Satyanarayana Rao J. says at page 19—

“What one has to see under the clause is to consider what is it that he is seeking to establish in evidence by using the document. Is he attempting to prove by the document a ‘transaction affecting immovable property’? In other words, is he seeking to prove a present demise of the property, or a lease of the property? That is not the object of the plaintiff in the present case. The object is to establish an agreement to lease the property, which was broken by the defendant. He is in no way attempting to show that an interest in immovable property is created by a present demise of the land.”

This is precisely the situation in the present case, for the plaintiff here is seeking to prove not that

any sale of the land in question took place but that there was an agreement to sell the land to him, and I do not see how it can be said that by such proof he is seeking to prove a transaction affecting immovable property, the relief claimed, of course, being damages for breach of agreement. The dissenting judgment by Panchapagesa Sastri J., largely adopts some of the reasoning adopted by the Privy Council while ruling out an unregistered sale-deed as proof of an agreement, but the basis of that reasoning was wiped out by the later amendments of the Registration Act. There was, first, the explanation added to section 17 in 1927 and two years later a proviso put into section 49, and it is hardly relevant now to go back to the earlier view of the Court on this question.

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Reference is made to a decision of the Calcutta High Court, *Ramjoo Mahomed v. Haridas Mullick* (5), where Page J., sitting alone, formed an opinion somewhat on the lines suggested by Mr. Aggarwal. That decision was noticed by the Full Bench of the Madras High Court in *Muruga Mudaliar v. Subba Reddiar* (4) and is obviously of no assistance as that case was decided before the two amendments in the Registration Act I have already referred to. There is no other authority to support Mr. Aggarwal's submission.

The second part of Mr. Aggarwal's argument is this that if the deed of sale is to be looked at, it must be looked at as a deed of sale which is, of course, forbidden by the Registration Act, and that it is not permissible to look at it as an agreement of sale, and to support this submission Mr. Aggarwal points out that if a deed of sale is to be

(5) A.I.R., 1925 Cal. 1087.

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considered as evidence of an agreement to sell, then the practical consequence would be that in every case an unregistered sale-deed would be made the basis of a suit to enforce the sale itself or, at any rate, to claim damages for breach of agreement. I am unable to see any harm in the ensuing situation, for obviously if a person has agreed to transfer his property to another, there is no reason why he should not be compelled to do so and the fact that certain forms have not been observed, may be sufficient answer to an allegation of a completed transaction, but is no answer to the grievance that an agreement to sell has been broken and damage caused by such breach. In my opinion, therefore, the correct view in the present case would be that the plaintiff-appellant is entitled to show on the basis of the unregistered sale-deed that there was an agreement to sell the land in question to him. This the plaintiff-appellant has succeeded in proving. The breach of the agreement is admitted and is no longer in dispute. Nor is the quantum of damage in doubt. The plaintiff-appellant is, in the circumstances, entitled to a decree, and I would, therefore, allow this appeal, set aside the decree of the District Court and restore the decree granted to the appellant by the trial Court with costs throughout.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

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REVISIONAL CRIMINAL

Before H. R. Khanna, J.

SHIV DAYAL,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 569 of 1962:

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Oct., 4th

Electricity Act (IX of 1910)—S. 39—Tampering with meters with intent to dishonestly abstract, consume or use electric energy—Whether amounts to theft simpliciter