

Remington Rand of India, Limited, Chandigarh v. Shrimati Lila Wati  
Bansal (Mahajan, J)

reliance on it. It was held in that case that the Rent Controller had sufficient jurisdiction to reopen the case and receive the additional evidence led by the landlord even after the arguments had been conducted and the case had been closed. Allowing additional evidence (at any stage of the case) which is relevant to the issues before the Rent Controller is a matter which is entirely different from allowing evidence in rebuttal which is not relevant to the issues in the case, but is relevant only for the purpose of showing that a party has told lies in the witness box on a material question.

(10) For the foregoing reasons I allow this petition and set aside the order of the Rent Controller allowing the landlord-respondent to produce evidence in rebuttal at this stage. The parties have been directed to appear before the Rent Controller on April 18, 1974, for further proceedings. The costs of these proceedings shall abide the result of the eviction application.

K. S. K.

REVISIONAL CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

REMINGTON RAND OF INDIA, LIMITED, CHANDIGARH—  
Petitioner.

versus

SHRIMATI LILA WATI BANSAL—Respondent.

C. R. No. 582 of 1971.

March 1, 1974.

*Evidence Act (I of 1872)—Sections 91 and 145—Indian Registration Act (XVI of 1908)—Section 49—Previous statement of a witness in an unregistered document—Whether and when can be used under section 145, Evidence Act.*

*Held*, that keeping in view the purpose of the provisions, there is no conflict between sections 91 and 145 of the Evidence Act, 1872 and section 49 of the Registration Act, 1908. Section 145 of the Evidence Act is meant for a totally different purpose from that of the other two provisions. The first part of the section permits oral question being put in cross-examination which are relevant to the

matters in question. The writing cannot be shown to the witness or be proved. But if it is intended to contradict the witness, the document before it is proved has to be put to him and his attention called to those parts of the document with which it is sought to contradict him. It is obvious that the second part of the section is intimately connected with the proof of the document. In order to prove a document, it must be admissible in evidence and it is here that proviso to section 49 of the Registration Act becomes material. If it can be admitted under section 49, Registration Act, the bar of section 91, Evidence Act, becomes otiose. Thus the question whether the document can be used to contradict the witness is interlinked with its admissibility under section 49 of the Registration Act and cannot be decided de hors it. Hence the previous statement in an unregistered document can be used for the purpose of putting relevant oral question to the witness, without bringing into play section 91 of the Evidence Act and section 49 of the Registration Act. But in case it is intended to contradict the witness with the document, section 49, Registration Act, will step in. If this bar is eliminated, section 91 of the Evidence Act will not come into play. This construction gives full play to all the three provisions and does not nullify any one of them. (Para 5).

*Case referred by Hon'ble Mr. Justice R. S. Narula to a Division Bench on 11th January, 1972, for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice R. S. Narula finally decided the case on 1st March, 1974.*

*Petition under section 44 of Act 9 of 1919 and section 115, C.P.C., for revision of the order of Shri K. D. Mohan, Senior Sub-Judge, Chandigarh, dated 27th March, 1971 allowing the defendants to confront the plaintiff with the document mark 'A' only to the extent that it may be available under Explanation 3 to section 91 of the Indian Evidence Act and not beyond that and also ordering the case now to come up on 29th May, 1971, for evidence of the plaintiff.*

S. P. Goyal, Advocate, for the petitioner.

J. N. Kaushal, Senior Advocate, S. P. Jain, Advocate, with him, for the respondent.

#### JUDGMENT

MAHAJAN, J.—My learned brother, by his order dated January 11, 1972, referred this petition for revision to a larger Bench. That is how the matter has been placed before us.

(2) The facts are simple and may be stated. Shrimati Lila Wati filed a suit for ejectment of Remington Rand of India (Ltd.)

**Remington Rand of India, Limited, Chandigarh v. Shrimati Lila Wati Bansal (Mahajan, J)**

from the premises rented by them in Sector 17. According to her, the tenancy was from month to month. The defendant took up the position that the tenancy was for a fixed period of twenty years, and in support of that set up the document marked "A". This document is unstamped and unregistered. An objection was taken by the plaintiff that it was inadmissible in evidence and could not be used for any purpose. Further, section 91 of the Evidence Act was pressed into service that the terms of the document could not be proved by oral evidence because the document was in writing. The plaintiff, when in the witness-box, was sought to be confronted with the document under section 145 of the Evidence Act. This raised the question whether in view of the provisions of section 91 of the Evidence Act and section 49 of the Registration Act, the document could be used to contradict the plaintiff? The trial Court settled this dispute as follows:

"I allow the defendants to confront the plaintiff with the document marked 'A' only to the extent that it may be available under Explanation 3 to section 91 of the Indian Evidence Act and not beyond that."

The question whether an unregistered deed of lease could be used for purposes of part-performance and could be let in evidence was left undecided as at this stage that question had not arisen.

(3) Before we proceed to deal with the controversy, it will be advisable to set out the provisions of sections 91 and 145 of the Evidence Act and section 49 of the Registration Act.

(4) Sections 91 and 145 of the Evidence Act are in the following terms:—

"S. 91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained....."

*Explanation 3.*—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

S. 145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

Section 49 of the Indian Registration Act, 1908, is in the following terms:—

"S. 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 immoveable 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:

Provided that an unregistered document affecting immoveable 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 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

(5) If we keep in view the purpose of these provisions, it will be apparent that in fact there is no conflict between sections 91 and 145 of the Evidence Act and section 49 of the Registration Act. Section 145 of the Evidence Act is meant for a totally different purpose. The first part of the section permits oral questions being

Remington Rand of India, Limited, Chandigarh v. Shrimati Lila Wati  
Bansal (Mahajan, J)

---

put in cross-examination which are relevant to the matters in question. The writing cannot be shown to the witness or be proved. For instance, the witness can be asked whether the premises were let out for 20 years. But if it is intended to contradict the witness, the document has to be put to the witness and attention of the witness called to those parts of the document with which it is sought to contradict him. No doubt the attention of the witness has to be so drawn to the document and that too before it is proved. It is obvious that the second part of the section is intimately connected with the proof of the document. In order to prove a document, it must be admissible in evidence. It is here that proviso to section 49 of the Registration Act becomes material. If it can be admitted under section 49 of the Registration Act, the bar of section 91 of the Evidence Act becomes otiose. Thus the question whether the document can be used to contradict the witness is interlinked with its admissibility under section 49 of the Registration Act and cannot be decided de hors it. If what is stated above is kept in view, it will be apparent that the defendant can use the previous statement in the document marked 'A' for the purpose of the first part of section 145 without bringing into play section 91 of the Evidence Act and section 49 of the Registration Act. But, in case the second part of section 145 of the Evidence Act is to be made use of, section 49 of the Registration Act will step in. If, however, this bar is eliminated, section 91 of the Evidence Act will not come into play. This construction gives full play to all the three provisions and does not nullify any one of them.

(6) In this view of the matter, the trial Court will see that our observations are given effect to and the controversy *inter se* the parties decided in the light of the said observations. If any objection is raised to any question, the question and answer be recorded and also the objection and the decision of the objection be deferred to the final stage of arguments. This course will avoid any revision from any interlocutory order and any wrong decision on the objection raised can be set right at the stage of appeal from the decree if and when preferred. There will be no order as to costs. The parties are directed to appear in the trial Court on 2nd of April, 1974.

NARULA, J.—I agree.

---

N. K. S.