(1928) 12 BOM CK 0011

In the Bombay High Court

Case No : Appeal from Order No. 6 of 1927

Fakirji Ardeshir Lavri — APPELLANT

Vs

Bhagvatlal Tricamlal Dave — RESPONDENT

Date of Decision : 12-12-1928

Acts Referred:
Registration Act, 1908 — Section 17

Citation : (1929) 31 BOMLR 493

Hon'ble Judges : Patkar, J;Murphy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patkar, J.—The plaint property originally belonged to one Mahomad Isaq who sold it to one Tribjhovan Sakhidas for Rs. 5,600 on April 9, 1869. Tribhovan in his turn sold the property to one Ardeshar Naaarwanji, the father of defendant No. 1, on July 17, 1872, for Rs. 2,275, and on that very day Ardeghar passed a document, Exhibit A, to the sons of the original owner to Mahomad, agreeing to reconvey the property to them or their Bimovatlai. heirs, executors or representatives on payment of Rs. 2,200 within fifty-one years. Ardeshar Nasarwanji gifted the property to his son defendant No. 3 on December 6, 1899. The interest of the sons of Mahomad, the original owner, under the document Exhibit A, was assigned to the plaintiff on October 10, 1921, who brought a suit to enforce the document, Exhibit A. The heirs of Ali and Abhram, the eons of Mahomad, were joined as co plaintiffs. Defendant No. 1 sold the property to defendant No. 3 on May 7, 1919. The plaintiff'', finding that defendant No. 3 was a bonafide purchaser for value, gave up his claim for specific performance and possession of the property and restricted his claim for damages for breach of the agreement, Exhibit A.

2. The learned Subordinate Judge held that the document, Exhibit A, required registration u/s 17, Clause (2), of Act VIII of 1871, and the exemption in favour of the documents embodied in Section 17, Clause (h), was enacted by Act III of

1877. He, therefore, held that the document, Exhibit A, was not admissible in evidence for want of registration, and dismissed the plaintiff''s suit.

3. On appeal, the learned District Judge held that the document, Exhibit A, operated to create an interest in immovable property and limited the vendor''s interest to that extent, and was compulsorily registrable under the Act of 1871, that the question of admissibility being a matter of procedure was governed by the present law, and that though it was compulsorily registrable when it was executed, it did not require registration under the present law, and, therefore, held that the document, Exhibit A, was admissible in evidence.

4. On behalf of the appellants it is urged that the document required registration under Act VIII of 1871 and that u/s 6 of the General Clauses Act, the provisions in Section 17, Clause (2)(v) embodied in the later Registration Acts of 1677 and 1908 would not affect the previous operation of the Registration Act VIII of 1871, and that the document in itself created an interest in immovable property and limited the vendor''s right to the value of Rs. 100 or more, and therefore, was inadmissible in evidence for want of registration. On the other hand, it is contended that the document did not require registration under Act VIII of 1871 as it did not create any interest in immovable property, that the document created a light in personam and did not create any right or interest in the property, and that though the document may not be admissible in evidence as affectine; immovable property, it was admissible in a suit for specific performance or for damages for breach of a contract.

5. The document was executed on July 17, J1872, and was governed by Act VIII of 1871. Section 54 of this Transfer of Property Act was not enacted at the time of the execution of this document. The Transfer of Property Act was made applicable to the Bombay Presidency in the year 18?J3. According to the decision in Fuiteh Chund Sahoo v. Ledumpcr Singh Doss (1871) 14 M.I.A. 129 an agreement for the sale of immovable property worth more than Rs. 100 required registration on the ground that it created equitable interest in the property to be conveyed. In that case specific performance was sued for on the strength of an unregistered agreement for sale, and the plaintiff fought to have a conveyance executed in pursuance of it, and it was held that the agreement not having been registered could not be given in evidence in the suit. A similar view was taken in the case of Valaji Isaji v. Thomas ILR (1876) 1 Bom. 190. Apart from the special terms of the document which was the subject-matter in that case, it was held that in a suit for specific performance of an agreement to execute a deed of immovable property, the agreement was not admissible in evidence for want of registration. The case of Jusab Haji Jafar v. Haji Gul Muhammad (1875) 12 B.H.C.R. 175 was distinguished on the ground that the instrument in question has been executed not by the intending vendor but by the intending purchaser, and therefore could not create any right, title or interest to or in the property to be sold. The decisions in the case of Jusab Haji Jafar v. Haji Gul Muhammad (1875) 12 B.H.C.R. 175 and Mark Ridded Currie v. S.V. Mutu Rumen Chetty

(1869) 3 Beng L.R. 126 relied on on behalf of the respondent, must be considered to have been overruled by the decision in the case of Futteh Chund Sahoo v. Leelumber Singh Duss (1871) 14 M.I.A. 129; see note at p. 195 in the case of Valaji Isaji v. Thomas ILR (1876) 1 Bom. 190. It was held in Dinkarrao Ganpatrao Kothare Vs. Narayan V. Mandlik, that a contract which under English law created an equitable interest in land taught also come within the description of the documents referred to in Section 17(2)(v) of the Indian Registration Act of 1877, and very possibly the legislature intended to exempt such contracts from registration, but the question whether they were compulsorily registrable or not was not definitely settled until the passing of the Transfer of Property Act. It follows, therefore, that the document, Exhibit A, according to the registration law prevalent at the time of the execution of the document, required registration. Their Lordships of the Privy Council in Futteh Chund Sahoo v. Leelumber Singh Doss observe (p. 131):?

The Registration Act, No. XX. of 1866, recently passed in India is extremely stringent. Their Lordships have, in the first place, no doubt whatever, that the instrument in question is one which, by Clause 2 of Section 17 of the Act, is required to be registered; that it in an instrument acknowledging the payment of the consideration money for what was to be ultimately an absolute sale of the property in question, and what in equity would operate as a sale of the property.

The last observation refers to the principle of English law according to which a contrast for sale of land operates in equity as a transfer of ownership from the vendor to the purchaser. In order to mitigate the rigour of the Registration Act, Clause (h) of Section 17 of Act III of 1877 was enacted. Act III of 1877 came into force on April 1, 1877, and did not contain any provision exempting from its operation documents executed previous to the date of its coming into force. On the contrary registration of documents executed on or after the date on which the Act came into force, and the date on which the previous Acts XVI of 1864, XX of 1866 and VIII of 1871 had come into force, is governed by Section 17 of the Act III of 1877. Act XVI of 1908 is to the same effect. It was held in Raju Balu v. Krishnarav Ramchandra ILR (1877) 2 Bom. 273 281 that the greater strictness of the requirements of Act VIII of 1871 and the earlier Registration Acts was mitigated by Act III of 1877, and the Act was framed, as it was, very probably with a view to admit, to the benefit of such mitigations, documents executed before the date on which the Act came into force, and that the practical result was that the provisions of Act III of 1877 applied to all documents tendered in evidence on or after April], 1877. The view of Green J. in Raju Balu v. Krishnaraw Ramchandra ILR (1877) 2 Bom. 273 was accepted in Chunilal Panalal v. Bomanji Manoherji Modi ILR (1883) 7 Bom. 310 where the reasons for enactment of Clause (A) of Section 17 of Act III of 1877 have been stated by reference to the proceedings in Council. Section 6 of the General Clauses Act which prevents repealing enactments affecting the operation of the previous Acts cannot apply in the present case, According to the view in In Raju Balu v. Krishnarav Ramchandram ILR (1877) 2 Bom. 273 and Chunital Panalal v. Bomanji Mancherji

Modi ILR (1883) 7 Bom. 310 the object of the later Registration'' Act was to admit, to the benefit of the mitigations of the rigour of the Law, documents which were executed prior to 1877 when the registration law was more stringent. I think, therefore, that the document, Exhibit A, having been produced in evidence after coming into force of Act XVI of 1908, would be governed by Section 17 of the Act, and would get the benefit of the mitigation of the rigour of the law embodied in Section 17, Clause (2)(v). On the other hand documents which were not compulsorily registrable under the registration law previous to the Act of 1871, did not require registration under the provisions of the later Acts of 1877 and 1908. In Desai Motilal Mangalji v. Desai Parashotam Nandlal ILR (1893) 18 Bom. 92 after referring to the view of Green J. in Rajy Balu v. Krishnarav Ramchandra ILR (1877) 2 Bom. 2731 that the practical result was that the provisions of Act III of 1877 applied to all documents tendered in evidence on or after April 1, 1877, it was observed that the document which was the subject-matter in Raju Balu''s case was one which ought to have been registered under Act XVI of pleas, but with regard to the documents which did not require Registration under the previous registration law, it was held that the subsequent Registration Act provided no means of registering the documents, and therefore, in the case of a document which did not require registration under the previous law, the requirements of registration under the later law could not have retrospective effect of invalidating documents which when they were executed were free from defects according to the existing law. The absence of any provision requiring documents, which did not require registration under the previous law, to be registered! within a certain time after coming into force of the new Registration Act would indicate that no change in the law was intended. See Ram Coomar Singh v. Kishari ILR (1882) Cal. 68 Intizam Fatima v. Ali Baksh (1911) 8 A.L.J. 609 and Khuda Bakhsh v. sheo Din ILR (1886) All. 405If the view of Green J. in Raju Balu v. Krishnaraw Ramchandra ILR (1877) 2 Bom. 273 approved in Chunilal Panalal v. Bomanji Mancherji Modi ILR (1883) 7 Bom. 310and Desai Motilal Mangalji v. Desai Parashotam Nandlal ILR (1893) 18 Bom. 92 be accepted, it would follow that the document, Exhibit A, though executed before Act III of 1877 came into force, would be entitled to the benefit of the mitigation of the rigour of the law asp embodied in the later Registration Acts, e. g., Section 17, Clause (h), of Act III of 1877, and Section 17, Clause (2)(v), of Act XVI of 1908. The question, therefore, arises whether the document, Exhibit A, did by itself create, declare, assign, limit or extinguish any right, title or interest of the value of Rs. 100 and upwards, or it merely created a right to obtain another document which created, declared, assigned, limited or extinguished any such right, title or interest. It is urged on behalf of the appellant that the document in itself created a right or at least limited the vendor''s right to that extent. The document, Exhibit A, says as follows: "Accordingly I pass this agreement to you that on receipt of Rs. 2,500 for that bhag. I will reconvey it to you or your heirs or your assigns. In case I fail to reconvey or in case I raise any sort of objection to such reconveyance, then you can, on the basis of this writing, file a suit against me according to law and obtain a decree and take it back through Court." The title of Ardeshar, the father of defendant No. 1, created by the sale-deed in his favour by Tribhovan on July 17, 1872, is not in any way limited by this document. If he broke the agreement and sold to a third party, h laid himself open to an action for damages while the right of the third party to retain the property will depend upon whether or not he had notice of the agreement. See Harkisandas Bhagvandas Vs. Bai Dhanu, . The document, Exhibit A, was simply an agreement that Ardershar would reconvey the property any time within fifty-one years on payment of Rs. 2,500 and on such payment the sons of Mahomed would be entitled to get a registered document from Ardeshar or would be entitled to enforce the agreement in a Court of law. I think, therefore, that the document, though it required registration under the law as it existed at the time of the execution of the document as being a conveyance of an equitable estate on the authority of the decision in Futieh Chund Sahoo v. Leelumber Singh Doss (1871) 14 M.I.A. 129 and Valaji Isaji v. Thomas ILR (1876) 1 Bom. 190 it can get the benefit of the mitigation of the rigour of the by virtue of the enactments contained in Section 17, Clause (ft), of Act III of 1877, and Section 17, Clause (2)(v), of Act XVI of 1908. The document, in my opinion, does not in itself create any right, title or interest or limit the title of the vendor so as to require compulsory registration under Article 17, and would be admissible in evidence in a suit for recovery of damages for breach of the agreement.

6. It is urged on behalf of the respondent that though the document required registration, it would not be inadmissible in evidence for waat of registration in a suit for specific performance or in a suit to recover damages, and reliance is placed on the decisions in Burjorji Cursetji Panthaki v. Muncherji Kuver ji ILR (1880) 5 Bom. 143 Adakkalam v. Theethant ILR (1888) 12 Bom. 505 Nagappa v. Devu ILR (1890) Mad, 55 Mangamma v. Ramamma ILR (1912) Mad. 480. The case Bhaoyatlal Panthaki v. Muncherji Kuverji ILR (1880) 5 Bom. 143 has been criticized in Ramling v. Bhagvant (1925) 28 Bom. L.R. 591 It is not necessary to go into this question as I think that the document, Exhibi A, does not by itself create, declare, assign, limit or extinguish any right, title or interest of the value of Rs. 100 and upwards, but merley creates a right to obtain another document Which when executed would create, declare, assign, limit or extinguish any such right, title or interest.

7. I think, therefore, that the document, Exhibit A, is admissible in evidence.

8. For these reasons I would confirm the order of the lower appellate Court and dismiss the appeal with costs.

Murphy, J.

9. Plaintiffs filed a suit praying that the defendants should execute a sale deed of the property in litigation in their favour, on their paying Rs. 2,500 the sum specified in the contract to sell and should also give them possession. But in the course of the suit the prayer for specific performance of the agreement to sell

was given up, and plaintiffs only claimed damage for its breach, and the suit as against defendant No. 3, who is in actual possession of the property as a vendee, was dismissed on the plaintiffs'' application, to the effect that he was a bona fide purchaser for value and without notice.

10. The original Court held that the suit Was not maintainable, because the document on which the plaintiffs relied, marked as Exhibit A in the case, was inadmissible in evidence as not having been registered.

11. This document was executed on July 17, 1872, by one Nusser-wanji the then owner, in favour of Ali and Abhram, the eons of the original owner Mahomed Isap, and contains an undertaking to reconvey the property for Rs. 2,500 on application made within fifty-one years of the date of its execution.

12. On appeal to the District Court, the original Court''s order of dismissal was set aside, and the case was remanded for disposal on the merits, the learned District Judge''s view being, that Exhibit A was admissible in evidence, even though unregistered. This is the order now before us in appeal.

13. The principal questions to decide therefore are :?

(1) Whether, at the time of its execution, Exhibit A was compulsorily registrable, and,

(2) if it was, whether the failure to register it now operates to forbid its being used as evidence.

14. There is no dispute about the facts. It has been argued that the contract contained in Exhibit A is void for want of consideration, but this contention can hardly be sustained. Looked at broadly, it contains reciprocal promises, which furnish enough consideration to support a contract, and I think it is essentially an ordinary agreement to sell the property, if required, for the sum fixed, within a certain time. In 1872 the Registration Act of 1871 was in force.

15. Section 17(2) of that Act made all instruments which purported, or operated, to create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent, of the value of Rs. 100 or upwards to or in Immovable property compulsorily registrable.

16. The Registration Act of 1871 was repealed by the Registration Act of 1877, which in turn has given place to the present Act of 1908. The Act of 1871 was different in its provisions ou this point to the later Acts and the change in the later Acts was actually made in order to mitigate the hardship of requiring such ''bargain papers'' to be registered. The subject has been fully discussed in the case of Dinkarrao Ganpatrao Kothare Vs. Narayan V. Mandlik, and I need not repeat its history in this judgment. I think that, in terms, Exhibit A was a document coming within the class of documents which in 3872 were compulsorily registrable, though in fact had it been executed later than 1877, it would not have had to be registered to b3 admissible in evidence, and the short point

therefore is whether on these facts it can now be admitted to prove the contract to sell which it contains.

17. The leading case is that of Futteh Chund Sahoo v. Leelumber Singh Doss (1871) 14 M.I.A. 129. The document in that case was an agreement to sell, and the registration law applicable was the Act of 1866 which, however, on this point bad a provision similar to the one found in the Act of 1871. This case was followed in Valaji Isaji v. Thomas ILR (1876) 1 Bom. 190.

18. These cases have been discussed by the learned District Judge, 1928 Wn0 quite rightly, and for the further reasons he gives in respect of the equitable doctrine then prevailing in India, before the coming into force of the Transfer of Property Act, which was, that a mere contract to sell conveys the equitable estate, held that Murphy J. Exhibit A was compulsorily registrable when it was executed. ? The reason why he ultimately decided that it was admissible was that he considered, on the strength of the decision in Raju Balu v. Krishnaraw Ramahandra ILR (1877) 2 Bom. 273 that the question of admissibility being a matter of procedure, would be governed by the law in force when the document was tendered in evidence, and such a document not now requiring registration, it could on this ground be admitted. He also considered the effect of the decision in Desai Motilal Mangalji v. Desai Parashotam Nandlal ILR (1893) 18 Bom. 92 in which case it was held that a document which was not compulsorily registrable when it was executed, but required that formality to legalize it at the date it was tendered in evidence was admissible though unregistered. The facts were the converse of those of this case, and he rightly observed that a converse case may be different, and that prohibitory and penal sections of the Registration Act must be construed strictly. But the ratio decidendi in the then decided case really had a different basis, The document dealt with in it had been in order when executed. Exhibit A was not in order at the time of its execution. It would have been inequitable to penalise a document on the ground of a change in the law, but it does not seem to me to be equally so inequitable when the document was originally invalid for want of this formality, and an only be held to avoid that defect because of the change in the law. In fact, the proposed vendees under it acquired no rights at the time, and had none for five years. Would it be equitable to enforce such rights against the other side, because of a change in the law, and as from 1877 ? I am not sure that it would be, but the determining argument in the present appeal must, in my opinion, rest on a proper interpretation of the relevant enactments. In 1872 as well as in 1877, the General Clauses Act of 1868 was in force. Section 3 of that Act provided that in all Acts made by the Governor General in Council after this Act had come into operation (1) for the purpose of reviving either wholly or partially, a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose. There was no provision similar to that in Section 6(a) and (b) of the present Act providing that the repeal of any enactment shall not operate to revive anything not in force at the date of the repeal, or to affect the operation of any enactment so repealed. This provision only came in the General Clauses.Act now in force, which was long

after the repeal of the Registration Act of 1871 in 1877. I think that neither of these enactments can be resort-ed to in order to solve the second question we have to decide and that recourse must be had to the case-law on the point.

19. In the Act of 1877 (III of 1877) there was a new Section 17(&) by which the necessity for registering agreements such as the one contained in Exhibit A in this case was removed, and the Act contains no provision to the effect that it would not apply to documents which had been executed previous to the date of its coming into force.

20. There are two reported cases on this point. The first is that of Raju Balu v. Krishnarav Ramchandra ILR (1877) 2 Bom. 273 in which it was held that the Act 1877 governed the admissibility of documents executed before, but offered in evidence after, 1877, and the second is that of Chunilal Panalal v. Bomanji Mancherji Modi ILR (1883) 7 Bom. 310 in which the opinion of Mr. Justice Green in the former case was accepted and followed.

21. I think there is a difficulty in holding that Exhibit A, though inadmissible in evidence at the time it was executed and for five years after that time, has now become admissible by reason of a change of the law without a provision for its retrospective effect. But in view of these two rulings of this Court, which bind us I think I must find that Exhibit A was admissible in evidence when tendered in the original Court.

22. There is yet another point of law in the case and it is, whether in view of the fact that the claim for specific performance was abandoned, and the suit as against the person in possession of the property in suit was given up, a claim for damages can now be persevered in. But this point, though referred to in argument before us, was not discussed in the Court below, and I think we need not find on it now, for there may be facts available to the parties which might affect the finding on it.

23. I agree that the lower appellate Court''s order must be confirmed and that this appeal should be dismissed with costs.

