

(1917) 07 CAL CK 0028
In the Calcutta High Court

Jnan Chandra Das and Others

APPELLANT

Vs

Rajani Kanta Pal and Others

RESPONDENT

Date of Decision : 27-07-1917

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : 41 Ind. Cas. 850

Hon'ble Judges : Newbould, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The suit out of which this appeal arises was one to recover possession of the lands in dispute under the following circumstances. The lands belonged originally to the plaintiff. They were sold in execution of a decree for money against him and purchased by on Debendra in March 1905, and symbolical possession was taken by him in March 1906. Debendra agreed to convey the lands to the plaintiff in consideration of a sum of Rs. 232 and actually executed a conveyance on the 27th March 1906, but it was not registered as plaintiff paid only Rs. 200 out of the consideration. The plaintiff, however, was allowed to remain in possession. On the 17th July 1907 the lands were sold in execution of another money decree against the plaintiff, and were purchased by the defendant No. 1, who obtained possession of the lands. The plaintiff on the 29th November 1907 obtained a second kobala from Debendra which was duly registered. It is upon the strength of this second kobala that the plaintiff brought the present suit for declaration of his title by purchase from Debendra and for possession against the defendant No. 1, on the ground that at the time of the purchase by the latter, he, the plaintiff, had not acquired any interest which could be purchased by the defendant No. 1, the title to the lands being still then with Debendra as no registered conveyance had been executed until the 29th November 1907, i.e., after the purchase by the defendant No. 1.

2. As there was no clear finding whether the balance of the purchase money had been paid to Debendra before the purchase at the execution sale by the

defendant No. 1, and also upon the question whether the plaintiff was in possession at the date of the said purchase, we sent back the case to the lower Appellate Court for findings on those points. The Court has found that the whole of the purchase money had been paid by the plaintiff to Debendra before the purchase by the defendant No. 1, and that the plaintiff was in possession at the date of the auction purchase by the defendant No. 1.

3. Upon the findings the position appears to be this. At the date of the purchase by the defendant No. 1 at the execution sale (17th July 1907), the plaintiff had paid the entire consideration money (Rs. 232) to Debendra who had purchased his rights at a previous execution sale, and who had agreed to convey the property to him, and the plaintiff was allowed to remain in possession of the property. In the circumstances stated above, plaintiff undoubtedly could have sued Debendra for specific performance, and he could have successfully resisted a suit by Debendra if the latter sued the plaintiff for possession of the property, although there was no registered conveyance executed by him. The argument founded upon Section 54 of the Transfer of Property Act that in the absence of a registered instrument the transaction was a nullity was relied on by Cox, J., in the case of Puchha Lai v. Kunj Behary Lal 20 Ind. Cas. 803 : 18 CWN 445 : 19 C. L. J. 213. but was overruled by the Court of Appeal (Jenkins, C. J., and Mookerjee, J.) relying upon the principle laid down in Walsh v. Lonsdale 1882) 21 Ch. D. 9 : 52 L. J. Ch. 2 : 46 L. T. 858 : 31 W. R. 109. Jenkins, C. J. observed in that case, "There is no invasion or evasion of the Registration Act, It is merely securing to a party those rights to which he is entitled apart from the Acts---rights to which he has a good title in Courts to which the abiding direction has been given to proceed in all cases according to equity and good conscience." The principle was followed in the case of Khagendra Nath Chatterjee v. Sonatan Guha 31 Ind. Cas. 987 : 20 CWN 149. in which the decision of the Privy Council in Mahomed Musa v. Aghore Kumar Ganguli 28 Ind. Cas. 930 : 42 I. A. 1 : 19 C. W. N. 250 : 17 Bom. L. R. 420 : 42 C. 801 : 21 C. L. J. 231 : 28 M. L. J. 548 : 13 A. L. J. 229 : 17 M. L. T. 143 : 2 L. W. 258 : (1915) M. W. N. 621 (P. C.). was also relied upon. Having regard to those decisions we think that the plaintiff at the date of the purchase by the defendant No. 1 had acquired a right to the property and that as Debendra could not, at that date, enforce any right against the plaintiff, the plaintiff cannot contend that he had no interest in the property which could be purchased by the defendant No. 1.

4. It is contended that the defendant No. 1 cannot avail himself of any equity which could be enforced by the plaintiff, but the defendant No. 1 as the purchaser of the rights of the plaintiff can do so. It is contended further on behalf of the plaintiff-respondent that the view taken in the cases of Tuchha Lai v. Kunj Behary Lai 20 Ind. Cas. 803 : 18 C. W. N. 445 : 19 C. L. J. 213. and Chagendra Nath Chatterjee v. Sonatan Guha 31 Ind. Cas. 987 : 20 C. W. N. 149. must be taken to have been overruled by the decision of the Judicial Committee in the recent case of Mating Shwe Goh v. Mating Inn 38 Ind. Cas. 938 : 21 C. W. N. 500 : 21 M. L. T. 18 : 15 A. L. J. 82 : (1917) M. W. N. 117 : 32 M. L. J. 6 : 25 C.

L. J. 108 : 19 Bom. L. R. 179 : 5 L. W. 532, 44 C. 542 pc: 10 Bur. L. T. 69 (P. C.). In that case it was found that the mortgagor had subsequent to the mortgage agreed (on the 4th April 1906) with the mortgagee to sell the property mortgaged to the latter on or before the 6th July 1906 for one lac of rupees, if he failed to pay the mortgage money (Rs. 50,000) with interest. He failed to do so and a decree was passed for specific performance of the contract to sell. The mortgagee entered into possession of the property on the 24th March 1911 though no proper conveyance of the equity of redemption had been executed and on an application which was in form for execution of the decree for specific performance, a question arose as to the manner in which the purchase money payable under the contract for sale was to be calculated. The mortgagee contended that interest continued to run upon his mortgage until the date when he entered into possession and that consequently the principal sum of Rs. 50,000 together with the agreed interest up to that date ought to be deducted from the one lac of rupees which was the purchase price, and the balance only should be paid by him. It was held by the Chief Court of Burma that he was entitled to bring into account the amount due for principal and interest up to the 6th July 1906.

5. The Judicial Committee pointed out that the foundation of that judgment of the Chief Court depended upon the application to the contract of the 4th April 1906 of the well-known principle by which the rights of vendors and purchasers are regulated in England, and under which a contract for sale of real property makes the purchaser the owner in equity of the estate, and from that principle it followed that Where the rights as to payment of interest on the purchase money are not regulated by the terms of the contract the purchaser is deemed to be entitled to the rents and profits of the property, as from the time when he did take or could safely have taken possession, and interest on the purchase money runs in favour of the vendor from that time," and observed: "It has been pointed out to their Lordships that the underlying principle, upon which this Rule depends, has no application to the sale of real estate in Lower Burma, since by Section 54 of the Transfer of Property Act, 1882, (a Statute (sic) made applicable to Lower Burma), it is expressly provided that such a contract creates no interest in or charge upon the land. If, therefore, the contract was silent in dealing with the question of interest, their Lordships think that the appellant would have strong ground for contending that the reasoning in the Court of Appeal could not be supported." But apart from that consideration their Lordships held that the appellant must succeed upon the construction of the contract itself.

6. Now Section 54 of the Transfer of Property Act expressly lays down that a contract for the sale of Immovable property does not of itself create any interest in or charge on such property, and to that extent it differs from the Rule of English Law, and this is all that was pointed out by the Privy Council.

7. The question whether the equitable doctrine of part performance, which arises from the fact that the vendee has paid the full purchase money and has obtained

possession of the property agreed upon to be sold, is inapplicable by reason of the provisions of Section 51 of the Transfer of Property Act was not considered nor decided by their Lordships. In the present case the defendant No. 1 does not rely upon the mere contract of sale, which by itself (as laid down by Section 54 of the Transfer of Property Act) does not create any interest in the property. He relies upon the fact of the entire purchase money having been paid and possession obtained by the plaintiff under the contract of sale. The Judicial Committee in an earlier case of *Mahomed Musa v. Aghore Kumar Ganguli* 28 Ind. Cas. 930 : 42 I. A. 1 : 19 C. W. N. 250 : 17 Bom. L. R. 420 : 42 C. 801pc : 21 C. L. J. 231 : 28 M. L. J. 548 : 13 A. L. J. 229 : 17 M. L. T. 143 : 2 L. W. 258 : (1915) M. W. N. 621 (P. C.). cited above, referring to the case of *Maddison v. Alderson* 1883) 8 A. C. 467 : 52 L. J. Q. B. 737 : 49 L. T. 303 : 31 W. R. 820 : 47 J. P. 821., observed: "Their Lordships do not think that there is anything either in the law of India or of England inconsistent with it, but, upon the contrary, that these laws follow the same rule. In a suit said Lord Salborne, in *Maddison v. Alderson* 1883) 8 A. C. 467 : 52 L. J. Q. B. 737 : 49 L. T. 303 : 31 W. R. 820 : 47 J. P. 821. founded on such part performance (and the part performance referred to was that of a parol contract concerning land) the defendant is really charged upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the Statute of Frauds) upon the contract itself. If such equities were excluded, injustice of a kind which the Statute cannot be thought to have had in contemplation would follow."

8. In the present case the person who disputes the right of the defendant No. 1 is the plaintiff himself whose interests were purchased by the former. No question, therefore, arises of any third person having acquired any rights in the property and we are not pressed with any considerations of the policy of the Registration Act.

9. We are of opinion that the interests of the plaintiff in the property passed to the defendant No. 1 under the sale in execution. The decree of the lower Appellate Court must, therefore, be set aside and that of the Court of first instance restored. The appellant will be entitled to his costs.