

(1929) 11 PAT CK 0017
In the Patna High Court

Loknath Prosad Singh and Another

APPELLANT

Vs

Shah Wahib Hussain and Others

RESPONDENT

Date of Decision : 29-11-1929

Acts Referred:

Specific Relief Act, 1877 — Section 27, 27(b), 49

Citation : AIR 1930 Patna 181

Hon'ble Judges : Wort, J; Ross, J

Bench : Full Bench

Judgement

Ross, J.—This was a suit for specific performance of an agreement to sell 3 annas 16 dams and odd share in mauza Mohiuddinpur Kosianwan for Rs. 7,500 which is said to have been entered into between defendants 1 and 2 and plaintiffs 1 and 2 on 29th April 1925. The defence of defendant 1 and of defendant 2 his wife was that there was no such agreement. Defendant 3 who along with his admitted benamidars, defendants 4 and 5, had taken a conveyance of the same property at a higher price on 12th May 1925, pleaded that he was a bona fide purchaser for value without notice.

2. The learned Subordinate Judge held that the contract set up by the plaintiffs was established, but that defendant 1 had no power to contract on behalf of his wife, defendant 2; and that defendant 3 had notice of the agreement. Consequently the plaintiffs were given a decree only for the share of defendant 1 in the property which belonged, as to 1 anna 9 dams and odd to that defendant, and as to the rest to defendant 2. The plaintiffs appeal against so much of the decree as disallows their claim to the share of defendant 2 and there is a cross objection by the defendants.

3. The material dates are these. From the 25th to 28th April 1925 negotiations were going on between the plaintiffs and defendant 1. On 29th April the contract for sale was entered into. On the same day defendant 1 received from the plaintiffs Rs. 75 for the purchase of stamps for the conveyance and this money was made over to one Jago Gope who went to Hilsa, purchased the stamps and

made them over to the plaintiffs. On 3rd May a post-card purporting to come from defendant 1 was sent to the plaintiffs stating the reason for the delay in executing the deed, and reciting some terms of the agreement. On 8th May a contract was entered into by registered instrument between defendants 1 and 2 and defendant 3 for sale of the same property for Rs. 10,000 and Rs. 1,000 was paid as earnest money. On 9th May the plaintiff heard that the defendant would not execute the conveyance in his favour.

4. On 10th May defendant 1 had an interview with Mr. Hasan Imam and on 12th May three conveyances were executed by defendant 1 on his own behalf and on behalf of his wife in favour of defendants 3 to 5 and transferring the property in suit to them in consideration of Rs. 11,654. On the same day Rs. 10,000 was deposited with Mr. Mohammad Hussain. On 13th May the plaint in this suit was filed and on 14th May an injunction was issued restraining further proceeding in connexion, with the conveyances to defendants 3 to 5, and this injunction was served either on that day or on the following day. On 15th May the deeds were presented for registration, but in view of the injunction registration was refused. About 20th May Rs. 2,000 was deposited by defendant 3 with Mohammad Hussain, this being the balance of the consideration which by a subsequent agreement had been raised to Rs. 13,000.

5. I shall first deal with the defence of defendant 3 because if that is established it is complete answer to the claim. He claims to be a bona fide purchaser for value without notice; and the question is whether he was a transferee within the meaning of Section 27(b) Specific Relief Act, and whether he had paid his money. It is contended on behalf of the plaintiffs that as a transfer of immovable property worth Rs. 100 and upwards can only be made by registered instrument, defendant 3 was not a transferee on the date on which he received the notice of the plaintiffs' contract for sale at the registration office. It is contended on behalf of the defence that the word transferee in Section 27 is used in a wide sense as meaning a person to whom a conveyance has been made and that registration of the conveyance was not within the contemplation of the legislature.

6. I cannot assent to this view. Section 27(b) merely enacts the English equitable rule which allows a later legal title to prevail over an earlier equitable title in the case of a bona fide purchaser for value without notice; but if the title is not complete there is no room for the application of this rule; and in completing title in India registration is necessary. When the Specific Relief Act of 1877 came into force on 1st May that year, the Registration Act 3 of 1887, which came into force on 1st April, required the registration of transfers of land of the value of Rs. 100 and upwards and enacted in Section 49 that:

No document required by Section 17 to be registered shall affect any immovable property comprised therein, unless it has been registered.

7. Consequently at the date of notice the title of defendant 3 was not complete

and he was not a transferee within the meaning of the section. I am not concerned with the effect of notice before registration where registration is subsequently made. Here no registration had been made when the suit was brought and consequently the property had not been affected by this title and the plaintiffs' equitable title stood unopposed. There was some discussion of the decision in *Blackwood v. The London Chartered Bank of Australia* [1847] 5 P.C. 92 where a passage in the judgment of Lord Selborne was referred to:

There is nothing more familiar than the doctrine of equity that a man, who has bona fide paid money without notice of any other title, though at the time of the payment he, as purchaser, gets nothing but an equitable title, may afterwards get in the legal title, if he can, and may hold it; though during the interval between the payment and the getting in the legal title he may have had notice of some prior dealing inconsistent with the good faith of the dealing with himself.

8. Learned Counsel for the respondents contends that this decision applies to the present case in this way that the legal title of defendant 3 not being complete for want of registration of his conveyance, he was entitled to complete that title even after notice of the appellant's equity. That decision, however, appears to depend upon the technical English doctrine of *tabula in naufragio* which is not law in India where tacking has been expressly abolished; and in that case, the Bank had a statutory title before notice, though it had still to be registered. Here the statute is against the respondents and as their conveyance has not been registered, I am at a loss to understand how their title can be proved because an unregistered conveyance cannot even be given in evidence. As I have already said I am not called upon to decide what the position would have been if the respondent's conveyance had been registered even after notice.

9. It was also argued on behalf of the plaintiffs that this defence was not open, because defendant 3 had not paid his money. The evidence shows that Rs. 1,000 was paid as earnest money on 8th May and Rs. 10,000 was deposited with Mohammad Hussain on 12th May to be paid to defendant 1 on registration of the deed of sale. It was contended for defendant 3 that he had done all that he had to do and that the money was no longer at his disposal when he had paid it to Mohammad Hussain, because the withdrawal of the money by the vendor depended on his own act in registering the deed, although in the events that happened the vendor was restrained by the Court from registering the deed. There is no doubt that the consideration must be actually paid before notice. This is the plain meaning of the words of the section and there is ample authority. This is the rule in England and it has been held to apply in India: see *Himat Lal Moti Lal v. Vasudev Ganesh Mhasker* [1912] 36 Bom. 446 where some of the English authorities are cited and *Qudur Ranga Reddi v. Gundala Pitchi Reddi* [1914] 1 M.L.W. 879. The effect of the rule in the present case is a matter of some doubt in view of the manner in which the payment was made and also of the fact that it was not payment in full, being short by Rs. 654 if the consideration expressed in the conveyance is taken (as I think it ought to be), or

by Rs. 2,000 if the subsequent agreement about the price is taken. But it is not necessary to decide this question in view of the decision on the first point; and it is sufficient to say that there is at least some further difficulty in the way of the defence here. I would, therefore, hold that the defence that defendant 3 was a bona fide purchaser for value without notice has not been established.

10. The next question for decision is whether the agreement for sale set up by the plaintiffs has been proved. The argument on behalf of the defence was that the draft deed of sale which is said to have been prepared was not produced; that the evidence of the stamp vendor is false and that the dates on the stamps and in his register are forged; that the post-card purporting to have been sent by defendant 1 is also forged; that Mr. Hasan Imam did not remember the precise nature of the transaction; and, that in any case, his evidence refers only to the sale of the wife's share and cannot prove the terms of any agreement.

11. Mr. Hasan Imam stated in his evidence that on 10th May, Wahib Hussain came to him and sought his advice about two conflicting contracts which had come to be made in connexion with the sale of some share in some property; he said that he had entered into a contract with a mahant on behalf of his wife and had accepted either earnest money or part of the consideration, but before he had entered into the contract with the mahant he had already entered into a contract for a smaller amount with another person who, as appears from a later passage in his evidence, was plaintiff 1. Now this is perfectly definite evidence that an agreement for sale had been entered into before the contract with the mahant. I do not think that the effect of this evidence is that the share of the wife only was to be sold, although a special question arose in connexion with that share which was the subject of particular discussion. There is no reason whatever to think that Mr. Hasan Imam's memory was playing him false. It is suggested that what defendant 1 was speaking about was some other contract altogether and it was put to the witness in cross-examination that it was a contract for an ijara. This was denied by Mr. Hasan Imam who said that it was a contract for sale. When defendant 1 came into the witness-box he said that the earlier contract which he referred to in his conversation with Mr. Imam was the mahant's contract and that the later contract was one with the plaintiff for a sum of Rs. 20,000. It is sufficient to say that "this was never put to Mr. Hasan Imam and it, therefore, cannot be regarded as serious evidence. In my opinion Mr. Imam's evidence stands unshaken and proves the existence of the plaintiffs' contract. The fact of an agreement being thus established, there is no reason why the evidence of plaintiffs 1 and 2 and of Firangi Singh and Ramnarain Singh as to the negotiations and their conclusion should not be accepted. The price Rs. 7,500, was a reasonable price, as it appears from the evidence of defendant 1 that 4 annas 7 dams share was in lease to plaintiff 1 at a rent of Rs. 375 and, consequently, the price Rs. 7,500 would represent twenty years' purchase. The learned Subordinate Judge thinks that there is an inconsistency between the evidence of plaintiffs 2 and that of their witnesses Firangi Singh and Ramnarain Singh in that the evidence of the plaintiffs was that the contract was concluded

on 29th April whereas their witnesses seemed to show that the contract had been concluded at an earlier date. The evidence of these witnesses does not support this inference. All that they say is that on 29th April defendant 1 came to the plaintiff and said that it was settled that the property should be sold for Rs. 7,500 and it is a reasonable interpretation of their evidence that it was then and there that defendant 1 made up his mind to accept the offer and concluded the contract. The evidence of the stamp-vendor has, in my opinion, been discarded by the learned Subordinate Judge on speculative grounds. There is nothing improbable in his evidence. The vendor has to buy the stamp and the purchaser has to pay for it and that is what was done. There is no reason whatever to suppose that the dates on the stamps or in the stamp-vendor's register are forged and there is no evidence to support any such suggestion.

12. On behalf of the defence it is argued that the stamp-vendor is obviously giving false evidence, because he says that Umrai Das (the scribe of the defendants' deeds) and the mahant were present when defendant 1 purchased the stamps for the later conveyances and he spoke to defendant 1 about his previous purchase of stamps. It is said, that this is invented in order to give defendant 3 notice of the plaintiff's agreement. I see no reason why this should be so. For one thing, it does not give notice and for another thing it is natural enough that these persons should have been present when the later stamps were purchased and that the stamp-vendor should have mentioned the earlier purchase of stamps. The learned Subordinate Judge has also disbelieved this part of the story because he thinks it improbable that defendant 1 would have waited while the stamps were bought at Hilsa five miles away when he was in a hurry to go to Patna.

13. The evidence of plaintiff 2 is that defendant 1 said that he was going to Patna in a car, but that is no ground for supposing that he was in any hurry. As to the post card, plaintiff 2 stated in his evidence that defendant 1 said that he would return in four or five days. The post-card is dated 3rd May and, in view of this undertaking, it was natural that the defendant should write and explain his inability to come on the date appointed. It is said that the post-card is suspicious because it is in too much detail in that it refers to the price settled, Rs. 7,500; but the defendant was telling the plaintiff that he would take the money when execution was admitted, and it was natural enough that he should mention the amount that had been agreed upon. The learned Subordinate Judge thinks that the signature does not tally with the admitted signatures of the defendant. I have examined these documents and all that I need say is that, if there is a difference, it is not obvious. It seems to me that the learned Subordinate Judge has been over-suspicious in the matter of this post-card. But the fact remains that there was great delay in the production of the document and therefore it is not entitled to the same weight as it would have had, if it had been produced with the plaint. As to the non-production of the draft which is said to have been prepared, nothing was made of this in cross-examination. The plaintiff said that he got his karpardaz to prepare a draft and some questions were put about the

dates on which instructions were sent and there the matter was left. The plaintiff was apparently never asked to produce the draft or to explain why it was not produced; and there is nothing to show that at the time of the suit the draft was in existence. In my opinion the grounds upon which the learned Sub-ordinate Judge has distrusted the evidence are not sufficient and the evidence of the plaintiffs and Firangi Singh and Ramnarain Sing taken with the evidence of Mr. Hasan Imam fully proves the agreement for sale and the terms thereof.

14. The next question is as to the share of defendant 2, how far, if at all, it is affected by this agreement. In the plaint there is no reference to any power of attorney nor was this referred to in the plaintiffs' evidence. The power was produced by the defence. Both sides make a grievance of the way in which the trial has been conducted. The defence says the plaint sets up a case of direct negotiation with defendants 1 and 2 while in evidence plaintiff 1 says that defendant 1 was general attorney for defendant 2 and spoke of negotiations only with defendant 1 and this took them by surprise. But the defence produced the power-of-attorney and relied upon it to show that defendant 1 had no authority to enter into this agreement for sale and consequently there was no surprise; and the pleading that the defendants agreed to sell is a perfectly good pleading of an agreement with defendant 1 acting for himself and for defendant 2. The plaintiffs complain that; the power-of-attorney was not put to plaintiff I and their case that defendant 1 as general attorney had power to contract was not questioned in cross-examination; and that the parties went to trial only on the question of contract or no contract and that if this point had been raised they would have shown that defendant 1 had in fact been selling the land of defendant 2 without objection. Reference was made to the evidence of defendant 2 who said that sale deeds on her behalf were executed by her husband and there was never any occasion before for her to resile from any document executed by her husband because he had executed the deed without her permission. This statement proves nothing to the purpose and is not inconsistent with the defence. The argument rests on a contention that a general attorney is an attorney for all purposes and, as such, can sell land; but no authority was shown for this and it is a proposition which cannot be accepted.

15. It was further contended for the plaintiffs that defendant 2 held out defendant 1 as her agent for sale of the land and cannot be heard to deny or to limit his authority by secret instructions. Now what is the evidence? All that the lady says is:

I expressed my intention to my husband to sell the share in the month of Ramzan last year.

16. This is no evidence of holding out. It is merely an expression of her intention to sell. On no ground therefore can it be said that the case can be decided apart from the terms of the power-of-attorney. Before turning to the question of the construction of the power, I should refer to a contention by the defence that this instrument being by a pardanashin lady should have been proved to have been

executed by her with full understanding of its terms. But this argument is not open to the defence which produced the instrument and relied upon it. Moreover the lady admitted in her evidence that the terms of the mukhtarnama were correct.

17. Now as to the construction it is argued for the plaintiffs that by this instrument defendant 2 made defendant 1 her "general attorney for all purposes," i.e., put him in her place; and this general authority is not cut down by the special terms which are only inserted for the satisfaction of the Registrar and other public officers before whom the deeds executed under the power might come; and that the full authority of the attorney is confirmed by the concluding clauses of the deed. It is also argued that there is a power to execute deeds of sale and this involves the medium power to negotiate sales. Now a power of attorney is to be construed strictly and any power sought to be exercised under it must be found within the four corners of the instrument read as a whole. What then is the fair effect of this instrument, regard being had to its general scope? The document begins by reciting that the executant being a pardanashin lady it is difficult and impossible for her to look after and take care of the whole and entire village and Court affairs and cases and to execute every kind of deed personally. I should observe that the word translated as "execute" is not the ordinary word "tamil" but "tahrir wo takmil" that is to say, "write and perfect." It then goes on to appoint defendant 1 general attorney with full powers and then specifies in detail the powers in relation (1) to village and Court affairs and (2) to instruments affecting moveable and immovable" properties. As to the latter powers the language used is this: after enumerating different kinds of deeds such as deeds of sale, mortgage and lease etc., it goes on to say that:

the said general attorney shall either as (or through) attorney on his own behalf or personally on my behalf by his pen sign and acknowledge and get attested (these instruments) and present them before the Registrar and admit execution and get them registered.

18. That is to say, the attorney has power to sign and consent to a deed of sale and get it attested and registered. If the lady had intended that her attorney should have power to sell, mortgage and lease, nothing would have been simpler than to say so; but this is not said. We are not here dealing with an executed conveyance or with the totally different questions that might arise after execution, as was the case in *Ram Lal Singh v. Mt. Bibi Shahbunnissa* AIR 1922 Pat. 559, which was, relied upon by the plaintiffs. The question here is simply: is there in this document power to settle the terms of a sale? I cannot find it. If there had been a power to sell, then by necessary implication there would have been the power to settle the terms of sale. But there is no power to sell. In other words the lady has not put her estate unfettered into the hands of her husband. She has only empowered him to perform for her the formal acts affecting; it which she as a pardanashin lady cannot perform for herself. The key to the construction of the document lies in the" opening words, being a pardanashin"

lady. "Her incapacity in the matter of the sale of her property is only in the formalities of execution and registration and what the preamble indicates the specific language confirms. This is the view that the learned Subordinate Judge has taken and it is the view that the lady herself expressed in her evidence. She stated that she had given a mukhtarnama to her husband to manage her property and not to sell it. It was argued that negotiating a sale is a medium power leading up to executing a deed of sale. In my opinion, it is not. Negotiating a sale is a medium power leading up to selling. It has no relation to the formality of executing the deed of sale, or if there is any relation it is the execution of the deed that is incidental to the agreement for sale. And this view is consistent with the last clause of the instrument also on which the plaintiff rely:

The said am-mukhtar shall perform without hesitation all such actions as may be necessary for me, tike executant to do.

19. The execution of a deed of sale is necessary after a contract is made. But it cannot be said that making the contract is a necessary act. Nor, finally, can it be said that the deed is ambiguous so as to bring the case within the rule in *Ireland v. Livingston* [1873] 5 H.L. 395. I, therefore, hold that on the true construction of this instrument defendant 1 had no power to enter into an agreement for sale on behalf of defendant 2 and consequently that the agreement will not affect her interest.

20. The result is that the appeal and the cross-objection must be dismissed with costs. There should be a direction in the decree requiring defendant 3 to deliver up for cancellation the sale deed executed in his favour by defendant 1 in respect of his own share of the property.

Wort, J.

21. I agree to the conclusions which have been arrived at by the judgment just now delivered. So far as the question of contract relating to the share of defendant 1 is concerned, I have nothing to add; and, as regards the first question which was discussed, namely, the proper construction to be placed on Section 27, Specific Belief Act, I cannot usefully add anything. Now, as regards the question of the share of defendant 2, the wife of defendant 1, the appellants appear to place their case in three different ways. Their case in the plaint was a case of contract to sell effected by defendants 1 and 2 without any reference to the circumstances under which that contract was brought. No reference was made to the power of attorney. It was the defendant herself who raised the question of agency by producing the power-of-attorney to show that if there was in fact a contract effected by the agent, that agent's authority was limited and consequently there was no binding contract as between the plaintiffs, and defendant 2 with respect to her share.

22. The second branch of the plaintiffs' case was that assuming the power-of-attorney was the authority of defendant 1, it entitled him to effect a sale of the property of defendant 2. The third branch was that there was either implied or

express authority to defendant 1 to sell.

23. So far as the question of the proper construction of the power-of-attorney is concerned, I agree with the judgment just now delivered. Mr. Pugh arguing the case on behalf of the appellants particularly relied upon Clause 1 of the power-of-attorney which is as follows:

Therefore, I having appointed my husband Saiyid Shah Wahid Hussain, son of Saiyid-Shah Bahadur Hussain, deceased, by caste Saiyid, by occupation a zamindar, resident of Mauza Desna, to be my general attorney with" full powers do hereby make declaration to the effect that the said am-mukhtar (general attorney) by virtue of this written power-of-attorney shall, on my behalf personally or through a pleader, look after and take actions" wholly or partly in all cases and disputes that shall be filed on my behalf against others etc.

24. Mr. Pugh's contention was that the effect of these words was to grant to-defendant 1 complete control over the properties of defendant 2 and, incidentally, power to sell. In my judgment, however, reading the power as a whole this contention cannot be supported. The words "to be my general attorney with full powers" are to be read as meaning "with full powers to do such acts as are thereafter described." The power goes on to set out various acts relating to the management of the property and to litigation and matters relating to execution arising out of the litigation and, then, there is a clause about which there has been a very considerable discussion. It commences with these words:

As regards properties moveable and immovable, belonging to me, the said am-mukhtar shall present, before the Sub-Registrar of the Sadar (District) or Mufassal Sub-Registrar within whose jurisdiction the said properties situate, deed of absolute sale or deed regarding the receipt or remission of consideration and so on admit the execution of the same through a mukhtar on his own behalf or personally on my behalf by putting his signature with his own pen.

25. The words translated in the printed copy as the execution of the same through a mukhtar" would have been, more correctly translated the execution of the same as a mukhtar." Mr. Pugh's argument is that the effect of the words "to execute deeds" must carry with it necessarily the power to enter into and carry through a contract relating to the sale of the land. A number of authorities have been, relied upon by Mr. Pugh, more particularly the case of Howard v. Baillie 2 H. B1. 618. That was a case in which a letter of attorney had been given by an executor enabling the grantee to transact the affairs of the testator in the name of the executor as executor; and, amongst other powers, was to pay, discharge and satisfy all debts due from the testator. It was held in that case that the power to discharge and satisfy all debts included a power to accept a bill of exchange in the name of the executor and make him personally liable. During the course of the judgment of Lord Chief Justice there were certain observations made upon which Mr. Pugh relied. They are as follows:

That an authority of this nature necessarily includes medium powers which are

not expressed. By medium powers, I mean all the means necessary to be used in order to attain the accomplishment of the object of the principal power, which in this case is the paying satisfying and discharging the testator's debts.

26. Now, obviously, if Mr. Pugh wishes to get support for his argument; it would in this case have to be held that the power to effect a sale was a medium power or incidental power to the execution of deeds which the power-of-attorney admittedly gives. It seems to me to state that the proposition is a sufficient answer in itself. It is obvious that entering into a contract to sell cannot in the circumstances be a medium or incidental power to that of executing the deeds. In my judgment that argument cannot be in any way supported. The other passage upon which the appellants rely is at the end of the document to the following effect:

In short the said am-mukhtar shall perform without hesitation all such actions as may be necessary for me, the executant, to do and thus all these acts done and performed by the mukhtar shall be accepted by me as if done by me personally.

27. I do not think it can be denied that these words are merely general words and, if that conclusion is arrived at, there is abundant authority to the effect that general words appearing in a power-of-attorney cannot in any way enlarge the powers which have been specifically enumerated. I should come to the conclusion on the proper construction of the power-of-attorney that defendant 1 had no authority to enter into a contract to sell his wife's share in the property without express authority to do so.

28. Mr. Pugh puts his case in another way. He argues that an am-mukhtar has ample authority to deal with the property of his principal. As far as I know, there is no authority in India which would support that contention. So far as my limited experience goes, in a case of this kind almost invariably am-mukhtars are appointed by a document such as in the present case. There is authority as I have said and clearly there is no evidence in this case that the am-mukhtar had complete power to deal with his wife's property. The appellants' case on this point was that implied authority of that character cannot be cut down by what in fact are secret instructions contained in this power-of-attorney. The argument is answered by the statement that there is no such implied authority for which the appellants contend. Mr. Pugh relies upon the case of *Perry v. Holl 2 De. G.F. & J. 38* for another and perhaps more important contention. His case is this that although the power-of-attorney strictly construed does not specifically empower defendant 1 to sell the property, the Courts must construe it as containing the powers which the lady herself understood to have been given thereby. I fail, however, to see any evidence in this case which would support that contention. On the contrary the evidence of defendant 2 is quite the reverse. She states in her examination-in-chief: "I had never authorized my husband to negotiate for sale with them." In her cross-examination she states:

I told my husband to sell the property to the mahanth and to none else.

The further passage upon which Mr. Pugh relies is at the end of that cross-examination. The passage runs thus:

There was never any occasion before for me to resile from any document executed by my husband because he had executed it without my permission.

29. Mr. Pugh relies upon that statement to show that there was a general authority by the wife to enter into a contract for sale such as this. In my judgment that passage cannot reasonably convey the construction which Mr. Pugh puts on it. I think there is nothing in the evidence which would lead me to suppose that defendant 2 understood that her husband had power to sell her property.

30. The third contention was that there was express authority in this particular case by the wife to the husband to enter into this particular contract. The statement in evidence upon which the appellants rely in support of that is the statement made by defendant 2 at the earlier

part of his examination-in-chief:

I expressed my intention to my husband to sell the share I own in that mourn in the month of Ramzan last year, as it is far from my house.

31. That passage taken in conjunction with the fact that there was a contract for sale with the plaintiff, he argues, leads to the irresistible inference that defendant 2 had given her husband at the end of the instructions in the power-of-attorney to enter into this particular contract for sale. That in my judgment would be doing violence to the evidence, it would be necessary for the Court to say that that part of her statement which refers to her intention to sell must be accepted, but the later part being inconsistent with the appellants' contention should be rejected. We should not be justified in taking that view of the evidence having regard to the fact that she was not in any way shaken in examination.

32. Having regard to the circumstances I have stated I come to the conclusion that defendant 1 had no authority to enter into this contract for sale so far as She wife's share was concerned and consequently in my judgment, both the appeal and the cross objection must be dismissed with cost.