

(1923) 05 AHC CK 0008
In the Allahabad High Court

Musammat Islam Fatima

APPELLANT

Vs

Syed Tamiz Ali

RESPONDENT

Date of Decision : 02-05-1923

Acts Referred:

Registration Act, 1908 — Section 52

Citation : AIR 1924 All 938 : 75 Ind. Cas. 111

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Judgement

Kanhaiya Lal, J.—This appeal arises out of a suit brought by the plaintiff-respondent for the possession of certain property said to have been sold by defendant No. 1, through defendant No. 2, who is her husband, to the plaintiff. The sale was effected on the 31st December 1918. The sale-deed was presented for registration on the 2nd January 1919. On that date the Registering Officer went to the house of defendant No. 1 and asked her whether she had executed a sale-deed. She admitted having done so, but when the terms of the sale-deed were read over to her, she said she had agreed to these terms except in so far as the amount of consideration payable to her was overstated in the sale-deed. The consideration specified in the sale-deed was Rs. 1,250 but the lady stated that she had agreed to sell the property in question for Rs. 1,100. The plaintiff asserted that the sale had been settled for Rs. 1,250 and that he had already paid Rs. 150 by executing a promissory-note in favour of defendant No. 2. It appears that the property sold was a share in a certain village in which the parties were also co-sharers. The Courts below found that, for fear of pre-emption, the plaintiff wanted that the sale consideration should be stated at Rs. 1,250 in the sale-deed, while the vendor, insisted that the correct amount of the consideration payable to her should be entered. The result of the dispute between the vendor and vendee at the time of the registration of the sale-deed was, that the vendee refused to pay the sale consideration but the registration of the sale-deed was, all the same, effected, and the vendor refused to affix her thumb impression below the registration endorsement and to deliver possession

over the property in question.

2. The only question for consideration in this appeal is, whether, in those circumstances, a good title had passed to the plaintiff. The Courts below found that, in spite of the question of the consideration money payable to the vendor, the plaintiff had acquired a good title to the property conveyed by the sale. On behalf of the defendant-appellant, it was urged that the plaintiff had repudiated the sale in the form in which it was agreed upon and that her only remedy was now to sue for the specific performance of the contract of sale. But, as the Court below observed, though the sale consideration was settled at Rs. 1,100 only and the sale consideration in the sale-deed was inflated, there was no defect in the registration of the transaction and the plaintiff had acquired a good title. There was in fact no repudiation of the sale; the plaintiff agreed to every term mentioned by the vendor, he merely wanted an extra sum of Rs. 150 entered in the sale-deed as a part of the consideration for his protection against any possible claim for pre-emption. Its inclusion did not vitiate the sale. As held in *Sagaji v. Namdev* 23 B. 525 : 1 Bom. L.R. 5 : 12 Ind. Dec. 349 and *Bajinath Singh v. Paltu* 30 A. 125 : 5 A.L.J. 96 : A.W.N. (1908) 88 in a sale of Immovable property mere non-payment of the purchase-money would not prevent the passing of the ownership from the vendor and the purchaser can, notwithstanding such non-payment, maintain a suit for possession of the property.

3. In *Subbaier v. Moniam Subramania Iyer* 10 Ind. Cas. 546 : 36 M. 8 : 10 M.L.T. 51 : (1911) 2 M.W.N. 6 : 21 M.L.J. 800 where a sale was effected for an ostensible consideration of Rs. 300 but the real consideration for the deed was a promise by the husband of the vendee that he would maintain the vendor for the rest of his life, it was held that the mere fact, that the price was not paid in the manner stated in the sale-deed would not prevent the passing of the land by sale from the vendor to the vendee after the sale-deed had been executed and registered. The refusal of the lady to affix her thumb impression below the endorsement after the plaintiff had agreed to pay the purchase-money, did not also affect the validity of the registration because the document was presented for registration by the vendee whose signature below the presentation endorsement was duly obtained as required by Section 52 of the Indian Registration Act of 1908. In spite of the small difference between the parties as to the amount of sale consideration which was to be entered in the sale-deed, the sale was for all intents and purposes complete and effectual.

4. The appeal, therefore fails and is dismissed with costs including fees in this Court on the higher scale.