

**(1952) 03 KAR CK 0002**

**In the Karnataka High Court**

**Case No : Second Appeal No. 8/1949-50**

R. Muninarayana Reddy and Others

APPELLANT

Vs

C.P. Chinnaswamy Gownder

RESPONDENT

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**Date of Decision : 28-03-1952**

**Acts Referred:**

Evidence Act, 1872 — Section 91, 92  
Transfer of Property Act, 1882 — Section 55

**Citation : AIR 1952 Kar 120**

**Hon'ble Judges : Venkata Ramaiya, J**

**Bench : Single Bench**

**Advocate : A.R. Somanatha Iyer, for the Appellant; M.P. Somasekhara Rao, for the Respondent**

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## **Judgement**

1. Respondent sued appellants for recovery of Rs. 163-14-0 paid by him towards a debt contracted by appellants with the Government of Mysore on the security of certain immovable properties which were purchased by him. The properties were purchased under a registered sale deed dated 18-11-1946 for a sum of Rs. 32,000/-, the recital in the sale deed being that there were no encumbrances. Admittedly there was a charge on the properties for a loan by Government. Subsequently while seeking transfer of the khata of the properties to his name, the respondent wrote to the Amildar stating that he had purchased the same subject to the payment of the Land Improvement Loan and that the appellants conveyed all their rights and liabilities. There was a similar communication by the appellants.

2. The plaint makes no reference to the letters of the parties but alleges fraudulent suppression of information about the prior encumbrances. When confronted with these at the trial, the respondent set up a story of his having affixed his signature to a writing said to be required for transfer of electric bills to his name; in other words, that his signature was obtained on a misrepresentation. The explanation was disbelieved and the trial court dismissed

the suit. The learned Subordinate Judge on appeal without disturbing this finding has granted a decree. His view seems to be that though the letter is genuine it cannot affect the obligation of the vendors u/s 55 of the Transfer of Property Act as there is no provision in the sale deed to exempt the vendors from liability for discharge of prior encumbrances.

3. In my opinion, the reasoning of the learned Judge is not correct, as the decision to be arrived at does not depend solely on the terms of the sale deed but on the subsequent agreement or admission, the genuineness of which cannot be doubted. The respondent is a literate and intelligent man of experience and must be presumed to have sent the letter knowing fully the meaning and effect of the contents. If the terms of that letter could be taken into account, the claim has to be disallowed as it expressly mentions that respondent has undertaken liability for the repayment of dues.

4. Sri Somasekhara Rao argued that the letter not being registered cannot alter or modify the rights of parties under the registered sale deed. The argument would be correct if Sections 91 and 92 of the Evidence Act can be relied upon for this. It is not by means of oral evidence that the terms of the sale deed are sought to be varied but on the strength of a written agreement. The bar to the letter must if at all lie on the ground of need for its being registered. It cannot apply unless the recital in the sale deed concerning encumbrances is a term of the sale deed. In *Gondu Ramasubba Iyer Vs. Muthiah Kone and Others*, , it was held that a recital of this kind is not a term of the contract and evidence to prove that the vendee was aware of the defect was held to be not inadmissible u/s 92 of the Evidence Act.

5. Since the letter is admissible and proved, the respondent is bound by his undertaking to pay the loan. He is not therefore entitled to be reimbursed for the payment made. The appeal is allowed and in reversal of the decree-of the learned Subordinate Judge the suit is dismissed with costs throughout.

6. Appeal allowed.