

(1943) 02 PAT CK 0015
In the Patna High Court

Sheikh Sultan Ahmad

APPELLANT

Vs

Syed Maksad Hussain @ Bhakur and Another

RESPONDENT

Date of Decision : 17-02-1943

Acts Referred:

Contract Act, 1872 — Section 39

Citation : AIR 1944 Patna 3

Hon'ble Judges : Fazl Ali, C.J.;Sinha, J

Bench : Full Bench

Judgement

Sinha, J.—This is a plaintiff's second appeal. It arises out of a suit instituted by the appellant for recovery of Rs. 8000 by way of principal and Rs. 600 as interest, in all Rs. 3600, against the defendants. The plaintiff alleged that there had been dealings between him, as a stamp vendor, and defendant 1 who was a zamindar. The plaintiff used to supply stamps to the defendant on different occasions as required by the defendant on the latter signing credit notes called purjas in favour of the plaintiff; and there used to be an adjustment of accounts every year. The last adjustment of accounts between the parties was made on 30th August 1936. As a result of the accounting, it was alleged, Rs. 3000 was found due from the defendant for which he agreed to assign to the plaintiff certain arrears of rent from tenants in a number of villages belonging to defendant 1 in zamindari right.

2. Accordingly, a sale deed was executed on 4th September 1936, for the said amount, assigning the arrears aforesaid. The next day the sale deed, as executed by defendant 1, was presented by, him for registration and was registered in due course. The plaintiff's case further was that in pursuance of this transaction between the parties he returned all the purjas to defendant 1 and also instituted a number of rent suits against those tenants whose arrears of rent had been assigned to the plaintiff, 4th September 1936 being the last day of limitation for institution of the suits for arrears of rent. But the plaintiff alleged, the defendant refused to deliver either the registration receipt which would

authorise the plaintiff to get delivery of the document from the Registration Office, or to deliver the sale deed itself after taking the same back from the Registration Office. Failing to get delivery of the sale deed the plaintiff served a pleader's notice on the defendant but without any tangible result. The plaintiff's cause, of action, therefore, was that the defendant had refused to deliver the deed of assignment to the former, with the result that he could not continue the suits which he had instituted for realisation of arrears of rent which had been purported to be assigned to him by the defendant. The plaintiff, therefore, claimed that his dues against the defendant amounting to Rupees 3000 by way of principal still remained unsatisfied, leading to the suit out of which the present appeal arises.

3. Defendant 1 contested the suit urging several grounds in defence, chief of them being: (1) That the plaintiff had no cause of action because his dues had been satisfied by execution of the sale deed in respect of the arrears of rent of which a list had been prepared and made over to the plaintiff, and the plaintiff in his turn had returned the purjas evidencing the several advances to the defendant; (2) That the contract had been executed would also appear from the fact that jamog, which means verification of arrears with reference to the tenants who agreed to pay the same to the plaintiff, had been done, so that the plaintiff, the defendant and his tenants whose arrears of rent had been assigned were all parties to the transaction; and (3) That the plaintiff himself had acted upon the deed of assignment by instituting a number of rent suits against those tenants who did not pay.

4. The trial Court dismissed the suit holding that, as a matter of fact, defendant 1 owed the sum of Rs. 3000 to the plaintiff, but that the same had been satisfied by the execution and registration of the deed of assignment which had been acted upon by both the parties. He further held that the right to realise arrears of rent from the tenants of the defendant vested in the plaintiff as soon as the deed of assignment had been executed and registered, and therefore, the non-delivery of the deed by the defendant presented no legal obstacle to the realisation of arrears of rent from those tenants. On these findings the trial Court dismissed the suit but without costs in the circumstances of the case. The plaintiff then carried an appeal from the decision of the trial Court. The lower appellate Court agreed with the decision of the trial Court on all the points and dismissed the appeal with costs. Hence this second appeal.

5. In this second appeal the learned Counsel for the appellant has urged that on the finding of fact concurrently arrived at by both the Courts below that defendant 1 had refused to deliver the deed of assignment to the plaintiff the plaintiff could treat the contract as at an end and his original claim for money thereby revived. In support of his contention that the contract was not complete without the delivery, of the deed of assignment he has relied upon the decision of this Court reported in *Sundar Chaudhari v. Lalji Chaudhri* AIR 1933 Pat. 129, which contains the following observations:

Execution does not mean mere signing but it means all acts necessary to make the parties to the contract bound thereby. If a man merely signs a contract and puts it in his pocket and does not allow it to depart from him as his act, that is not execution; and the story of the defendants here is that they signed the contract but they never allowed it to depart from them or to come into the possession of any other person who could make use of it and hold them bound by it.

6. The passage quoted above would apparently lend some support to this contention on behalf Of the appellant, but when the facts of that case are closely examined it will appear that the question in that case was simply whether or not the defendant in that case had denied the execution of the deed in question, so as to throw the burden of proof of execution on the plaintiff. On the pleadings in that case the late Chief Justice held that execution had been denied, thus throwing the burden of proof on the plaintiff to prove the due execution of the document in question in that case. That case is no authority for the proposition contended for in the case before us. No other authority has been cited before us to substantiate the proposition that where a sale deed has been in fact executed and duly registered, title to the subject-matter of the sale would not pass simply because the defendant, for some unexplained reason had refused to deliver the sale deed after taking the same back from the Registration Office. In my opinion, to execute a document simply means to perform what is required to give validity to a writing, as by signing and sealing it. Delivery of the same is not an essential part of it, unless that is specifically agreed to between the parties to the deed. It may be mentioned here that it is not the plaintiff's case that there was any stipulation between the parties that unless the deed of assignment had been delivered to the plaintiff, title would not pass. On the other hand, we find from the pleadings of the parties, as also on the findings arrived at by the two Courts of fact below, that the plaintiff had acted upon the transaction by delivering the purj as to the defendant, thus cancelling his liability, and had himself brought a suit for arrears of rent, thus indicating that he had treated the contract as having been fully executed. Further, it is the settled law that unless there is a stipulation between the vendor and the vendee that title would not pass until a certain event had happened, for example, until consideration had passed from the vendee to the 7 vendor, the vendee acquires title to the vended property as soon as the sale deed is executed and duly registered: see the cases reported in *Ramdhari Rai v. Gorak Rai* AIR 1931 Pat. 236 , AIR 1934 68 (Privy Council) and *Abdullah Khalifa v. Bhichuk Gosain* AIR 1934 Pat. 68. Learned Counsel for the appellants has also contended that Section 39, Contract Act, would come into operation in the present case. Section 39 reads as follows:

When a party to a contract has refused to perform or disabled himself from performing, his promise in its entirety, the promisee may put an end to the eontract unless he has signified by words or conduct his acquiescence in its continuance.

7. It will be noticed from the terms of the section quoted above that it applies to cases of what are called "executory" contracts and not to "executed" contracts. As I have said above the transaction in this case had been completed, consideration having passed from the vendee to the vendor and the vendor having executed and registered the deed of assignment. The non-delivery of the deed by the vendor to the vendee was not such an act as would render the contract null and void at the choice of the vendee. In the present case the plaintiff who was in the position of the vendee could have gone on with the prosecution of the suits for arrears of rent, and there was no legal bar to his doing so, if he allowed his suits to be dismissed for default of payment of full courtfees, as has been suggested by the Courts below, the plaintiff has to thank himself. It is not the plaintiff's case, further, that the defendant had realised all those arrears of rents from his tenants which he had assigned to the plaintiff. That is another factor which would go to show that both the parties understood that the contract had been completed between the parties and that the delivery of the deed of assignment was not essential to the passing of title. In this connexion counsel for the appellant has relied upon the case in *Withers v. Reynolds* (1831) 2 B. Ad. 882 to support his contention that it was open to the plaintiff to treat the contract as at an end. In that case the facts were as follows: B agreed to supply W with straw, to be delivered at W's premises at the rate of three loads in a fortnight, during a specified time; and W agreed to pay a certain price per load delivered on his premises. After the straw had been supplied for some time W refused to pay for the last load delivered, and insisted on always keeping one payment in arrear. On these facts it was held by the Court that according to the true effect of the agreement each load was to be paid for on delivery and that on W's refusal so to pay for them, B was not bound to send any more loads of straw. It is clear from a recital of this summary of the facts of that case that it was a case of an executory contract in the sense that one party could refuse to carry out the terms of the contract if the other party refused to do his own part.

8. In my opinion, this case lends absolutely no support to the proposition contended for by the appellant. As the only point urged on behalf the plaintiff-appellant fails, the appeal must be dismissed with costs.

Fazl Ali, C.J.

9. I agree.