
(1974) 06 BOM CK 0001
In the Bombay High Court
Case No : F.A. No. 132 of 1966

Taramati Anantrai Parekh

APPELLANT

Vs

Gangaram Shamdas and others

RESPONDENT

Date of Decision : 28-06-1974

Acts Referred:

Stamp Act, 1899 — Section 35

Citation : (1975) MhLj 726

Hon'ble Judges : P. M. Mukhi, J;N. D. Kamat, J

Bench : Division Bench

Advocate : M. L. Dudhat with S. N. Deshpande and P. M. Vyas, for the Appellant; C. C. Chhaya, for the Respondent

Final Decision : Allowed

Judgement

P. M. Mukhi, J.—This is an appeal filed by the original plaintiff whose suit for the recovery of the balance price of a motor truck was dismissed by the learned Principal Judge of the City Civil Court on the ground that it was not maintainable, although on merits all the other issues had been found by him in favour of the plaintiff.

2. It is necessary to set out the facts in order to appreciate the several contentions which have been taken before us.

3. First of all, it is to be noticed that the appellant Smt. Taramati Anantrai Parekh and respondent No. 2 Smt. Rasika Shantila! Desai were partners of a firm by the name of Messrs. Parekh and Company. It would appear that a Tata Mercedes-Benz motor truck bearing registration No. BMQ 1645 (hereinafter referred to as the "said truck") had been purchased by the firm of Messrs. Parekh and Company some time in March 1959 and the transfer of the said truck in favour of the firm was registered by the Regional Transport Office. Now, it is a matter of common general knowledge that in the City of Bombay the Regional Transport Officer does not register a motor vehicle in the name of a firm as such,

presumably because the firm is not a person. In any event the practice is that the motor vehicle is registered in the name of a partner or partners of the firm. It is to be noticed from the record of the R. T. O. that the said truck was registered in the following manner:

"Smt. Rasika S. Doshi, Partner Messrs. Parekh and Co., 102 Chakla Street, Bombay.

(Italics supplied).

4. Some time in the first week of May 1960, the said truck was sold by the firm to respondent No. 1 Gangaram Shamdas for a sum of Rs. 23,201. It is on record that the transaction of sale of the said truck was brought about by a broker by the name of Nanji. It is not disputed and, is indeed, common ground, that a sum of Rs. 101 was paid towards the price of the said truck on May 5, 1960 and a further sum of Rs. 3,100 was paid by respondent No. 1 on the following day, that is to say, May 6, 1960, leaving a balance of Rs. 20,000 due and payable in respect thereof. There is also no dispute that possession of the said truck was handed over to respondent No. 1 on May 5, 1960 immediately after the receipt of the sum of Rs. 101. Indeed, the arrangement seems to have been that the said truck was to be repaired and thereafter it was to be transferred to the name of the respondent in the records of the Regional Transport Office. Respondent No. 1 has admitted that he received possession of the said truck and gave it for repairs to his own repairers. There is also no dispute that payment of the balance sum of Rs. 20,000 was to be made by respondent No. 1 after the said truck was transferred into the name of respondent No. 1, in the records of the Regional Transport Office.

5. Now, it would appear that a few days after possession of the said truck had been taken by respondent No. 1 and repairs to the truck had commenced at the instance of respondent No. 1, a firm by the name of Messrs. Bholaram Mulchand filed a suit in the City Civil Court, being Suit No. 1429 of 1960, against United Forwarding Clearing and Transport Service, Vasantrai Parekh and respondents Nos. 1 and 2, inter alia for a declaration that Messrs. Bholaram Mulchand, the plaintiffs in that suit, were the owners of the said truck. It would appear that Messrs. Bholaram Mulchand obtained an ex parte order in the said suit whereby a Receiver of the said truck was appointed by the City Civil Court. As stated above, this happened only a few days after respondent No. 1 had taken possession of the said truck but in the events that happened the notice of motion for appointment of a Receiver in the suit filed by Messrs. Bholaram Mulchand came to be dismissed on June 26, 1960 and following the dismissal of the notice of motion, possession of the said truck was handed back by the Receiver to respondent No. 1. It requires to be mentioned that thereafter in the present suit an attachment before judgment was levied on the said truck on an application made by the appellant.

6. To continue the narrative, it would appear that the documents relating to the

said truck were admittedly handed over by broker Nanji to respondent No. 1 a few days after the transaction while the said truck was being repaired at the instance of respondent No. 1.

7. From the vehicle card, which has been produced in Court as exh. A, it would appear that non-user of the truck was noted from May 13, 1960 to August 29, 1960. There is nothing on record to show as to who applied for the noting of non-user. But as we have already mentioned, the documents relating to the said truck were admittedly with respondent No. 1 a few days after the date of the transaction. Ultimately after the Receiver appointed in Suit No. 1429 of 1960 was discharged and the said truck handed back to respondent No. 1, the transfer of the truck was effected in the records of the Regional Transport Office and from the vehicle card, exh. A, it appears that the transfer was effected in the name of respondent No. 1 Gangaram Shamdas. However, the transfer date is shown as 28-6-60/23-1-61. There is no explanation as to why a double date has been given as the date of transfer. But it is sufficient for us to notice that at least on January 23, 1961 the truck was transferred into the name of respondent No. 1, so that the appellant could contend that at least from January 23, 1961 the balance amount of Rs. 20,000 became payable by respondent No. 1 as the balance purchase price of the truck.

8. Respondent No. 1 did not, however, pay the amount and after a notice of demand had been issued the plaintiff filed the present suit on January 31, 1963.

9. It is to be noticed that there is no dispute regarding the contract of sale; there is no dispute regarding possession of the truck having been taken by respondent No. 1 and repairs commenced thereupon at his instance immediately after; there is no dispute that the part payments referred to above were made by respondent No. 1. There is also no dispute, and there can be none, that at least with effect from January 23, 1961 the said truck was transferred in the records of the Regional Transport Office to the name of respondent No. 1. Respondent No. 1, however, contends that the contract of sale (which was oral) contained a stipulation that the balance purchase price would be payable only after the truck had been passed by the Regional Transport Office and the permit in relation to the truck was also transferred to respondent No. 1.

10. These then are the facts to which may be added one more fact that the suit filed by Messrs. Bholaram Mulchand was admittedly dismissed for non-prosecution after the present suit had been filed.

11. It may be mentioned at this stage that the suit was originally filed with only respondent No. 1 as defendant, but thereafter possibly to meet the objection of non-joinder of necessary parties and pursuant to an order made by the learned Judge of the City Civil Court on August 18, 1964 in the course of the hearing of the suit, defendant No. 2, that is to say, Smt. Rasika Shantilal Doshi, the erstwhile partner of the appellant was added as a party-defendant to the suit on the application of the appellant and consequential amendments were also made

in the plaint.

12. It also requires to be noticed that the partnership between the appellant and respondent No. 2 was dissolved as from September 1, 1960. The suit, as we have seen, was filed on January 31, 1961, so that the transaction in suit had taken place during the existence of the partnership between the appellant and respondent No. 2, that is to say, in May 1960, and the transaction was incomplete in so far as the said truck remained to be transferred in the name of respondent No. 1 and payment of Rs. 20,000 as the balance purchase price was also to be received after such transfer of the said truck.

13. Now, the case of respondent No. 1 in the written statement filed by him in the suit was that the said truck was not purchased by him from the firm of Messrs. Parekh and Co., but that it was purchased by him from respondent No. 2 Smt. Rasika Shantilal Doshi in her individual capacity. Respondent No. 1, therefore, contended that there was no privity of contract between Messrs. Parekh and Co. or the appellant on the one hand and respondent No. 1 on the other. But in the said written statement filed by him (respondent No. 1), he did not dispute that the balance of Rs. 20,000 was still payable by him in respect of the price of the said truck.

14. Respondent No. 1 then contended that if it was held by the Court that the appellant was entitled to file the suit and claim Rs. 20,000 as the balance sale price, then the suit was premature and not maintainable because marketable title free from reasonable doubt in respect of the said truck had not been made out. This contention appears to have been taken on the footing that a suit had been filed by Messrs. Bholaram Mulchand in which Messrs. Bholaram Mulchand claimed title to the said truck. On this contention respondent No. 1 submitted that he was entitled to repudiate the contract of sale and by his said written statement purported to repudiate the said contract. He expressed his readiness to return the said truck to the rightful owner on the amount due to him being paid to him.

15. Respondent No 1 also contended that the suit was not maintainable.

16. As we have noticed, the appellant's erstwhile partner Smt. Rasika Shantilal Doshi was impleaded as a party-defendant to the suit and she also filed her written statement in which she completely supported the case of the appellant. In para. 5 of her written statement, respondent No. 2 stated that the Appellant had become the sole proprietor of the firm of Messrs. Parekh and Co. on the retirement of respondent No. 2 from the said firm and that respondent No. 2 had no right, title, claim or interest in the assets of the said firm on its dissolution. It may be mentioned that there is on record a deed of dissolution which is exh. C, which we will have occasion to consider.

17. On these pleadings the learned Principal Judge of the City Civil Court framed the necessary issues and held that the appellant and Smt. Rasika Shantilal Doshi were partners in the said firm of Messrs Parekh and Co ; that the said

partnership was dissolved on or about September 1, 1960; that the said Smt. Rasika Shantilal Doshi retired from the said firm and the appellant was left with the business of the firm as the sole proprietor thereof.

18. The learned Principal Judge was of the opinion that the issue as to whether Smt. Rasika Shantilal Doshi had made out a marketable title to the said truck did not arise for his consideration but if it was to be decided then he would have held that she had made out a marketable title. The learned Principal Judge further held that respondent No. 1 was not entitled to repudiate the contract of sale, and as to contention that the oral contract contained a clause that the balance of the purchase price was only payable on the permit relative to the said truck being also transferred to the name of respondent No. 1, the learned Principal Judge held that the stipulation as to the permit being transferred as a term of the contract was not proved and that the balance of the purchase price became payable when the said truck was transferred in the records of the Regional Transport Office to the name of respondent No. 1. He also held that the suit was not premature. But while dealing with the issue as to the payment of Rs. 20,000 by respondent No. 1 to the appellant, he came to the finding that the suit by the appellant alone was not maintainable and that respondent No. 2 having been joined as a party-defendant to the suit after the period of limitation did not make the suit as filed maintainable and he, therefore, ordered that although the appellant as the plaintiff in that suit had succeeded on every issue on the merit, her suit must be dismissed as not maintainable.

19. The plaintiff in the suit was thus compelled to file this appeal and that is how the appeal has come before us.

20. Mr. Chhaya, the learned advocate for respondent No. 1, has not only sought to support the decree on the issue of maintainability which has been decided in his favour but also to support the decree on the grounds decided against him in the Court below. This he is clearly entitled to do and we shall deal with those grounds at a later stage.

21. We will first take up and consider the main issue in the suit, which is as to maintainability of the suit as filed by the appellant.

22. On behalf of the appellant it has been argued that the suit was clearly maintainable, firstly, because the suit as filed by the appellant Smt. Taramati Anantrai Parekh (even though it was not filed in the firm name) could be Filed by the appellant because the deed of dissolution which has been admitted in evidence at exh. C shows that on the dissolution of the partnership which consisted of only two partners, the appellant became the owner of the partnership assets and respondent No. 2 retired therefrom relinquishing all her right, title and interest in favour of the appellant.

23. Now, it would appear that the original deed of dissolution was admittedly executed on a stamp paper of Rs. 15 (which was the stamp duty then payable on a deed of dissolution). Evidence has been led to show that the original has been

lost and that the copy thereof produced in the Court was made by witness Vasantrai Amersi Parekh, husband of the appellant, in his own hand-writing from the original of the said writing. The learned Principal Judge has rightly held that the loss of the original has been proved and admitted the copy in evidence as Exh. C. An objection was, however, taken by Mr. Chhaya who also appeared in the City Civil Court that the original of Exh. C was not properly stamped. He contends that it should have been stamped as an assignment or a conveyance since it operates to relinquish or transfer to the appellant the right, title and interest of respondent No. 2 in the partnership assets including the said truck. The learned Principal Judge negatived the objection of Mr. Chhaya by holding that the deed of dissolution, Exh. C, was merely a record of what had already taken place and that, therefore, there was no relinquishment or transfer sought to be effected by the document itself.

24. On a Perusal of the document which bears no date, we find it difficult to arrive at such a categorical finding as the learned Principal Judge has done that the document was merely a record of what had already taken place. The document does not say that it is only a record of what had transpired earlier. We agree however that the document was properly admitted in evidence although for different reasons.

25. It is to be noticed that the document is written in Gujarati and we have been supplied with a free translation although both the advocates are agreed that it is a correct translation. Now, there is no doubt that this document which is described as a deed of dissolution refers in particular to the said truck and the fact that a balance of Rs. 20,000 is recoverable and that the partnership between the appellant and respondent No. 2 is dissolved as from September 1, 1960. Respondent No. 2 who has written it in the form of a letter, which is accepted and confirmed by the appellant, also mentions that-

"I have now no right or claim on Parekh & Co. Similarly I have no right or claim on the property of Parekh & Co., that you are entitled to the firm's goodwill, goods, stock-in-trade, outstanding etc. and that you are entitled to recover the above stated outstandings and use them, I have no concern for the said recoveries. I have relinquished all my rights of a partner of my own free will. I have retired from I-9-1960 and from tha date I have no concern in the business of Messrs. Parekh & Co."

The letter also states that the appellant will be solely responsible for all the profits and losses.

26. Now, an assessment of the document which is before us clearly shows that there is a relinquishment and that the assets and rights of the partnership are set out and relinquished by the retiring partner in favour of the continuing partner who on dissolution of the firm being only one person naturally becomes the sole proprietor of the rights and assets.

27. Mr. Chhaya has argued that this document is not only a deed of dissolution

but also contains an assignment of the partnership right to the sum of Rs. 20,000 and, therefore, requires to be separately stamped in so far as the assignment, relinquishment, transfer or conveyance is concerned. Admittedly it bears only a stamp of Rs. 15 which is the correct stamp duty for a deed of dissolution. Mr. Chhaya then proceeds with his argument to say that this document is inadmissible in evidence and ought not to have been exhibited because it is not properly stamped. He then says that even section 35 of the Act will not come to the rescue of the appellant because the original has not been produced. He refers to a judgment of the Supreme Court in *The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd.*, , for the proposition that if a document is unstamped or insufficiently stamped "hen it is only the original, if produced, which can be validated so that a copy of a document which is produced in Court after the original is found to have been lost cannot be validated u/s 35 of the Stamp Act.

28. In so far as Mr. Chhaya's contention that if the original of Exh. C was unstamped or insufficiently stamped, then Exh. C, which is a copy, cannot be validated u/s 35 of the Act, is concerned, he is obviously right. But if the original of Exh. C can be said to have been sufficiently stamped then Exh. C as a copy of that document will have full effect in law.

29. Mr. Chhaya has pointed out that but for this document, that is to say, Exh. C, whereby the retiring partner purported to assign and transfer her rights to the appellant, the appellant would have no right to sue in her individual name but because the original of Exh. C was insufficiently stamped the same result would follow,

30. Now, in our opinion, Exh. C as a deed of dissolution admittedly stamped with a correct stamp of Rs. 15 would clearly enable the appellant to sue in her name for the balance purchase price of the said truck. This is so because, as pointed out by this Court in *Santdas Moolchand Jhangiani and Another Vs. Sheodayal Gurudasmal Massand*, , A deed of dissolution of partnership can also contain certain ancillary matters and that the stamp duty cannot be levied separately on such matters. In that case it was held that (p. 50):

"... We do not think that Article 47 of Schedule I of the Bombay Stamp Act, 1958. which provides a stamp duty for a deed of dissolution of partnership merely contemplates a one sentence agreement of dissolution providing that the Partnership was dissolved and fixing the date of dissolution. We think that such an agreement must of necessity cover other matters which arise directly out of the fact of dissolution ... closing down or continuation of business, collection of outstandings and payment of liabilities. For this purpose, a power of attorney and an indemnity clause would also ordinarily be necessary. These are matters that depend upon the fact of dissolution and arise out of that fact and ancillary thereto. Experience also shows that in deeds of dissolution the mere fact of dissolution of partnership and fixing the date of dissolution are not provided for, but the other matters which are provided in the instrument before us are matters

normally provided for in a deed of dissolution. If we were to read each clause of the deed of this instrument separately and to try to find out what stamp duty it attracts under the several Articles of Schedule I of the Bombay Stamp Act it would work not only a great hardship but would be violating the principle that a fiscal statute must be interpreted in a manner which is beneficial to the subject."

31 Now, in that case the facts were that the two plaintiffs and the defendant entered into a partnership under a deed of partnership dated June 11, 1960 and carried on the partnership business. They decided to dissolve this partnership with effect from April 1, 1966, settle the accounts of the partnership and provide for the defendant continuing the partnership business, payments of amounts due to the outgoing partners and several other matters. On July 6, 1966 they reduced what they called the terms of dissolution to writing. It was the interpretation of this writing which came up before the Court and after reciting the terms whereby it was provided that the defendant therein would be the continuing partner; that the partnership was dissolved; that the plaintiffs therein had retired from it; and that "the said business with its goodwill, trade name, benefits of all the contracts, engagements, agencies, quota rights, tenancy rights etc., and the assets and liabilities, books of accounts and outstandings would belong to the defendant and thenceforward the said business would be his sole proprietary business", the Court observed that this term in effect amounted to a transfer of the right, title and interest of the plaintiffs in the said business to the defendant.

32. Now, the document also recited that a sum of Rs. 30,000 odd was payable to one of the outgoing partners. In addition she was also given a sum of Rs. 10,000 as solatium. The argument before the Court was that in so far as the sum of money referred to was concerned the document was liable to be stamped as a bond.

33. As we have stated above, the Court came to the conclusion that the deed of dissolution in that case was not liable to be stamped as a bond and that it having been properly stamped as a deed of dissolution was sufficient. Our brother Justice Nain who delivered the judgment of the Court analysed the document to show what it provided for and this he did in the following words (p. 44) :

"It would appear from the aforesaid terms of the deed of dissolution that in so far it provided for the dissolution of the partnership with effect from April 1, 1966, it would be a deed of dissolution of partnership. In so far as it conveyed the interest of the plaintiffs to the defendant in the partnership, it may be argued that it was a transfer or conveyance. In so far as it provided for payment of certain amounts to each of the plaintiffs, it may be argued that the document was a bond. In so far the defendant indemnified the plaintiffs in respect of liabilities other than certain specific liabilities, the document contained an indemnity bond. In so far as it provided that the income tax and sales tax liabilities would be shared equally, it is possible to argue that it was an agreement. In so far as it restricted the plaintiffs from carrying on the business

in the name and style of Messrs. Oriental Engineering Company in Nagpur, Bhopal and elsewhere, it may amount to a negative covenant. In so far as the defendant was constituted a lawful attorney of the plaintiffs for the purpose of recovering outstanding and paying liabilities, the document contained a power of attorney. It is, However, contended Before us that the document amounted only to a bond, in addition to being a deed of dissolution in so far as it pertains to payment of certain amounts to each of the plaintiffs. No contention has been raised before us that the deed of dissolution also constitutes several other documents referred to by us hereinabove and that the said document must bear a separate stamp for each of the clauses which pertain to the several matters referred to by us hereinabove."

34. The Court also observed, by reference to the arrangement of the various sections in Chapter IV of the Indian Partnership Act, that matters pertaining not only to the fact of dissolution and fixing the date thereof but also matters arising out of the fact of dissolution which pertain to the winding up of the partnership, i. e. the settlement of accounts, taking over of the goodwill and assets of the partnership etc. were all matters dealt with under the subject of "dissolution of firm" The Court said (p. 46) :

"...This would at least indicate that in the Indian Partnership Act, the winding up of a partnership has been treated as a part and parcel of the dissolution of partnership and has not been treated as a distinct, separate or independent matter or Transaction. In fact, the fact of winding up is so much dependent on the preceding fact of dissolution that but for dissolution the question of winding up and making other provisions consequent to it, would not arise."

35. The Court referred to several authorities which were cited before it and came to the conclusion as set out and we are in respectful agreement with what has been decided in that case.

36. Now, applying the ratio of this judgment, the facts whereof, it may be noticed, are startlingly similar, we find that in Exh. C provision is made for ancillary matters arising as direct result of the dissolution of the partnership although there are not so many clauses as are to be found in the document which was construed in the case to which we have just referred.

37. If the deed of dissolution which was the subject-matter of the judgment of this Court in Santdas Moolchand v. Sheodayal was held to be properly stamped, then we are unable to understand how the document, Exh. C before us, can be said to be insufficiently stamped. It is clear that in the matter before us the deed of dissolution, Exh. C, apart from setting out the factum of dissolution and the date therefore also provides for transfer of the firm's goodwill, goods, stock-in-trade, outstanding etc. to the remaining partner. In fact, the free translation of Exh. C to which we have referred specifically provides that the appellant was entitled to recover the above said "outstandings, meaning thereby the balance price of the said truck. A provision of this kind is clearly a matter ancillary to the

dissolution of partnership and can be properly incorporated in the deed of dissolution without attracting additional stamp duty.

38. Now, if this then is the state of the law then the argument of Mr. Chhaya that the appellant as the plaintiff had no right to sue in her name fails. We must hold and we do so that the original of Exh. C was properly stamped as a deed of dissolution and notwithstanding that it contained ancillary matters referred to by us the document could not be said to have been insufficiently stamped. In other words, it was not liable to be stamped as an assignment, transfer or conveyance, as contended.

39. Mr. Chhaya has sought to seek support from a decision of this Court in *In re Hiralal* (1908) 10 Bom. LR 730 for the contention canvassed by him that the original Exh. C was not sufficiently stamped. The judgment of Scott C. J. which is at page 733 is in two short paragraphs, which may be conveniently reproduced :

"By the document, which has been referred to us for consideration in this case, the executing party, purporting to be entitled to a four annas share in a going Pressing Factory, transfers the whole of that share to the other person interested in the factory for the sum of Rs. 17,841. The terms of the transfer are that in consideration for all his rights he has received Rs. 17,841, and nothing remains due to him in respect of the aforesaid things".

We are of opinion that the document is a conveyance on sale of property, namely, the quarter share in the Pressing Factory."

40. We find ourselves unable to appreciate how this authority can be of any help to respondent No. 1. All that was decided in that case was that the document in question was a conveyance on sale of property, viz. the quarter share in the Pressing Factory. The point that we have now decided as to the scope and content of a deed of dissolution of a partnership and the stamp duty payable thereon under the Bombay Stamp Act was never considered by the Court.

41. Mr. Chhaya has attacked the maintainability of the suit as filed by the appellant on yet another ground. He argues that even if the said truck was agreed to be sold by the firm of Messrs. Parakh & Co. and not by respondent No. 2 in her individual capacity, none of them had made out a marketable title free from reasonable doubt because a third party, that is to say, Messrs. Bholaram Mulchand had laid claim to the said truck and not only filed a suit for declaration as to the ownership of the said truck in which suit both the appellant and respondent No. 2 were impleaded along with respondent No. 1 but that Messrs. Bholaram Mulchand had even succeeded in getting a Receiver appointed albeit for a very short time, after which the said truck was returned to respondent No. 1 from whose possession it had been taken by the Receiver.

42. These facts, it was argued, showed that the title of the vendors of the truck was doubtful and respondent No. 1 was, therefore, entitled to repudiate the contract of sale which he then purported to do by his written statement.

43. Now, strictly speaking, this kind of defence is not as to maintainability of the suit but as to the liability of respondent No. 1. Our attention was sought to be invited to a judgment of this Court in *Ahmedbhoy Habibbhoy v. Sir Dinshaw M. Petil* (1909) 11 Bom. L R 545 and it was contended that title is doubtful when third parties' claim and interest are involved.

44. Now, first of all we do not find this authority applicable to the facts of this case because here there are no facts in controversy between the vendor and the purchaser. What was held in that case was that if at the time when the property was offered to the purchaser there were facts in controversy between the vendor and the purchaser of a kind which might be ascertained in an inquiry between them alone, then the quality of the title is to be found not as it was last offered but as to when the inquiry was being made. In the case before us the facts are clearly different. First of all it is on record that both the vendor and the purchaser have denied the claim of Messrs. Bholaram Mulchand. It is also on record that the suit filed by Messrs. Bholaram Mulchand, being Suit No. 1429 of 1960, was admittedly dismissed for non-prosecution after the present suit was filed. We are in agreement with the learned Principal Judge when he says in his judgment that the fact that a third party chooses to file the suit, however, frivolous the claim may be, (and which suit as in this case was ultimately and admittedly dismissed for non-prosecution) cannot by itself lead to the conclusion that the appellant had failed to make out a marketable title free from reasonable doubt. In any event, this contention of respondent No. 1 is itself untenable and even frivolous because the pleadings and the evidence show that respondent No. 1 not only got the truck transferred into his name but filed an affidavit on May 24, 1960 in Suit No. 1429 of 1960 to the effect that the sale to him was complete and neither the other defendants to that suit nor the plaintiffs Messrs. Bholaram Mulchand to that suit had any title or interest in the said truck. When he was giving evidence in the Court below respondent No. 1's attention was specifically drawn to this statement made by him in an affidavit on solemn affirmation and he readily came out with the assertion that the statements made by him in the said affidavit of May 24, 1960 were correct. In fact, this is what he said in his deposition before the City Civil Court:

"... Statements made therein are correct. The statement in the opening portion of paragraph 4 of the said affidavit that I have made all necessary inquiries to ascertain the ownership of the said truck and the marketable title is correct. I had made those inquiries from broker Nanji. The statement in paragraph 3 of the said affidavit that the sale to me is complete and neither the other defendants to the other suit nor the plaintiffs to the said suit have any right, title or interest over the said truck and that there is now a balance of Rs. 20,000 left to be paid by me is correct."

45. In the face of these admissions, respondent No. 1 cannot be heard to say that a marketable title had not been made out or that it was not free from doubt. We cannot agree that merely because a suit is filed by some third party it can be

at once contended that there is no marketable title free from reasonable doubt. If we were to accede to such a dangerous proposition it would mean that all that a dishonest litigant had to do was to arrange for a frivolous suit to be filed and then put forth a plea that the title to what he has agreed to purchase is not marketable and free from reasonable doubt and thereby seek to avoid the bargain. It was in these circumstances that the learned Principal Judge held, and rightly so, that respondent No. 1 was not entitled to repudiate the contract of sale on the ground as alleged.

46. It was then suggested that the suit was not maintainable because it had not been filed in the firm name. This contention was obviously made on the footing that Exh. C did not validly assign the right, title and interest of the outgoing partner to the continuing partner, viz. the appellant-plaintiff. It is really no longer necessary to discuss this aspect of the matter because we have already held that Exh. C as a deed of dissolution even though containing ancillary matters of the nature mentioned was properly stamped. Now, the document having been admitted in evidence, it must follow that the rights relating to the assets of the partnership and in particular the said truck had been effectively assigned and transferred to the appellant who could therefore proceed to sue in her own name as she has done.

47. It is to be noticed that the learned Principal Judge dismissed the suit on the point of maintainability because he came to the conclusion that the suit should either have been filed in the name of the firm or by both the partners. We have noticed that the outgoing partner was subsequently made a party-defendant to the suit but as that was beyond the period of limitation it did not meet the alleged difficulty.

48 Now, the fact that respondent No. 2 was made a party defendant after the period of limitation is no longer relevant in the light of our finding that the appellant could sue for the balance price of the said truck in her own name by reason of Exh. C. i.e. the deed of dissolution, and the ancillary matters contained therein.

[After discussing, but not deciding, another issue, his Lordship proceeded]

49. As regards the other issues, viz. whether there was a privity of contract between the appellant and respondent; as to when the balance purchase price was to be paid under the contract of sale; and as to whether no marketable title has been made out, we are in agreement with the findings of the learned Principal Judge on these issues, all of which have been decided in favour of the appellant and it is not necessary to once again discuss them in detail.

50. In the result the appeal succeeds. The appeal is, therefore, allowed, the decree of the trial Court is set aside and the following decree is passed in its place.

51. Respondent No. 1 do pay to the appellant the sum of Rs. 20,000 with future

interest at six per cent, per annum and full costs in both the Courts.