

## ORIGINAL CIVIL.

*Before Mr. Justice Birdwood.*CHUNILAL PANA LAL, PLAINTIFF, v. BOMANJI MANCHERJI  
MODI AND OTHERS, DEFENDANTS.\*1883  
June 14.*Registration—Document not itself creating an interest in immovable property—  
“ Bargain-paper”—Registration unnecessary—Registration Act III of 1877,  
Sec. 17, Cl. (h).*

An agreement, or “ Bargain-paper”, in writing, for the sale of a house by the defendants to the plaintiff, stated that the defendants had agreed to sell and the plaintiff to buy the house in question for Rs. 15,225, on the following conditions,— that the plaintiff should, on the execution of the bargain-paper, pay Rs. 1,000 as earnest-money, and that the defendants were duly to make out a good title to the house, and get approved by the plaintiff’s solicitors, “ as being of good title”, a deed of sale thereof, prepared according to law, within two months, the cost incidental to the preparation of the deed to be borne jointly by vendor and vendee; that, on the execution of such deed and delivery of possession of the house to the plaintiff, the balance of the purchase-money was to be paid; that, in case a good title to the house could not be made out, the bargain-paper was to be null, and the earnest-money was then to be returned to the plaintiff with interest, and any solicitors’ charges incurred were to be paid by the defendants.

*Held* that the document was admissible in evidence, though unregistered, as coming within the provisions of clause (h) of section 17 of the Registration Act III of 1877.

THIS was a suit for the specific performance of an agreement, alleged to have been entered into with the plaintiff by the defendants, for the sale, to the plaintiff, of a house, the property of the defendants.

The alleged agreement was in Gujarathi, and ran as follows, when translated :—

“ Parsi Bomanji Mancherji and Merwanji Mancherji Modi, inhabitants of Bombay, and Chunilal Panalal, inhabitant of Bombay. To wit. We mutually pass this bargain-paper to one another as follows :—There is a house [here followed the description]. The said Bomanji Mancherji and Merwanji Mancherji Modi have agreed to sell the house situated within such boundaries to the said Chunilal Panalal on condition of receiving Rs. 15,225, namely, fifteen thousand two hundred and twenty-five, as the value thereof. And Chunilal Panalal has agreed to purchase the said house. The conditions thereof are as follows :—

\* Suit No. 260 of 1882.

'The said Chunilal Panalal did, at the time of executing this bargain-paper, pay to the said Bomanji Mancherji and Merwanji Mancherji Modi Rs. 1,000, namely, Rupees one-thousand; as earnest-money, the receipt of which sum the said Bomanji Mancherji and Merwanji Mancherji Modi admit by this writing; and the said Bomanji Mancherji and Merwanji Mancherji Modi are duly to make out a good title to the said house, and they are through the solicitors of the said Chunilal Panalal to get approved, as being of good title, a deed of sale thereof, prepared according to law, within a period of two months, and are to deliver the same, and the charges for preparing the deed and the solicitors' charges are duly to be paid jointly by the two persons; on the deed of sale being thus made out, and on the said house being made over to Chunilal Panalal, the balance of Rupees 14,225, namely, fourteen thousand two hundred and twenty-five, is duly to be paid. In case good title to the said house cannot be made out, then this bargain-paper is null. And in that case, as regards the amount of earnest-money which has been paid, that amount is duly to be returned by the said Bomanji Mancherji and Merwanji Mancherji Modi with interest at the rate of Rs.  $\frac{3}{4}$ , namely, twelve rams or annas per cent. per mensem. And as to the solicitors' charges that may have been incurred, those are duly to be paid personally by the said Bomanji Mancherji and Merwanji Mancherji Modi. This bargain-paper has been made through the broker Shah Atmaram Lalbhai. Bomanji Mancherji and Merwanji Mancherji Modi shall duly pay to him brokerage at the rate of Rs. 2 per cent.; out of the same,  $\frac{1}{2}$  per cent. is to be deducted for servants; and brokerage at the rate of  $1\frac{1}{2}$  per cent. is duly to be paid by Chunilal Panalal.'

The defendants did not admit the agreement, and the plaintiff having proved the document tendered it in evidence.

*Jardine* (*Inverarity* with him) for the first defendant objected to the document going in, on the ground that it was not registered.

*Badrudin Tyabji* (*Lang* with him), for the second defendant, joined in the objection.

*Starling* (*Farran* with him) contended that the document was

1883

CHUNILAL  
PANALAL  
v.  
BOMANJI  
MANCHERJI  
MODI.

1885

CHUNILAL  
PANALAL  
v.  
BOMANJI  
MANCHERJI  
MODI.

one which came within section 17, clause (h), of Act III of 1877, and did not, therefore, require registration.

The arguments of counsel and the authorities cited fully appear from the decision of the learned Judge.

The learned Judge, after hearing the arguments of counsel on either side, admitted the document, and proceeded with the case, but reserved to himself a fuller consideration of the point when he should come to consider his final judgment in the case.

July 10.—BIRDWOOD, J., in delivering judgment on the case, expressed himself as follows on the point of registration above mentioned :—

The first point for consideration is whether the document on which the suit is brought is one of which the registration was compulsory under section 17 of Act III of 1877. It is an agreement or "bargain-paper", as it is styled, to sell a house, and acknowledges the receipt of Rs. 1,000 from the purchaser as earnest-money. The vendors were to make out a good title and to get approved, through the purchaser's solicitors, as being of good title, a deed of sale of the house, according to law, within a period of two months, and to deliver the same. In the event of a good title not being made out, the bargain-paper was to be null, and the earnest-money was to be returned. In *Burjorji Cursetji Panthaki v. Muncherji Kuverji*(1), an unregistered document containing an agreement to sell, acknowledging receipt of earnest-money and providing for the execution of a deed of sale, was held by West, J., to be one which, being unregistered, could not create or assign any interest in immoveable property. The only right created by it was held to be one *in personam*,—a right to obtain another document which would, one executed, effect the desired purpose, if the execution were accompanied by registration. At the hearing, I followed this, the latest ruling of this Court; but as it appeared that there were conflicting decisions on the point by the several High Courts, including this Court, the question was reserved for further consideration in the judgment.

A recent Madras case, *Ramasami v. Ramasami*(2), was relied on by the defendants, in which the vendor of a village wrote a letter

(1) I. L. R., 5 Bom., 143.

(2) I. L. R., 5 Mad., 115.

to the vendee, stating that an agreement had been made between them for the sale of certain land for Rs. 4,500; that the vendor had received Rs. 500, and was only entitled to receive the balance after executing the sale deed within a certain date, and had no connection whatever with the land. The Court held that the instrument was not within the exception of clause (h) of section 17 of Act III of 1877, as it "of itself" declared a right, title and interest in the purchaser which had passed to him from the vendor. In that case, though a further instrument was contemplated between the parties, yet no uncertainty was left as to the extent of the purchaser's interest already in existence when the letter was written. There had been an absolute sale of the land, and such sale was declared in the letter itself. The case, therefore, can be distinguished from the present case.

In a recent Calcutta case, *Sreegopal v. Ramchurn* (1), the agreement for the purchase and sale of certain immoveable property provided that the completion of the contract should be subject to the approval of the purchaser's solicitors, and that, if they should not approve of the title, the vendor should return the purchaser money, and pay all costs incurred in investigating the title. That case and the present are, therefore, similar; and Wilson, J., held that if a document only entitled a person to a future right in immoveable property, it was not within section 17 of Act III of 1877, and ruled that the document in question was admissible without registration, as there "was something to be done under this agreement, namely, the payment of the purchase-money on one side, and the execution of the conveyance on the other."

In an earlier case, *Mark Currie v. S. V. Mutu Ramen* (2),—a case under Act XX of 1865, which contained no express provision similar to clause (h) of section 17 of the present Registration Act (III of 1877),—Sir Barnes Peacock observed, with reference to the contention that a Court of Equity considers that as done which a party agrees to do:—"I do not dispute that position as a general rule; but it is not because a Court of Equity would treat a document as doing a thing which a party agrees to do, that the document comes within the meaning of an enactment which refers to a document by which the thing is done, and not to an agreement

1883

---

 CHUNILAL  
 PANALAL  
 v.  
 BOMANJI  
 MANCHERJI  
 MODI.

(1) I. L. R., 8 Calc., 856.

(2) 3 Beng. L. R., 126.

1883

CHUNILAL  
PANALAL  
v.  
BOMANJI  
MANCHERJI  
MODI.

to do it. The two cases are very different and stand upon wholly different grounds." And it was ruled that a document which was merely an agreement to create an interest of the value of Rs. 100 or upwards in immoveable property, but did not purport to create it, was not a document coming within the meaning of clause 2 of section 17 of Act XX of 1866, although a Court of Equity would compel specific performance of it. This ruling was followed by the Bombay High Court in *Jusab Haji Jafar v. Haji Gul Mahomed* (1). In that case, as in the present, the document was a "bargain-paper" for the purchase of immoveable property, and acknowledged the receipt of Rs. 1,000 as earnest-money. Sir C. Sargent distinguished the case from *Fattehchand v. Lilamber* (2), in which the instrument acknowledged the payment of the entire purchase-money. *Fattehchand's* case was one for specific performance of an agreement for sale of real estate, and the only question before the Privy Council was whether the unregistered agreement could be received in evidence under Act XX of 1866. The judgment pronounced by Sir James Colville contains the following passage:—"The Registration Act No. XX of 1866, recently passed in India, is extremely stringent. Their Lordships have, in the first place, no doubt whatever that the instrument in question is one which by clause 2 of section 17 of that Act is required to be registered; that it is an instrument acknowledging the payment of the consideration money for what was to be ultimately an absolute sale of the property in question, and what in equity would operate as a sale of the property." In the foot-note at p. 195 of the report of the case of *Valaji Isaji v. Thomas* (3) it is remarked that the decision of the Privy Council in *Fattehchand's* case seems to overrule *Currie's* case, just referred to, and two earlier Calcutta cases to the same effect. In *Valaji Isaji's* case, the late Chief Justice of this Court was of opinion that the circumstance that, in *Fattehchand's* case, the whole of purchase-money had been paid, did not affect of the question of registration; and the registration of a writing, acknowledging receipt of Rs. 100, as part of the purchase-money of a bungalow, was held by Westropp, C.J., and Kembal, J., to be

(1) 12 Bom. H. C. Rep., 175.

(2) 14 Moor's I. A., 129.

(3) I. L. R., 1 Bom., 190.

compulsory. This ruling, which was under Act VIII of 1871, is not referred to in the judgment of West, J., in *Burjorji Cursetji v. Muncherji Kuverji*(1). There can be no doubt that the intention of the Legislature, in enacting certain exceptions to section 17 of the Registration Act of 1877, was to mitigate the greater strictness of the requirements of Act VIII of 1871, and the earlier Registration Acts (see the remarks of Green, J., in *Raju Balu v. Krishnarav*(2). The reasons for clause (h) were explained in the Legislative Council when the charges in the former law were under consideration. I refer to the debates in Council, not for the purpose of interpreting the present Act, which must be construed on a consideration of the language actually used in it but only to ascertain what, as a matter of fact, was the object which the Legislature had in view. In introducing the Bill, which was subsequently passed as Act III of 1877, Sir C. Hobhouse explained that, under the proposed addition to section 17, it would not be necessary to register an agreement to execute a conveyance of land. "The agreement", he remarked, "would give the owner of it no absolute right to the land; and if, before he got his conveyance, another person took a conveyance and registered it, acting honestly, the agreement would be displaced." And when certain amendments were moved, Mr. Cockerell said that the direct object of this provision was "to save a person from having to register two deeds in relation to the same subject-matter, executed for the purpose of giving effect to a single transaction regarding it." It appears, therefore, that the framers of the present Act intended that the registration of such documents as the bargain-paper in the present case should not be compulsory. I think that effect has been given to that intention sufficiently if not very clearly, by the language used in clause (h) of section 17 of Act III of 1877. A document is apparently within the exception if it does not "itself", by its express terms, create a certain interest in immoveable property, but expressly contemplates the creation of that interest by a subsequent document. The exception seems to apply to a contract of sale and purchase, of which a Court of Equity would only under certain circumstances decree a specific performance. And the decision

1893

CHUNILAL  
PANALAL  
v.  
BOMANJI  
MANCHERJI  
MODI.

(1) I. L. R., 5 Bom., 143.

(2) I. L. R., 2 Bom, at p. 281.

1883

CHUNILAL  
PANALAL  
v.  
BOMANJI  
MANCHERJI  
MODI.

of the Privy Council in *Fattehchand's* case cannot apparently now be held to govern such a case as the present. I adhere, therefore, to the decision already given at the hearing as regards the admissibility of the bargain-paper on which the present suit is brought.

Attorneys for the plaintiff.—Messrs. *Macfarlane and Edgelow.*

Attorney for the first defendant.—Mr. *Pestonji Kavasji.*

Attorneys for the second defendant.—Messrs. *Smith and Frere.*

### APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.*

1882  
September 2.  
1883  
May 3.

ISHWARDAS JAGJIVANDAS, FOR HIMSELF AND AS GUARDIAN OF HIS NEPHEW MANRUKHLAL GULABDAS AND ANOTHER, APPLICANTS, v. DOSIBAI, WIDOW OF JEHANGIRSHA ARDASHIR, FOR HERSELF AND AS LEGAL REPRESENTATIVE OF HER DECEASED MOTHER-IN-LAW, BAI AVABAI, WIDOW OF ARDESHIR DHANJISHA, OPPONENT.\*

*Award—Act VIII of 1859, Sec. 327—Judgment and decree—Execution—Act X of 1877, Sec. 526—Limitation—Act XV of 1877, Sched. II, Art. 178—Estoppel.*

At the request of the applicants, the lower Court filed an award on the 20th December, 1866, but no judgment was passed in terms of it. Several applications for execution of the award were subsequently made and granted. The last application was made in 1880, and was rejected on the ground that there was no decree to execute. The order was confirmed by the High Court on appeal. The applicants then applied to the lower Court to pass judgment in terms of the award. The Court rejected the application as barred under the Limitation Act XV of 1877, sched. II, art. 178. The applicants appealed.

*Held by Sargent, C.J., and Kemball, J., that, looking to the provisions of the Codes of Civil Procedure of 1859 and 1877 with respect to the filing of awards in Court and the proceedings thereon, it appeared to be the duty of the Court, under both Codes, to proceed to pass judgment according to the award as soon as it was ordered to be filed, without waiting for any application that that should be done, though such application was, as a matter of practice, usual; and that being so, such an application was one which, under the authority of *Kylasa Goundan v. Ramasami Ayyan* (1) and *Vithal Janardan v. Vithojirao Putlajirao* (2), was not within the contemplation of the Limitation Act.*

*Held, further, that the same effect should be given to the language of section 327 of Act VIII of 1859 and section 526 of Act X of 1877. The expression "may be*

\* Application under Extraordinary Jurisdiction. No 20 of 1883.

(1) I. L. R., 4 Mad., 172.

(2) I. L. R., 6 Bom., 568.