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OPINION.

SARGENT, C. J.—We think that s. 28 of Act VII of 1889 (1) distinctly applies the provisions of s. 26 and the other sections set out in s. 28 to certificates granted under Regulation VIII of 1827 and applications for such certificates made after the commencement of the Act.

Order accordingly.

17 B. 232.

[232] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

GITABAI (*Original Defendant*), *Appellant v.* BALAJI KESHAV SHASTRI NAGARKAR (*Original Plaintiff*), *Respondent.**
[2nd March, 1892.]

Specific performance—Agreement to sell—Reversionary interest, sale of—Purchase-money less than market value of reversion—Stat. 31 Vic., c. 4—Inadequate consideration.

The rule observed in England until the passing of Stat. 31 Vic., c. 4, that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase-money was less than the market value of the reversion.

Held, not to be the rule in India.

[1906 P.W.R., p. 104.]

THIS was a first appeal from the decision of Khan Bahadur L. G. Fernandez, First Class Subordinate Judge of Poona.

Suit for specific performance of an agreement to sell a house.

The defendant, Gitabai, was the daughter-in-law and heiress of one Nana, deceased. On 18th December, 1885, Nana had agreed to sell the house in question to the plaintiff for Rs. 2,000, and then received Rs. 25 earnest-money. At the time of the agreement Nana was not entitled to the possession of the house. His adoptive mother, Renukabai, was in possession and management, and under the will of her deceased husband she was entitled to it during his lifetime and after her death it was to go to Nana.

On Renukabai's death the plaintiff, in accordance with the agreement, tendered the rest of the purchase-money to Nana, and asked him to execute a conveyance, but he refused. Nana subsequently died, and the plaintiff now sued the defendant, as his representative, to enforce the agreement of sale.

The defendant pleaded that Nana was of weak mind, and had been induced by the plaintiff's misrepresentation to enter into the agreement; that the agreement was, therefore, invalid, and that the suit was time-barred.

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* Appeal No. 47 of 1890.

(1) *Section* 28.—Notwithstanding anything in the regulation of the Bombay Code No. VIII of 1827, the provision of s. 3, s. 6, sub-s. (1), cl. *f*, and ss. 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of s. 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, so far as they can be made applicable, apply, respectively, to certificates granted under that regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

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The Subordinate Judge found that the claim was not barred by limitation, and allowed it, observing: "The plaintiff has, no [233] doubt, secured a good bargain from Nanaji Dinkar without any risk at all to himself * * . I cannot say that he dealt very fairly with Nana, but he is within his legal rights in trying to enforce the agreement, and, as defendant has failed to establish the ground on which the agreement was impeached, the plaintiff is entitled to succeed."

The defendant appealed.

Jardine (*Mahadeo Chimnaji Apte*), for appellant.—Nana had only a reversionary interest in the property. The Court cannot give specific performance of an agreement relating to the sale of such interest. By this agreement Nana sold a house for Rs. 2,000, which, according to the evidence and in the opinion of the lower Court, was worth Rs. 5,000 or Rs. 6,000. The consideration is inadequate. The onus lies on the plaintiff to show it was sufficient: see White and Tudor's Leading Cases, Vol. I, p. 685. Moreover, it is shown that Nana was of weak mind, and undue advantage was taken of him. A Court of Equity will not give effect to such an agreement. Under s. 28 of the Specific Relief Act (I of 1877) the plaintiff is not entitled to relief, because the consideration for the sale is grossly inadequate.

Branson (*D. S. Garud* and *N. V. Gokhale*), for respondent.—A new case is made here on appeal. The appellant's case in the lower Court was that fraud was practised on Nana, but no fraud was proved. The consideration is not inadequate. Some witnesses, no doubt, say that the house is worth Rs. 6,000, but it is very old, and requires extensive repairs. The plaintiff did not induce Nana to make the agreement of sale. On the contrary, it was he who was anxious to sell. Fraud cannot be presumed, and there is no evidence to prove it. The agreement is, therefore, capable of specific performance (s. 22 of Specific Relief Act I of 1877). Nana was not a man of weak intellect. The lower Court has found that he was a man possessed of ordinary capacity. He himself could not have resisted a decree for specific performance, and if so, his heirs cannot.

JUDGMENT.

SARGENT, C. J.—The case was tried below on the statements contained in the written statement that the plaintiff had practised [234] fraud on Nana by representing that Nana's mother had given the house away from Nana to her mother. It was also stated that Nana was a simpleton. Those defences were held by the lower Court not to be supported by the evidence. And no attempt has been made before us to impeach that finding.

Here, however, it has been sought to impeach the sale on the ground that, being a sale of a reversionary interest, the Court would not decree specific performance, as the purchase-money was less than the market value of the reversion. Such, no doubt, was the practice in England until the passing of 31 Vic., c. 4, but it cannot, we think, be held to be the rule in India. No mention of it is to be found in the Specific Relief Act, and if it had been intended to give effect to it, we should have expected to find it in s. 28 of the Act. It is further to be remembered that the Specific Relief Act I of 1877, which was passed after the English Act had been passed, abolishing the rule, was drawn by a jurist who had had long experience of the practice of the Court of Chancery.

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The only other question which can be raised on the evidence is, whether the price for which the property was sold was so grossly inadequate as to be evidence of fraud practised on the vendor. We do not think that was the case. The property would not probably have been let for more than Rs. 250 per annum. That rental capitalized at 16 per cent. subject to a deduction of 10 per cent. for repairs would give Rs. 3,400 as the value of the property, and it was sold for Rs. 2,000. The defendant having failed to establish the defence actually set up, and the only grounds on which the case has been argued before us having also failed, we confirm the decree of the Court below with costs.

Decree confirmed.

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17 B. 235.

[235] APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

JOHARMAL (*Original Plaintiff*), *Appellant v.* TEJRAM JAGRUP (*Original Defendant*), *Respondent.** [7th March, 1892.]

Registration—Partnership—Mortgage of land to a firm—Dissolution of firm—Division of assets among partners—Letters of one partner to another transferring to the latter the share of the former in the assets of the firm, including the mortgages, but not mentioning them—Necessity of registering such letters—Evidence—Registration Act III of 1877, ss. 17 and 49—The words "document" and "instrument" in the Registration Act.

By two mortgage-bonds, dated, respectively, 25th July, 1866, and 13th September, 1870, certain lands were mortgaged to a firm of money-lenders at Khadkala, carrying on business under the style of Gangaram and Mayaram. There were four partners in the firm, *viz.*, Gangaram, Mayaram, Panji and Sadaram. In 1874 Gangaram retired from the firm, and wrote three letters, the effect of which was to transfer his share in the partnership to Panji and Sadaram. In 1878 the shop was closed, and the partners divided the assets of the firm. The two mortgages fell to the share of Sadaram. Subsequently Sadaram died, and the plaintiff, his son, inherited his property and took possession of the mortgaged lands. These lands were afterwards attached in execution of a money decree against one of the mortgagors (defendant No. 1). The plaintiff objected to the attachment, but his objection was disallowed, and the property was sold in execution and purchased by defendants Nos. 2 and 3. The plaintiff then filed this suit to establish his rights under the two mortgage-bonds. The defendants contended that the plaintiff had no interest in the mortgages, and was not entitled to sue. The plaintiff relied (*inter alia*) in support of his title upon the letters (A, B and C), whereby Gangaram had transferred his share in the assets of the firm to his (the plaintiff's) father Sadaram. These letters were objected to as inadmissible in evidence, not having been registered.

Held, that, independently of the letters, there was evidence to show that the plaintiff's father Sadaram was a partner in the firm, and that as such partner the mortgages in question fell to his share at the final division of assets. The position of Sadaram as a partner being once established, his right to the property followed by operation of law, and no other proof of title was required.

Per JARDINE, J.—"To lay down that the three letters in question, which deal generally with the assets moveable and immoveable, without specifying any particular mortgage or other interest in real property, require registration, would, I incline to think, in the present state of the authorities, go too far. It may be argued that such letters are not 'instruments of gift of immoveable property', but rather disposals of a share in a partnership of which the business is money-lending, and the mortgage securities merely incidental thereto."

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* Second Appeal No. 138 of 1891.