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## ORIGINAL CIVIL.

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*Before Mr. Justice Starling.*

HORMASJI MANEKJI DADACHANJI (*Plaintiff*) v. KESHAV  
PURSHOTAM AND ANOTHER (*Defendants*).\* [21st August, 1893.]

*Registration—Indian Registration Act (III of 1877), ss. 17 and 49—Decree—Attachment—Execution—Unregistered contract for sale of land subsequently attached in execution.*

In execution of a decree against S and P, property was attached on the 11th February, 1891, and sold by auction to the plaintiff in July, 1892. The defendants, [14] however, alleged that at the date of attachment the property did not belong to S and P, as they had sold it to them (the defendants) on the 22nd January, 1891, under a contract of sale of that date. Their contract had not been registered.

*Held*, that by cl. (b) of s. 17 of the Indian Registration Act (III of 1877) the contract needed registration if it was intended that it should affect the land (s. 49). Not being registered it did not operate to transfer the ownership, and could not be received in evidence of any transaction affecting the land, *i.e.*, it could not be used to show that the ownership had passed from the vendor to the purchaser. The property in question was, therefore, at the date of attachment the property of S and P, and under the attachment and sale in execution it passed to the plaintiff.

A contract for the sale of immovable property recited that, on the date thereof, Rs. 100 had been received as earnest-money, and provided that within two months the vendor would execute a proper conveyance, and thereupon receive the balance of the purchase-money and give up possession.

*Held*, that the document did not pass any right, title or interest in the property to the purchaser, but merely gave him a right against the vendor personally to call for a conveyance and possession on paying the balance of the purchase-money.

[D., 26 A. 266 (270) = 24 A.W.N. 8; 24 B. 400 (402) = 2 Bom. L.R. 220.]

SUIT by a purchaser at an execution sale for partition and possession of the property purchased.

The plaint set forth that in execution of a decree in suit No. 677 of 1890 passed against Shricrishna Janardan and Pandharinath Janardan on the 10th January, 1891, their right, title and interest in a certain immovable property consisting of a house and land in 1st Carpenter Street, Bombay, was sold by public auction on the 27th July, 1892, and the present plaintiff Hormasji Manekji became the purchaser. The property had been attached on the 10th February, 1891.

At the time of the sale, Shricrishna and Pandharinath were entitled to a third share of the said property, and were in exclusive possession of (*inter alia*) the first floor of the house. On the 15th September, 1892, the plaintiff obtained a writ of possession, and in execution of it the defendants in this suit were removed from portions of the first floor into which they had entered in collusion with Shricrishna and Pandharinath, and the plaintiff obtained possession.

The defendants, thereupon, on the 20th September, 1892, took out a rule calling on the plaintiff to show cause why they should [15] not be put back into possession of the said first floor, and an order was made requiring the plaintiff to establish his right to possession of the first floor of the house in question.

\* Suit No. 621 of 1892.

The plaintiff then filed this suit. He prayed for a declaration that he was entitled to a third of the said house and land, and to possession of the first floor thereof, and that the defendants were not entitled to possession of the said first floor. He also prayed for possession of this first floor, and, in the alternative, in case the defendants should be held to have any right to the first floor, for a partition, &c.

In the written statement the defendants said that they and one Janardan Purshotam (the father of Shricrishna and Pandharinath) were the sons of one Purshotam Sakharam, to whom the property originally belonged. He died intestate, leaving these three sons him surviving. Janardan died in 1886, leaving two sons, the said Shricrishna and Pandharinath. They stated that the said property had never been divided between them and the said Janardan, but that by an agreement dated the 22nd January, 1891, Shricrishna and Pandharinath had sold their right, title and interest in the property to them (the defendants) and that since that time they (the defendants) had been owners of the whole of the property, but that by permission Pandharinath had occupied a part of the said first floor for a time. They contended that the first floor had been wrongfully taken possession of by the plaintiff.

At the hearing the only issue raised was whether at the time of the attachment (10th February, 1891) in suit No. 677 of 1890 Shricrishna and Pandharinath had any and what right, title and interest in the said premises.

It was admitted that prior to the 22nd January, 1891 they were entitled to a third share.

*Macpherson* and *Scott*, for plaintiff. They cited *Dart's Vendors and Purchasers*, p. 284; *Burjorji Cursetji v. Muncherji Kuverji* (1); *Tasker v. Small* (2); *Fox v. Pursell* (3).

[16] *Lang* (Acting Advocate General) and *Anderson*, for defendants. They cited *Balaji Anant v. Ganesh Janardan* (4); *Dhondu v. Ramji* (5); *Krishnapa v. Panchapa* (6); *Naigar Timapa v. Bhaskar Parmaya* (7); *Johur Mull v. Tarankisto Deb* (8).

#### JUDGMENT.

STARLING, J.:—In this case it is admitted that Shricrishna Janardan and Pandharinath Janardan were jointly entitled to an undivided third share of certain property in 1st Carpenter Street, Bombay, to the remaining two-thirds in which the defendants were entitled; and it is also admitted that these two persons continued to be entitled to their one-third, unless their interest therein was divested by an agreement for sale of the said interest which was executed by them on the 22nd January, 1891.

On the 10th of January, 1891 a decree was passed against Shricrishna and Pandharinath in suit No. 677 of 1890. On the 10th February, 1891, their interest in the property was attached in execution of that decree, and on the sale of that interest on the 27th July, 1892, the plaintiff became the purchaser thereof, and the sale to him was duly confirmed. *Prima facie*, therefore, the plaintiff is entitled to a partition of the property, and, on such partition, to be allotted one-third thereof.

The defendants, however, say that at the time of the attachment Shricrishna and Pandharinath had no interest in the property, because on

(1) 5 B. 143.

(3) 3 Sm. & G. 242.

(5) 4 B. H. C. R. (A. C. J.), 114.

(7) 10 B. 444.

(2) 3 Myl. & C. 63.

(4) 5 B. 500.

(6) 6 B. H. C. R. (A. C. J.), 258.

(8) 10 C. 252.

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the 22nd January, 1891, they had agreed to sell it to the defendants, and by such agreement all their interest had passed to the defendants.

There is no doubt that such an agreement was executed, though there are circumstances in the case from which it has been argued that it was never intended to operate at all, but was merely a contrivance to prevent the decree, which had been passed, being executed.

If that is the true view of the facts, then I think the agreement might be treated as non-existent, and a decree passed for the plaintiff; but I do not think it necessary to decide this point, [17] and will treat this case as if a good and *bona fide* contract for sale had been made on the 22nd January, 1891.

The question to be decided is, therefore what in this country is the effect of an unregistered contract for sale on an attachment on the property comprised therein placed subsequent to the date of the agreement. In England it would seem that if immoveable property be agreed to be sold, and subsequently judgments are entered up against the vendor, which would under ordinary circumstances bind the land, that circumstance does not in any way prevent the vendor from being able to make a good title to the land; see *Lodge v. Lyseley* (1). In England, however, there is no Registration Act, and this Act seems to me to make a great difference in the effect of a contract for sale of land in this country. In England a contract for sale of land in equity operates to transfer the ownership from the vendor to the purchaser. Under s. 17 of the Indian Registration Act (III of 1877), cl. (b), such an instrument must be registered, otherwise under s. 49, it will not affect the land, *i. e.*, it will not operate to transfer the ownership; and it cannot be received in evidence of any transaction affecting the land, *i. e.*, it cannot be used to show that the ownership has passed from the vendor to the purchaser. Consequently I am of opinion that in this country it is not open to a purchaser under an unregistered contract of sale to allege that after the contract the vendor has lost his right, title and interest in the land itself.

The contract in this case which was admitted in evidence, under cl. (h) of s. 17 of the Registration Act, as being an instrument which did not create, &c., any right, title or interest in immoveable property, but merely created a right to obtain another document, which, when executed, would create such a right, recites that on the date thereof Rs. 100 had been received as earnest-money, and provides that within two months the vendors would execute a proper conveyance, and thereupon receive the balance of the purchase-money and give up possession of the property sold. This document, therefore, on the face of it, clearly falls within cl. (h), and only gives the purchaser a right [18] against the vendor personally to call for a conveyance and possession on paying the balance of the purchase-money. Such a document might in England perhaps operate in equity to pass the land to the purchaser, but for the reasons already given I do not think that that is its legal effect in this country. Up to the date of the issue of the sale certificate to the plaintiff nothing was done to carry out this contract. In fact, after the attachment was placed on the property on the 1st February, 1891, s. 276 of the Civil Procedure Code (XIV of 1882) would have made any subsequent alienation void as against the attachment, and so, in any event, the defendants would have to rest their case upon the effect of the contract for sale. Consequently at the date of sale the defendants had

(1) 4 Sim. 70.

nothing more than a right to call for a conveyance on payment of the balance of the purchase-money, and no right, title or interest in the land itself.

Under the circumstances I am of opinion that on the 10th February, 1891, Shricrishna and Pandharinath were the owners of their one-third share in the property in dispute, and that their share therein was capable of attachment and sale, and that by the sale on the 27th July, 1892, the ownership of that one-third passed to the plaintiff, who is consequently entitled to a decree for partition against the defendants. If I had not come to this conclusion I am of opinion that under the prayer for further and other relief I could have given the plaintiff a decree for Rs. 1,900, the balance of the purchase-money unpaid at the date of attachment, together with interest thereon, as the defendants have been in possession ever since the agreement according to their own account; and doubtless under the circumstances of this case, this is the decree which would have been most beneficial to the plaintiff.

Attorneys for plaintiff :—Messrs. *Nanu and Hormasji*.  
 Attorney for defendants:—Mr. *Khanderao Moroji*.

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[19] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

NAGUSHA (*Original Plaintiff*), Appellant v. MUNICIPALITY OF SHOLAPUR (*Original Defendant*), Respondent.\* [17th November, 1892.]

*Municipality—Suit against municipality for ejectment—The Bombay District Municipal Act Amendment Act (Bombay Act II of 1884), s. 48—The Bombay District Municipal Act (Bombay Act VI of 1873), s. 86.*

The words "in the case of any such action for damages" in s. 48 (1) of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) clearly show that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable. The section does not contemplate only "suits to recover monetary compensation for a wrongful act." A suit in ejectment—not being a suit brought to recover damages "for an act done or intended to be done"—was excluded under s. 86 (2) of the

\* Second Appeal No. 827 of 1891.

(1) Section 48 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884)—

No action shall be commenced against any municipality, or against any officer or servant of a municipality, or any person acting under the orders of a municipality, for anything done or purporting to have been done, in pursuance of this Act, or of the principal Act, without giving to such municipality, officer, servant or person one month's previous notice in writing of the intended action and of the cause thereof, nor after three months from the date of the act complained of;

and in the case of any such action for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender.

(2) Section 86 of the Bombay District Municipal Act (Bombay Act VI of 1873) :—

No action shall be brought against the municipality, or any of their officers, or any person acting under their direction, for anything done or intended to be done under this Act, until the expiration of one month next after notice in writing shall have been delivered or left at the office of the municipality, or at the place of abode of the intended defendant, stating with reasonable particularity the cause of action, and the name and place of abode of the intended plaintiff;