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by a breach of contract seeks only to be indemnified. That, I think, is not the case here: the plaintiffs do not ask the Court to assess in money the damage suffered by them in consequence of the defendant's breach of the contract: that has already been done by the parties themselves, and the plaintiffs only seek to obtain that particular sum of money which by the terms of the contract is now money belonging to them in the hands of the defendants.

Forms 10 and 12 of Schedule IV of the Code of Civil Procedure of 1882, which was in force when the suit was instituted, afford further support to the view that the Legislature never intended or attempted to invalidate a suit for the price of goods bargained and sold.

The plaintiffs' suit is admittedly good unless it is prohibited by virtue of section 73 of the Contract Act. For the foregoing reasons I am of opinion that it is not so prohibited, and I therefore agree that the appeal should be allowed with costs.

Appeal allowed.

Attorneys for appellants: *Messrs. Payne and Co.*

Attorneys for respondents: *Messrs. Daphtary, Ferreira and Divan.*

B. N. L.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

PARASHARAMPANT SADASHIVPANT (ORIGINAL PLAINTIFF), APPELLANT,
v. RAMA bin YELLAPPA AND ANOTHER (ORIGINAL DEFENDANTS), RES-
PONDENTS.*

Registration Act (III of 1877), sections 17 and 49—Release—Document compulsorily registrable—Registration by mistake in a wrong book—Mistake not to affect parties—Document duly registered—Endorsement releasing mortgaged property for consideration in cash—Registration.

A release whereby a father transferred all his rights of ownership in his immoveable and moveable property in favour of his son was registered not in

* Second Appeal No. 3 of 1909.

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Book No. 1, but in Book No. 4, that is to say, not in the Book kept for the registration of documents compulsorily registrable under section 17 of the Registration Act (III of 1877).

Held, that the release must be considered as having been duly registered. The father's property was capable of identification and the error of the registrar in registering the document in Book No. 4 should not be allowed to affect the parties prejudicially.

Sorabji Edalji v. Ishwzrdas Jagjivandas (1) followed.

An endorsement made by a mortgagee (on the back of the mortgage-deed) releasing the mortgaged property in consideration of a cash payment of Rs. 300 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties.

SECOND appeal from the decision of A. D. Brown, Assistant Judge of Dhárwár, reversing the decree of T. V. Kalsulkar, Subordinate Judge of Hubli.

The plaintiff sued to recover possession of the land in dispute together with mesne profits alleging that the defendant's father sold the land to plaintiff's grandfather Antajipant on the 24th March 1879 and that the defendants took wrongful possession seven or eight years before suit. The suit was filed in May 1904.

The defendants replied *inter alia* that the plaintiff had no right to institute the suit so long as plaintiff's father was alive, that the defendants' father mortgaged the land in suit to plaintiff's grandfather on the 24th March 1879 for Rs. 300, that the transaction was really a mortgage though in form a sale, that it was orally agreed that Antajipant should enjoy the land for interest on Rs. 300, that Antajipant was in possession and enjoyment through tenants including the defendants, that the defendants redeemed the land on the 2nd October 1894 on payment of Rs. 300 to plaintiff's uncle Dattopant who endorsed the receipt of the amount on the back of the deed that since then the defendants had been in possession as owners.

The Subordinate Judge found that the sale-deed passed by the defendants' father to the plaintiff's grandfather was not in reality a mortgage, that there was no redemption as alleged by

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the defendants, that the suit was maintainable and that the plaintiff was entitled to recover mesne profits from date of suit to date of possession. He, therefore, passed a decree awarding the claim for possession with mesne profits.

With respect to the defendants' contention that the plaintiff was not entitled to maintain the suit because his father was alive the Subordinate Judge found that the plaintiff's father had, on the 2nd June 1903, passed a release to the plaintiff relinquishing his rights to the property in plaintiff's favour. The Subordinate Judge made the following observations with reference to the release :—

The defendants' pleader contended that the release is void as no description of the property is given as stated in section 21 of the Indian Registration Act. I do not think so, as no particular land is mentioned but all lands which can be identified when necessary by other evidence. Defendants' pleader also contended that as the release was registered in book No. 4 and not in book No. 1, it should not affect immoveable property. I think that the error of the Sub-Registrar should not be prejudicial to the public and that the release should be considered to be duly registered (*vide Sorabji Edalji v. Ishwardas Jagjivandas*, P. J., 1892, p. 5). Plaintiff and his father were owners. As plaintiff's father gave his interest to plaintiff, plaintiff became full owner and hence he is entitled to maintain the suit.

On appeal by the defendants the Assistant Judge reversed the decree and dismissed the suit holding that it was bad for non-joinder of plaintiff's father, that the defendant was entitled to have the sale (exhibit 49) treated as a mortgage and nothing was due to the plaintiff on account of redemption. The following were some of his reasons :—

Plaintiff claims that under exhibit 38, dated 2nd June 1903 he is the exclusive owner of the property in suit and that his father lost all interest in the property on the execution of that release.

But exhibit 38 contains no description whatever of the lands which it purports to transfer and therefore under section 21 of the Registration Act it could not be registered as a document affecting immoveable property.

The case differs from *Sorabji v. Ishwardas*, P. J. 1892, p. 5, quoted by the Sub-Judge. In that case the land was described and the entry of the document in Book IV instead of Book I, was entirely the mistake of the Sub-Registrar. It was held that the mistake did not invalidate the registration. But in that case the document should have been entered in Book I. In the present case the document ought not to have been accepted for registration at all. In *Baji*

Nath v. Sheo Sahay it was held by the Calcutta Full Bench (18 Cal. 556) that a false or insufficient description rendered the registration void. In *Narasamma v. Subbarayudu* (18 Madras 365) the document appears to have been very similar to that in the present case. The executant of the release subsequently sold the land covered by the deed of release. It was held that the registration was not valid against the purchaser. If that is the law, a purchaser from plaintiff's father would be able to contend successfully that his title was not affected by exhibit 33. Plaintiff might be able to enforce the agreement against his father, but the record shows that the present plaintiff's father disputes the agreement (exhibit 62) and is in actual possession of a large part of the family land, as admitted by plaintiff (exhibit 77). Under these circumstances I find that plaintiff's father is not proved to have parted with his interest in the land in suit and should have been made a party to this suit.

* * * * *

All these reasons seem to justify the conclusion that the transaction was one of mortgage. The endorsement on exhibit 49 not being registered the release cannot be strictly proved. But in view of the Dekkhan Agriculturists' Relief Act the point is not important. For, if an account be taken, defendants can prove the payment of the principal and as nothing then remains due they are entitled to possession.

The plaintiff preferred a second appeal.

D. A. Khare for the appellant.

N. A. Shiveshvarkar for the respondents (defendants).

SCOTT, C. J.:—The plaintiff sued the defendants for possession of certain land alleging that the defendants' father had sold it to the plaintiff's grandfather in 1879.

The defendants resisted the claim contending that the alleged sale was a mortgage which had been redeemed in 1894 by payment of Rs. 300 to the plaintiff's uncle Dattopant and that the defendants had since then been in possession as owners.

It was found by both the Courts that the defendants had been in possession as tenants of Dattopant, the plaintiff's uncle, prior to 1894, the date of the alleged redemption.

The defendants set up a case of possession since 1893. The suit was filed in May 1904; so that upon the defendants' case no question of limitation arises.

The Subordinate Judge found that the defendants' story of redemption by payment of Rs. 300 in 1894 was false and that

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the endorsement appearing upon the sale-deed was not a genuine endorsement, and passed a decree in favour of the plaintiff for possession.

An appeal was preferred to the Assistant Judge who held first, that the plaintiff was not entitled to maintain the suit on the ground that he did not prove that he was the exclusive owner of the property claimed, since it was not shown that his father, who was still alive, had lost his interest therein; secondly, he held that the deed of 1879, though on its face a sale-deed, was really a mortgage, and he came to that conclusion in consequence of the weight he attached to the endorsement upon the sale-deed purporting to be made by Dattopant admitting the receipt of Rs. 300 in 1894 and releasing the property. He therefore came to a different conclusion on the question of fact to that arrived at by the Subordinate Judge and in second appeal we are, so far as his finding upon the facts is material, bound to accept his decision. We will take the two points decided in favour of the defendants in order.

The plaintiff claims to be entitled to maintain this suit alone without the co-operation of his father by reason of a release executed by his father in his favour on the 2nd June 1903 whereby he became the owner of the whole of the property in suit. By that document his father purported to transfer to him all his rights of ownership which he had in his immoveable and moveable property. The document was presented for registration and was accepted by the Registrar but it was registered not in Book No. 1 but in Book No. 4, that is to say, not in the Book kept for the registration of documents compulsorily registrable under section 17 of the Registration Act. It is on the ground of the want of registration that the defendants contend that the plaintiff cannot be held to be the sole owner of the property in question assuming that his case is in other respects a true one. The learned Subordinate Judge held that the error of the Sub-Registrar ought not to prejudice members of the public and that the release should be considered to be duly registered upon the authority of *Sorabji Edalji v. Ishwardas Jaggivandas*⁽¹⁾. His

(1) (1892) P. J. 5.

decision upon the point was reversed by the Assistant Judge relying upon the case of *Baij Nath Tewari v. Sheo Sahoy Bhagut*⁽¹⁾ and *Narasamma v. Subbarayudu*⁽²⁾.

In our opinion the view taken by the Subordinate Judge should prevail. The property of the plaintiff's father is capable of identification, and the case in so far as it involves a discussion of the applicability of sections 21 and 22 of the Registration Act is on all fours with that of *Narasimha Nayanevaru v. Ramalingama Rao*⁽³⁾, in which it was held that the words "my family property" were sufficiently precise to entitle the document to registration. The error of the Sub-Registrar in registering the document in Book No. 4 instead of Book No. 1 should not be allowed to prejudice the plaintiff. In this connection the remarks of their Lordships of the Privy Council in *Sah Mukhun Lall Panday v. Sah Koondun Lall*⁽⁴⁾ are appropriate. Their Lordships say:—

"Now, considering that the registration of all conveyances of immovable property of the value of Rs. 100 or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of sections 19, 21 or 36, or other similar provisions. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words 'defect in procedure' in section 83 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertance of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register, the mistake may be rectified upon appeal under section 83, or upon petition under section 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled, and may not discover, until it is too late to rectify it, the error by which, if the registration is

(1) (1891) 18 Cal. 556.

(2) (1895) 18 Mad. 364.

(3) (1899) 10 Mad. L. J. R. 104.

(4) (1875) L. R. 2 I. A., 210 at p. 216.

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in consequence of it to be treated as a nullity, they may be deprived of their just rights."

We, therefore, hold as was held in the case of *Sorabji Edalji v. Ishwardas Jagjivandas*⁽¹⁾, above referred to, that the document must be considered as having been duly registered. It follows, therefore, that the plaintiff is entitled to maintain this suit alone.

The next point to be considered is whether the Assistant Judge was justified in admitting as evidence the endorsement purporting to be made by Dattopant releasing the property in consideration of a payment of Rs. 300 in 1894. It is clear that a release in consideration of a payment of Rs. 300 is a document which requires registration and this endorsement has not been registered. The learned Assistant Judge seems to have been aware of the difficulty, for, he says "the endorsement on Exhibit 49 not being registered the release cannot be strictly proved. But in view of the Dekkhan Agriculturists' Relief Act the point is not important. For, if an account be taken, defendants can prove the payment of the principal and as nothing then remains due they are entitled to possession." These remarks appear to be irrelevant because it was not proved in the case that the defendants were agriculturists to whom the Dekkhan Agriculturists' Relief Act applied.

We, therefore, hold that having regard to the provisions of section 49 of the Registration Act, the endorsement was not admissible in evidence of either the redemption of the property or the real nature of the original transaction between the parties. That being so, we reverse the decree of the lower appellate Court and restore that of the Subordinate Judge with costs throughout.

Decree reversed.

G. B. R.

(1) (1892) P. J. 5.