

suddenly gone up, we should certainly have heard nothing whatever of this grievance. It is not that the plaintiffs had really suffered any loss through manganese not being shipped to Antwerp, but that because there has been a technical breach of contract on the defendants' part they see their way, by claiming differences, to pocketing between £500 and £600 that this litigation has been pressed, still the law is the law, and I have little to do with the mere motives of those who are cunning enough and well advised enough to take advantage of it. I cannot doubt but that there has been a technical breach of contract in this case, and that the defendants are not justified by section 56 of the Indian Contract Act. Neither do I doubt that the plaintiffs had not really sustained any damages.

[His Lordship then proceeded with the trial further, and awarded to the plaintiffs one anna as damages. No order was made as to costs.]

Attorneys for the plaintiff: Messrs. *Crawford, Brown & Co.*

Attorneys for the defendants: Messrs. *Payne & Co.*

Suit decreed.

G. G. N.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

BHASKAR GOPAL AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS
v. PADMAN HIRA CHOWDHARI AND ANOTHER (HEIRS OF THE ORIGINAL
PLAINTIFF), RESPONDENTS.*

Transfer of Property Act (IV of 1882), section 54—Sale deed of property in possession of tenants—Deed should be registered.

1915.

October 11.

* Second Appeal No. 177 of 1914.

1915. -

KARL
ETTLINGER
v.
CHAGANDAS
& Co.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs. 50 by an unregistered deed of sale. It was again sold in 1910 by the owner to the plaintiff by a registered sale deed. The plaintiff having sued to recover possession :—

Held, that the defendants were not entitled to set up their sale deed to defeat the plaintiff's claim ; for the deed though earlier in point of time required registration, as the only interest which the vendor had at the date of the sale was a 'reversion' in the house, within the meaning of section 54 of the Transfer of Property Act (IV of 1882).

SECOND appeal from the decision of V. G. Kaduskar, First Class Subordinate Judge, A. P., at Thana, modifying the decree passed by S. J. Yajnik, Subordinate Judge at Bassein.

Suit for declaration and possession of a house.

One Rama owned the house in dispute. He had let it to defendants as tenants prior to 1909. Whilst the house was in possession of defendants, Rama sold the same to them for Rs. 50 by an unregistered deed of sale in September 1909.

On the 3rd June 1910, Rama's widow and daughters (Rama having died in the meanwhile) sold the house to the plaintiff by a registered deed of sale.

The plaintiff filed the present suit on the 23rd September 1910, to obtain a declaration that he was the owner of the house, and to recover its possession and mesne profits.

The Court of first instance was of opinion that the defendants' sale-deed being unregistered was inoperative against plaintiff's claim ; and granted the declaration sought ; but rejected the plaintiff's claim for possession and mesne profits on the ground that he had given no notice to quit.

On appeal, the lower appellate Court came to the same conclusion as to the effect to be given to the defendants' sale-deed, on the following grounds :—

It is alleged in the written statement (exhibit 9) that the land had been in the possession of the defendant for fifteen years before the sale-deed, as a tenant, and since the sale-deed, as owner thereof. This continuous possession is urged as satisfying the requirements of section 54 of the Transfer of Property Act. Under that section it is provided that, when tangible immovable property is conveyed for less than Rs. 100, the transfer may be effected by an unregistered sale-deed accompanied with delivery of possession. This provision of law has received a stricter interpretation from the High Court of Calcutta, which has held that the previous possession before the unregistered sale-deed and continued after the deed cannot be equivalent to a delivery of possession under the deed so as to effect the transfer thereunder conveyed (*vide* I. L. R. 34 Cal. 207). This ruling has been referred to by Messrs. Shepherd and Brown in their commentaries on the Indian Transfer of Property Act. And on p. 179 they have deduced the rule from the above ruling that where possession is already with the buyer, there can be no transfer even of property under Rs. 100 in value except by a registered instrument. This result does, no doubt, sound not a little strange but would appear to have been based on the misleading character of the possession which, under the circumstances, cannot be unmistakably referred to the agreement of sale embodied in the unregistered deed, and would fail in giving publicity to the transaction so as to warn persons subsequently intending to deal with the property, and viewed at from this point of view, the ruling referred to would appear to be in consonance with the spirit and policy of the Indian Transfer of Property Act. This Act does not countenance sales of immovable property above the value of Rs. 100 unless supported by a registered deed of sale which were recognised prior to the Act as good though not even reduced to writing. The Act further provides even in respect of transfers of property below Rs. 100 that the transfer cannot be good unless supported by an unregistered deed accompanied with delivery of possession. So that, as the section stands, there cannot be a good transfer enforceable at law, of tangible immovable property unless supported with a written instrument evidencing the agreement of sale. If the value be Rs. 100 and upwards, a registered instrument would suffice to perfect the title. Nothing short of it can effect the transfer. If the value be below Rs. 100, there ought to be a deed, though unregistered, accompanied with delivery of possession.

In the former case the registration of the deed is enough notice to others subsequently dealing with the property, and in the latter case the delivery of possession which is insisted on is intended to serve the purpose of a notice.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

But in order to attract this significance, the delivery must be in consequence of the agreement of sale unmistakably referable to that agreement. Viewed at in this light the reasoning of the ruling referred to above can be easily understood and appreciated. It is unnecessary for me further to dilate on this point. I need only say that I hold, following the ruling referred to above, that there being no delivery of possession under the sale-deed, the defendant acquires no title to the property in dispute.

The plaintiff's claim for possession and mesne profits was, however, allowed.

The defendants appealed to the High Court.

P. B. Shingne, for the appellants.—The case of *Sibendrapada Banerjee v. Secretary of State for India in Council*⁽¹⁾ does not apply. As the consideration was below Rs. 100, the sale-deed was not registered; and as the property was already in the possession of appellants, there could be no actual delivery of possession. The vendor did all that was necessary to be done: see Pollock and Mulla's Indian Contract Act, commentary on section 90.

A. G. Desai, for the respondents, was not called upon.

BATCHELOR, J.—The suit in which this appeal arises was brought in ejectment, and the plaintiff made title on a registered sale-deed executed to him in 1910 by the widow and daughters of Rama, the original owner of the property. The defendants resisted the suit on the ground that they were tenants of Rama prior to the year 1909 and that in the year 1909 the property was sold to them for Rs. 50 by Rama's widow. Admittedly this sale deed was not registered, but the defendants' contention was that no registration was necessary, since the value of the property was under Rs. 100. The lower appellate Court has decided in the plaintiff's favour, relying upon the case of *Sibendrapada Banerjee v. Secretary of State for India in Council*⁽¹⁾, where

⁽¹⁾ (1907) 34 Cal. 207.

a certain parcel of land, having been transferred to the Public Works Department for a sum less than Rs. 100 without any registered instrument, the Secretary of State for India in Council sued the defendants to recover possession of the land, and, upon objection taken that the plaintiff acquired no title to the property inasmuch as the transfer upon which he relied contravened section 54 of the Transfer of Property Act, the Court held that since the transfer was not made by registered instrument and since the plaintiff had been in prior occupation, there could not be said to have been any delivery of possession within the meaning of section 54 of the Transfer of Property Act, and the plaintiff consequently acquired no title by the transfer. No specific reasons are, however, given by the learned Judges for this decision which I have some difficulty in following. It is not, however, necessary for me further to consider the authority of this case, because on another ground, I think that the defendants-appellants must fail.

Section 54 of the Transfer of Property Act provides that, in the case of tangible immovable property of a value less than Rs. 100, transfer by way of sale may be made either by a registered instrument or by delivery of the property. But the section draws a sharp distinction between tangible immovable property and a reversion or other intangible thing. The defendants contend that the thing sold to them was the tangible house; which indeed purported to be the object of the sale. But it is clear that the vendor could not sell any higher interest than she possessed, and as at the date of the sale she had transferred possession to the defendants who were in possession as her tenants, I am of opinion that the only interest which remained in the vendor was the reversion within the meaning of that term as used in section 54. That, so far as I am aware,

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

is the only interest in the property which remains with a landlord after he has leased the immovable property to tenants and has made over possession to them. The word is used in this sense in Woodfall's Law of Landlord and Tenant and also in Lord Halsbury's Laws of England, Vol. XVIII, paragraph 766 under the title "Landlord and Tenant." This use is in conformity with the definition contained in Stroud's Judicial Dictionary where a "reversion" is described as "the undisposed of interest in land which reverts to the grantor after the exhaustion of the particular estates,—*e.g.*, for years, for life, or in tail,—which he may have created."

I think, therefore, that in this case as the sale was in law a sale of a reversion, it could, under section 54 of the Transfer of Property Act, be effected only by a registered instrument. That being so, there was no legal sale to the defendants and the lower Court was right in decreeing the plaintiff's suit.

This appeal, therefore, in my opinion, fails and is dismissed with costs.

HAYWARD, J.:—The plaintiff sought to recover possession of certain land as the purchaser from the owner by a registered sale-deed. The defendants alleged that they had been in possession as tenants from the owner and pleaded that they had subsequently on payment of a sum less than Rs. 100 obtained delivery of further possession as owners in virtue of a prior unregistered sale deed. The plaintiff succeeded in his suit in first appeal where it was held that the defendants had not received delivery of possession as owners following the case of *Sibendrapada Banerjee v. Secretary of State for India in Council* ⁽¹⁾ and that without such delivery of possession there could be no valid transfer of ownership by the prior unregistered sale-deed in

⁽¹⁾ (1907) 34 Cal. 207.

view of the provisions of section 54 of the Transfer of Property Act. It has been argued on second appeal on behalf of the defendants that they did receive delivery of possession as owners and, therefore, obtained a valid transfer notwithstanding the invalidity of the attempted transfer by the unregistered sale-deed contrary to the provisions of section 54 of the Transfer of Property Act.

It seems to me important to consider closely what it was that was alleged to have been delivered into the possession of the defendants. They alleged, as already stated, that they held actual possession of the term or tenancy and pleaded in effect that they had further received a symbolical possession of the interest remaining in their landlord, that is to say, that they had received possession of the reversion. If authority be required for the proposition that that interest was a reversion, reference may be made to Woodfall's Landlord and Tenant *passim* and Halsbury's Laws of England, Vol. XVIII, in para. 766. It is plain that actual possession can be given in the case of a term or tenancy to tenants, as that involves transfer of tangible immovable property. But, on the other hand, symbolical possession alone can be given in the case of the right to possession at the end of the term or tenancy vested in the landlord, *i.e.*, of the landlord's reversion as that involves transfer of intangible immovable property. No doubt a valid transfer can be effected for less than Rs. 100 by delivery of actual possession without a registered instrument in the case of tangible immovable property. But the question here is whether a valid transfer could be effected for less than Rs. 100 by delivery of symbolical possession without a registered instrument in the case of a reversion or intangible immovable property. It is not impossible to deliver symbolical possession. Such delivery is familiar in

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

law, and it is difficult to follow the arguments of the learned Judges in the case of *Sibendrapada Banerjee v. Secretary of State for India in Council*.⁽¹⁾ But is such delivery of symbolical possession recognized by law as a valid transfer? That depends on the interpretation of the terms of section 54 of the Transfer of Property Act.

Now a sharp distinction has there been drawn between the mode of transfer of tangible immoveable property and the mode of transfer of a reversion or other intangible thing. Where the property is valued at less than Rs. 100, the transfer of the former, that is to say, tangible immoveable property can be effected either by delivery of possession or by means of a registered instrument. But in the case of the latter, viz., intangible immoveable property, the transfer can be effected solely by registered instrument. No doubt the reason was to avoid unnecessary obstacles in the transfer of unimportant immoveable property where delivery of actual possession would afford patent evidence of the transfer. It was apparently not considered necessary in such cases to insist on the formalities of registered instruments. Where, however, the delivery would be a disputable fact as where symbolical possession alone would be possible, then apparently it was considered necessary to insist on a registered instrument in the case even of unimportant immoveable property. Here the transfer attempted was a transfer of a reversion or other intangible thing, and although that reversion was valued at under Rs. 100, the transfer could be effected only by a registered instrument. There was in this case no such registered instrument. Therefore, the transfer was invalid by reason of the provisions of section 54 of the Transfer of Property Act.

(1) (1907) 34 Cal. 207.

We ought, therefore, in my opinion, though for somewhat different reasons from those given by the learned Judge of first appeal, to confirm the decision of the lower appellate Court and to dismiss this second appeal with costs.

1915.

BHASKAR
GOPAL
v.
PADMAN
HIRA.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

1915.

October 11.

MURLIDHAR NARAYAN GUJARATHI (ORIGINAL DEFENDANT No. 1),
APPELLANT V. VISHNUDAS BALMUKUNDDAS (ORIGINAL DEFENDANT),
RESPONDENT.*

Transfer of Property Act (IV of 1882), sections 88, 89—Civil Procedure Code (Act XIV of 1882), section 244—Limitation Act (XV of 1877), Schedule II, Articles 178, 179—Civil Procedure Code (Act V of 1908), section 97, Order XXXIV, rules 1 and 5—Order passed under section 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale.

In 1907, a suit was filed to recover the mortgage amount by sale of the mortgaged property. A preliminary decree was passed on the 30th of June 1910, as contemplated by Order XXXIV, rule 4, of the Civil Procedure Code (Act V of 1908), ordering among other things, defendants Nos. 1 and 2 to pay the mortgage amount within six months to the plaintiff and in default, directing a sale of the mortgaged property. The payment was not made; and a final decree for sale was made on the 15th March 1912. Defendant No. 1 appealed against the decree of 1912, and raised substantially points against the decree of 1910. The lower appellate Court held that the defendant not having appealed against the preliminary decree within time, was precluded, by section 97 of the Civil Procedure Code (Act V of 1908), from disputing its correctness in an appeal preferred from the final decree. The defendant appealed to the High Court contending that the suit having been filed in 1907, the right of appeal which he had under the Civil Procedure Code of 1882 was not taken away by the Civil Procedure Code of 1908 :—

Held, that, whether an order absolute for sale was treated as an order falling under section 244 of the Civil Procedure Code (Act XIV of 1882) and

* Second Appeal No. 245 of 1914.