

APPELLATE CIVIL.

Before Graham and Mitter JJ.

NAGARBASHI BANIK.

v.

MEGHNATH MAISHAN.*

1930

May 27.

Registration—Agreement for sale of immoveable property valued at Rs. 100 or over, registration, whether compulsory—Indian Registration Act (XVI of 1908), s. 17, as amended by Act II of 1927.

An agreement for sale of immoveable property valued at Rs. 100 or upwards does not require registration under section 17 of the Indian Registration Act of 1908 as amended by Act II of 1927.

The explanation to section 2 of Act II of 1927 makes the Act retrospective in its application.

Dayal Singh v. Indar Singh (1), *Quinn v. Leathem* (2) and *Mata Prasad v. Nageshar Sahai* (3) referred to.

James Skinner v. R. H. Skinner (4) distinguished.

SECOND APPEAL by the plaintiff.

The facts are stated fully in the judgment.

Bijankumar Mukherji for the appellant.

Upendrakumar Ray and *Manmohan Banerji* for the respondents.

GRAHAM J. This appeal is from a decision of the District Judge of Tippera, confirming a decision of the Munsif, 3rd Court, Brahmanberia, and arises out of a suit for specific performance of a contract for the sale of some land within the town of Brahmanberia together with two huts standing thereon. The plaintiff's case was that defendants Nos. 1 and 2, to whom the land and house in question belonged, entered into a contract with him to sell them to him for a sum of Rs. 525, that he paid Rs. 125 as earnest money, that the defendants executed a *báináptra* in

*Appeal from Appellate Decree, No. 1534 of 1928, against the decree of N. L. Hindley, District Judge of Tippera, dated March 7, 1928, affirming the decree of Surendrachandra Basu, Munsif of Brahmanberia, dated June 2, 1927.

(1) (1926) L. R. 53 I. A. 214.

(3) (1925) I. L. R. 47 All. 893;

(2) [1901] A. C. 495.

L. R. 52 I. A. 398.

(4) (1929) I. L. R. 51 All. 771; L. R. 56 I. A. 363

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his favour on the 22nd Agrahayan, 1322 B.S., and that, subsequently, they sold the land and houses to defendant No. 3, who, in his turn, transferred them to defendant No. 4.

It appears that, at the trial, the *báinápatra*, not having been registered, was not admitted in evidence by the Munsif, as creating a charge upon property, following the decision of the Judicial Committee of the Privy Council in the case of *Dayal Singh v. Indar Singh* (1), and thereafter the suit proceeded on the footing that it was for the refund of the earnest money, and issues were framed accordingly. In the result, the Munsif found that the plaintiff was entitled to a refund of the earnest money and a decree was given accordingly. The plaintiff then preferred an appeal to the District Court, and the learned District Judge, while expressing some doubt as to the view of the law taken in the trial court with regard to the *báinápatra* and the necessity for its registration, held that the granting of specific relief was a matter for the discretion of the court. He considered, therefore, that it was not necessary to remand the case and dismissed the appeal.

The plaintiff has now preferred this Second Appeal, and it has been urged on his behalf that, having regard to the finding arrived at by the learned District Judge to the effect that the Act II of 1927 was applicable to the case, the learned Judge erred in law in not remanding the case for the trial of the other material issues.

The question of law involved, *viz.*, whether an agreement for sale with payment of earnest money requires registration or not was the subject matter of a decision of their Lordships of the Judicial Committee in the case of *Dayal Singh* (1) to which reference has already been made. That case, which was decided in 1926, was good law until the enactment of the amending Act II of 1927, which was a legislative sequel to that decision. The explanation to section 2 of the amending Act seems to make it quite clear that

(1) (1926) L. R. 53 I. A. 214.

the operation of the Act is retrospective and that it is intended to cover not only documents which may in future be executed, but also to apply to documents which have been previously executed. The effect of the amendment has been to supersede the decision in *Dayal Singh's* case. The position, however, at first sight seems to be complicated to some extent by another and more recent decision of the Judicial Committee in the case of *James Skinner v. R. H. Skinner* (1), in which the view taken in *Dayal Singh's* case was reiterated. In this later decision, although it was given more than two years after Act II of 1927 had become law, it is rather a remarkable circumstance that no reference whatever has been made to the amending Act. Apart, however, from this fact, that case is in my judgment distinguishable from the present case, inasmuch as the document in that case was held upon its true construction to be a sale deed purporting to transfer an interest in immoveable property of the value of over Rs. 100 and as such to be precluded by section 49 of the Indian Registration Act from being admitted in evidence unless registered in accordance with the Act. The terms of the document in that case have been set out at length in the judgment of their Lordships of the Judicial Committee and a reference may be made to paragraph 8 thereof for the purpose of making this point clear. That paragraph is in these words "The said vendor confirms this to be a complete and conclusive sale binding on the said vendor and all his heirs or assigns in favour of the said vendee.....and if the vendee should ever consider necessary to execute and register a sale deed.....the vendor or his heirs, assigns, etc., will always be ready to execute and register the same at the instance of the vendee." In the present case, on the other hand, there can be no question that the document is merely an agreement for sale entitling the recipient to obtain execution of a deed of sale. Having regard to these considerations I am of opinion that the case of *Skinner v. Skinner* (1) is distinguishable, and that, in view of the amendment of the law

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by Act II of 1927, the *bâinâpatra* must be deemed not to have required registration and should have been admitted in evidence without such registration. I am further of opinion that the decision of the learned District Judge cannot be supported and that the proper course would have been to remand the case to the trial court for a decision of the issues which arose between the parties. In my judgment, therefore, the appeal must be allowed, the judgments and decrees of the courts below set aside and the case remanded to the court of first instance for retrial after framing such issues as arise upon the pleadings. It follows from what has already been stated that the issues as previously framed were incomplete by reason of the fact that the *bâinâpatra* was not admitted in evidence by the Munsif. It will be necessary, therefore, to frame the issues afresh.

The appellant is entitled to his costs in this appeal.

MITTER J. I agree with my learned brother, that this appeal should be allowed. The appeal was brought by the plaintiff and arises out of a suit for specific performance of a contract entered into between him and the defendants Nos. 1 and 2 for the sale of some lands and two huts standing thereon. The allegation made by the plaintiff in his plaint is that defendants Nos. 1 and 2 executed a *bâinâpatra* which is an agreement for sale of the disputed lands on the 22nd Agrahayan, 1322 and subsequently the said defendants sold the land and the huts to defendant No. 3, who in his turn transferred the same to defendant No. 4. The defence which was set up at the initial stage of the suit was that the *bâinâpatra*, which was an agreement for sale, not having been registered, was not admissible in evidence, having regard to the decision of their Lordships of the Judicial Committee of the Privy Council in the case of *Dayal Singh v. Indar Singh* (1). This defence apparently prevailed with the Munsif and the suit proceeded after the document was ruled out of

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evidence as a suit for the refund of the earnest money, which was a sum of Rs. 125 out of Rs. 525, which was the consideration money of the sale. The Munsif, accordingly, gave the plaintiff a decree for the refund of the earnest money. On appeal, the learned District Judge affirmed the decision of the Munsif, although he was of opinion that the *bâinâpatra* might be admitted in evidence in view of the amending Act II of 1927.

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Against this decision an appeal has been preferred by the plaintiff. The main contention raised before us is that the Munsif was clearly in error in rejecting this document from evidence and that the learned District Judge, being of opinion that the document should have been admitted in evidence, has committed an error in refusing to grant a decree for specific performance or to remand the suit for trial of the necessary issues on the ground that it was discretionary with the court below to grant the prayer for specific relief or not. It is further contended that, even assuming that it was a matter of discretion, the court below should have held that it was a judicial discretion which should have been exercised, not arbitrarily or capriciously, but on correct judicial principles. We think that the contention of the appellant, in so far as it challenged the decision of the Munsif rejecting the *bâinâpatra* from evidence, and, in so far as it attacks the judgment of the lower appellate court as having refused the relief on arbitrary grounds, is well founded and must prevail. It appears that in the decision in the case of *Dayal Singh v. Indar Singh* (1) their Lordships of the Judicial Committee laid it down that an agreement for the sale of an immoveable property was a transaction affecting such a property and could not be given in evidence unless the sale deed was registered, seeing that the value of the property in question in that case was admittedly over Rs. 100, that decision was apparently contrary to the view which had been taken previously in the courts of India. The result was that the

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legislature passed an enactment in 1927, which runs to the following effect, "that the following explanation "shall be inserted in sub-section (2) to section 17 of "the Indian Registration Act after clause (vii), name- "ly, 'A document purporting or operating to effect a " 'contract for the sale of immoveable property shall " 'not be deemed to require or ever to have required " 'registration by reason only of the fact that such " 'document contains a recital of the payment of any " 'earnest money or of the whole or any part of the " 'purchase money.' " This enactment came into force on the 18th of February, 1927, and, accordingly, on the 1st June, 1927, a day before the Munsif delivered his judgment in the suit, the plaintiff filed a petition asking that the order of the Munsif rejecting the *báinápátra* from evidence be considered in view of the amended Act to which reference has been made. The Munsif, it may be mentioned, came to the conclusion that the amended Act was not retrospective in its operation. An examination, however, of the amended Act will show that the amendment was intended to be retrospective in its operation. The words "or ever to have required registration" are clear enough to indicate that the legislature enacted that the document purporting or operating to effect the contract for sale never required registration by reason of the fact that such a document contained a recital of the payment of the earnest money or of the whole or part of the purchase-money. It is not seriously contended on behalf of the respondents that the words used in the amendment were not retrospective in their operation. The language is plain enough and the effect of this amendment was to supersede the effect of the decision of their Lordships of the Judicial Committee in *Dayal Singh's* case (1) and to bring the law in conformity with the view which had been adopted by the courts of India prior to the decision in that case of *Dayal Singh v. Indar Singh* (1). If the matter had stood as before after the amendment of this Act, there would be no difficulty in the decision of the present appeal. But the question

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in controversy in the present appeal is complicated by the circumstance that in a later decision of the Judicial Committee in the case of *Skinner v. Skinner* there are some observations which lead to the conclusion that an agreement for the sale of an immoveable property is a transaction affecting the property within the meaning of section 49 of the Registration Act and that, consequently, without registration such a document could not be used in any legal proceedings as evidence for the purpose of directly or indirectly affecting the said property. The passage which has created the difficulty in the Indian courts may be quoted *in extenso*. Sir George Lowndes, in delivering the judgment of their Lordships of the Judicial Committee, observed thus: "They think that an agreement for the sale of immoveable property is a transaction affecting the property within the meaning of the section inasmuch as, if carried out, it will bring about a change of ownership." An examination of the case of *Skinner v. Skinner* (1) will show that in that case the agreement for sale, although described as such, was something more than an agreement for sale. The terms of the document are quoted there. An examination of the terms in paragraphs 8 and 9 of the said document will show that the document was intended to transfer the property *in praesenti*. In paragraph 8, the vendor states this. "The said vendor confirms this to be a complete and conclusive sale binding on the said vendor and on all his heirs or assigns, *etc.*, in favour of the said vendee..... and if the vendee should ever consider necessary to execute a registered sale-deed..... vendor or his heirs, assigns, *etc.*, will always be ready to execute and register the same at the expense of the vendee." In paragraph 9, the document is described as a sale and an agreement. There is, therefore, nothing in the actual decision in *Skinner v. Skinner* (1) which conflicts with the view that, in so far as the deed in that case was concerned, the document was more than a mere agreement for sale and their Lordships held that in those circumstances it required

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registration, for it fell within the mischief of section 49 of the Indian Registration Act. It is possible to read the passage which has created the difficulty in the courts of India and to which I have already made a detailed reference as being applicable to the facts of the particular case. But, at the same time, it may be said that the observations are somewhat general. It has been pointed out as one of the salutary rules in construing judicial decisions that a case shall be regarded only as an authority for what it actually decides. See *Quinn v. Leathem* (1). It is sufficient for the purposes of the present case to hold that the present document is one which is not in reality a deed of sale, but really a document which requires that another document will have to be executed in order to pass the title in the property to the vendee. We have had the document read before us. Towards the end of the document, there is a distinct clause to the effect that the vendor will execute a registered document on the execution of which the sale would be complete. The observation, however, of the Judicial Committee to which reference has been made above is very general in its character. In a recent case their Lordships said this "Their Lordships think it desirable to point out that it is not open to the courts of India to question any principle enunciated by this Board, although they have right of examining the facts of any case before them to see how far the principle on which stress is laid applies to the facts of the particular case." See the case of *Mata Prasad v. Nageshar Sahai* (2). The courts of India have to bear these observations of their Lordships in mind in coming to a decision as to whether they should adopt for the purposes of a particular case the very general observation which is made in another case on which the actual decision did not depend and in which the observations were of the nature of *obiter dicta*. I am not unmindful of the view taken in the courts of India that *obiter dictum* of their Lordships of the Judicial Committee is entitled to very great

(1) [1901] A. C. 495.

(2) (1925) I. L. R. 47 All. 883 (900);
 L. B. 52 I. A. 398 (417).

weight. But in this particular case, having regard to the clear legislative enactment by Act II of 1927, which unfortunately was not brought to the notice of their Lordships by the counsel, whose duty it was to bring this legislative change to the attention of their Lordships, and, having regard to the fact that there is nothing in the actual decision of the case of *Skinner v. Skinner* (1) which in any way conflicts with the view which we now take, we think we are not, in any way, disregarding the observations of the Judicial Committee in the case of *Mata Prasad* (2) as to the duty of Indian courts in following the principles enunciated by their Lordships. I think, therefore, that the court of first instance was clearly in error in rejecting this document from evidence and in holding that Act II of 1927, which amended the Registration Act, was not retrospective in its operation.

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Appeal allowed: case remanded.

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