

LETTERS PATENT APPEAL.

Before Mukerji and R. C. Mitter JJ.

NARESHCHANDRA DATTA

v.

GIREESHCHANDRA DAS.*

1935

Feb. 22.

Mahomedan Law—Pre-emption—Sale, when can be said to have taken place—Knowledge—Delay—Transfer of Property Act (IV of 1882), s. 54.

The point of time, at which the transfer of immoveable property valued at Rs. 100 and upwards is to be effective under section 54 of the Transfer of Property Act as regards third parties, is when the deed of transfer can be said to be a registered one, although before that date the vendor on receipt of a portion of the consideration had put the vendee in possession of the property.

Veerappa Chetty v Kadiresan Chetty (1) followed.

Nabadweepchandra Das v. Lokenath Ray (2) and *Kalyanasundaram Pillai v. Karuppa Mooppanar* (3) referred to.

The ceremonies of *talabs* or demands that are required to be performed by one entitled to pre-emption under the Mahomedan law are, therefore, to be performed with reference to knowledge of such a sale immediately after the registration.

The question of delay in performing the *talabs* for pre-emption is essentially a question of fact.

LETTERS PATENT APPEAL by the plaintiff.

The facts of the case and the arguments in the appeal are sufficiently stated in the judgment.

Beerendrakumar De for the appellant.

Sharatchandra Basak, Senior Government Pleader, and *Priyanath Datta* for the respondents.

MUKERJI J. This is an appeal by the plaintiff in a suit for pre-emption. It is not disputed that the Mahomedan law of pre-emption applies to the case

*Letters Patent Appeal, No. 6 of 1934, in Appeal from Appellate Decree, No. 1729 of 1931.

(1) (1913) 24 Mad. L. J. 664;
20 Ind. Cas. 385.

(2) (1932) I. L. R. 59 Calc. 1176.

(3) (1926) I. L. R. 50 Mad. 193;
I. R. 54 I. A. 89.

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though the parties themselves are Hindus. The following are the facts:—

The sale in connection with which the plaintiff is seeking to enforce his right to pre-empt is evidenced by a deed which was presented for registration at the registration office on the 30th day of August. Before that date the vendor, on receipt of Rs. 50 out of the total amount of consideration which was fixed at Rs. 500, had put the vendee in possession. On the date abovementioned the vendor admitted execution and thereupon the Sub-Registrar made the usual endorsements on the deed. The necessary entries and copies were thereafter made and the final endorsement that the deed had been registered was made on the 3rd day of September.

The Munsif decreed the suit. On appeal by the defendants the Subordinate Judge reversed that decision and dismissed the suit, and his decree has been affirmed by Henderson J.

It has been found that the first *talab* or demand was performed on the 4th day of September, and the suit has been dismissed on the ground that there was delay in such performance. On that, two questions at once arise: 1st, when did the sale take place? 2nd, when did the plaintiff come to know of the sale?

So far as the first question is concerned, there may be three points of time at one or other of which the sale can possibly be taken to have been effected: the first is the point of time at which a part of the consideration money having been paid the vendor put the vendee in possession; the second, when the transfer became operative under section 54 of the Transfer of Property Act: and the third any other point of time at which the parties may have intended the sale to be effective. Of the third of these contingencies there was no indication in the pleadings. And, therefore, upon the view most favourable to the plaintiff it is the second point of time aforesaid that should be regarded. This gives rise to the question, when was the deed 'registered' within the meaning of section 3 of

the Transfer of Property Act. On the question whether the executant of a deed compulsorily registrable, has any *locus penitentiae* to resile, by reason of the fact that the title under it is incomplete for want of registration, it has been held and that proposition appears to have been affirmed by the Judicial Committee that incompleteness due to want of registration is not a thing of which the executant can take any advantage, and that if the instrument is otherwise complete, the executant is to be regarded as having done everything that was in his power to complete the transfer and to make it effective, because registration does not depend upon the executant's consent, but is the act of the officer appointed for the purpose. *Nabadweepchandra Das v. Lokenath Ray* (1), *Kalyanasundaram Pillai v. Karuppa Mooppanar* (2). But as regards third parties, the point of time at which the transfer is to be effective is when the deed of transfer can be said to be a registered deed. The question has been considered in the case of *Veerappa Chetty v. Kadiresan Chetty* (3) in which, after referring to the relevant sections of the Registration Act, the learned Judge observed:—

Briefly then, registration includes the getting made and the making of certain endorsements, making the certificate of registration and the copying of the documents in the register book and the filing of the map or plan, if any, in Book I. The substantial portion is apparently complete with the making of the certificate of registration. It is these that section 49 prescribes should have taken place with reference to the document before it can affect any immoveable property to which it relates or be received in evidence.

We agree in the view thus expressed and, on that view, we must hold that the sale took place on the 3rd of September.

As regards the second question it may be stated at once that the case which the defendants made has failed. But it is with the plaintiff's case on the point with which we are more concerned. His case, by which he sought to establish the element of promptness

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(1) (1932) I. L. R. 59 Calc. 1176. (3) (1913) 24 Mad. L. J. 664;
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in the *shafiat* ceremonies, was that he first heard of the sale on the 4th September and that, as soon as he heard of it, he made the *talab* first at the Bar Library and then in the house of the defendant. That case, shortly stated, is that the plaintiff's officer Nagendra came to Sylhet on the 3rd September, and on going to the registration office on the 4th to inquire whether the *kabála* had been executed and registered he was told by a deed-writer that it had been, and that he promptly went to the Bar Library and saw the plaintiff who immediately made the *talab*. The Subordinate Judge has shown the utter falsity of this story and has found that the plaintiff must have come to know of the registration before the time alleged and that the *talab* at the Bar Library was stage-managed. The element of promptness having been found against the plaintiff, his suit has been dismissed; and on that finding, which is essentially a finding of fact, it has been rightly dismissed.

The appeal fails and must be dismissed. There will be no order as to costs of this appeal.

Mitter J. I agree.

Appeal dismissed.

A. A.