

[3 Mad. 46.]

APPELLATE CIVIL.

The 2nd May, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Bimaraz and another, Minors, by their Mother and Guardian
Latchamma.....(Plaintiffs) Appellants*versus*

Papaya and others... ..(Defendants) Respondents.*

Registration Act of 1871, Sections 50—48—Priority.

A sale deed of which the registration is optional, being registered, takes effect under Section 50 of the Registration Act of 1871 as against a similar but unregistered sale-deed prior in date though followed by possession.

THE question in this case, so far as it is material for the purposes of this report, was whether a registered sale-deed of which the registration was optional took effect as against an unregistered sale-deed of which the registration was also optional but which was followed by possession.

C. Rutnavelu Mudali for Appellant.

Mr. Normandy for Respondents.

On this point the Court (INNES and KERNAN, JJ.) delivered the following

Judgment:—The plaintiffs do not appear to have called in question in this suit the genuineness of the document by which Atchamma is said to have conveyed the premises to 3rd, 4th and 5th defendants. There seems to have been no impeachment of it [47] in the plaint, nor does the question appear to have arisen at the hearing of the appeal, as neither of the Subordinate Judges before whom the case came touches upon the question. The document was one which did not require registration. It was followed by possession. What then is the effect of the registered document in favour of 2nd defendant upon that of 3rd, 4th and 5th defendants? According to the literal language of Section 50† of the Registration Act of 1871 the registered document of 2nd defendant is to take effect as against the unregistered document of 3rd, 4th and 5th defendants.

But according to Section 48‡ all registered documents take effect against any oral agreement or declaration relating to the same property only when the oral agreement or declaration has not been followed by possession.

* Second Appeal No. 591 of 1880 against the decree of the Subordinate Judge of Cocanada reversing the decree of the District Munsif of Peddapuram, dated 20th March, 1880.

Registered documents relating to immoveables, of which the registration is optional, to take effect against unregistered documents.

† [Sec. 50:—Every document of the kinds mentioned in clauses (1) and (2) of section eighteen, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Explanation.—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and where the document is executed after the first day of July 1871, not registered under this Act.]

‡ [Sec. 48:—All documents, not testamentary, duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.]

Registered documents relating to property when to take effect against oral agreements.

A written instrument is an oral declaration committed to writing, and it may appear startling that an unregistered written instrument not requiring registration, followed by possession, should have less effect as against a registered instrument than an oral declaration or agreement.

The consequence of giving literal effect to the language of the Registration Act of 1871 in this part of it was constantly before the Legislature up to the date of the enactment of the Act of 1877, but no change has been made in the latter Act in the language of the corresponding sections, and we should not be carrying out the intention of the Legislature were we to refuse to give literal effect to the terms in which this provision is couched. And the 2nd defendant's registered sale-deed must, therefore, take effect as against that of 3rd, 4th and 5th defendants. We must, however, before disposing of the appeal, require the Subordinate Judge to reconsider documents C 1 and 2 and the oral evidence to them, and to find whether they are genuine and what their import is; if genuine, as bearing upon the question of whether the debt of Atehamma was contracted with the ancestor of plaintiffs and 1st and 2nd defendants or was otherwise a debt to the joint family of plaintiffs and 1st and 2nd defendants in discharge of which the property in question was sold to 2nd defendant.

The following issues will therefore be sent:—

Are Exhibits C 1 and 2 or any and which of them genuine?

Was the property, in which plaintiffs claim a share, purchased with the joint funds of the family of plaintiffs and 1st and 2nd defendants?

[48] The costs will be costs in the cause.

NOTE.—See *Agra Bank, Limited v. Barry*, L. R. H. L., 7 E. and I. App. 135, for Rules of Construction in Registry Acts, cp. 9 Bo. H. C. R., 147.