living in discord with the karnavan would not vitiate the alienation. In the two cases *Kóndi Ménón* v. *Sráng̃umreagatta Ahammada*,(1) *Kaipreta Ramen* v. *Makkaiyil Mutoren*,(2) Mr. Justice Holloway referred, in general terms, to the rule of law as one requiring the assent of all members of the tarwad, but in both the appeal of an alleged dissentient was dismissed, and we do not find that it has ever been determined that the rule is invariable. In our opinion the factious or capricious dissent of a single anandravan ought not to be allowed to invalidate a sale made in pursuance of the decision of a family conclave, and which was either absolutely necessary, or the most reasonable and prudent arrangement for the protection of the other family property. We will, therefore, ask the Subordinate Judge to find on the evidence already recorded—

(i) whether the sale to defendant No. 5 was necessary;

(ii) whether the plaintiff openly opposed it;

(iii) whether the plaintiff's opposition was reasonable or merely frivolous and factious.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

PALANI (PLAINTIFF), APPELLANT,

and

SELAMBARA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1885. July 21. 1886. January 22.

Registration Act, s. 48—*Constructive possession in pursuance of oral agreement to sell land.*

Where a vendor in pursuance of an oral agreement to sell certain land directed the tenants of the land to pay, and the tenants agreed to pay, rent to the purchaser:

Held, that such possession was given to the purchaser as would satisfy the conditions of s. 48 of the Indian Registration Act and enable him to resist the claim of subsequent registered purchaser.

APPEAL from the decree of H. Wigram, District Judge of Coimbatorĕ, modifying the decree of P. Náráyanasámi Ayyar, District Múnsif of Erode, in suit 100 of 1883.

The Acting Advocate-General (Hon. Mr. *Shephard*) and *Náráyana Ráu* for appellant.

(1) 1 M.H.C.R., 248. (2) 1 M.H.C.R., 359.

* Second Appeal 356 of 1884.

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Bhâshyam Ayyangâr for respondents.

The facts necessary for the purpose of this report appear from the judgments of the Court (Kernan and Brandt, JJ.).

KERNAN, J.—The appellant (plaintiff) filed suit No. 100 of 1883 against the two defendants and prayed that the defendant No. 1 should recover from plaintiff Rs. 1,400 and execute a deed of sale to him of certain lands, and that defendant No. 2 should surrender the lands to the plaintiff. The plaintiff relied on and proved exhibit A (1st March 1882), which was an agreement by defendant No. 1 to sell the land to him and execute a conveyance within the 30th of April 1882. It was proved that plaintiff paid to defendant No. 1 on the 1st of March 1882 Rs. 500, and Rs. 100 on the 10th of March. The stamped agreement A was registered in August 1882. Defendant No. 2 proved that defendant No. 1, on the 27th of February 1882, agreed orally to sell the same land to him, and got a decree against defendant No. 1 in suit 228 of 1882 for performance of the agreement and got a deed of sale, 12th December 1882, executed in that cause, in default of execution of conveyance by defendant No. 1.

Defendant No. 2 alleged that the agreement sued on by plaintiff was fraudulent and was subsequent to the sale to him and to the possession obtained by him.

The Múnsif dismissed the suit on the ground of misjoinder.

The plaintiff appealed, and the Judge relying partly on exhibits ii and iii (unregistered documents) found that so far as possession could be given by defendant No. 1 to the defendant No. 2, it was given on the 27th of February 1882, just three days before the agreement made with the plaintiff, and dismissed the suit as against defendant No. 2, but directed the defendant No. 1 to pay the plaintiff Rs. 600 and interest.

In this second appeal the plaintiff objected that exhibits ii and iii were inadmissible as not being registered, and therefore the Judge acted on inadmissible evidence as to the question of possession being given to defendant No. 2.

On hearing the second appeal, it appeared that the question of admissibility of exhibits ii and iii depended on the value or amount of the property to which they related, and that the question of when and how the defendant No. 2 obtained possession should be further inquired into.

By order, dated the 21st July 1885, we directed the following issues to be tried :—

(1) Are exhibits ii and iii admissible in evidence?

(2) If not, upon the other evidence already on record, did defendant No. 2 obtain possession before plaintiff's registered agreement?

The Judge has returned a finding that exhibits ii and iii were inadmissible, and no question is now made on this point.

He also finds that defendant No. 1 made over possession on the 17th of Masi, corresponding to 27th February 1882, and that he did so by asking the tenants of the lands in occupation thereof to pay their rents to the defendant No. 2, and he finds that defendant No. 2 obtained possession before the date of A, and long before the registration of it in August 1882.

In his return on the issue, the Judge referred to the evidence given by one of the witnesses for defendant No. 2, in which he says that before the day on which he signed exhibit iii he agreed to pay rent to the plaintiff. It was contended that the reference to the inadmissible exhibit iii rendered the evidence illegal. But we do not think so, as the exhibit was not thereby used in respect of any transaction therein referred to concerning the property in it. It was referred to merely to fix a date for another fact.

It was objected that on the evidence the Judge should have found that no possession either actual or constructive was given by defendant No. 1 to defendant No. 2 either accompanying or following the oral agreement with defendant No. 2. There was no evidence that actual possession of the lands was given to defendant No. 2 by delivery of the lands into his possession. The only possession alleged was constructive possession, that is, by defendant No. 1 directing the tenants in actual occupation to pay their rents in future to defendant No. 2 and by the tenants agreeing to do so.

The Judge believed that such constructive possession was so given on the 27th of February 1882, and that defendant No. 2 has since been in receipt of his share of the crop. No doubt defendant No. 1 denied that such constructive possession was given, and alleged that defendant No. 2 took possession forcibly, but the Judge disbelieved defendant No. 1. We accept the

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finding of the Judge that defendant No. 2 did receive such constructive possession.

The Registration Act in s. 48 refers to possession accompanying or following the oral agreement, but does not confine such possession to "actual possession" by delivery of possession of the land. The section would receive its full meaning if the possession intended thereby was possession according to the circumstances of the interest in the property sold and the agreement of the parties. If the vendor was at the time of sale in actual possession and sold the property with actual possession, such possession should accompany or follow the sale. If, however, the property was in actual possession of tenants, then as the tenants could not be put out so as to give the purchaser actual possession, the possession to be given should be constructive possession, by the vendor procuring the tenants to attorn to or accept new leases or agreements from the purchaser.

I would dismiss this second appeal with costs.

BRANDT, J.—There is evidence of attornment of the tenants under the defendant No. 1 to the defendant No. 2 at the request of the former, which evidence it was open to the Judge to accept as proving such attornment, irrespective of exhibits ii and iii, or at least having reference to those documents for purposes not directly affecting the right to the property in suit, and we must, I think, accept the finding of the Judge on this point.

Was there then such delivery of possession as is required by the Registration Act? That is to say, is such constructive possession as is held proved in this case insufficient for the purposes of that Act? Is physical delivery of possession alone sufficient?

I am of opinion that the words used in s. 48 of the Act do not exclude such constructive possession, and that oral agreements accompanied by such delivery of possession are sufficient to prevail against subsequent registered documents relating to the same property, when capable of proof by evidence accepted as sufficient to establish the fact of transfer of ownership and the reality of the transaction.

I would then confirm the decree appealed against and dismiss this appeal with costs.