

QUEEN  
EMPERESS  
v.  
PARANGA.

tion of section 174 is that the place where a witness is summoned to attend must be in British India:

We direct that the conviction and sentence be set aside, and the fine levied be refunded.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.*

PAPIREDDI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

NARASAREDDI (DEFENDANT), RESPONDENT.\*

*Transfer of Property Act—Act IV of 1882, s. 54—Oral sale with possession—Land worth more than Rs. 100.*

The plaintiff entered into an oral contract to sell certain land to the defendant for Rs. 2,500, and he put him into possession. The defendant made default in payment of the purchase money. The plaintiff, having professed to cancel the sale on the ground of this default, now sued to recover possession of the land with mesne profits:

*Held*, that the sale was not complete, and the plaintiff was entitled to the relief sought by him.

APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in original suit No. 17 of 1890.

This is a suit to recover possession of certain land with mesne profits accrued thereon.

It was averred in the plaint that plaintiff No. 1 had sold the land in question to the defendant on the 15th October 1887 for Rs. 2,500 payable in eight days, and had put the defendant in possession, and that defendant had paid Rs. 150 only, and that plaintiff No. 1 had subsequently cancelled the sale by reason of the non-payment of the balance. The District Judge held that time was not of the essence of a contract, and he also expressed the opinion that, although the value of the land exceeded Rs. 100, the sale accompanied by a transfer of possession was as complete as if it had been evidenced by a registered conveyance executed before consideration passed. In this view he held that the plaintiffs were entitled to a decree for the unpaid purchase money and

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\* Appeal No. 119 of 1891.

damages and not for possession of the land. In this connection he referred to *Trimathra Raghavendra v. The Municipal Commissioners of Hubli*(1), *Moidin v. Acaran*(2), *Shib Lal v. Bhagwan Das*(3), and he passed a decree in accordance with the above ruling.

PATIREDDI  
v.  
NARASAREDDI.

The plaintiffs preferred this appeal.

*Pattabhirama Ayyar* for appellants.

*Rama Rau* for respondent.

JUDGMENT.—It is argued that the decision of the Lower Court is contrary to the provisions of section 54 of the Transfer of Property Act, by which it is enacted that the transfer of immovable property above Rs. 100 in value can be made only by registered instrument. In this case the value of the property, which was the subject of the contract, was upwards of Rs. 2,000. All that has been found is that there was an oral contract for sale, possession given to defendant, and part-payment of the purchase money Rs. 150. We cannot concede that possession can take the place of the registered deed required by section 54. Moreover possession was only given pending the completion of the contract for sale. It did not amount to any transfer of the property. The cases referred to by the District Judge were decided prior to the Transfer of Property Act and have therefore no application. The decision relied on by Mr. Rama Rau in *Janki v. Girjadat*(4) is not on all fours with this case, and the decision of the majority of the Full Bench proceeded on the ground that the vendor and vendee had colluded to defraud the persons who had the right of pre-emption. Another point urged upon us is that defendant is entitled to claim specific performance, and that so long as he has such right, he cannot be dispossessed. We observe that a suit for specific performance was pending at the time when defendant put in his written statement, and we understand that it was dismissed on the ground that the contract, specific performance of which defendant sought, was different from the actual contract. The decree of the Court of First Instance was confirmed in appeal. It is very doubtful whether defendant can maintain a second suit for specific performance of the contract of sale and for execution of a registered deed, but, assuming that it can be done, we do not

(1) I.L.R., 3 Bom., 172.

(2) I.L.R., 11 Mad., 263.

(3) I.L.R., 11 All., 244.

(4) I.L.R., 7 All., 482.

PAPIREDDI  
v.  
NARASAREDDI. see how he can resist the present suit, as the property has not passed to him and cannot vest in him until he is in possession of a registered deed. We reverse the decree of the Lower Court and give plaintiffs a decree for possession and mesne profits from 15th October 1887 to the date on which possession is given to plaintiffs to be ascertained in execution. Cr dit must be given to defendant for the Rs. 150 paid to plaintiffs as part-payment. Plaintiffs are entitled to their costs throughout.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

1893.  
March 17.

RAMASAMI AND OTHERS (DEFENDANTS NOS. 2 TO 4 AND 7 TO 9),  
APPELLANTS,

v.

PAPAYYA AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

*Hindu Law—Gift of land to a daughter—Presumption as to interest taken by donee.*

In a suit to recover possession of certain land, the plaintiff claimed title under a gift made to his mother, deceased, by her father, whose sons and grandsons, the defendants, had entered into possession on the death of the donee, which took place less than three years before suit. The deed of gift was not produced, and it did not appear that the donee, who had been placed in possession of the land and had retained it for thirty-seven years, was a widow at the time of the gift:

*Held*, that the plaintiffs were entitled to a decree, there being no ground to presume that a life-interest merely was intended to pass under the gift.

SECOND APPEAL against the decree of H. G. Joseph, Acting District Judge of Ganjam, in appeal suit No. 44 of 1892, confirming the decree of N. Somayajulu Pantulu, Acting District Munsif of Sompeta, in original suit No. 243 of 1891.

The plaintiffs sued for possession of certain land claiming title under a gift made to Gangammal, the late mother of plaintiff No. 1, from her father. The defendants were the son and grandsons of the donor, and had entered into possession on the death of Gangammal. The defendants pleaded that Gangammal had taken only a life-interest. The deed of gift was not produced.