

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.*

MUTHIA CHETTY (FIRST DEFENDANT), APPELLANT,

*v.*

SINNA VELLIAM CHETTY *alias* SINNA KARUPPAN  
;CHETTY (PLAINTIFF), RESPONDENT.\*

1911.  
February 2.

*Transfer of Property Act (Act IV of 1882), sec. 55, cl. (4)—Vendor has no absolute title to interest in all cases irrespective of equities—Right of vendor in possession to interest.*

Section 55 clause (4) of the Transfer of Property Act, does not give the vendor an absolute title to interest in all cases irrespective of equities. It only provides that the vendor shall have a lien for interest when it is payable.

Interest on the purchase money cannot be claimed so long as the vendor remains in possession of the property sold.

APPEAL against the decree of S. Ramasamy Aiyalgar, Subordinate Judge of Madura (East), in Original Suit No. 62 of 1906.

*S. Srinivasa Aiyangar* for appellant.

*K. Srinivasa Aiyangar* for respondent.

The facts for the purpose of this case are fully set out in the judgment.

JUDGMENT.—In this appeal the first defendant is the appellant. The plaintiff sued to recover possession of a tope half of which was sold to him by the first defendant with the profits thereof from the 4th July, 1903, the date of the conveyance (Exhibit C). The plaintiff's case is that as the defendant failed to execute a conveyance according to the agreement (Exhibit A), dated the 28th April, 1903, within the time fixed, the plaintiff demanded performance of the agreement and after some negotiations between the parties it was agreed that the plaintiff should pay the purchase money Rs. 2,600 before the Registrar of Assurances at the time of the registration of the conveyance after the defendant made an endorsement of discharge on a hundi for the amount which the plaintiff had previously executed in the defendant's favour and deposited with one Muthia Chetti. The plaintiff alleges that as the defendant refused to register the deed he applied for compulsory

\* Appeal No. 72 of 1908.

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registration of Exhibit C which had been previously executed by the defendant and handed over to the plaintiff. Before the Registrar the execution of Exhibit C was admitted by the defendant, but he stated that the sale could not be completed as the plaintiff had failed to pay the purchase money. The defendant contended in this suit that the understanding between the parties was that the property should not pass to the plaintiff and Exhibit C should not have any legal operation until the plaintiff paid the purchase money which he was bound to do at the Registration office before the registration of Exhibit C. He repudiated all obligation under Exhibit C and if he was held bound by it, he claimed payment of not only the sum of Rs. 2,600, the amount of the purchase money, but also interest on it at 12 per cent.; at the same time he disclaimed any liability for the payment to the plaintiff of the profits of the land until the payment of the purchase money.

The lower Court found that the defendant was not to blame in the matter of the non-payment of the purchase money and that the plaintiff if he was entitled to have payment endorsed on the hundi ought to have had it produced at the Registrar's office. It therefore refused to award to the plaintiff the profits claimed. With regard to the defendant's claim for interest the Subordinate Judge held that he was not entitled to it, as he remained in possession of the land and got the income accruing therefrom.

It is contended before us by the appellant that he is entitled to interest from the date of Exhibit C when according to him the ownership of the property vested in him. The respondent contended before us that according to the agreement between the parties the ownership had not passed to the plaintiff as he failed to pay the purchase money. We do not consider it necessary to go into this question as we agree with the learned vakil for the respondent that the appellant is not entitled to interest in this case. For the same reason we do not deal with the contention that the plaintiff is entitled to an unconditional decree for possession and that the lower Court was not justified in making its decree in the plaintiff's favour conditional on his paying the purchase money to the defendant; but we may point out that the case of *Velayutha Chetty v. Govindasawmi Naicken* (1) relied on in

support of this position appears to be in conflict with *Subrahmaniya Ayyar v. Poovan* (1) which does not seem to have been brought to the notice of the learned Judges who decided *Velayutha Chetty v. Govindasawmi Naicken* (2). The claim for interest is based by the learned pleader for the appellant on section 55, clause 4(b) of the Transfer of Property Act. That clause in our opinion does not give the vendor an absolute right to interest on the purchase money irrespective of the equities and circumstances of each case. The object of the clause is to give the vendor a lien on the property for unpaid purchase money and it declares that the lien will inure for the interest as well as for the principal of the purchase money, assuming that interest is payable. It does not enact that the vendor is entitled to interest in every case. The only case relied on by the appellant, *Leggot v. Metropolitan Railway Company* (3), does not support his contention. In that case, the agreement between the parties expressly provided for payment of interest by the vendee and of an occupation rent by the vendor till delivery of possession which was to take place on a certain day. The vendor was obliged to remain in possession against his will after the time fixed for delivery and he had to sue for specific performance. The question raised was whether the vendee was entitled to occupation rent till delivery of possession and no question was raised as to the vendor's right to interest on the purchase money, which was conceded, the parties having expressly provided for it. Sir W. M. JAMES, L. J., held that the vendee was not entitled to occupation rent, as the vendor continued in occupation of the premises "under a pressure arising from the purchaser's default." As observed in *Fry on Specific Performance*, page 591, fourth edition, it is obviously inequitable in the absence of express and distinct stipulation that either party to the contract should at one and the same time enjoy the benefits flowing from possession of the property and those flowing from possession of the purchase money. The estate and purchase money are things mutually exclusive. "You cannot," said Knight BRUCE, V.C., in a case arising out of the sale of some *slob* lands in Chichester harbour, "have both money and mud." It is not alleged that there was any such express stipulation in this

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(1) (1904) I. L. R., 27 Mad., 28.

(2) (1910) M. W. N., 637.

(3) (1870) L. R., 5 Ch., App. Cases, 716.

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case. On the other hand, we think that the parties must have intended that the payment of purchase money and the delivery of possession of the property should be carried out contemporaneously and that interest on the money would not be payable so long as the defendant was in possession of the land.

We confirm the lower Court's decision and dismiss the appeal with costs.

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### APPELLATE CIVIL.

*Before Mr. Justice Munro and Mr. Justice Sankaran Nair.*

A. SUNDARARAMAYYA (PLAINTIFF), APPELLANT

v.

C. SITAMMA AND SEVEN OTHERS (DEFENDANTS), RESPONDENTS.\*

*Hindu Law—Gift—Gift of immovable property to daughter by father—Gift valid whether made at or after marriage.*

There is a moral obligation on a Hindu father to make a gift to his daughter on the occasion of her marriage.

A gift by a father to his daughter of a small portion of ancestral immovable property is binding on the undivided family, whether such gift is made at or after the daughter's marriage.

SECOND APPEAL against the decree of T. Gopalakrishna Pillai, Subordinate Judge of Kistna at Ellore, in Appeal Suit No. 18 of 1908, presented against the decree of T. Varadarajulu Nayudu, District Munsif of Tanuku, in Original Suit No. 56 of 1906.

The facts for the purpose of this case are fully set out in the judgment.

The Hon. the Advocate-General for appellant.

V. Ramesam for sixth to eighth respondents and P. Narayanamurti for first respondent.

JUDGMENT.—The plaintiff and his father were members of an undivided family. The father made a gift of about 8 acres of land, which formed ancestral property, to the first defendant, his daughter, in 1899. The father died in 1904 and the plaintiff sues to recover possession of the land given to the first defendant by his father, on the ground that the father was not

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\* Second Appeal No. 572 of 1909.