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must be held to bar the application of section 189, under which jurisdiction is vested in the revenue courts.

The Subordinate Judge will restore the plaints to file and dispose of them according to law. Costs will follow the result.

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## APPELLATE CIVIL.

*Before the Chief Justice Sir Charles Arnold White and Mr. Justice Munro.*

1911. April 27.

SUBBAYYAR (PLAINTIFF) APPELLANT,

*v.*

MONIEM SUBRAMANIA AYYAR AND THREE OTHERS (SECOND DEFENDANT AND LEGAL REPRESENTATIVES OF FIRST DEFENDANT), RESPONDENTS.*

*Indian Evidence Act (I of 1872), s. 92—Sale of land, consideration for, not as stated in the deed—Oral promise, failure to perform.*

Assuming that it may be shown by oral evidence that the real consideration for a deed of sale was not the consideration stated in the deed itself but a promise to maintain the plaintiff, in the absence of coercion, undue influence, fraud or misrepresentation of any kind, at the time when the deed of sale was registered and possession taken thereunder, the deed will not be set aside. The special equitable doctrine whereby the American Courts have relieved in cases where an aged person has conveyed all his property in consideration of an oral promise to be supported for the remainder of his life by the grantee, not applied.

SECOND APPEAL presented against the decree of K. C. MANAVEDAN RAJA, the District Judge of North Arcot, in Appeal Suit No. 335 of 1907, presented against the decree of T. KRISHNASWAMI NAIDU, the District Munsif, Arni, in Original Suit No. 47 of 1906.

The facts of this case are stated in the judgment.

Messrs. *C. P. Ramaswami Ayyar* and *C. K. Mahadeva Ayyar* for appellant.

*V. Ryru Nambiar* for first respondent.

*T. V. Ramanuja Rau* for third and fourth respondents.

The CHIEF JUSTICE—In this suit the plaintiff asked that a certain deed of sale might be set aside. The deed of sale (Exhibit

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*Second Appeal No. 1231 of 1909.

I) was executed between the plaintiff and the first defendant's husband.

The deed was registered, delivery of the deed was given to the first defendant's husband and the second defendant is now in possession under his purchase from the first defendant. The consideration recited in the deed is Rs. 300.

The case for the plaintiff is that the real consideration for the deed was a promise by the first defendant's husband that he would maintain the plaintiff who, we are told, was an old man when the deed was executed, for the rest of his life.

The learned District Judge considered the question whether under section 92 of the Indian Evidence Act, oral evidence was admissible for the purpose of showing what was the real consideration for this deed of sale. The learned judge came to the conclusion that such evidence was not admissible. For the purpose of considering the question whether the plaintiff is entitled to get this deed set aside, I assume that it is open to the plaintiff to show by oral evidence that the real consideration for the deed of sale was not the consideration stated in the deed itself, but the promise to maintain the plaintiff. I am of opinion that the plaintiff is not entitled to have this deed set aside. It is not found or alleged that there was coercion, undue influence, fraud or misrepresentation of any kind at the time when the deed of sale was registered and possession taken thereunder. That being so, the title to the property in question under section 54 of the Transfer of Property Act passed to the party to whom the conveyance was executed. I do not know that that is contested. If it is necessary to cite authorities in support of that proposition, I might refer to the decision in *Sagaji* v. *Namdev*(1), *Baijnath Singh* v. *Paltu*(2) and the decision of this court reported in *Govindammal* v. *Gopalachariar*(3). As regards the case last mentioned, the learned judges did not decide the first point whether a suit would lie in the circumstances of that case by the party who executed the sale deed to get it set aside. But it is an authority that the transfer of ownership of land by sale is effected on the execution and registration of the conveyance even though the price be not paid, so I think I may say that where the title passes on failure of consideration or on failure to pay the agreed purchase money the

(1) (1899) I.L.R., 23 Bom., 525. (2) (1908) I.L.R., 30 All., 125.
(3) (1906) 16 M.L.J., 524.

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remedy of the vendor is not to have the deed of sale set aside, but to recover the purchase money.

Then the question is, are we to apply a different principle to a case of this character where the real consideration, as we assume for the purpose of this judgment, is not payment of money but maintenance of the party conveying for his life.

The learned vakil for the appellant has been unable to call our attention to any English or Indian authority in which this distinction has received recognition. He has, however, called our attention to the law in America which is to be found laid down in Pomeroy's Equity Jurisprudence, Volume VI (Equitable Remedies, Volume II), paragraph 686. The learned author there, after referring to the general rule that "the mere failure by a grantee to perform a promise, which formed the whole or part of the consideration inducing an executed conveyance, gives rise to no right of rescission in the grantor", says: "This rule has been found to work a great hardship in the frequent cases where an aged person has conveyed all his property to a son or other relative on the consideration, often oral, that the grantee shall support and care for the grantor, during the remainder of the grantor's life, and the grantee, while retaining the land has abandoned the performance of his obligation." No doubt this special equity in these special circumstances has been recognized by the courts of America. I know of no English cases where this special equity has been recognized and I know of no Indian case; and in the complete absence of authority I do not think that we ought to import into the law of this country this very special rule of equity which certain American courts have applied. I think we must apply the law as laid down by the decisions of our own courts and applying that law—though possibly the case may be a hard one—I think it is not possible to come to any other conclusion than that the suit was rightly dismissed. It is not necessary to discuss the other points raised and I think we must dismiss the appeal with costs.

MUNRO, J.—I agree.