

## APPELLATE CIVIL.

Before Mr. Justice Se-hajiri Ayyar and Mr. Justice  
Kumaraswami Sastriyar.

1914.  
August 7, 11  
and 27.

MUTHUKARUPPAN SAMBAN AND FOUR OTHERS  
(DEFENDANTS NOS. 1 TO 5), APPELLANTS,

v.

MUTHU SAMBAN (PLAINTIFF), RESPONDENT.\*

*Transfer of Property Act (IV of 1882), ss. 4 and 54—Unregistered sale-deed for land of less than Rs. 100 in value, invalidity of, when no previous oral sale—Evidence, in admissibility of, to prove adverse possession—Possession, change of, in cases of oral sale, how to be effected.*

A sale of tangible immoveable property of the value of less than Rs. 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and incompetent to pass the title to the property under section 54, Transfer of Property Act (IV of 1882).

A document which affects immoveable property, and which is required by law to be registered is, if it is not registered, inadmissible in evidence to prove the nature of possession of the person claiming under it, such as, the adverse character of the possession.

*Per curium.*—If an oral sale is made of immoveable property of the value of less than Rs. 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 54 of the Transfer of Property Act, the person in possession should give it up formally and take it afterwards as vendee.

*Sibendrapada Banerjee v. Secretary of State for India in Council (1907)* I.L.R. 34 Cal., 207, not followed.

SECOND APPEAL against the decree of J. G. BURN, the District Judge of Madura, in Appeal No. 163 of 1912, preferred against the decree of G. R. SUBBARAYA AYYAR, the District Munsif of Tirumangalam, in Original Suit No. 92 of 1912.

The necessary facts are given in the judgment.

G. S. Ramachandra Ayyar for the appellants.

K. Balamukunda Ayyar and K. Jagannatha Ayyar for the respondent.

\* Second Appeal No. 2349 of 1913.

JUDGMENT.—Defendants Nos. 1 to 5 are the appellants. The plaintiff as the purchaser from one Alagur Samban sued to redeem an usufructuary mortgage, dated 8th December 1897, executed by Alagur Samban in favour of the first defendant. Defendants Nos. 1 to 5 plead a sale by Alagur Samban to the first defendant by an unregistered sale-deed, dated 6th April 1898, and state that they have been in possession as owners ever since that date and that the plaintiff's suit is barred by limitation. The District Munsif held that the plaintiff was aware of the sale-deed in favour of the defendants and the defendant's possession thereunder and that he was not entitled to redeem on the strength of the sale-deed. He held in effect that, though the plaintiff's deed was registered, and that of the defendant's unregistered, the plaintiff was entitled to no priority as he purchased with notice of the defendant's title. The District Judge on appeal reversed the decision of the District Munsif on the ground that as the defendants were already in possession as mortgagees at the date of the sale-deed (Exhibit II) and no fresh possession was given to them, they acquired no title under section 54 of the Transfer of Property Act. He also held that a mere assertion of title under an invalid sale-deed cannot create prescriptive rights. He was of opinion that it was not shown that the plaintiff had notice of the defendant's unregistered sale-deed when he purchased the property. It is contended for the appellants that the view taken by the District Judge is erroneous and that the fact the defendants were already in possession will not render the sale to them invalid. The District Judge relied on *Sibendrapada Banerjee v. Secretary of State for India in Council*(1), and was of opinion that the oral sale, even if true was invalid as the vendee was already in possession of the properties at the time of the oral sale. We are unable to see why an oral sale with a request by the vendor to the vendee to remain in possession in the capacity of vendee with absolute rights should not be sufficient to pass title without having recourse to the expedient of the vendee quitting the property one moment and entering upon it at another. An arrangement by which the legal nature and character of the previous possession is put an end to and subsequent possession

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treated as one by the vendee with absolute title is, in our opinion, sufficient to satisfy the requirements of section 54 of the Transfer of Property Act. In *Kannan v. Krishnan*(1), it was held that possession under a mortgage which was followed by an agreement to sell was equivalent to delivery of possession so as to satisfy the requirements of section 48 of the Registration Act. In *Palani v. Selambara*(2), it was held that an attornment by tenants was sufficient delivery of possession to satisfy the requirements of section 48 of the Registration Act, and in *Kannan v. Krishnan*(1), above referred to, HANDLEY, J., was of opinion that the same principle may be extended to cases where possession is already with the purchaser and he retains it under the agreement to sell. So far as the delivery of possession is concerned there seems to be no difference between the provisions of section 48 of the Registration Act and those of section 54 of the Transfer of Property Act. Section 48 of the Registration Act requires an agreement or declaration to be accompanied or followed by delivery of possession and section 54 of the Transfer of Property Act requires delivery of the property, such delivery being by putting the purchaser in possession of the property. In *Bai Kushal v. Lakhma Mana*(3), it was held that where one of several donees was in physical possession a declaration by the donor to the donee in occupation that he has parted with the possession is sufficient to validate the gift.

Unless there is something in section 54 of the Transfer of Property Act which compels us to do so, there is no reason for putting on this section a construction that would in effect require sales of properties below Rs. 100 to be only by registered instruments in the numerous classes of cases where the vendee is already in possession as tenant or mortgagee.

With due deference to the learned Judges who decided *Sibendrapada Banerjee v. Secretary of State for India in Council*(4), we are unable to accept that case as a correct exposition of the provisions of section 54 of the Transfer of Property Act. The conclusion we have come to is that, if there was an oral sale of the properties, the fact that the vendee was already in possession would not render the sale invalid if the vendor

(1) (1890) I.L.R., 13 Mad., 324.

(2) (1886) I.L.R., 9 Mad., 267.

(3) (1888) I.L.R., 7 Bom., 452.

(4) (1907) I.L.R., 34 Cal., 207.

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had by appropriate declarations or acts converted the possession of the vendee as mortgagee into one as purchaser. The difficulty in the present case, however, arises from the fact that no oral sale has been pleaded; on the contrary the case for the defendants has been that there was an unregistered document evidencing the sale which was accompanied by delivery of possession. No issue was raised as to any oral sale having preceded Exhibit II, but issues 1 and 2 are framed on the footing that the defendants' title is based on a deed of sale coupled with delivery of possession. Under these circumstances, we do not think that it is open to the appellants to set up an oral sale as to which there was no issue or any evidence.

The position, therefore is that the sale deed relied upon by the defendants is invalid for want of registration as section 54 of the Transfer of Property Act requires all sale deeds, if in writing, to be registered. Section 4 of the Transfer of Property Act provides that section 54 of the Act shall be read as supplemental to the Registration Act. The effect, therefore, of section 4 read with section 54 of the Transfer of Property Act is to make all sale-deeds compulsorily registrable irrespective of the value of the property. There is, therefore, in this case no competition between a document which is optionally registrable and a registered document. The competition is between an invalid and a valid sale-deed. It is argued by the appellants' vakil that, as the defendants had possession for twelve years before the suit, they acquired title by prescription and that even assuming that the sale deed in their favour was invalid it must be taken that their possession was an assertion of absolute title as vendees. The difficulty in accepting this contention of the appellants' vakil is that, as the sale-deed (Exhibit II) is required by law to be registered it is not admissible in evidence even for the purpose of showing the nature of the appellants' possession. In *Subbayya v. Madduleiah*(1), it was held that an unregistered document is inadmissible to prove the nature of the possession of the person claiming under it. So far as this Presidency is concerned the balance of authority is for holding that the establishment of title by adverse possession is a transaction affecting immoveable property. If the defendant's

(1) (1907) 17 M.L.J., 469.

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sale-deed cannot be looked into for the purpose of determining the nature of their possession, there are no materials for holding that their admitted previous possession as mortgagees was altered or that they acquired by prescription absolute title as purchasers.

The Second Appeal fails and is dismissed with costs.  
N.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.*

1914.  
September 2.

GANDLA PEDDA NAGANNA AND TWO OTHERS (PLAINTIFFS),  
APPELLANTS,

v.

SIVANAPPA AND TWO OTHERS (DEFENDANTS), RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), O. II, r. 2—Specific Relief Act (I of 1877), sec. 42—Suit for declaration—Previous decree between third parties—Plaintiffs not parties—Suit to declare that the decree is collusive and not binding on plaintiffs, if maintainable.*

The plaintiffs sued for a declaration (1) that they were the owners of the suit properties as the reversioners of one N, who was the last male owner and (2) that a decree obtained by the first defendant against the second in respect of the properties in another suit to which the plaintiffs were not parties, was collusive and was not binding on the plaintiffs. The plaintiffs had already brought a suit in the same Court against the present defendants to recover possession of some other properties as the reversionary heirs of N but did not include therein the properties claimed in the present suit, though the defendants were in possession of them at the time of their previous suit. The plaintiffs alleged that they came into possession of the properties subsequently to the previous suit. The defendants contended that the suit was barred under Order II, rule 2 of the Civil Procedure Code, and that the suit for a declaration that the decree passed in the suit between the first and the second defendants was collusive and not binding on the plaintiffs, was not maintainable.

*Held*, that the present suit was not barred under Order II, rule 2 of the Civil Procedure Code.

*Held* further, that a suit for a declaration that a decree obtained by the first defendant against the second defendant was collusive and not binding on the plaintiffs was maintainable under section 42 of the Specific Relief Act.

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\* Second Appeal No. 372 of 1913.