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IN THE  
MATTER OF A  
PLEADER.

would have the effect of suspending or dismissing the pleader from practice. By his order refusing to renew the certificate the learned District Judge has in effect found the pleader guilty before he has been tried. Notwithstanding the alleged misconduct by the pleader he has been practising from February, 1915, to the end of the year. We think that the pleader should not be suspended under the circumstances of the present case until the result of the criminal prosecution is made known. We accordingly direct the learned District Judge to renew the certificate of the pleader in question. After the criminal trial, if necessary, and in the event of a conviction, the matter can be reported to the High Court for orders.

*Order quashed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice  
Muhammad Rafiq.*

NAUBAT RAI AND ANOTHER (DEFENDANTS) v. DHAUNKAL SINGH  
(PLAINTIFF) AND SHEORAJ SINGH AND ANOTHER (DEFENDANTS).\*

*Act No. 1 of 1877 (Specific Relief Act), section 27—Sale—Suit for specific performance of contract to sell, defendants being vendees under a registered sale-deed — Priority—Act No. XVI of 1908 (Indian Registration Act), section 50.*

The owners of a village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff, provided that the auction sale should be set aside. The auction sale was set aside; but subsequently the village was sold by means of a registered sale-deed to a third party. *Held*, on suit by the plaintiff for specific performance of the contract to sell to him, that the defendants vendees' registered sale-deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff.

THE facts of this case were as follows :—

The plaintiff alleged that there was a contract, dated the 24th of December, 1910, between him and the owners of a certain village that the village should be sold to him, if a sale of the same in execution of a decree could be set aside; that the auction sale had been set aside, but that the owners, contrary to the agreement with him, had subsequently, on the 26th of July, 1912, sold the

\* First Appeal No. 411 of 1913, from a decree of Rama Das, first Subordinate Judge of Aligarh, dated the 27th of August, 1913.

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property to Naubat Rai and another, defendants, and that they had purchased with knowledge of the prior agreement with him. The plaintiff sued for specific performance of the agreement made with him.

The vendees defendants denied all knowledge of the contract between their vendors and the plaintiff; they stated that there was no real intention to sell the property to the plaintiff, the object of the agreement having been to facilitate the setting aside of the auction sale on the ground of inadequacy of consideration, and further pleaded that the property having already been sold in execution of a decree on the date of the contract, *viz.*, the 24th of December, 1910, the vendors on that date had no saleable interest left in the property about which they could enter into a valid contract. The court below decreed the suit. The defendants vendees appealed to the High Court.

The Hon'ble Pandit *Moti Lal Nehru* (The Hon'ble Dr. *Sundar Lal* and Mr. *Jawahar Lal Nehru*, with him), for the appellants :—

The plaintiff having come into court on the allegation that the defendants appellants had knowledge of the agreement with him the burden of proof lay on him to establish that allegation by affirmative evidence. If no evidence were given at all the plaintiff undoubtedly would fail. The appellants cannot be expected to prove the negative. If the only proof in the case consists of two deeds, then, since the deed of the vendees is registered, while that of the plaintiff (the agreement to sell) is unregistered, the court will have to give effect to the registered deed. *Ohinnappa Reddi v. Manickavasagam Chetti* (1), *Bhabu Roy v. Jakhru Roy* (2), *Harnandun Singh v. Jawad Ali* (3) and *Kadar v. Ismail* (4). The suit ought to have been dismissed, inasmuch as the plaintiff's evidence about the presence of the appellants at the time when the agreement between him and the vendors had been entered into was disbelieved.

Mr. *B. E. O'Gonor*, (Munshi *Gulzari Lal*, with him), for the respondents, was not called on.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—This appeal arises out of a suit for specific performance of a contract alleged to have

(1) (1902) I. L. R., 25 Mad., 1.

(3) (1900) I. L. R., 27 Cal., 468.

(2) (1885) I. L. R., 11 Cal., 667.

(4) (1886) I. L. R., 9 Mad., 119.

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been made by the defendants Nos. 1 and 2 in favour of the plaintiff. The alleged contract is dated the 24th of December, 1910. It was for the sale of a village called Binpur Khurd for the price of Rs. 21,000. As part of the consideration the purchaser was to be entitled to set off the amount due for principal and interest upon a certain promissory note, dated the 15th of December, 1910. It appears that the village had already been sold in execution of a decree against the vendors, and the sale was conditional upon this auction sale being set aside. The auction sale, we may here mention, was subsequently set aside under a compromise. In the court below defendants Nos. 1 and 2 pleaded that there was no real intention ever to sell the property to the plaintiff, but that the document (which admittedly was executed) was merely for the purpose of strengthening the application to set aside the auction sale on the ground of inadequacy of price. The defendants Nos. 3 and 4 (who are appellants here), pleaded that they were *bona fide* purchasers without notice under a sale-deed, dated the 26th of July, 1912. They further pleaded that, inasmuch as at the time of the alleged contract with the plaintiff the property had already been sold by auction sale, the contract was void. The court below has found that there was no solid foundation for the plea of the defendants Nos. 1 and 2. They have not appealed and there is now no controversy on the question of the genuineness of the contract of sale made in favour of the plaintiff. The court below has found that Naubat Rai and Nek Ram were aware of the sale to the plaintiff and has accordingly decreed the plaintiff's claim. In appeal it has been urged that the evidence of knowledge of the defendants is unreliable and unsatisfactory. It is further urged that having regard to the provisions of section 50 of the Registration Act the registered sale deed in favour of the appellants must have preference over the unregistered contract in favour of the plaintiffs and that the *onus* lay upon the plaintiff of showing that the appellants had knowledge of the contract of sale. There is evidence on the record that Naubat Rai (who had the sale carried out on behalf of himself and his co-purchaser) was actually present at the time the contract in favour of the plaintiff was made and executed. Apart from this it appears that Naubat Rai has two brothers, Banke Lal and Gulzari Lal. They all three live together.

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Banke Lal is the patwari of the very village which was sold. It has been sworn to by a witness that not only Naubat Rai but this man Banke Lal was present at the time that the contract of sale was made in favour of the plaintiff. It is almost certain that Banke Lal knew of the contract. Banke Lal was not produced. There can be little doubt that these circumstances weighed very much with the court below when it came to its decision that Naubat Rai and his co-purchaser knew of the contract in favour of the plaintiff. It is of some importance to consider the point of law raised by the appellants. No doubt if the *onus* lay on the plaintiff of showing that Naubat Rai and Nek Ram were aware of the sale, and if we were confined to a consideration of the oral evidence, and had to disregard surrounding circumstances and probabilities, the case might present some difficulty. It seems to us, however, that the contention of the appellant that their sale-deed must be preferred to the unregistered contract in favour of the plaintiff has no force. Section 50, clause (1), of the Registration Act of 1908, no doubt, provides that a document duly registered takes effect against every unregistered document relating to the same property whether such unregistered document be of the same nature as the registered document or not. But clause (2) expressly provides that the section shall not apply to any document mentioned in sub-section (2) of section 17 of the Act. One class of "document mentioned in clause (2) of section 17" is "any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of Rs. 100 and upwards to or in immoveable property; but merely creating a right to obtain another document which will, when executed, create, declare, assign limit, or extinguish any such right, title, or interest." It seems to us that this class includes a contract for sale. If then the provisions of section 50 (1) of the Registration Act have no application, we have to look to section 27 of the Specific Relief Act to see what are the rights of the parties. That section provides as follows: "except as otherwise provided by this chapter specific performance of a contract may be enforced against (a) either party thereto, (b) any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract."

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It seems to us that, regard being had to the provisions of this section the *onus* lay upon the appellants to show that they had no notice of the contract in favour of the plaintiff. Having regard to the evidence in the case and the surrounding circumstances, we have no doubt whatever that the appellants (or at any rate Naubat Rai who acted for himself and his co-purchasers) were fully aware of the contract for sale in favour of the plaintiff. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice  
Muhammad Rafiq.*

NAJM-UN-NISSA BIBI (PLAINTIFF) v. AMINA BIBI AND OTHERS  
(DEFENDANTS).\*

*Civil Procedure Code (1908), section 109—Appeal to His Majesty in Council—  
“Substantial question of law”—Position of holder of certificate under the  
Succession Certificate Act, 1889.*

*Held that the nature of the legal position of a person who has collected the  
debts of a deceased person by virtue of his being the holder of a succession  
certificate granted under the provisions of the Succession Certificate Act, 1889,  
is a substantial question of law such as would support the granting of special  
leave to appeal to His Majesty in Council.*

THE facts of this case were as follows :—

One Shaikh Minnat-ullah died leaving his widow, Musammat Najm-un-nissa, the plaintiff appellant, and his father, Khadim Husain, as his heirs. Subsequently Khadim Husain died leaving the defendants respondents as his heirs. Under a mortgage-deed dated 14th February, 1891, Nasrat-ullah and Musammat Karamat Bibi had borrowed Rs. 7,296 from Minnat-ullah. After the death of Khadim Husain, the first defendant, Musammat Amina Bibi, his widow, obtained a succession certificate in regard to this debt due from the mortgagors, and together with the other defendants brought a suit for sale of the property mortgaged, making Musammat Najm-un-nissa a defendant to that suit. A decree for sale was obtained and in execution of that decree the mortgaged property was sold and purchased by the decree-holders on the 21st of May, 1906, and the sale was confirmed on the 15th of June, 1906. Musammat Najm-un-nissa brought this suit for recovery of one-fourth of the decretal amount together with interest on the

\* Application No. 17 of 1915, for leave to appeal to His Majesty in Council.