

*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

1940
July, 25

PEAREY LAL (DEFENDANT) *v.* MISRI AND ANOTHER
(PLAINTIFFS)*

Partnership Act (IX of 1932), sections 15, 19—Sale by one partner of immovable property of the firm—Wholly invalid—Contract Act (IX of 1872), sections 196, 200—Ratification—Not possible of an act which was not done on behalf of the ratifier—Transfer of Property Act (IV of 1882), section 43—Subsequent title acquired by unauthorised vendor feeds the estoppel.

Two partners, *B* and *D*, constituted a firm. *B* sold certain immovable property belonging to the firm to the plaintiff; he professed to sell it in his own right and not on behalf of *D* or the firm. The next day *D* sold the same property to the defendant. Soon afterwards proceedings for dissolution of the partnership were instituted, which terminated in an arbitration award, to which both the parties consented. One term of the award was that the property in question was awarded to *B*, his sale deed was held to be valid and *D*'s sale deed was held to be invalid. Thereafter the plaintiff brought a suit for a declaration that the property belonged to him:

Held, that—

(1) Under sections 15 and 19 of the Partnership Act a sale of immovable property, belonging to the firm, by one partner alone is wholly void and ineffective even as regards that partner's share. *B*'s sale deed was therefore originally invalid.

(2) Under sections 196 and 200 of the Contract Act there could be no valid ratification of *B*'s sale deed by *D* in the arbitration proceedings, because *B* professed to make the sale on his own behalf alone and not on behalf of *D* or the firm, and also because the ratification would have the effect of prejudicially affecting the rights of the defendant to whom *D* had sold the same property.

(3) Under section 43 of the Transfer of Property Act the plaintiff was entitled to the benefit of the title which his vendor *B* subsequently acquired in the property sold by him; thus the defect in title which existed at the time of the sale deed was subsequently cured.

*Second Appeal No. 1375 of 1937, from a decree of F. H. Logan, Civil Judge of Meerut, dated the 8th of March, 1937, confirming a decree of Jamil Ahmad, Second Additional Munsif of Meerut, dated the 7th of May, 1936.

Mr. *Basudeva Mukerji*, for the appellant.

Mr. *Shiva Prasad Sinha*, for the respondents.

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THOM, C.J., and GANGA NATH, J.:—This is a defendant's appeal and arises out of a suit brought by the plaintiffs respondents for declaration that the house described in the plaint belonged to them. There was a firm Kure Mal Kallu Mal. Bhagwan Das and Durga Prasad were its partners. The property in dispute, as has been found by both the lower courts, belonged to this firm. On 17th August, 1933, Bhagwan Das sold the property in dispute to the plaintiffs. On the next day, that is 18th August, 1933, the same property was sold by Durga Prasad to the defendant. Both the sale deeds were registered on the same day, the 18th August, 1933. The firm was subsequently dissolved by an award dated 24th July, 1935. The defendant contended that the plaintiffs' sale deed was invalid inasmuch as Bhagwan Das had no right to sell the partnership property. The trial court found that, though Bhagwan Das had no right to sell the property to the plaintiffs, yet the sale was ratified in the arbitration proceedings by Durga Prasad and therefore the plaintiffs' sale deed was valid. On appeal the decision of the trial court was upheld.

The defendant has appealed. It has been urged on his behalf that the plaintiffs' sale deed was invalid, because there could be no ratification by Durga Prasad in the arbitration proceedings. The argument is based on the fact that Bhagwan Das executed the sale deed in his own right and not on behalf of the firm, and, therefore, there could be no ratification by his partner Durga Prasad. This contention of the learned counsel for the appellant seems to be correct. Section 196 of the Indian Contract Act lays down: "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority." Section 200 further lays down: "An act done by one person

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on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect."

In this case, as already stated, the sale had not been made by Bhagwan Das on behalf of Durga Prasad or the firm. Further, the ratification by Durga Prasad would have the effect of prejudicially affecting the rights of the defendant, to whom Durga Prasad had sold the same property.

It has been urged on behalf of the respondents that though there could be no ratification of the sale, yet as the property in dispute was subsequently allotted to Bhagwan Das the sale which was invalid when made by Bhagwan Das for want of his title became valid. Learned counsel relied on section 43 of the Transfer of Property Act. This section enjoins: "Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists."

Subsequent to the sales by the parties proceedings for dissolution of the partnership were instituted. These proceedings terminated in an arbitration award on the 24th July, 1935. This award was made with the consent of the parties. Under the award the sale deed executed by Durga Prasad to the defendant was held to be invalid and the plaintiffs' sale deed was held to be valid. Durga Prasad was allowed to carry on the business of the firm, as the sole proprietor, after the dissolution of partnership. Under the terms of the award Bhagwan Das was to pay Rs.1,500 towards the discharge of the liabilities of the firm. All the assets of the firm were allotted to Durga Prasad. The effect of holding

the sale deed of the plaintiffs as valid was to allot this property to Bhagwan Das. If for any reason the sale were to fail, the property would be retained by Bhagwan Das alone.

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It was contended that the award could not be received in evidence, because the defendant was no party to the arbitration proceedings. The award is only a piece of evidence of the fact that the property in dispute was allotted to the plaintiffs' vendor on the dissolution of the partnership and belonged to him, and, as such, it is admissible in evidence.

Both the sale deeds were originally invalid, as the property in dispute belonged to the firm and neither the plaintiffs' vendor nor the defendant's had any authority to sell the property in dispute as his own.

It was contended by learned counsel for the appellant that inasmuch as the property belonged to both the partners of the firm, each partner should be deemed a co-owner of the property in dispute and, as such, each had a right to transfer his share. The property, as already stated, did not belong to the transferors but belonged to the firm, and according to the provisions of sections 15 and 19 of the Indian Partnership Act none of the partners had any right to treat this property as his individual property and to transfer it as such. According to section 15 a partner can use the property exclusively for the purposes of the partnership. It lays down: "Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business."

The principal differences between co-ownership and partnership have been stated in Lindley on Partnership, 10th edition, at page 31:

"1. Co-ownership is not necessarily the result of agreement. Partnership is.

"2. Co-ownership does not necessarily involve community of profit or of loss. Partnership does.

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“3. One co-owner can, without the consent of the others, transfer his interest, or in the case of land his equitable interest, to a stranger, so as to put him in the same position as regards the other owners as the transferor himself was before the transfer, except that in the case of a transfer by a joint tenant the stranger will become a tenant in common or in the case of land a tenant in common in equity with the other owners. A partner cannot do this.”

The property in dispute was allotted subsequently to Bhagwan Das, the plaintiffs' vendor, on the dissolution of partnership. Whatever defect there was in the sale deed at the time it was made was subsequently cured in virtue of section 43 of the Transfer of Property Act, when Bhagwan Das acquired the property on the dissolution of partnership. The plaintiffs have a right to avail themselves of the benefit of the provisions of section 43 of the Transfer of Property Act. They have so elected.

In the result the appeal is dismissed with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice
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RAMPAT SINGH AND ANOTHER (DEFENDANTS) v. NAGESHAR
 SINGH AND OTHERS (PLAINTIFFS)*

Agra Tenancy Act (Local Act III of 1926), sections 4, 44—Suit by sir holder for ejectment of a co-sharer in the mahal—“Landholder”—Agra Tenancy Act, section 266—Suit for ejectment by khudkasht holder, without joining the other co-sharers in the mahal as co-plaintiffs—Maintainability.

A suit for ejectment from the khudkasht plots held by the plaintiffs, brought without joining as co-plaintiffs the other co-sharers in the mahal, is not barred by section 266 of the Agra Tenancy Act. So far as the khudkasht rights are concerned, i.e. the right to be in possession of and to cultivate the plots, the plaintiffs alone are entitled to such rights and there are

*Second Appeal No. 1715 of 1937, from a decree of S. B. Chandiramani, District Judge of Gorakhpur, dated the 8th of March, 1937, reversing a decree of Abdur Rahman Adhami, Honorary Assistant Collector first class of Gorakhpur, dated the 28th of September, 1936.