

APPELLATE CIVIL.

Before Das and James, J.J.

MUSAMMAT AKLI

v.

MUSAMMAT DAHO.*

1927.

Aug., 4.

Immovable Property—Purchaser under a registered sale-deed, suit by—prior purchaser under unregistered deed, whether can resist the claim—onus on the defendant to prove title in equity—consideration, passing of, cannot be challenged except by parties to transaction or person claiming under them.

The passing of consideration in respect of a transaction cannot be challenged except by the parties to the transaction or by those who claim under them.

Where a purchaser of immoveable property under an unregistered deed has paid the agreed price to the vendor and has been placed in possession, in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance, a subsequent purchaser of the property under a registered conveyance cannot succeed in a suit to recover possession of the property from the prior purchaser.

Walsh v. Lonsdale (1), *Maddison v. Alderson* (2), *Puchha Lal v. Kunj Behari Lal* (3) and *Shyam Kishore Dey v. Umesh Chandra Bhattacharjee* (4), followed.

In such circumstances, however, the onus lies on the defendant, in the first instance, to establish that he has a title in equity which would enable him to maintain a suit for specific performance, and then it would be for the plaintiff to prove that he is a bona fide transferee for value.

*Second Appeal no. 197 of 1925, from a decision of Babu Surendra Nath Mukherji, Subordinate Judge of Patna, dated the 2nd December, 1924, confirming a decision of Babu Ananta Nath Banerji, Munsif of Barh, dated the 24th January, 1923.

(1) (1882) L. R. 21 Ch. 9.

(2) (1913-14) 18 Cal. W. N. 445.

(3) (1882-83) L. R. 8 A. C. 467.

(4) (1919-20) 24 Cal. W. N. 463.

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Appeal by the plaintiff.

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The facts of the case material to this report are stated in the judgment of Das, J.

N. N. Sen, for the appellant.

Kailaspati, for the respondents.

DAS, J.—This appeal arises out of a suit instituted by the plaintiff for the recovery of a house fully described in the schedule annexed to the plaint. It is the common case that the house in question belonged to one Babu Chand. He died sometime in 1919, leaving a widow Musammat Bifia. The question as to whether Musammat Bifia was the married wife of Babu Chand was raised by the defendant in the Courts below; but that question has been answered in favour of the plaintiff's case, and the finding that Musammat Bifia was the widow of Babu Chand is no longer open to discussion before us. The plaintiff says that on the 1st of July, 1921, Musammat Bifia sold the house to her for Rs. 450 : Rs. 350 was actually paid to her before the Registrar, Rs. 100 having been paid before. It happened that defendant no. 1, the sister of Babu Chand was actually in possession of the house in question, and she refused to make over possession of it to the plaintiff. According to the plaintiff the defendant is a tenant in possession of the house; but the defendant's case is as follows:—

She says that she lent Rs. 500 to her brother Babu Chand and that there was a panchayati to decide the question between her and her brother and that the panchayati decided that her brother Babu Chand should sell the house to her. The Courts below have found that an unregistered conveyance was actually executed in favour of the defendant.

Both the Courts below have found that no consideration money was paid in respect of the transaction of the 1st of July, 1921, by the plaintiff to Musammat Bifia, and according to the learned Judge

in the Court below the kabala is not a bona fide document. As I read the judgment of the learned Subordinate Judge, he has dismissed the plaintiff's suit specifically on the ground that he failed to prove her title. But it seems to me that this finding cannot be supported. Until the defendant established that she could put forward some claim as the successor in interest of Chand Sao she has no locus standi to dispute the passing of the consideration in respect of the transaction of the 1st of July, 1921. It is well established that the passing of consideration cannot be challenged except by the parties to the transaction or by those who claim through those parties. It was, therefore, not open to the defendant to question the passing of consideration until the defendant established some sort of title in her as the successor in interest of Chand Sao who is undoubtedly the predecessor in interest of Musammât Bifia.

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But then arises a very interesting question. The defendant says that she has got a title in equity. She says that Babu Chand executed a conveyance in her favour and put her in possession of the property. It is quite true that the conveyance in her favour was not registered; but she says that that does not make any difference to her position for she has a perfectly good title in equity. This position must be conceded to her on the authority of *Walsh v. Lonsdale* (1) and *Maddison v. Alderson* (2) and on numerous cases decided by the Calcutta High Court of which I may mention *Puchha Lal v. Kunj Behari Lal* (3) and *Shyam Kishore Dey v. Umesh Chandra Bhattacharjee* (4). These cases establish that where a purchaser of immovable property under an unregistered kabala paid the agreed price to the vendor and was placed in possession, in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance, a subsequent purchaser of the property under a registered conveyance cannot

(1) (1882) L. R. 21 Ch. 9.

(3) (1913-14) 18 Cal. W. N. 445.

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succeed in a suit to recover possession of the property from the former purchaser. As was laid down in *Puchha Lal v. Kunj Behari Lal* (1), the defendant is entitled, apart from the provisions of the Registration Act, to resist such a suit, and to permit such a defence to be taken does not amount to an invasion or evasion of the Registration Act.

In order to succeed, therefore, the defendant must establish that she has a title in equity which would enable her to maintain a suit for specific performance against Babu Chand and the persons claiming through Babu Chand. She must establish in the particular facts of this case, that she was actually put in possession of the house in pursuance of the agreement. If this is not established, then there is no defence available to her, for it must follow that she is not a person claiming through Babu Chand. But, if it is established that Babu Chand put her in possession pursuant to the agreement to sell the house in question to her then it would be for the plaintiff to establish, to quote the words of section 27, paragraph (b), that she is a transferee for value who has paid her money in good faith and without notice of the original contract. The case has really not been decided from this point of view. Both the Courts below have proceeded on the ground that the plaintiff's conveyance is not a bona fide document and have dismissed her suit on that ground. As I have already stated, it is not open to the defendant to take that plea until she proves some sort of title either at law or in equity as the successor in title of Chand Sao.

I must, accordingly, allow this appeal, set aside the judgment and the decree passed by the Court below, and remand the case to that Court for decision according to law. Costs are reserved, and will be disposed of by the lower Court.

JAMES, J.—I agree.

Case remanded.

(1) (1913-14) 18 Cal. W. N. 445.