

the Privy Council in the case of *Subrahmaniam Ayyar v. K.E.*, (I.L.R. Mad., XXV, page 61). But I am unable to see how that ruling is in any way pertinent to the point at present in issue. What their Lordships laid down was that a disregard of a clear rule of law as to a mode of trial could not be regarded as a mere irregularity which could be cured by the provisions of section 537 of the Code of Criminal Procedure.

In the present case there is no clear rule of law which has been disregarded. I am of opinion that the proceedings of the Magistrate are not void on this ground.

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APPELLATE CIVIL.

Before Mr. Justice Duckworth.

MAUNG PO YIN

v.

MAUNG TET TU AND ONE.*

1924
 July 4.

Estoppel—Sale of immovable property, whether barred from denial of, where no registered deed executed—Contract to sell immovable property—Acceptance of advance, whether creating any title in the purchaser.

Held, that where no registered deed of sale had been executed, a statement made by a person, prior to the institution of the suit under appeal which was for possession, that immovable property exceeding Rs. 100 in value had been sold by him to a certain person did not operate to estop denial of the sale by the person making the statement.

Dharam Chand v. Manji Sahu, 16 C.L.J., 436; *Mathura Mohan Saha v. Ram Kumar Saha*, 20 C.W.N., 370—followed.

Dutt—for the Appellant.

Aiyangar—for the Respondents.

DUCKWORTH, J.—In this case the plaintiffs-respondents filed a suit against the present appellant,

* Civil Second Appeal No. 286 (at Mandalay) from the decree of the District Court, Kyaukse in Civil Appeal No. 58 of 1923.

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Maung Po Yin and two others, who were impleaded as agents of Jamal, for the ejectment of the appellant from some land, on the ground that they had purchased it by a registered conveyance from Jamal's agents and that the appellant would not deliver possession. Incidentally, they prayed for *mesne profits*.

The defence of the present appellant was that he was in possession of the land under a rightful title and that he had not sold the land to Jamal's agents, who had therefore no title to convey to the present respondents. He admitted that he entered into an agreement to sell the land to one of Jamal's agents, and that he received a small advance of purchase money, but he contended that the sale had never been effected, and that he gave Jamal no registered title.

Both the lower Courts found in favour of the respondents, holding that the appellant, Maung Po Yin, had sold the land to Jamal and that Jamal was therefore entitled to sell it to the respondents.

This appeal therefore lies only under the provisions of section 100 of the Civil Procedure Code. The main contention of Mr. Dutt, the learned pleader for the appellant, Maung Po Yin, is that inasmuch as his client conveyed no registered title to the land to Sir A. K. Jamal, or his agents, they, in turn, could not convey any legal title by a registered deed of sale to the two respondents.

I am of opinion that this contention must prevail.

Mr. Aiyangar, who appeared for the respondents urged most ingeniously, that the action of Mr. Stewart, I.C.S., Special Officer, in connection with the Jamal lands, resulted in Jamal being given what amounted to nothing less than a grant of this land by the Local Government, and that therefore no registered title was necessary as between the appellant, and

Jamal. His next plea is that the appellant, Maung Po Yin, must be held bound by his admission in Exhibit D, application to Mr. Stewart dated in 1922, in which he stated that he had sold the land, and by Mr. Stewart's order on that application in Exhibit E that he might be entered as a person entitled to repurchase the land.

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This admission, made prior to the institution of the suit, must, in all fairness, be read in connection with Maung Po Yin's evidence that he had agreed to sell the land, and had accepted an advance from Sir Jamal's agents. It need not mean much more than what he now admits, and is, in any case, subject to the condition that the sale was never legally completed.

Further, an admission of this sort cannot act as an estoppel, so as to do away with the necessity for a registered deed of transfer, where the statute expressly requires it. That this is so, is not only well accepted law, but is clear from the cases of *Dharam Chand v. Mauji Sahu*, (1913) 16 C.L.J., 436, and *Mathura Mohan Saha v. Ram Kumar Saha*, (1917) 20 C.W.N., 370 at page 382.

Again, from the evidence, and documents, in the record, it is impossible to conclude that there was any grant, or even a quasi-grant, by the Local Government in favour of Jamal, in connection with this land.

The appellant has never vacated possession of the land, and is still in possession thereof.

It is admitted that there was no registered conveyance as between the appellant and Jamal, or his agents. The latter, therefore, could not convey any title in the land as against the appellant to the present respondents. No evidence could, moreover, be given of the alleged sale to Jamal, because such

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evidence was not admissible under the law of evidence.

The appeal is, therefore, allowed. The decrees of the two lower Courts are set aside and the respondents' suit is dismissed with costs in all Courts.

APPELLATE CIVIL.

Before Mr. Justice Lentaigne.

D. S. ABRAHAM & Co.

v.

EBRAHIM GORABHOY.*

1924

July 7.

Set-off, valuation of, for the purpose of jurisdiction—Suits Valuation Act (VII of 1887), section 8—Portion of the amount, claimed to be set-off, admitted and defendant given credit for, in the plaint—Civil Procedure Code (V of 1908), Order 8, Rule 6.

Held, that the valuation of a set-off for the purpose of jurisdiction must be taken as relating to the whole of the ascertained sum so pleaded, and without reference to any portion of the plaintiff's claim which the defendant admits.

Held, also, that where the plaintiff in his plaint admits and gives credit to the defendant for a certain sum, such sum being a portion of the amount which the defendant seeks to set-off, the valuation of the set-off for purposes of jurisdiction must be taken to be the amount of the ascertained sum pleaded, exclusive of the amount given credit for.

Brojendra Nath Das v. Budge Budge Jute Mill Co., 20 Cal., 527—followed.

N. N. Sen—for the Appellants.

Auzam—for the Respondent.

LENTAIGNE, J.—The petitioners, as plaintiffs, sued the defendant-respondent, claiming Rs. 283-8-6 from the defendant-respondent, alleging that Rs. 550-13-0 was due to plaintiff as the price of goods purchased by defendant at auctions held by the plaintiff, but giving defendant credit for Rs. 267-4-6 as amounts

* Civil Revision No. 105 of 1923 against the decree of the Rangoon Small Cause Court in Civil Regular No. 4838 of 1922.