

## APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Otter.

MAUNG MON

v.

MA KIN OH AND ONE.\*

1927

May 12.

*Evidence Act (I of 1872), s. 92—Oral agreement on a matter on which the deed is silent—Sale—Registration of sale deed without payment of consideration—Purchaser's title.*

The defendant-vendor of a piece of land pleaded that he agreed to sell the land to the plaintiffs for Rs. 480 on condition that they paid the interest on the purchase money paid by him at the auction amounting approximately to Rs. 300. The document was silent as to any payment of Rs. 300 as purchase money or otherwise and there was no recital of receipt of consideration.

*Held*, that section 92 of the Evidence Act does not bar oral proof of the agreement as a preliminary to a sale for Rs. 480.

*Held, further*, that, if the purchase price has not been paid, registration of a sale deed would entitle the vendee to a decree for possession only on payment of the purchase price.

*Bainnath Singh v. Pattu*, 30 All. 125; *Ponnayya Goundon v. Multu Goundon*, 17 Mad. 146; *Ramalinga Mudali v. Ayyadorai Nainar*, 28 Mad. 124—referred to.

*Aung Thin*—for Appellant.

*R. K. Banrjee*—for Respondents.

PRATT AND OTTER, JJ.—Ma Kin O on her own behalf and as guardian *ad litem* of her minor son Maung Kyaw Zan sued to evict Maung Mon from a piece of paddy land purchased from him by a registered deed (Exhibit A in Civil Regular Suit No. 8 of 1926 of the Township Court, Myittha) and for mesne profits.

The suit was originally instituted in the Township Court, but the Judge, after framing issues, hearing evidence in full, and the arguments of the pleaders, decided that he had no jurisdiction and returned the plaint for presentation to the proper Court.

The plaint was accordingly presented to the District Court.

By consent the Judge of that Court decided the case on the issues framed and evidence recorded by the

\* Civil First Appeal No. 80 of 1926 (Mandalay).

Township Court, after hearing the arguments of the advocates. The evidence was not transferred to the record of the District Court as it ought to have been.

Plaintiffs' case as disclosed in evidence was somewhat different to that set forth in the plaint. In the plaint it was stated that the land had been purchased for Rs. 480 as set out in the deed of sale.

In the written statement defendant admitted execution of the deed of sale, but alleged that he refused to register it, because the consideration was not paid.

In evidence plaintiff Ma Kin O admitted that she had only paid Rs. 300 out of the Rs. 480 specified in the deed of sale and expressed her willingness to pay the balance of Rs. 180.

She also admitted that she actually only bought from defendant two-thirds of the land as alleged by him in his written statement. The one-third was already in possession of plaintiff and is not in dispute.

The two-thirds in question had been bought by defendant at an auction for Rs. 480.

Defendant's whole case was consequently not disclosed till U Mon himself gave evidence as first witness cited by plaintiff.

His case briefly was that he agreed to sell the land to plaintiffs for Rs. 480 on condition that they paid the interest on the purchase money paid by him at the auction for 16 months at 4 per cent. per mensem, which approximately amounted to Rs. 300.

Plaintiff agreed to do so and paid Rs. 300 on account of interest on the price originally paid by defendant, and defendant gave her the conveyance for Rs. 480 the same day.

Plaintiff agreed to pay the purchase money Rs. 480 at the time of registration ; but as she failed to do so, defendant refused to register the sale deed.

1927

MAUNG MON

v.  
MA KIN OH  
AND ONE.PRATT AND  
OTTER, JJ.

1927

MAUNG MON

v.  
MA KIN OH  
AND ONE.PRATT AND  
OTTER, JJ.

The document was ultimately registered by order of the Registrar under section 75 of the Registration Act.

The District Court found that, as defendant had not mentioned in the sale deed that Rs. 300 had been paid as interest on the previous purchase money, evidence of the agreement to that effect was inadmissible under section 92 of the Evidence Act.

It held that by virtue of the sale deed plaintiff became legal owner of the land and was entitled to eject defendant and to a decree for mesne profits.

It is difficult to follow the reasoning of the learned Judge of the District Court.

The document was silent as to any payment of Rs. 300 as purchase money or otherwise.

There was no recital of receipt of consideration.

There was therefore no reason why defendant should not prove that there was an agreement that plaintiff should pay him Rs. 300, on account of interest on the money originally paid by him, as a preliminary to be given a conveyance for Rs. 480.

Defendant was also equally entitled to prove an agreement that the sale should not be completed by registration until the purchase money had been paid and that non-payment was his reason for refusal to register.

The lower Court seems to have forgotten the 2nd and 3rd provisos to section 92. Defendant was entitled to prove failure of consideration. This point is not disputed. Plaintiff admitted failure to the extent of Rs. 180 and defendant alleged total failure. The main question for decision is therefore whether the Rs. 300 paid on the day the conveyance was executed was part of the Rs. 480 specified as consideration in the deed of sale or was a preliminary payment on account of interest as alleged by defendant, made

as a condition of granting the conveyance for a further sum of Rs. 480.

We have no hesitation in holding on the evidence that defendant has established his allegation that Rs. 300 was a preliminary payment and that no part of the consideration specified in the sale deed has been paid.

It is however, argued that, even if it be conceded that the purchase money has not been paid, nevertheless the transfer has been completed by registration, the title to the property is with plaintiff and she is still entitled to a decree as prayed.

The authorities cited on behalf of plaintiff do not, however, support the contention that she is under the circumstances entitled to evict defendant unconditionally and to recover mesne profits.

In *Ponnayya Goundan v. Muttu Goundan* (1), it was undoubtedly held that registration constitutes a sufficient delivery to pass the interest in the land sold.

That was a case where earnest money had been paid. But the important point is that plaintiff was merely given a decree for specific performance on payment of the balance of the purchase money.

In *Bajinath Singh v. Paltu* (2), it was held that in a sale of immoveable property non-payment of the purchase money does not prevent the passing of the ownership of the purchased property from the vendor to the purchaser, and the purchaser can, notwithstanding such non-payment, maintain a suit for possession.

In that case similarly a decree was given for delivery of the property on payment of the purchase money.

Assuming therefore for the purposes of the argument that the effect of registration of the sale deed

1927

MAUNG MON

v.

MA KIN OH  
AND ONE.PRATT AND  
OTTER, JJ.

(1) 1893) 17 Mad. 146.

(2) (1908) 30 All. 125 at p. 127.

1927

MAUNG MON

v.

MA KIN OH  
AND ONE.PRATT AND  
OTTER, JJ.

was to pass the title in the property to plaintiff, she would only be entitled to obtain possession of the suit property on payment of the purchase money agreed upon, Rs. 480.

It should, however, be observed that there is authority for the proposition that where a transfer is intended to be effected only in the event of a certain condition being fulfilled and, that condition not being fulfilled, effect is not given to the intention to transfer, no property passes.

It cannot be laid down as an invariable rule that mere registration of an instrument without reference to other circumstances operates to transfer the property ; *vide* the Madras case of *Ramalinga Mudali v. Ayyadorai Nainar* (1).

The advocate for plaintiff expresses his willingness to pay Rs. 480, if we find against him on the facts, and the advocate for defendant admits that plaintiff is entitled to possession on payment of Rs. 480.

The decree of the District Court will therefore be set aside and plaintiff will be given a decree for possession on payment of Rs. 480 within one month of the date of the decree.

Plaintiff to pay the costs in both Courts.

If plaintiff fails to pay the purchase money within the specified period the suit will stand dismissed with costs in both Courts.

---

(1) (1905) 28 Mad. 124.