

## APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Abdul Raouf.

RAM SINGH (PLAINTIFF)—*Appellant*,

*versus*

GANGA RAM, ETC. (DEFENDANTS)—*Respondents*.

1922

April 20.

Civil Appeal No. 1243 of 1918.

*Sale of property—whether registration of deed of sale transfers title, where the intention of the parties was that it should not pass till payment of consideration—Second Appeal—question of intention—whether one of fact or law—Evidence of previous and subsequent conduct of the parties—whether relevant.*

*Held*, that mere registration of a deed of sale does not pass the title if the intention of both the parties was that ownership should not pass till payment of the consideration.

*Mussammat Bhagan v. Allah Ditta* (1), and *Sirat Chandra v. Rakha Hari* (2), followed.

The question whether the intention of the parties was that the title to the land sold should not be transferred till payment of the purchase-money is a question of fact, which cannot be challenged in second appeal where there is evidence upon which the Lower Appellate Court could come to a finding and no important evidence has been ignored.

*Durga Chowdhani v. Jewahir Singh* (3), followed.

*Harendra Lal Roy v. Haridasi Debi* (4), *Gauri Shankar v. Madho Charan* (5), *Khubi v. Chottu* (6), *Kali Sahu v. Kedar Mal* (7), *Dilani Singh v. Choa Singh* (8), and *Jiwana v. Nathu* (9), distinguished.

*Held also*, that evidence of previous as well as subsequent conduct of the parties was relevant in the present case in deciding the question of the intention of the parties.

*Mussammat Bhagan v. Allah Ditta* (1), referred to.

*Second appeal from the decree of Khan Bahadur Khawaja Twsadduq Hussain, District Judge, Ludhiana, dated the 2nd January 1918, affirming that of Lala*

(1) 55 P. R. 1911.

(2) (1909) 3 Indian Cases 177.

(3) (1893) I. L. R. 18 Cal. 23 (P. C.)

(4) (1914) I. L. R. 41 Cal. 972 (P. C.)

(5) (1912) 16 Indian Cases 897.

(6) 103 P. L. R. 1915.

(7) (1917) 83 Indian Cases 561.

(8) (1917) 42 Indian Cases 397.

(9) (1917) 88 Indian Cases 587.

1912

RAM SINGH  
v.  
GANGA RAM.

*Munshi Ram, Senior Subordinate Judge, Ludhiana, dated the 11th June 1917, and granting the plaintiff a decree.*

NAND LAL, for Appellant.

DEVI DYAL, for Respondents.

The judgment of the Court delivered by—

SCOTT-SMITH J.—The appellant sued for possession of certain land on payment of Rs. 1,128 on the ground that Jhanda had sold it to him by a registered deed of sale of 21st December 1904. The Court below has dismissed the suit holding that the parties never intended ownership in the land sold to pass until the full consideration had been paid, and that it was, therefore, no complete sale on the 21st December 1904, but merely an agreement to sell and that the plaintiff's suit brought about 12 years afterwards was barred by time.

The first point urged by Dr. Nand Lal for the appellant was that the sale deed itself showed that the land had been sold and that it could not be construed as merely an agreement for sale. The mere registration of the deed of sale, however, does not always imply that a complete sale has taken place. In *Mussammat Bhagan v. Allah Ditta* (1), there was a registered deed and it was held that—

“Although title can pass without payment of consideration, no title will pass where there is proof of an intention in both the parties that ownership should not pass until payment of consideration, and the subsequent conduct of the parties to the sale is relevant in order to show whether the parties intended ownership to pass independently of the payment of consideration or not.”

In *Sarat Chandra v. Rakha Hari* (2), it was held that—

“Mere registration of a deed of sale does not necessarily pass the title if the parties intend that no title shall pass till the consideration money has been paid in full.”

In that case it was also stated that—

“The question whether the intention of the parties was that the title to the land sold should not be transferred till the balance of the purchase-money was paid was a question of fact.”

(1) 55 P. R. 1911.

(2) (1909) 3 Indian Cases 177.

It is clear to us that these rulings are applicable to the present case. Mere registration of the deed of sale upon which the plaintiff bases his claim does not necessarily imply that ownership passed at the time of registration. It is also clear to us that the finding that the intention of the parties was that the title should not pass until Rs. 1,128 had been paid, is a finding of fact.

Dr. Nand Lal has urged that the Lower Appellate Court was wrong in taking into consideration the previous conduct of the parties as well as their subsequent conduct. In *Mussammat Bhagan v. Allah Ditta* (1), no doubt the Judges said that the subsequent conduct of the parties was relevant, but it was not laid down in that ruling or in any other ruling to which we have been referred that the Court is debarred from taking the *previous* conduct of the parties also into consideration. In the present case, in our opinion, the previous conduct of the parties, as appears from the judgment of the Lower Appellate Court, was clearly relevant in order to show what was their probable intention at the time the deed of sale was written. It is clear that the vendor never intended to part with the ownership of the property until he was paid in full, and the purchaser agreed to this.

Dr. Nand Lal has further urged that in certain circumstances a Court of second appeal is not bound by a finding of fact of the Lower Appellate Court. He has cited several rulings in support of this including *Harendra Lal Roy v. Haridasi Debi* (2), wherein it was held that a finding of fact based on no evidence is not a finding which cannot be contested in second appeal. Here there is evidence and the ruling is obviously inapplicable. In *Gauri Shanker v. Madhe Charan* (3), there was no sufficient legal evidence of the point said to have been proved. In *Khubi v. Chottu* (4), important evidence was ignored. In *Kali Sahu v. Kedar Mal* (5), it was held that "the Court had made only a colourable pretence of considering the evidence." In *Dilan Singh v. Choa Singh* (6), it was held that "there

1922

RAM SINGH  
v.  
GANGA RAM.

(1) 55 P. R. 1911.

(2) (1914) I. L. R. 41 Cal. 972 (P. C.)

(3) (1912) 16 Indian Cases 887.

(4) 103 P. L. R. 1915.

(5) (1917) 38 Indian Cases 561.

(6) (1917) 42 Indian Cases 397.

had not been an honest and complete consideration of the evidence." In *Jivna v. Nathu* (1), it was held that important evidence had been ignored. None of these rulings are, therefore, on all fours with the present case. It is clear to us that there is evidence upon which the Lower Appellate Court could come to a finding and that no important evidence of any sort has been ignored. Therefore, in accordance with the well-known ruling of the Privy Council, in *Durga Chowdhani v. Jewahir Singh* (2), the finding of the Lower Appellate Court as to intention of the parties to the deed of sale is final.

The appeal, therefore, fails and is dismissed with costs.

A. N. C.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Martineau and Mr. Justice Harrison.*

*Mst. SARDAR KHANAM (DEFENDANT)—Appellant  
versus*

*AMIR ZAMAN KHAN AND OTHERS (PLAINTIFFS),  
Respondents.*

Civil Appeal No. 135 of 1919.

*Custom—Alienation—gift by sonless proprietor of ancestral property in favour of his wife—Gakhars of Malpur, district Rawalpindi—Riwaj-i-am—onus probandi.*

*Held*, that the entry in the *Riwaj-i-am* of the Rawalpindi district to the effect that among *Gakhars* a sonless proprietor can make a gift of the whole or any part of his ancestral property without the consent of the near male kindred was sufficient to shift the *onus* of proving the contrary upon the plaintiff-collaterals who contested the gift, the custom as stated in the entry being by no means exceptional.

*Beg v. Alla Ditta* (3), *Sher Jang v. Ghulam Mohi-ud-Din* (4), *Hasan v. Jahana* (5), *Bholi v. Fakir* (6), and *Feroz Khan v. Amir Muhammad Khan* (7), referred to.

(1) (1917) 33 Indian Cases 587.

(2) (1898) I. L. R. 18 Cal. 23 (P. C.).

(3) 45 P. R. 1917 (P. C.).

(4) 22 P. R. 1904.

(5) 71 P. R. 1904.

(6) 62 P. R. 1906.

(7) 153 P. R. 1902.

1922

April 26.