

## APPELLATE CIVIL.

*Before Mr. Justice Brown.*

PINDEE

v.

U HPA AND ONE.\*

1928

Feb. 14.

*Possession of land under contract for sale a shield against owner's claim—Purchaser by registered deed from owner, position of—Registered purchaser without notice of previous oral purchase, takes precedence—Possession of previous owner as tenant of previous unregistered purchaser is no notice to subsequent registered purchaser—Registration Act (XV of 1908), ss. 48, 50.*

*Held*, that although a defendant in possession of land under a contract of sale can resist a suit for possession by the owner, or at most as plaintiff can ask for a decree that he was in lawful possession of the land, the case is different when a purchaser by registered deed from the owner claims the land. He is in law the owner of the land, provided he has no notice of the previous oral purchase. If the previous owner remains in possession as tenant of the previous unregistered purchaser, such possession is no notice to the subsequent registered purchaser of the earlier purchase.

*Maung Myat Tha Zan v. Ma Dun 2 Ran. 285 ; Moreswar v. Datlu, 12 Bom. 569—referred to.*

*N. M. Cowasjee* for the appellant.

*Ba Thein (1)* for the respondent.

BROWN, J.—The respondents, U Hpa and Ma Nan Paung, brought a suit against the appellant, Pindee and two others, Maung Tha Pon and Ma Sein Kye, for a declaration that they were the owners of certain land. Their case was that they had bought this land from Maung Tha Pon and Ma Sein Kye in the year 1914 for the sum of Rs. 1,900 and had been in possession ever since. The suit was filed in May 1924. On the 29th of September 1923, Maung Tha Pon and Ma Sein Kye executed a registered sale deed of the land in favour of Pindee.

\* Special Civil Second Appeal No. 317 of 1927 against the judgment of the District Court Myaungmya in Civil Appeal No. 206 of 1926.

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The case was originally decided without evidence being offered on either side and was finally remanded by this Court for the taking of evidence. In the remanding order it was declared that even if the plaintiff did not prove his title, he might still be entitled to a declaration that he was lawfully in possession of the property. That the plaintiffs did not prove their title is clear. They alleged an oral sale in the year 1914 for Rs. 1,900. Under the provisions of section 54 of the Transfer of Property Act, even if this so-called oral sale took place, title to the land did not pass but still remained with Maung Tha Pon and Ma Sein Kye ; nor, at the time of the suit, had the plaintiffs acquired title by prescription as the suit was filed only ten years after the alleged oral purchase. The most, therefore, that the appellants could have obtained in this case was a decree that they were in lawful possession of the land. It is now settled law that a defendant who is in possession of land under a contract of sale can resist a suit for possession by the owner. The leading case on this point in Burma is the case of *Maung Myat Tha Zan and two v. Ma Dun and one* (1). If the so-called oral sale were proved in the present case, then as against Tha Pon and Ma Sein Kyethe respondents, U Hpa and Ma Nan Paung, would be entitled to a decree as to their possession.

The appellant, Pindee, is however in a different position. The sale by registered deed to him is not denied and whatever may be the equities of the case, he is in law the owner of the land. Under the provisions of section 50 of the Registration Act, priority is given to registered documents as against unregistered. In the case of *Moreswar Balkrishna v. Dattu and another* (2), it was held that the provisions of this section were subject to the condition that the subsequent registered purchaser has no notice of the previous

(1) (1924) 2 Ran. 285.

(2) (1888) 12 Bom. 569.

purchase. But it was also held that where the previous owner remained in possession as tenant of the previous purchaser, such possession would not be deemed to give notice to the subsequent purchaser of the earlier purchase.

Section 50 of the Registration Act is not directly applicable to the present case. Here there is no conflict of title. The title rests with Pindee, but there is no suggestion that Pindee was a party to the sale of 1914 and the equities to be urged in favour of the plaintiff-respondents against the original owners could clearly not be urged against Pindee, unless, when he made his purchase, he had notice of the claims of the the plaintiff-respondents. The trial Court held that no such notice had been proved and dismissed the plaintiffs' suit. The lower Court held that Pindee had notice of U Hpa's claims and passed a decree in favour of the plaintiffs. Pindee now comes in second appeal to this Court and the appeal is argued on two grounds.

It is firstly argued that the so-called sale of 1914 was recorded in the form of a document and that oral evidence of it was not therefore admissible, and secondly it is contended that Pindee was not proved to have had any notice of the transaction.

On the evidence his Lordship restored the decision of the trial Court and reversed the decision of the District Court.

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