

## APPELLATE CIVIL.

*Before Mr. Justice Mya Bu, and Mr. Justice Mosely.*

SHIRA KHATOON *v.* MAUNG PAN.\*

1939

Jan. 20.

*Transfer of Property Act, s. 53A—Nature and contents of the writing required—Formal agreement or contract not essential—Document in essence an agreement or contract sufficient—Agreement and receipt—Terms of agreement to be ascertained from receipt not sufficient.*

To satisfy the requirements of s. 53A of the Transfer of Property Act the document need not be a formal agreement or contract, nor need it purport to be in its entirety an agreement, but part of the document at least must be in essence an agreement or contract. A document may start as an agreement and then recite the receipt of money. Conversely a document may start as a receipt and then recite the terms of the agreement in pursuance of which the money has been paid, and be also in essence an agreement. But it is not sufficient to say that the terms of an agreement can be ascertained from a document which purports to be on the face of it merely a receipt.

The document in suit read as follows: "Received from M the sum of Rs. 100 only being advance against sale of a piece of paddy land at Ngante for Rs. 400 balance to be paid within 15 days."

*Held* that the document could not be construed as an agreement, or in essence an agreement.

*Ma Thei v. Ma Se Mai*, I.L.R. 13 Ran. 17; *Maung Ohn v. Maung Po Kwe*, [1938] Ran. 692, referred to.

*Soorma* for the appellant.

*K. C. Bose* and *R. M. Sen* for the respondent.

MOSELY, J.—This second appeal has been referred to a Bench for hearing. The plaintiff bought certain land from Mohamed Hussein by a registered deed. Before that the defendant purported to have entered into an agreement to buy the said land and to have paid part of the purchase price for which he obtained a receipt. The defence was on the ground of part performance—section 53A of the Transfer of Property

\* Special Civil 2nd Appeal No. 182 of 1938 from the judgment of the District Court of Amherst in Civil Appeal No. 23A of 1938.

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Act. The receipt was on an unstamped piece of paper and reads as follows :

“ Received from Maung Pan the sum of Rs. (100) one hundred only being advance against sale of a piece of paddy land at Ngante for Rs. 400 balance to be paid within 15 days.”

The trial Court held that this receipt did not come within the four corners of section 53A and decreed the suit. In appeal the learned Additional District Judge said that the provision in the document that the balance should be paid within 15 days turned it into an agreement, and that the references to part-payment, the purchase price and the description of the land sold were the terms necessary to constitute the transfer. He therefore reversed the judgment of the lower Court and directed that the suit be dismissed.

Section 53-A of the Transfer of Property Act reads :

“ Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which

the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part-performance thereof."

I do not think that the mere mention of the date within which the balance of the purchase money is to be paid is sufficient in itself to turn the receipt into an agreement of the kind contemplated by section 53-A. The clause in question is not expressed as a condition, and may be a mere memorandum of the date fixed for payment of the balance of the purchase money. It is common of course to get such clauses in memoranda attached to any receipt, for example, a receipt for part-payment of goods purchased may recite "Received so much, the balance to be paid within such and such a time."

A somewhat similar case was considered in *Ma Thet v. Ma Se Mai* (1). In that case, however, the document which was written in a book recited that the transferor "sold it (the land) outright to Ma Se Mi by asking from her the sum of Rs. 150, and Ma Se Mi having agreed to buy the land for that sum paid the earnest money for which Ma Thet (the vendor) signs this receipt."

In that case it was held that the essential terms of the contract for sale were mentioned in the document, and were sufficient to form the basis of a suit for specific performance of the contract. It was found that the document was an agreement or a contract to transfer immovable property by writing signed, and that there the terms necessary to constitute the transfer could be ascertained with reasonable certainty from the document. It was remarked that as an agreement for sale the document was insufficiently stamped with a one anna stamp. In the present case, of course, the

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document does not contain any mention of an agreement for sale.

Another case is *Maung Ohn and another v. Maung Po Kwe and others* (1), reproduced in the judgment in the Letters Patent appeal against it. In that case Mya Bu, Officiating Chief Justice, dealt with a similar case where a receipt was given. This receipt was in very detailed terms, and not merely admitted part receipt of the consideration but recited "As it has already been agreed to sell the house and land to Ko Maung Ohn, the house and land are sold for Rs. 350." In that case it was held that unless the document in question could be held to be an agreement or a contract of sale it would not by the mere fact that from it the terms necessary to constitute the transfer could be ascertained with reasonable certainty be sufficient to satisfy the requirements of the section, as what the section required was not the document from which the terms necessary to constitute the transfer could be ascertained with reasonable certainty, but a contract or an agreement in writing from which such terms could be ascertained.

The Bench which heard the Letters Patent appeal from this decision evidently approved of that statement of the law. In the judgment of the learned Chief Justice it was said :

"It has been urged upon us that the mere production of a writing from which can be ascertained matters referring to a pre-existing oral contract is sufficient to come within the protection of the section : but in my opinion the section clearly contemplates that the contract itself shall be in writing, and not that there shall be a writing referring to some part or parts of a contract which may previously have been oral."

By the concluding words what the learned Chief Justice was conveying was obviously that the *contract*

(1) [1938] Ran. 692.

should be in writing, and that it is not enough that there should be a writing, *which was not in itself an agreement*, referring to some part or parts of the contract which may previously have been oral. This will be clear also from the concluding words of Dunkley J's judgment.

In my opinion the document need not be a formal agreement or contract, nor need it purport to be in its entirety an agreement, but part of the document at least must be in essence an agreement or contract. A document may often start as an agreement and then recite the receipt of money. Conversely a document may start as a receipt and then recite the terms of the agreement in pursuance of which the money has been paid, and be also in essence an agreement. It is not sufficient to say that the terms of an agreement can be ascertained from a document which purports to be on the face of it merely a receipt. It is true that the essential terms of the agreement are all, or nearly all, mentioned in the receipt in this case, Exhibit I. I say "nearly all" because the receipt does not contain anything referring to a very common feature in these transactions, namely, forfeit of advance or penalty for non-performance. But in my opinion it is clear that the document could not even be construed as an agreement, much less that it is in essence an agreement.

For these reasons I consider that the judgment of the District Court must be reversed and the judgment of the trial Court restored with costs throughout.

MYA BU, J.—I concur in the judgment of my learned brother as to the principle of law enunciated in the Letters Patent appeal, *Maung Oln and another v. Maung Po Kwe and others* (1). The learned

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Additional District Judge gave his judgment before the decision in the Letters Patent appeal was published and therefore did not have the guidance of that judgment in his decision in first appeal.

I agree that the appeal must be allowed and the judgment and decree of the Township Court restored with costs throughout.