

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

PARASHRAM AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. GANPAT AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1896.

January 20.

Registration—Registration Act (III of 1877), Sec. 17, Cls. (c) and (h)—Receipt for purchase-money—Document creating or extinguishing a right to immoveable property.

The plaintiffs sued to recover the property sold to them by the defendants. The defendants set up a repurchase and produced a receipt passed to them by the plaintiffs which stated that the plaintiffs had no longer any interest in the property, and that they would execute a new sale-deed. The plaintiffs contended that the receipt required registration.

Held, that as the receipt created or declared or extinguished a right to the property with a superadded covenant to execute a stamped document to the same effect on a future occasion, it required registration.

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Násik, reversing the decree of Ráo Sáheb S. M. Kale, Subordinate Judge of Málegaon.

Suit in ejectment. The plaintiffs had bought the house in question in 1875 from the defendants, and now sued for possession. The defendants alleged that in 1883 they had repurchased the house from the plaintiffs, and they relied on a document of which the following is a translation:—

Receipt passed on Mágħ Shudh 13th, Shake 1804, cyclical year of the name of Chitrabhánu (19th February, 1883), to Ganpati valad Navji of Chinchavad, táluca Málegaon, district Násik, by Parashram valad Raja Patil of Chinchvad, táluca Málegaon, district Násik, as follows:—Rs. 322-8-0, that is Rs. 222-8, former debt, including principal and interest up to date and Rs. 100, being the price of your two houses which are with us by reason of purchase, in all Rs. 322-8-0 is due to us by you. The same debt you have discharged by giving us twenty-seven maunds of cotton worth Rs. 135 at the rate of Rs. 5 per maund and by paying us this day in cash Rs. 187-8. Thus you have paid us in all Rs. 322-8-0 which we have received. Now up to date nothing is due to us by you. Should there be any kháta or bond, the same is to be deemed as cancelled. We have no longer any interest remaining in any way in the aforesaid two houses. We shall execute to you a new sale-deed on a stamp. This receipt is passed by us in our sound mind and of free will and accord."

The Subordinate Judge passed a decree for the plaintiffs. He held that the above document not being registered was inadmissible in evidence.

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On appeal by the defendants, the Judge reversed the decree, holding that the receipt did not require registration and was admissible in evidence, and that the plaintiffs were not entitled to eject the defendants.

The plaintiffs preferred a second appeal.

Ganesh K. Deshamukh, for the appellants (plaintiffs):—The document relied on by the defendants, either creates a title or it does not. If it does create a title, and operates as a sale-deed, then not being registered it is inadmissible in evidence. If it does not create a title, then the defendants cannot resist our claim, as they have no other evidence. Whether the document is a sale deed or a mere receipt, it requires registration under clause (c), section 17 of the Registration Act (III of 1877)—*Valaji Isaji v. Thomas*⁽¹⁾; *Basawa v. Kalkapa*⁽²⁾; *Waman Ramchandara v. Dhondiba Krishnaji*⁽³⁾; *Faki v. Khotu*⁽⁴⁾; *Ramapa v. Umanna*⁽⁵⁾. The language of the document shows that it was intended to be evidence of title.

Vasudev G. Bhandarkar, for the respondents (defendants):—The document does not require registration, as it contemplates the execution of another document. Further, it shows that there was a previous oral contract of sale. The property became vested in the defendants when the whole consideration was paid and not under the document. It, therefore, does not require registration—clause (h) of section 17 of the Registration Act. It does not by itself create or extinguish any right in immoveable property—*Chunilal v. Bomanji*⁽⁶⁾; *Shridhar v. Chintaman*⁽⁷⁾.

FARRAN, C. J.:—The plaintiffs seek to recover the property in suit by reason of an admitted sale of it by the defendants to them. The defendants attempt to resist plaintiffs' claim by alleging a repurchase of the property on 19th February, 1883, from the plaintiffs. In proof of this repurchase they produce the document bearing date on that day. It is the only proof which

(1) I. L. R., 1 Bom., 190, at p. 196.

(2) I. L. R., 2 Bom., 489.

(3) I. L. R., 4 Bom., 126.

(4) I. L. R., 4 Bom., 590.

(5) I. L. R., 7 Bom., 123.

(6) I. L. R., 7 Bom., 310.

(7) I. L. R., 18 Bom., 396.

they adduce. The question is whether it is admissible in evidence, not being registered.

In the document the plaintiffs state that they received Rs. 322-8-0, which, as the receipt shows, included a sum of Rs. 100, the alleged consideration for the repurchase. It is contended that under clause (c) of section 17 of the Registration Act the document, therefore, requires registration. Mr. Bhandarkar for the defendants, on the other hand, argues that there was a prior oral sale which passed the property, but which became complete only on payment of the consideration; but assuming that to be so, the payment of the consideration which completed the title to the land is evidenced by the document, and it, therefore, falls within the express words of clause (c), as the payment extinguishes the plaintiffs' title to the land. There is not, however, any evidence of the prior oral agreement which Mr. Bhandarkar suggests. The document then goes on: "We (the plaintiffs) have no longer any interest remaining in any way in the aforesaid two houses. We shall execute to you a new sale-deed on a stamp." The lower appellate Court has treated this as an agreement falling within clause (b) of section 17 of the Act as not in itself creating or declaring or extinguishing a right, but merely creating a right to a document, which will, when executed, create, declare or extinguish a right. We are unable to agree in that view. To us it appears to create or declare or extinguish at once a right to the property with a superadded covenant to execute a stamped document to the same effect—another sale-deed stamped—on a future occasion. Manifestly it requires registration.

We reverse the decree of the lower appellate Court, and restore that of the Court of first instance with costs in this and the lower appellate Court on the respondents.

Decree reversed.

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