

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

1900.
February 14.

KARALIA NANUBHAI MAHOMEDBHAI (ORIGINAL DEFENDANT), APPELLANT, v. MANSUKHRAM VAKHATCHAND (ORIGINAL PLAINTIFF), RESPONDENT.*

Contract of sale—Delivery of possession—Payment of the whole of the purchase-money—Registered conveyance not executed—Transfer—Attachment—Vendor having no attachable interest—Transfer of Property Act (IV of 1882), Secs. 40, 54, 55 (6) (b)—Trusts Act (II of 1882), Sec. 91.

Under a contract of sale with respect to certain fields, possession was delivered to the vendee, and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed. Subsequently a judgment-creditor of the vendor sought for a declaration that the fields were liable to be attached and sold as the property of the judgment-debtor. Before the case was decided by the Court of first instance, a registered conveyance had been executed.

Held, that the judgment-debtor was nothing more than a bare trustee and had no attachable interest in the property.

Hormosji v. Keshav⁽¹⁾ distinguished.

SECOND appeal from the decision of Ráo Bahádur D. G. Gharpur, Additional First Class Subordinate Judge of Ahmedabad with appellate powers, reversing the decree of Ráo Sáheb Karpurram M., Additional Joint Subordinate Judge.

The plaintiff sued for a declaration that certain fields belonged to his judgment-debtor Jivanlal Chhotalal, and that he had a right to have them sold in execution of his decree No. 3058 of 1894. He alleged that the fields belonged to his judgment-debtor and as such he attached them in execution of his decree under darkhást No. 754 of 1896, and that the defendant having applied for the removal of the attachment, the attachment was raised on the 9th December, 1897.

The defendant answered (*inter alia*) that the fields did not belong to the plaintiff's judgment-debtor Jivanlal; that he had sold them to the defendant for Rs. 900 in October, 1893; that since then the defendant had been in possession; and that the plaintiff had no right to have them sold.

* Second Appeal, No. 739 of 1899.

(1) (1894) 18 Bom., 13.

The Subordinate Judge found that the fields did not belong to Jivanlal and that the plaintiff had no right to attach them. He, therefore, dismissed the suit, observing in his judgment that the defect in the defendant's title (owing to there being no registered conveyance) was cured, inasmuch as a conveyance was, pending suit, reduced to writing and registered under a decree obtained by the defendant against Jivanlal for specific performance of the contract of sale.

On appeal by the plaintiff the Judge, relying on section 54 of the Transfer of Property Act (IV of 1882) and the decision in *Hormasji v. Keshav*¹⁾, found that the purchase by the defendant was invalid because it was not accompanied by a registered conveyance. He, therefore, reversed the decree and allowed the claim.

The defendant preferred a second appeal.

Lallubhai A. Shah for the appellant (defendant) :—We became the equitable owner of the lands in dispute, inasmuch as we paid the purchase-money and obtained possession although no registered conveyance was passed to us simultaneously with the transaction. The plaintiff's judgment-debtor had no attachable interest in the property at the date of the attachment. The provisions of section 54 of the Transfer of Property Act are not exhaustive—for instance, see section 55 (6) (b), which creates a charge upon the property under certain circumstances. The ruling in *Hormasji v. Keshav*⁽¹⁾ does not apply. It was a case of a purely executory contract which was covered by the last clause of section 56 of the Transfer of Property Act. The present case is quite different. The principle enunciated in the case of *Dagdu v. Panchamsing*⁽²⁾ ought to be followed. Here the original defect in our title has been cured by the execution of a subsequent registered sale-deed. The judgment-debtor having no right, title or interest which he could honestly sell, the auction-purchaser would get nothing under the sale.

[JENKINS, C. J.:—Section 91 of the Trusts Act makes the point quite clear.]

¹⁾ (1893) 18 Bom., 13.

⁽²⁾ (1892) 17 Bom., 375.

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Krishnalal M. Jhaveri for the respondent (plaintiff):—The provisions of section 54 of the Transfer of Property Act are clear, and without a registered conveyance no title could pass to the defendant. The case of *Hormasji v. Keshav*⁽¹⁾ is a direct authority on the point. The decision in *Papireddi v. Narasareddi*⁽²⁾ also supports our contention. A conveyance executed subsequent to the attachment cannot help the defendant. On the date of the attachment the title was vested in the judgment-debtor. The plaintiff not being a party to the suit brought by the defendant against the judgment-debtor for specific performance of contract, the decree is not binding upon him.

JENKINS, C. J.:—The facts are clear. The plaintiff sought for a declaration that the fields in dispute can be attached and sold as the property of his judgment-debtor Jivanlal. But Jivanlal had in 1893 sold these fields to the present defendant for Rs. 900, which sum was paid at the time possession was given to the purchaser. Transfer, however, was not effected, as the necessary registered conveyance had not been executed. The lower appellate Court, therefore, held that, at the time of the attachment in 1896, Jivanlal had an attachable interest, relying on the decision of Starling, J., in *Hormasji v. Keshav*⁽¹⁾. In that case no purchase-money had been paid. Here the purchase-money, as shown above, was paid when possession was given to the purchaser. Reliance has been placed on the concluding words of section 54 of the Transfer of Property Act, which provide that a contract “does not, of itself, create any interest in or charge on” the property sold. But the answer is that here reliance is not placed on the contract of sale alone: there is something more: there is possession and payment of the whole of the purchase-money; and that this makes a material difference is manifest from section 55 (6) (b), which entitles the purchasers to a charge on the property for the amount of any purchase-money properly paid by him. Reference may also be made to section 40 of Transfer of Property Act and to section 91 of the Trusts Acts. Furthermore, before this case was decided by the Court of first instance, a registered conveyance had been executed, so that the

(1) (1893) 18 Bom., 13.

(2) (1892) 16 Mad., 464.

purchaser's title was perfected, and it would be impossible for us to cancel that deed. It is not suggested before us that the decree for specific performance was wrongly given. We hold that from September, 1893, Jivanlal was nothing more than a bare trustee and had no attachable interest.

Under these circumstances we must reverse the decision of the lower appellate Court and restore that of the Second Class Subordinate Judge, dismissing the suit with all costs throughout on plaintiff.

Decree reversed.

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

LAKHMICHAND RAMCHAND (ORIGINAL PLAINTIFF), APPELLANT,
v. CHOTOORAM MOTIRAM AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1900.

March 29, 30.

Principal and agent—Agent—Revocation of authority—Interest of agent in property—Exercise of authority so as to bind principal—Contract Act (IX of 1872), Secs. 201, 202, 203—Counter claim—Permission to extend—Practice.

The plaintiff received instructions by letter from the defendants to purchase cotton on their behalf. This letter was received by the plaintiff before a telegram sent by the defendants the next day revoking the order reached him. The plaintiff replied by letter stating that the telegram had arrived too late and that the purchase had already been made. In fact, the plaintiff had merely appropriated to the defendants a contract entered into by himself with a third party the day before the defendants' order reached him.

Held, that the telegram was a revocation of the order contained in the letter of the previous day.

Held, further, that the plaintiff had no such interest in the subject-matter of the agency as to prevent its termination; nor had he exercised his authority so as to bind his principal, no contractual relation with any third person having been created before the receipt of the telegram.

The defendants owing to their ignorance of the true facts did not include in their counter claim certain sums paid by them to the plaintiff in part payment of the alleged losses incurred in respect of the purchase and re-sale of the aforesaid cotton.

Held, that the lower Court (RUSSELL, J.) had rightly permitted the defendants to put in a supplemental written statement extending their counter claim so as to include these items.

* Suit No. 37 of 1899; Appeal No. 1952.