

APPELLATE CIVIL.

Before Mr. Justice Batchelor.

1915.

February 19.

TIMANGOWDA BIN VENKANGOWDA (ORIGINAL PLAINTIFF), APPELLANT,
v. BENEFGOWDA BIN CIHENAPGOWDA AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.³

Transfer of Property Act (IV of 1882), section 51—Sale—Agreement to reconvey—No bar to recovery of possession—Construction of statute.

An agreement by the plaintiff to reconvey the property to the defendant made contemporaneously with the sale-deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale.

The provisions of section 51 of the Transfer of Property Act are imperative.

The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts.

Kurri Veerareddi v. Kurri Bapireddi⁽¹⁾ followed.

SECOND appeal from the decision of F. K. Boyd, District Judge of Bijapur, varying the decree passed by D. V. Yennemadi, Additional Subordinate Judge of Bagalkot.

The plaintiff sued to recover possession of the house in dispute from the defendants. He alleged that the house belonged to defendants 1 to 3, that the defendants 1 and 2 sold the house and other land to him on 30th November 1907; and that the defendants took forcible possession of the house and let it to defendant No. 4.

The defendant No. 1 who alone appeared denied the claim of the plaintiff and contended that plaintiff was never in possession of the plaintiff house although a sale-deed in respect thereof was passed to him; that the plaintiff had agreed to reconvey the house on payment of Rs. 400 and put off the execution of the deed of reconveyance; that the plaintiff could not therefore claim possession.

³ Second Appeal No. 941 of 1913.

⁽¹⁾ (1906) 29 Mad. 336.

The Subordinate Judge found that the agreement to reconvey the property to defendant 1 and the payment of Rs. 400 to plaintiff by him were proved and dismissed the suit.

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On appeal the District Judge agreed with Subordinate Judge's finding as regards the covenant of reconveyance but held that the payment of Rs. 400 was not proved and therefore amended the decree by directing that plaintiff was entitled to possession of the house in suit only on failure of payment of Rs. 400 by defendant No. 1.

The plaintiff appealed to the High Court.

P. D. Bhide for the appellant (plaintiff):—An agreement to reconvey is no defence to a suit for possession brought by my client on the strength of the sale-deed passed in his favour. Moreover, it is found in my favour that the price of reconveyance is not paid. When there is a strict provision of law and statute it cannot be overridden by reference to equitable principles. A sale as well as a reconveyance can only be effected by registered instrument under section 54 of the Transfer of Property Act: *Kurri Veerareddi v. Kurri Bapireddi*⁽¹⁾; *Papireddi v. Narasareddi*⁽²⁾; *Gopalan Nair v. Kunhan Menon*⁽³⁾; *Karalia Nanubhai v. Mansukhram*⁽⁴⁾. By a mere agreement to reconvey no interest in the property or charge is created. *Karalia Nanubhai v. Mansukhram*⁽⁴⁾ was distinguished in *Lalchand v. Lakshman*⁽⁵⁾ on the ground that there was payment of consideration, and a registered agreement had been obtained pending the suit.

K. H. Kelkar for the respondent (defendant No. 1):—We can successfully set up the plea of an agreement to

(1) (1906) 29 Mad. 336.

(2) (1907) 30 Mad. 300.

(3) (1892) 16 Mad. 464.

(4) (1900) 24 Bom. 400.

(5) (1904) 28 Bom. 466.

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reconvey. *Lalchand v. Lakshman*⁽¹⁾ and *Karatia Nanubhai v. Mansukhram*⁽²⁾ are authorities for the view that defendant can defend his possession as against the plaintiff on the ground that possession had been delivered over to him as part and parcel of the agreement to reconvey. In this case there has been a part performance and it would, therefore, be inequitable to refer the defendant to a separate suit for specific performance to which the plaintiff would have no defence.

BATCHELOR, J.—The facts upon which this appeal has to be decided lie within very small compass, and may be briefly stated. The plaintiff sued to recover possession of a house, and admittedly he purchased that house from the defendants under a registered sale-deed. But the defendants are still in possession, and the contesting defendant, that is the 1st defendant, met the plaintiff's claim with the plea that the defendant was entitled to retain possession, because the plaintiff had agreed to reconvey the house to the defendant on payment of Rs. 400, and this sum of Rs. 400 had been paid. The finding of fact of the lower appellate Court is, however, that the Rs. 400 have not been paid, so that in the defendant's favour there is this circumstance, and nothing more, that the plaintiff is found to have agreed to reconvey on payment of Rs. 400. In this state of the facts the learned District Judge has made a decree directing that the plaintiff is entitled to recover possession of the house if, and only if, the defendant fails to pay him Rs. 400 within a period of three months. The decree provides further that if that payment is made within the time limited, then the defendant is entitled to retain possession.

The question of law raised in these circumstances is whether, on the findings stated, the agreement by the

⁽¹⁾ (1904) 28 Bom. 466.

⁽²⁾ (1900) 24 Bom. 400.

plaintiff to reconvey to the defendant can be pleaded in bar of the plaintiff's present right to recover possession of the house under his purchase. If that question had to be decided on grounds of general principle, or by reference to equitable doctrines, much might be said in favour of the decree which the District Judge has made, for we are, for the purposes of the present argument, entitled to assume that the plaintiff would have no answer to a suit brought by the defendant for specific performance, and, upon that assumption, it would seem that the District Judge's decree operates to effect speedy and complete justice between the parties. But the question, as it seems to me, is not open to be decided on any such broad principles, but is concluded by the express words of the statute governing such transactions. That is section 54 of the Transfer of Property Act. That section lays down that "a contract for the sale of immoveable property does not, of itself, create any interest in or charge on such property." And it is clear that if these words are to be read strictly, there is no defence to the plaintiff's suit in this case. The exact question now under consideration occurred in Madras, and was fully considered by a Full Bench of that High Court in *Kurri Veerareddi v. Kurri Bapireddi*⁽¹⁾, where the learned Judges adopted the strict interpretation of this paragraph of section 54, and held that a contract of sale, followed by delivery of possession, does not, when there is no registered sale, create any interest in the property agreed to be sold, and cannot, even if enforceable at the date of suit or decree, be pleaded in defence to an action for ejection by a person having a legal title to recover. I have studied the judgments which the learned Judges delivered in this case, and no good

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purpose would be served by any attempt to repeat the arguments which were there used. It is enough for me to say that I follow this ruling, not only because it is a ruling of a Full Bench, but because my own opinion is in entire agreement, both with the decision come to, and with the reasoning upon which that decision is grounded. It will be observed that the judgments of Sir Arnold White and Mr. Justice Subrahmania Ayyar deal with the apparent difficulty caused by the decision of the Privy Council in *Immudipattam Thiruguanan v. Periya Dorasami*⁽¹⁾, and I agree in the construction there placed upon the language used by their Lordships of the Judicial Committee. The judgments of the learned Judges of the Madras Court contain, as it seems to me, convincing arguments for the view that the express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts; and I find that since the Madras case was decided, further authority for this view has been supplied by a later decision of the Privy Council. I refer to the case of *Mubraj Khatau v. Vishwanath Prabhuram Vaidya*⁽²⁾, which, as the judgments of the High Court show, was a strong case for the application of equitable principles, if recourse could ever be had to such principles for the purpose of qualifying the clear words of the Indian Statute. But their Lordships of the Privy Council held fast to the exact terms of section 130, sub-section 1, of the Transfer of Property Act, and in reversing this Court's decision, observed that the error arose from the learned Judges not having appreciated that the proceedings under that section precluded the application in India of the principles of English law on which they based their decision.

⁽¹⁾ (1900) L. R. 28 I. A. 46 : 24 Mad. 377.

⁽²⁾ (1912) 37 Bom. 198.

It appears to me, therefore, that the proper decision of this appeal is to hold that there is no escape from the plain language of section 54 of the Transfer of Property Act, and that in consequence the lower appellate Court's decree must be reversed. There is not, so far as I am aware, any Indian decision which is in conflict with the ruling in *Kurri Veerareddi v. Kurri Bapireddi*⁽¹⁾, and the case of *Karalia Nanubhai v. Mansukhram*⁽²⁾, on which Mr. Kelkar relied for the defendants, is distinguishable, inasmuch as in that case the Court had before it, not only the agreement, coupled with possession, but the fact of the payment of the whole of the purchase money. I cannot, therefore, regard the Bombay decision as modifying or casting doubt upon the decision in *Kurri Veerareddi v. Kurri Bapireddi*⁽¹⁾.

For these reasons, I reverse the decree of the District Court, and make a decree as prayed for by the plaintiff. The plaintiff must have his costs in this Court, and there will be no order as to any other costs. The amount of mesne profits will be determined in execution.

Decree reversed.

J. G. R.

⁽¹⁾ (1906) 29 Mad. 336.

⁽²⁾ (1900) 24 Bom. 400.

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