

## APPELLATE CIVIL.

1919.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.*

November

27.

DESAIBHAI JORABHAI (ORIGINAL DEFENDANT), APPELLANT v. ISHWAR JESHING (ORIGINAL PLAINTIFF), RESPONDENT<sup>o</sup>.

*Transfer of Property Act (IV of 1882), section 54—Sale—Oral Sale—Vendee put in possession of property on consideration being paid—Subsequent sale by a registered sale-deed—Notice of first sale—Registered purchaser gets no better title—Vendee under oral sale entitled to get a registered sale-deed from vendor.*

One Dola made an oral sale of the property in suit to Desaibhai. In pursuance of the sale, rupees two hundred and twenty-five were paid to the vendor and Desaibhai was placed in possession of the property. Thereafter Dola sold the property to one Ishwar who had notice that Desaibhai claimed to have bought the property and was in possession of it. In spite of this notice, Ishwar got his sale-deed registered and then sued for possession of the property on the ground that he had a better title by reason of his registered purchase. Desaibhai also sued Dola for getting a registered sale-deed of the property from him:

*Held*, (1) that Ishwar having distinct notice of the sale to Desaibhai, his title could not prevail against Desaibhai.

(2) that Dola having given possession to Desaibhai and received consideration from him, Desaibhai would be entitled to get a registered sale-deed from Dola.

SECOND appeal against the decision of M. M. Bhat, Assistant Judge at Ahmedabad, reversing the decree passed by M. H. Vakil, Subordinate Judge at Godhra.

The facts were as follows:—

The property in suit originally belonged to one Dola Nana.

In May 1913, one Desaibhai purchased the property from Dola by an oral sale, paid him the consideration money Rs. 285 and obtained possession.

On the 14th April 1914 Dola sold the property to one Ishwar by a registered sale-deed which was registered

on the 16th April; but on the 10th April, Desaibhai had submitted a petition to the Sub-Registrar stating that the land was sold to him and was in his possession and so the sale-deed passed by Dola to Ishwar should not be registered.

Ishwar having failed in his attempts to obtain possession brought Suit No. 726 of 1914 against Desaibhai for possession alleging that Desaibhai had taken wrongful possession on the 10th July 1914 and that Suit No. 680 of 1914 was filed by Desaibhai against Dola Nana for getting a registered sale-deed executed by Dola, alleging that Dola had agreed to pass a sale-deed two months after the date of the sale.

The Subordinate Judge held that the contract of sale alleged by Desaibhai was proved; that he paid Rs. 285 to Dola as its sale price; that he took possession of the property and spent Rs. 200 in improving the land. He, therefore, decreed in Suit No. 680 of 1914 that Desaibhai was entitled to obtain a registered sale-deed from Dola. In Suit No. 726 of 1914 by Ishwar it was held that though Ishwar's registered sale-deed was proved he was entitled to no relief, as Desaibhai was in possession and his suit to get a registered deed was decreed. Suit No. 726 of 1914 was, therefore, dismissed.

On appeal, the Assistant Judge was of opinion that an oral sale was not allowed by section 51, Transfer of Property Act, 1882, and thus there was no legal sale in favour of Desaibhai and therefore no agreement to pass a regular and legal sale-deed. He held that Desaibhai had no legal title to the land and that the sale in favour of Ishwar effected by registered document must prevail as against that in favour of Desaibhai. He, therefore, reversed the decrees of the Subordinate Judge in both the suits and decreed that

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Desaibhai's Suit No. 680 of 1914 be dismissed and Ishwar's Suit No. 726 of 1914 be allowed.

Desaibhai appealed to the High Court.

*G. N. Thakor*, for the appellant.

*Ishwarlal K. Vakil*, for the respondent.

MACLEOD, C. J.:—These are companion appeals in two suits which arose out of one Dola Nana selling certain property first to one Desaibhai and then to one Ishwar. The sale to Desaibhai was oral, and therefore the property being worth more than Rs. 100, Desaibhai obtained no title to the property, but he got possession, and on whatever ground the suit may have been based, if he had filed a suit to get a registered sale-deed, I have no doubt the Court would have made an order compelling Dola to execute a sale-deed in his favour. After the oral sale to Desaibhai, and after Desaibhai had been put in possession, Dola sold to Ishwar. Before the sale-deed to Ishwar was registered, Desaibhai put in a petition before the Sub-Registrar stating that he was in possession, and asking the Sub-Registrar to refuse to register the sale-deed to Ishwar. Therefore Ishwar had distinct notice of the sale to Desaibhai, and of the fact that Desaibhai was in possession. Therefore there was an obstruction to his getting a good title from Dola, and in spite of his knowledge that there was that obstruction he got his sale-deed registered, it is quite clear that his title cannot prevail against Desaibhai. That question or a very similar one was decided before us in Second Appeal No. 672 of 1917. It may be a question whether the transaction between Dola and Desaibhai must be treated as a sale, or merely as an agreement to sell, the consideration passing and the possession being given. But whether there was an agreement to sell that could be specifically enforced, or a sale without a

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document which was required to make it effectual at law, it appears to me that if Dola gave possession to Desaibhai and received consideration from him, Desaibhai would be entitled to get a registered sale-deed from Dola, unless after the original transaction a third party had obtained a better title. In this case there is no such third party. So I think that the plaintiff Desaibhai was entitled to succeed in his suit against Dola. Dola must be directed to execute a proper sale-deed with respect to the property. The plaintiff Ishwar must fail, and really there is no equity in his favour in this case. If there is any equity at all it exists in favour of Desaibhai who had paid his money for the property, and spent money on the property, and now has run the risk of losing it, whereas Dola would get the purchase price from two purchasers. The plaintiff Ishwar will not be a loser because it is expressly provided in the sale-deed that if he is obstructed in getting possession under his sale-deed, then he can have resort to Dola. The appeal, therefore, in Suit No. 680 will succeed. There will be a decree for the plaintiff with costs throughout. The appeal by Desaibhai in Suit No. 726 will also succeed, and that suit will be dismissed with costs throughout.

HEATON, J. :—The principal fact found is that there was what is called an oral sale of the property in suit by Dola to Desaibhai. In pursuance of this sale Desaibhai was placed in possession of the property and the price was paid, or some arrangement was made equivalent thereto. The first Court held on these facts that Desaibhai was entitled to have a regular sale-deed executed. The Court of appeal took the view that because there was no agreement for passing a regular and formal sale-deed, therefore Desaibhai was not entitled to obtain a sale-deed. What happened was, as I have said, that there was what is called an oral

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sale. Whether when this matter was arranged orally between the vendor and the purchaser, the vendor used the expression "I sell" or words equivalent thereto, or used the expression "I agree to sell," does not seem to me to really matter; especially as the form of words used in the conversation between the parties has not been precisely determined. The Court of first appeal decided that it would not order a deed to be executed, not however because it was shown that there was not an agreement to sell; but because it was not shown that there was an agreement to execute a deed. Plainly however there was a contract between them, although it may not have eventually taken the legal shape which the law requires. It seems to me that if we regard it as an agreement by which the vendor let it be understood that he was selling the property, then it may properly be taken to comprise "an agreement to sell". It seems to me, therefore, that we must not adopt this singularly fine distinction; that if the vendor said "I agree to sell", then he was bound; and if he said "I sell", he was not bound; and that Desai-bhai is entitled to obtain a sale-deed from the vendor. The parties made a mistake, they thought that an oral sale was valid, but in legal effect an oral sale is no more than an agreement to sell. The other argument urged is that Dola, the vendor, subsequently sold the same property to somebody else. But it appears that that somebody else had notice that Desai-bhai claimed to have bought the property, and was in possession of it. The lower appellate Court, it is true, found as a fact on the evidence that this other person had no notice. But quite clearly, as it seems to me, the Judge there was thinking of notice before the execution of the sale-deed which Dola passed to this other person. But it appears from the judgment of the trial Court, and it is not here denied, that this

other person actually had notice at the Sub-Registrar's office before his document was registered. As we have already held in a previous case that is a sufficient notice in a case of this kind. I agree, therefore, that both the appeals should be allowed and an order should be made as proposed by my Lord the Chief Justice.

*Decrees reversed.*

J. G. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.*

SURAJPRASAD DWARKADAS (ORIGINAL PLAINTIFF), APPELLANT v. KALMALI ABDULMIYA (ORIGINAL DEFENDANT), RESPONDENT<sup>a</sup>.

*Indian Limitation Act (IX of 1908), Schedule I, Articles 61 and 116—Well jointly owned by parties—Registered agreement for effecting repairs of well jointly—Repairs made at plaintiff's costs—Suit for contribution of expenses—Claim not for compensation for breach of a contract in writing registered—Limitation, three years.*

The plaintiff and the defendant jointly owned a well. They entered into a registered agreement to the effect that the repairs of the well were to be made by them jointly. The repairs were effected by the Municipality at the instance of the plaintiff who paid a certain amount to the Municipality in 1911. The plaintiff having sued the defendant in 1916 for the contribution claimable in respect of the repairs of the well, it was contended that the suit being covered by Article 116 of the Limitation Act, 1908, was not barred by limitation.

*Held*, that the suit, being in fact a suit for contribution, in which the right of action did not rest upon the registered contract, was time barred after three years.

SECOND appeal against the decision of C. N. Mehta, District Judge at Thana, confirming the decree passed by G. M. Kharkar, Joint Subordinate Judge at Thana.

Suit to recover money.

<sup>a</sup> Second Appeal No. 811 of 1918.

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