

## APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and  
Mr. Justice Crump.*

1923.  
August 17.

SANGAWA KOM GURUBASAPPA (ORIGINAL PLAINTIFF), APPELLANT *v.*  
HUCHANGOWDA BIN HUCHANGOWDA GOWDAR AND ANOTHER  
(ORIGINAL DEFENDANTS), RESPONDENTS<sup>a</sup>.

*Indian Registration Act (XVI of 1908), section 17—Sale-deed—Unregistered agreement to reconvey—Admissibility—Limitation—Indian Limitation Act (IX of 1908), Articles 91, 144.*

On December 13, 1913, a registered sale-deed was passed by the plaintiff's husband in favour of his step-uncle, defendant No. 1. On December 25, 1913, defendant No. 1 executed a receipt in favour of plaintiff's husband in terms as follows: "I shall without any objection give up your land at any time you may ask me to give up." This document was not registered. In January 1919, the plaintiff sued to recover possession of land on the ground that the sale deed was a mere paper transaction and was not intended to be operative. Defendant No. 1 contended that the receipt was inadmissible in evidence for want of registration and that suit was barred by limitation.

*Held* (1) that the receipt did not require registration as, even on the assumption that in terms it fell within section 17 (b) or (c) of the Registration Act, 1908, it would clearly be saved under sub-section (2) (v) of that section, and was, therefore, admissible in evidence.

(2) That the sale-deed was a mere paper transaction and inoperative, and the suit was therefore not barred, being governed by Article 144 and not by Article 91 of the Limitation Act, 1908.

*Petherpermal Chetty v. Muniandi Serrai* (1) and *Narsagounda v. Chavagounda* (2), referred to.

SECOND appeal against the decision of N. K. Bapat, First Class Subordinate Judge, A. P., at Bijapur, reversing the decree passed by Joint Subordinate Judge at Bagalkot.

Suit to recover possession.

<sup>a</sup> Second Appeal No. 410 of 1922.

(1) (1908) L. R. 35 I. A. 98 at p. 104.

(2) (1918) 42 Bom. 638

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The lands in suit originally belonged to the plaintiff's husband, Gurbasappa. Gurbasappa sold the lands to his step-uncle Huchangouda (Defendant No. 1) for Rs. 600, by a registered conveyance (Exhibit 16), dated December 13, 1913. The sale-deed was presented for registration on December 23, 1913. On December 25, 1913, Huchangouda passed a Yadi (Exhibit 18) in favour of Gurubasappa in terms as follows :—

"I shall without any objection give up your land at any time that you may ask me to give up."

The Yadi was signed by Huchangouda and attested by two witnesses.

In August 1918, Gurbasappa died and his widow Sangawa sued in 1919 to recover possession of the property. She alleged that the sale-deed was hollow and was never intended to effect a valid transaction, that its execution was induced by fraud and misrepresentation.

Defendant No. 1 contended *inter alia* that he held the lands as owner; that the suit was not maintainable till the conveyance in dispute was set aside, and that it was barred under Articles 91 and 95 of the Limitation Act, 1908.

The Subordinate Judge treated the Yadi (Exhibit 18) as an agreement and on recovering the requisite stamp duty and penalty admitted it as evidence of the transaction. On the merits he held that the conveyance (Exhibit 16) was not intended to transfer ownership over the lands mentioned therein to defendant No. 1, as alleged by him and that he paid no consideration for the same to the plaintiff's husband. He further held that the suit was not barred by Article 91 of the Limitation Act. He allowed the plaintiff's claim.

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On appeal, the First Class Subordinate Judge, A. P., held that the Yadi was not an agreement to reconvey the land but it affected interest in the land itself; and that it was not admissible in evidence as it was not registered under section 17 of the Registration Act. He held that the claim was also barred under Article 91 of the Limitation Act and he further found that the sale-deed was not hollow or was not the result of any misrepresentation or fraud and was passed for proper consideration. Plaintiff's suit was, therefore, dismissed by him.

The plaintiff appealed to the High Court.

*Nilkant Atmaram*, for the appellant.

*H. B. Gumaste*, for respondent No. 1.

SHAH, AG. C. J.:—This appeal arises out of a suit filed by the plaintiff to recover possession of the lands mentioned in the plaint on the ground that the sale-deed executed by her husband on the 13th December 1913 in favour of defendant No. 1 was merely a paper transaction and was not intended to be operative. The plaint referred to misrepresentation and fraud on the part of defendant No. 1, but no further particulars of the alleged fraud or misrepresentation were given, and in substance the suit was based on the ground that the transaction was an inoperative and hollow transaction. The defendant No. 1 was the step-uncle of Gurubasappa, the husband of the minor plaintiff, and the suit is filed by the plaintiff's next friend, her father Sangappa Basappa.

The defendant No. 1, who is the principal defendant, contended that it was a genuine and real sale by Gurubasappa to him, that it was passed for valuable consideration, and that he was rightfully in possession. He also contended that the claim was time-barred

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under Articles 91 and 95 of the Indian Limitation Act. The issues framed on those pleadings were these:—

1. Whether the conveyance, Exhibit 16, was intended to transfer ownership over the lands mentioned therein to defendant No. 1 as alleged by him?

2. Whether he paid any and what consideration therefor?

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4. Whether the suit is barred by Article 91 of the Limitation Act?

The learned trial Judge was satisfied on the evidence that the conveyance was not intended to transfer ownership over the lands mentioned in Exhibit 16, and that in fact it was a hollow transaction. He also held that the consideration of Rs. 600 was not proved. He accordingly decreed the plaintiff's claim for possession and mesne profits.

The defendants appealed to the District Court, and the learned First Class Subordinate Judge, with appellate powers, who heard the appeal, came to the conclusion that Exhibit 18, which is a *yadi* said to have been passed by defendant No. 1 after the execution of the sale-deed, was not admissible in evidence, as it was not registered. He also came to the conclusion that the evidence as to the payment of consideration was not "quite unreliable," and that the burden of proving the payment of consideration was wrongly thrown on the defendant. He ultimately came to the conclusion that the sale-deed was not proved to be hollow or to have been the result of any misrepresentation or fraud. He also held that under Article 91 or 95 the claim of the plaintiff was barred. He accordingly allowed the appeal and dismissed the plaintiff's suit.

The plaintiff has appealed to this Court from the decree of the appellate Court. The first point that has been urged in support of the appeal is that the lower

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Court was wrong in its view that Exhibit 18 was not admissible in evidence for want of registration. That document is in these terms:—

“To

Gurbasappa father Basangowda residing at Hireyarankeri Pavti (lit. receipt) to wit. The receipt passed by me Huchangowda father Huchangowda residing at Hireyarankeri is as follows:—I shall without any objection give up your land at any time that you may ask me to give up. Dated 25th December 1913.”

It is signed by defendant No. 1 and attested by two witnesses. We do not think that this document could be held to be inadmissible for want of registration. It is at the most an agreement to reconvey when Gurubasappa would ask him to give up the property. In the trial Court when the objection was taken, the point as to registration was disallowed, and the document was admitted in evidence on the footing of its being an agreement after the usual penalty for want of stamp was paid. We are not at all sure that the document in terms comes under section 17 (b) or (c), Indian Registration Act. It does not purport to do any of the things mentioned in that section, clause (b) or (c). But even if it did, it seems that it would clearly be saved under clause (v), sub-section (2) of section 17 of the Indian Registration Act.

As to the execution of this document, the trial Court found that it was duly proved. That Court disbelieved the evidence of the witness Jaffar, one of the attesting witnesses, and believed the evidence of Basappa, as to the execution: and defendant No. 1 admitted his signature on it.

No objection seems to have been taken before the lower appellate Court as to the genuineness of this document, and in any case as there is no finding on that point, it is open to us under section 103 of the Civil Procedure Code to determine, if necessary, the question as to whether this document was executed by defendant No. 1.

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We have heard Mr. Gumaste for the respondent No. 1 on this point, and we have heard nothing from him which would go to show that the finding of the trial Court on this point is open to any objection. The trial Court was perfectly right in its conclusion that the document was executed by defendant No. 1.

[After discussing the evidence on the point of consideration, the judgment proceeded:]

We have considered the case as stated in the judgment of the trial Court, and having regard to the reasons given by the lower appellate Court on the question of consideration, it seems to us to be unnecessary to remand any issue to the lower appellate Court on this point. Exhibit 18 puts quite a different colour upon the whole case, and after hearing the arguments urged on behalf of respondent No. 1, we are satisfied that as defendant No. 1 executed the *yadi*, and as that *yadi* is held to be admissible in evidence, he has really no just or honest answer to the plaintiff's present claim.

As regards the question of limitation, it presents no difficulty. If this transfer was inoperative, and a mere paper transaction, it would not require to be set aside. It would be enough to refer on this point to the observations in *Petherpermal Chetty v. Muniandi Servai*<sup>(1)</sup> and to the decision of this Court in *Narsagounda v. Chawagounda*<sup>(2)</sup>. The Article that would apply to a case of this kind where the document is found to be inoperative is Article 144 and then the claim would be in time.

We reverse the decree of the lower appellate Court and restore that of the trial Court with costs here and in the lower appellate Court on the respondents.

*Decree reversed.*

J. G. R.

<sup>(1)</sup> (1908) L. R. 35 I. A. 98 at p. 104.

<sup>(2)</sup> (1918) 42 Bom. 658.