

CALCUTTA HIGH COURT

Naresh Chandra Dutta

Vs.

Girish Chandra Das

(Mukerji, J.)

22.02.1935

JUDGMENT

Mukerji, J.

1. This is an appeal by the plaintiff in a suit for pre-emption. It is not disputed that the Mahomedan law of pre-emption applies to the case though the parties themselves are Hindus. The following are the facts: The sale in connection with which the plaintiff is seeking to enforce his right to pre-empt is evidenced by a deed which was presented for registration at the registration office on the 30th day of August. Before that date the vendor, on receipt of ₹ 50 out of the total amount of consideration which was fixed at ₹ 500, had put the vendee in possession. On the date abovementioned the vendor admitted execution and thereupon the Sub-Registrar made the usual endorsements on the deed. The necessary entries and copies were thereafter made and the final endorsement that the deed had been registered was made on the 3rd day of September. The Munsif decreed the suit. On appeal by the defendants the Subordinate Judge reversed that decision and dismissed the suit, and his decree has been affirmed by Henderson, J. It has been found that the first talab or demand was performed on the 4th day of September, and the suit has been dismissed on the ground that there was delay in such performance. On that, two questions at once arise: 1st when did the sale take place? 2nd, when did the plaintiff come to know of the sale?

2. So far as the first question is concerned there may be three points of time at one or other of which the sale can possibly be taken to have been effected: the first is the point of time at which a part of the consideration money having been paid the vendor put the vendee in possession; the second, when the transfer became operative under Section 54, T. P. Act, and the third, any other point of time at which the parties may have intended the sale to be effective. Of the third of these contingencies there was no indication in the pleadings. And therefore upon the view most favourable to the plaintiff it is second point of time aforesaid that should be regarded. This gives rise to the question, when was the deed 'registered' within the meaning of Section 3, T. P. Act. On the question whether the executant of a deed compulsorily registrable has any locus paenitentiae to resile, by reason of the fact that the title under it is incomplete for want of registration, it has been held and that proposition appears to have been affirmed by the Judicial Committee that incompleteness due to want of registration is not a thing of which the executant can take any

advantage, and that if the instrument is otherwise complete, the executant is to be regarded as having done everything that was in his power to complete the transfer and to make it effective, because registration does not depend upon the executant's consent but is the act of the officer appointed by the purpose, *Nabadweep Chandra Das v. Lokenath Roy*¹ *Kalyanasundram Pillai v. Karuppa Mooppanar*² But as regards third parties the point of time at which the transfer is to be effective is when the deed of transfer can be said to be a registered deed. The question has been considered in *Veerappa Chetty v. Kadireson Chetty*³, in which after referring to the relevant sections of the Registration Act the learned Judges observed:

Briefly then, registration includes the getting made and the making of certain endorsements, making the certification of registration and the copying of the documents in the register book and the filing of the map or plan, if any, in Book 1. The substantial portion is apparently complete with the making of the certificate of registration. It is these that Section 49 prescribes should have taken place with reference to the document before it can affect any Immovable property to which it relates or be received in evidence.

3. We agree in the view thus expressed and on that view we must hold that the sale took place on the 3rd September. As regards the second question it may be stated at once that the case which the defendants made has failed. But it is with the plaintiff's case on the point with which we are more concerned. His case, by which he sought to establish the element of promptness in the shafiat ceremonies, was that he first heard of the sale on the 4th September and that as soon as he heard of it he made the talab first at the Bar Library and then in the house of the defendant. That case, shortly stated, is that the plaintiff's officer Nagendra came to Sylhet on the 3rd September and on going to the registration office on the 4th to inquire whether the kobala had been executed and registered he was told by a deed--writer that it had been, and that he promptly went to the Bar Library and saw the plaintiff who immediately made the talab. The Subordinate Judge has shown the utter falsity of this story and has found that the plaintiff must have come to know of the registration before the time alleged and that the talab at the Bar Library was stage--managed. The element of promptness having been found against the plaintiff, his suit has been dismissed, and on that finding, which is essentially a finding of fact, it has been rightly dismissed. The appeal fails and must be dismissed. There will be no order as to costs of this appeal.

R.C. Mitter, J.

4. I agree.

¹1933 Cal 212

³20 Ind. Cas. 385 : (1913) 24 MLJ 664

²1927 P C 42