

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Ganga Properties Ltd

(Sankar Prasad Mitra and S Mukharji , JJ.)

17.06.1969

JUDGMENT

Sankar Prasad Mitra, J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922. The assessment year is 1957-58. The corresponding previous year was the financial year ending on the 31st March, 1957. At the relevant time the assessee was a private limited company. In the years preceding the financial year aforesaid the assessee was the owner of premises No. 17B, Gurusaday Road, Calcutta. The assessee claimed for the assessment year 1957-58, that the bona fide annual value of this property was not assessable in the assessee's hands as the property had been sold on the 29th March, 1956, to Messrs. Punjab Produce & Investment Co. Ltd. before the beginning of the accounting year in question. It was stated that under an oral agreement dated March 27, 1956, the assessee agreed to sell the property to the aforesaid purchaser and in accordance with this agreement delivery of possession was given to the purchaser on March 29, 1956. It was stated further that the purchaser paid the whole of the consideration money on the 16th April, 1956, which was credited in the assessee's books in the suspense account. An agreement for sale was drawn up on April 28, 1956. The deed of conveyance transferring the property was executed on the 17th March, 1958, and was registered on 8th July, 1958.

2. The Income-tax Officer was of opinion that ownership was not transferred until registration of the deed of conveyance. In the premises, during the accounting year in question the ownership remained vested in the assessee. The Income-tax Officer included the property's bona fide annual value in the assessee's total income.

3. The Appellate Assistant Commissioner was also of the same view. He said that the property had not legally passed to the purchaser on the 29th March, 1956, as claimed by the assessee and he sustained the Income-tax Officer's order.

4. The Tribunal referred to the Supreme Court's decision in Commissioner of Income-tax v. Bhurangya Coal Co., and held that the execution of the deed of conveyance having taken place on the 17th March, 1958, registration could not take effect on any date earlier than that, even though it might have been mentioned in the body of the deed that the sale actually took place at a much earlier date. The Tribunal negatived the assessee's contention that the sale of the property was effected on March 29, 1956. The Tribunal, however, was of opinion that, though the assessee remained the legal owner, the beneficial ownership passed to the purchaser on the 29th March, 1956, and under Section 9 of the Indian Income-tax Act, 1922, the income from the property was assessable in the hands of the beneficial owner, that is the purchaser and not the assessee. The Tribunal held that the expression "of which he is the owner" in section 9 of the Act of 1922 made the beneficial owner and not the person having a legal title assessable in respect of the income from property under assessment. The Tribunal directed the exclusion of the bona fide annual value of premises No. 17B, Gurusaday Road, from the assessee's total income for the assessment year 1957-58.

5. The following questions have been referred to this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the legal ownership of premises No. 17B, Gurusaday Road, Calcutta, did not pass to the purchaser on the 29th March; 1956?

(2) If the answer to question No. 1 is in the affirmative then, whether the Tribunal was right in holding that the assessee was not liable to be assessed in respect of the bona fide annual value of premises No. 17B, Gurusaday Road, Calcutta, under section 9 of the Indian Income-tax Act, 1922, for the assessment year 1957-58 as the assessee was not the beneficial owner thereof?"

6. Mr. Roy, learned counsel for the assessee, contended that the execution of a document, unless the contrary is stated, ordinarily takes effect from the date of the execution, but if there is an express stipulation in the document specifying the date from which it shall take effect, the document becomes operative on and from the date so specified. Learned counsel refers to Section 47 of the Indian Registration Act, 1908, and submits that this section does not lay down that the date of commencement would be the date of execution of the document. Mr. Roy submits further that his argument can be substantiated, also by referring to various sections of the Transfer of Property Act. In Section 55, Sub-sections (4) (5) and (6) of the Transfer of Property Act, it is provided, for instance, that the seller is entitled to the rents and profits of the property till the ownership thereof passes to the buyer and the buyer is entitled, where the ownership of the property has passed to him, to the rents and profits thereof, but all these provisions become applicable" in the absence of a contract to the contrary ". Then again, Section 19 of the Transfer

of Property Act, inter alia, provides;

"Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer ..."

7. Counsel for the assessee states that in view of these provisions it is permissible to create title with effect from a date specified in a document of transfer. Counsel submits that, in terms of the agreement between the parties, possession in the instant case, was delivered on the 29th March, 1956, but the vendor was to pay the rates, taxes and outgoings and was to be entitled to rents, issues and profits up to the 31st March, 1956. His contention is that in view of these terms the title of the buyer was created with effect from the 29th March, 1956, or in any event the 31st March, 1956.

8. The assessee's counsel relies on a judgment of the Full Bench of the Delhi High Court in *Commissioner of Income-tax v. R. B. Jodhamal Kuthiala*. In this case the assessee was a registered firm. It purchased a property known as "Nedous Hotel" and the adjoining buildings in Lahore in February, 1946. For acquiring this property for Rs. 46 lakhs, the assessee had to raise an interest bearing loan of Rs. 30 lakhs from a bank. During the financial year relevant to the assessment year 1951-52, the assessee credited a sum of Rs. 1,14,875 on account of interest payable to the lender and paid Rs. 15,000 as interest in the said year. The assessee claimed a loss of Rs. 1,70,104 with respect to the property by showing the gross annual letting value as nil and claiming the said amount as loss on account of interest payable to and credited to the account of the bank, R. B. Jodhamal Trust and insurance premia. Similar losses were claimed in respect of assessment years 1952-53, 1955-56 and 1956-57. The property, however, had vested in the Custodian of Evacuee Property, Lahore. The Full Bench of the Delhi High Court has held that, though Section 9 of the Indian Income-tax Act, 1922, merely prescribes the notional method of arriving at "income from property" on which the assessee has to be taxed, basically the tax is on income. The scheme of the Act shows that a person can be termed an owner for the purpose of Section 9, only if he has such control over the property as may enable him to earn income therefrom. In other words, the assessee must be in a position to earn income from the property unless he chooses not to do so or the circumstances do not permit him to earn income even though he has dominion or control over the property. According to the Delhi High Court, during the period that an assessee's property remains vested in the Custodian of Evacuee Property by virtue of Section 6(1) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, as evacuee property, the right of the assessee to claim to be the owner of the property is taken away by the statute, and he cannot be said to be the owner of the property for the purpose of Section 9

of the Indian Income-tax Act, 1922. Neither can the annual letting value of the property so vested be included in the assessee's income, nor can he be allowed deductions under Section 9.

9. Mr. Roy cites this authority of the Delhi High Court in support of his contention that the word "owner" in Section 9 of the 1922 Act must mean a person having control and domain over the property. In other words "ownership" in Section 9 refers to possession of those rights in relation to property which results in the earning of income. The reason is that, income-tax is a tax on income and unless a person has out of the property, either actual or potential earning capacity, he cannot be charged under Section 9.

10. It should be pointed out that under Section 6(1) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, "all evacuee property shall vest and shall be deemed always to have vested in the Custodian with effect from the 1st day of March, 1947." In these premises, there could be no question of any "owner" apart from the custodian during the period the property remained so vested.

11. Mr, Roy has also relied on the case of Commissioners of Inland Revenue v. Fleming, [1928] 14 T.C. 78. decided by the Court of Session, Scotland (First Division). The respondent's estates were sequestrated in 1921 under the Bankruptcy (Scotland) Act, 1913, and a trustee was appointed. The assets included heritable properties subject to mortgages and the rents were applied by the trustee in payment of mortgage interest and redemption of mortgages, but not in payment, of dividends to creditors. At the close of the sequestration the respondent was re-invested in those properties which had not been sold, and received the balance of rents in the trustee's hands. Ordinary creditors received 9 sh. in the ., out of the amount realised by the trustee, and the respondent obtained his discharge in 1926 on payment of a composition of a further 1sh. in the . The respondent thereupon claimed repayment of tax suffered on the heritable properties for each year from 1920-21 to 1925-26 in respect of the personal allowance to which he contended he was entitled. It was contended that in spite of the sequestration the " radical" right in the estate remained with the bankrupt and that the income arising during sequestration was his income for income-tax purposes. It was held that during sequestration the income from the sequestrated estate, which was vested in the trustee, was the trustee's income and not the bankrupt's and that neither the trustee nor the bankrupt was entitled to claim the relief sought.

12. In this Scottish case also, as in the case of the Delhi High Court, the immovable property in question remained statutorily vested in some one else during the relevant period. At page 84 of 14 Tax Cases, the Lord President observes :

"It is obvious that, unless during the years in question the annual value of the properties was

income of the respondent, he cannot have any claim to abatement of it for income-tax purposes; and accordingly every thing depends upon the soundness of the proposition that the income consisting in the annual value of these properties was truly income of the respondent. I do not see how it can possibly be so described. It was part of the income arising from the sequestrated estates vested in the trustee for the respondent's creditors. Any income that did arise from those estates was income of the trustee as such, and he (and he alone) had the right to put it into his pocket as income. It was not income that went or could go into the pocket of the respondent as income in any of the years in question, How then can it be said to have reached his pocket as income on his subsequent reinvestiture ? What was he reinvested in ? It is said that he was reinvested in whatever substance remained of the radical right belonging to Mm all along. But the radical right of a bankrupt in his sequestrated estate is nothing but a right of reversion to the balance remaining after the creditors are satisfied for which balance he is entitled to call the trustee to account. It is not, I think, a specific right to any particular assets, or a right which applies specifically to that part of the reversion which originated from revenue on the one hand and that part which originated from capital on the other hand. The argument for the respondent must, I think, go this length that it was the duty of the trustee to make the claim for the respondent's ' personal allowance' when he paid income tax on the income arising from the trust, estate. A glance at Section 18 of the Finance Act, 1920, shows how unworkable and Impossible that would be. The trustee (who represents the creditors) could not appear as claimant for the abatement in the guise of the person who alone is entitled to the allowance, "

13. These observations of the Lord President completely distinguishes the facts in Fleming's case from those in the instant reference.

14. To decide the points that have arisen for our consideration in this case, it would be necessary to refer, in the first instance, to some of the provisions of the relevant statutes. Under the Income-tax Act one of the heads of income chargeable to tax is "Income from property" : vide Section 6 (iii) of Act of 1922. Then under Section 9 the tax is payable by an assessee, under the head "Income from property", in respect of "bona fide annual value of property of which he is the owner". The question is whether the expression " of which he is the owner " envisages the case of a legal owner only or the case of a beneficial owner as well.

15. Now, Section 17(1)(b) of the Indian Registration Act, 1908, makes compulsorily registrable non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or In future, any right, title or interest, whether vested or contingent, of the value of Rs. 100 or upwards, to or in immovable property. And Section 47 of the Registration Act says a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from

the time of its registration.

16. It is well known that where an Instrument which purports to transfer title to property requires to be, registered, the title does not pass until registration has been effected. Section 47 of the Registration Act does not create a new title. It only affirms a title which has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute ; but by virtue of Section 47, once registration is effected, the title relates back to the date of execution: vide Mulla on the Indian Registration Act, 6th edition, pages 164 and 165.

17. A Division Bench of this court in *Hall & Anderson (Pvt.) Ltd. v. Commissioner of Income-tax*, [1963] 47 I.T.R, 790 (Cal). had to consider a similar case. The assessee carried on business as general drapers, outfitters, furnishers and warehouse-owners. It entered into an agreement on November 29, 1946, for the sale of its undertaking including all its immovable and movable properties and assets to a public company with effect from December 1, 1946. The assessee undertook to execute a conveyance or any other document which might be necessary for the portions of the premises which did not pass by delivery of possession. Possession of all the properties was delivered on December 1, 1946. For some reason or other, there being no suggestion that it was with the intention of avoiding payment of any tax, the sale deed for the immovable properties was not executed until the 26th February, 1949. The sale deed recited that it was executed " for the purpose of formally transferring the lands, hereditaments and premises" mentioned in the agreement for sale. This court had held that the word "sale" was not defined in the Indian Income-tax Act, 1922, and in order to find out the legal implication of a "sale "one must resort to the Transfer of Property Act in the case of immovable property and to the Sale of Goods Act for movable property. And under section 8 of the Transfer of Property Act, even though the assessee had parted with the immovable properties to all intents and purposes as from December 1, 1946, in law the ownership continued in it until February 26, 1949. The sale of immovable properties was, therefore, effected on February 26, 1949, and capital gains tax was not chargeable under Section 12B of the Indian Income-tax Act, 1922. In this case, on behalf of the revenue, reliance was placed on Section 47 of the Registration Act; but G. K. Mitter J., at page 801, has observed :

"In my view Section 47 of the Registration Act does not help the revenue. In this case the registered document itself did not come into existence before February 26, 1949, and under Section 47 could operate only from that date."

18. We may now, in the light of the relevant provisions of the Registration Act referred to above, examine a few provisions of the Transfer of Property Act Section 54 of the Transfer of Property Act defines a sale. It says: sale is a transfer of ownership in exchange for a price paid or

promised or part paid and part promised. Then it speaks of how a sale is made. It provides :

" Such transfer, in the case of tangible immovable property of the value of Rs. 100 and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument."

19. In other words, in the case of tangible immovable property of the value of Rs. 100 and upwards, title can pass only by execution of a registered instrument. And the date on which the instrument is executed (not the date of registration) is the date on which the passing of title takes effect. Incidentally, Section 54 of the Transfer of Property Act also prescribes that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties and it does not, of itself, create any interest in or charge on such property. Then again, Sub-section (6) of Section 55 of the Transfer of Property Act, inter alia, provides that the buyer is entitled, unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission. These provisions show that a contract for sale followed by payment of money may create a charge on the property or give rise to a suit for specific performance or rescission ; but it does not have the effect of passing the title thereto.

20. Incidentally again, it may be useful to refer to some of the provisions of Section 40 of the Transfer of Property Act which prescribes, inter alia, that where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of the immovable property, but not amounting to an interest therein or easement thereon, such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation nor against such property in his hands. The illustration to this section runs thus:

"A. contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C., who has notice of the contract. B may enforce the contract against C. to the same extent as against A."

21. In Mulla's Transfer of Property Act, 5th edition, at page 198, it is stated that the right referred to above has to come into existence before the transfer, but does not presuppose ownership of property; it is a purely personal right arising out of contract and the person who has the right need

not be the owner of any property at all; but the right though personal must be annexed to the ownership of immovable property. It is stated further that the illustration shows that the purchaser under a contract of sale of land has the right defined therein and that right in English Law is an equitable estate in land.

22. But as we all know, the English doctrine of equitable ownership is not recognised in India. According to Section 3 of the Indian Trusts Act, 1882, the "beneficial interest " or "interest" of the beneficiary is the right against the trustee as owner of the trust property. In other words, what would be in English law the equitable estate of the cestui qui trust is the benefit of an obligation annexed to the ownership of property. In English law an agreement for the sale of land leaves the legal estate in the seller but creates an equitable estate in the buyer. These equitable estates were the creation of the Court of Chancery. A cestui qui trust when in possession was protected in his enjoyment of the rents and profits and treated as if he were the owner, and the Court of Chancery continued to treat him as having an estate in land when out of possession. Again, the relation created by contract between a vendor and a purchaser was described as that of trustee and cestui qui trust and the contract was held to give the purchaser an equitable estate in land: vide Mulla's Transfer of Property Act, 5th edition, pages 50, 51. In India the leading case on the subject is the case of G.M. Tagore v. G. M. Tagore, [1872] I.A. Supp. 47 which the Judicial Committee decided in 1872. In Webb v. Macpherson, [1904] I.L.R. 31 Cal. 57 ; L.R. 30 I.A. 238 (P.C) at page 72, the Privy Council observes:

" The law of India, speaking broadly, knows nothing of the distinction between legal and equitable property in the sense in which that was understood when equity was administered by the Court of Chancery in England, and the Transfer of Property Act gives a statutory charge upon the estate to an unpaid vendor unless it be excluded by contract. Such a charge, therefore, stands in quite a different position from a vendor's lien. You have to find something, either express contract, or at least something from which it is a necessary implication that such a contract exists, in order to exclude the charge given by the statute, "

23. In the case of Chhatra Kumari Devi v. Mohan Bikram Shah , also it is stated :

"The Indian law does not recognise legal and equitable estates:... By that law, therefore, there can be but one 'owner', and where the property is vested in a trustee, the 'owner' must, their Lordships think, be the trustee. "

24. Before we summarise our conclusions we ought to refer to a few other cases and certain provisions of the relevant documents we have to consider in this reference.

25. In Commissioner of Income-tax v. Bhurangya Coal Co., the facts briefly were that on March

16, 1946, the coal company, which was the owner of a colliery, entered into an agreement with the promoters of another company to sell the colliery which included both movable and immovable properties for Rs. 6,10,000. The schedule to the deed of agreement set out the details of the properties in two parts : the first part Included immovable property whose value was fixed at Rs. 2,00,600 and the second part consisted of movables valued at Rs. 4,09,400. The purchaser-company was incorporated on March 18, 1946, and its directors adopted the agreement by a resolution, On March 30, 1949, all the properties movable and immovable were put into the possession of the purchaser-company. On May 17, 1946, a sale deed was, executed and registered in respect of the immovable properties mentioned in the first part of the schedule to the agreement. The sale deed recited the agreement of March 16, 1946, and referred to the two classes of properties agreed to be sold thereunder. The actual conveyance under the deed was only of the immovable properties specified in the first part of the schedule and the price thereof was stated to be Rs. 2,00,600. The Appellate Tribunal held that, so far as the movable properties were concerned, title passed when they were delivered to the company on March 30, 1946, and capital gains tax was not payable in regard to these properties under Section 12B (this section applied only to transfers effected after March 31, 1946) but the coal company was liable to pay capital gains tax for the immovable properties covered by the sale deed dated May 17, 1946. The Supreme Court has held, inter alia, that the title to immovable properties covered by the sale deed passed to the transferee on the date it was executed, namely, May 17, and the title to the movable properties passed to the company on the date they were handed over, namely, March 30, and not on the date of the agreement, and, therefore, the firm was liable for tax only in respect of profits made with reference to the immovable properties covered by the sale deed.

26. This case reiterates the principle that title to immovable properties does not pass until a proper deed of conveyance is executed and registered. The fact that the purchaser has been put into possession on an earlier date is immaterial so far as the passing of title is concerned.

27. Then, it is well known that under Section 9 of the Indian Income-tax Act, 1922, the tax is payable by an assessee in respect of the bona fide annual value of the property irrespective of the question whether he received that value or not. The income from property is an artificially defined income and the liability arises from the fact that the assessee is the owner of the property. The liability does not depend on the power of the owner to let out the property, as it also does not depend on the capacity of the owner to receive the bona fide annual value (see the decision of the Bombay High Court in *D.M. Vakil v. Commissioner of Income-tax* and the decision of the Calcutta High Court in *Commissioner of Income-tax v. Biman Bihari Shaw, Shebait* . In the instant reference, even if we assume that the Punjab Produce & Investment Co. Ltd. was the beneficial owner with effect from the 29th March, 1956 (although there is no such concept in

Indian law), the assessee would be liable for income-tax as the legal owner under Section 9. Two other cases may be considered in this reference. In Alapati Venkalaramaiah v. Commissioner of Income-tax, the appellant owned certain lands and buildings and plant and machinery thereon. He carried on the business of manufacture of tiles and bricks. He entered into an agreement on March 17, 1948, with one V to sell his assets including stock and goodwill for a sum of Rs. 2 lakhs to a company. Option was reserved for the company to adopt the agreement. On March 17, 1948, the appellant handed over possession of the lands and buildings, plant and machinery to the company. On March 20, 1948, the company credited the sum of Rs. 2 lakhs in its accounts in favour of the appellant. The appellant also made appropriate entries in his own books of account. The sale deed in respect of the land was executed in favour of the company on November 22, 1948. The company's board of directors gave its approval to the agreement on March 16, 1949. The company's shareholders at their general meeting on April 10, 1949, approved of the agreement. The question was whether capital gains arose from the sale in the previous year ending March 31, 1948, relevant to the assessment year 1948-49. The Supreme Court has held, inter alia, that (1) before Section 12B of the Indian Income-tax Act, 1922, could be attracted, title must pass by any of the modes mentioned in Section 12B, that is, sale or exchange or transfer; in the context, " transfer " meant effective conveyance of the capital assets to the transferee ; and delivery of possession of immovable property could not by itself be treated as equivalent to conveyance of the immovable property; (2) the entries in the account books of the appellant and of the company on March 20, 1948, were irrelevant for the purpose of determining the date when the sale or transfer took place ; (3) the title to the land and buildings and the plant and machinery and electrical fittings permanently embedded thereon could not pass to the company till the conveyance was executed and registered ; and (4) as the sale deed was executed and registered only on November 22, 1948, no sale or transfer of these assets took place before April, 1948, and no capital gains arose in the relevant previous year.

28. The next case that may be of some assistance to us is the case of *Waddington v. O'Callaghan*, [1931] 16 T.C. 187 (K.B.). The appellant, who had for many years carried on, solely, practice as solicitor, informed his son on the 31st December, 1928, that it was his intention to take him into partnership as from that date and on the 1st January, 1929, instructed another firm of solicitors by letter to draft a partnership deed. The deed, which was expressed to have effect as from the 1st January, 1929, was executed on the 11th May, 1929. No formal notice of the partnership was at any time given by advertisement, circular or otherwise. No alteration of the name under which the practice was carried on, or in the business bank account, was made until after the date of the partnership deed. From the 31st December, 1928, the son was credited with the share of profits to which he was entitled under the partnership deed. Rowlatt J. has held that the partnership constituted by the deed commenced on the date of the deed and there was no evidence before the

Commissioners of the existence of the partnership before that date. At page 197 Rowlatt J. says :

"I think this is a plain case. There is no sort of doubt at all about the legal position as I understand it. When people enter into a deed of partnership and say that they are to be partners as from some date which is prior to the date of the deed, that does not have the effect that they were partners from the beginning of the deed. You cannot alter the past in that way. What it means is that they begin to be partners at the date of the deed, but then they are to take the accounts back to the date that they mentioned as from which the deed provides that they shall be partners. There is no sort of doubt at all that that is the only effect which such a deed can have. No deed can alter the past, but of course, it is quite possible that before the deed was executed the partners may in point of fact have been carrying on business in partnership which would give rise to partnership accounts and which would give rise to partnership liabilities and so on; and when the deed is executed and said to relate back to an earlier period, that means that the provisions of the deed as to the partnership rights and partnership accounts shall supersede the rights which have accrued under the partnership which de facto had existed before the date of the deed. All that is perfectly clear and perfectly simple."

29. In the context of the above decisions it may be worth-while examining a few provisions of the agreement for sale in the instant reference at pages 4 to 6 of the paper book. Clause 5 makes it incumbent upon the vendor to make out a good and marketable title free from all encumbrances and if there are claims of encumbrances, the vendor has to clear the same at its own costs and expenses; Clause 6 confers on the purchaser the right to ask for requisitions on title within two months and imposes an obligation on the vendor to answer those requisitions within a month of the receipt thereof; Clause 7 says "upon the vendor's title to the said premises being found good and marketable to the satisfaction of the purchaser, the purchaser shall produce to the vendor a proper conveyance of the said premises either in its favour or in favour of its nominee or nominees for execution and registration. Such conveyance shall take effect from the date of delivery of possession, namely, the 29th March, 1956 ": and Clause 8 provides:

"If the vendor fails to execute a proper conveyance the purchaser shall be at liberty to institute a suit against the vendor for enforcement of this agreement in a court of competent jurisdiction."

30. Lastly, Clause 9 deserves special attention. It stipulates :

"If the purchaser is not satisfied with the vendor's title to the said premises or any part thereof the purchaser shall be at liberty to decline to complete the said purchase and thereupon this agreement shall determine and the vendor shall forthwith refund to the purchaser the said price of Rs. 6,54,242 (rupees six lakhs fiftyfour thousand and two hundred and forty two) and pay to the

purchaser its cost of investigation of title, and the purchaser shall thereafter redeliver possession of the said premises to the vendor and return to it the title deeds of the said premises."

31. These clauses in the agreement for sale clearly establish that there is no substance in the contention that the title to the property passed on 29th March, 1956. The agreement puts on record a contemplated sale and the ante-dated arrangement may be relevant for accounting purposes only. The position is further clarified by Clause (i) of the conveyance dated the 17th March, 1958, which, inter alia, provides :

"... the vendor doth hereby as on and from the twenty ninth day of March one thousand nine hundred and fifty six grant sell convey transfer and assign upto the purchaser"

32. In other words, it is by this document of conveyance of the 17th March, 1958, that the title is being conveyed.

33. We may, therefore, summarise our conclusions as follows :

1. In the case of a sale of immovable property a registered document is necessary to give effect to the sale.

2. The sale takes effect from the date of execution of the document.

3. In Indian law, beneficial ownership is unknown and there is but one owner, namely, the legal owner both in respect of vendor and purchaser and trustee and cestui que trust.

4. And the expression "income from property" used in Sections 6 and 9 of the Indian Income-tax Act, 1922, refers to the income of the legal owner of the property who is the only person assessable to tax on the basis of the bona fide annual value thereof.

Our answers to the questions are :

Q. No. 1. Yes.

Q. No. 2. No. The assessee will pay to the Commissioner the costs of this reference.

Sabyasachi Mukherji, J.

I agree.