

## APPELLATE CIVIL.

Before Kapur, J.

KARORI MAL - -Appellant

versus

PARMANAND AND ANOTHER —Respondents.

Regular Second Appeal No. 96 of 1951

1955  
March, 28th

*Registration Act (XVI of 1908)—Sections 17 and 49—Transfer of Property Act (IV of 1882)—Section 53A—Doctrine of part performance—Whether available to a Plaintiff—Registration—Document—Document merely reciting a fact and not creating a right—Whether requires registration.*

*Held, that the doctrine of part performance is not available to a Plaintiff and is only available to a defendant to protect his possession.*

*Held also, that a document which is a mere acknowledgment of a fact that the right is in the persons rather than a document which passes the right itself, does not require registration.*

*Probodh Kumar Das and others v. Dantmara Tea Company Limited and others* (1), relied upon; *Ram Kishan and another v. Hirda Ram and others* (2), discussed; *Krishnaji's case* (3), and *Bageshwari Charan Singh v. Jagarnath Kuari* (4), followed.

Second Appeal from the decree of the Court of Shri H. C. Mital, Senior Sub-Judge, Gurgaon, with enhanced appellate Powers, dated the 6th day of November, 1950, varying that of Shri P. N. Thukral, B.A., LL.B., P.C.S., Additional Sub-Judge, 1st Class, Gurgaon, dated the 25th November, 1949, by awarding the plaintiff a decree for full possession of the site in suit and leaving the parties to bear their own costs throughout.

ROOP CHAND, for Appellant.

P. C. PANDIT, for Respondents.

#### JUDGEMENT.

KAPUR, J.—The defendant, in this appeal against the Senior Subordinate Judge's decree dated the 6th of November, 1950, modifying the decree of the trial Court, has challenged the finding of the learned Senior Subordinate Judge as to the applicability of the doctrine of part performance in regard to the rights of plaintiff under section 49 of the Registration Act and section 53A of the Transfer of Property Act. The property in dispute and other properties belonged to one Gunie and were inherited by Lachhman and Har Dat. There was a partition of the properties including the property in dispute. On the 11th of June, 1936, a document, Exhibit P. 4, was executed. It recites as under :—

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"I, Shiv Ji Ram \*\*\*\*\* in equal shares  
 .....one-fifth ;  
 Badri, son of Tulsi Ram.....one-fifth ;  
 Lachhman Das, son of Pars Ram...one-fifth;  
 Kirori Mal, son of Hira Lal, etc....one-fifth;  
 Shiv Nath, etc., sons of Channu Mal one-tenth;

(1) A.I.R. 1940 P.C. 1

(2) A.I.R. 1923 Lah. 135

(3) I.L.R. 5 Bom. 232

(4) I.L.R. 11 Pat. 272.

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Ji Lal, etc., sons of Mussadi Lal...one-tenth;  
.....

That in houses which are mentioned below the parties are owners and in possession :

- (1) House of Gunie son of Daulat Ram, etc., which have come to the share of Lachhman Das, Rs. 40 have been paid because the value of the property was more than the share of the said person.  
\*\*\*\*\*'

Towards the end in regard to the other portions the words used are—

*“Maqbuza ho gai hain aur ropai diya gai hain.”*

The property in dispute was sold by the widow of one and the daughter of another, as heirs, to the plaintiff who brought a suit for declaration and injunction and in the alternative for possession.

The question for decision is whether this document required registration. The appellate Court has held that the document did require registration. but it applied the principle of part performance and held in favour of the plaintiff.

The doctrine of part performance, as was held by the Privy Council in *Probodh Kumar Das and others v. Dantmara Tea Company Limited and others* (1), is available only to the defendant to protect his possession. Their Lordships at page 2 agreed with the view expressed by Mittar, J., that “the right conferred by section 53 A is a right available only to the defendant to protect his possession.” This was the view which was taken

(1) A.I.R. 1940 P.C. 1

by Sir Dinshah Mulla in his second edition of the Transfer of Property Act at page 262, Their Lordships observed—

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“The section is so framed as to impose a statutory bar on the transferor ; it confers no active title on the transferee. Indeed, any other reading of it would make a serious inroad on the whole scheme of the Transfer of Property Act.”

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In my opinion the doctrine of part performance was not available to the plaintiff and the learned Senior Subordinate Judge was in error in applying that principle to the rights of the plaintiff.

But that by itself does not solve the problem. The question still arises whether the document, Exhibit P. 4, required registration. In the first part of the document the shares of the portion are given and then some vague language is used which is capable of meaning that the parties are in joint possession or are in possession of their respective shares. It is further on that the language becomes clearer, and particularly in regard to the property in dispute, that the house of Gunie has fallen to the share of the person named and that Rs. 40 have been paid by that person because the value of the property in dispute is more than the share claimed by him. Mr. Roop Chand Choudhry submits that even if it was to be read in the manner that the plaintiff would like it to be read, it would be a device to defeat the provisions of section 49 of the Registration Act and he relies on a judgment of the Lahore High Court in *Ram Kishan and another v. Hirde Ram and others* (1). in which the language used was held to be a device to save the expense of registration and stamp. The language

(1) A.I.R. 1923 Lah. 135

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used in that case is not quite clear from the judgment and it appears that Sir Shadi Lal, C.J., who gave a concurrent judgment, was careful not to allude to that part of the case. All that the learned Chief Justice said was that he was of the opinion that Harbans Rai was not the manager of the family and had no authority to acknowledge debt on behalf of Hirde Ram and his sons. In my opinion this case does not help us in determining the question now before us. Two cases have almost become historical in regard to the law of registration. The first is *Krishnaji's case* (1), decided by West, J., and the other is *Bageshwari Charan Singh v. Jagarnath Kuari* (2). In the former the words were—

“Our eldest brother N. has built houses and is building new houses on property appertaining to his share.....  
To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should prefer any claim, then the same is to be null. This release paper we have duly passed in writing jointly and severally and in sound mind.”

In the latter (Privy Council) case there was a petition presented in the following terms :—

“That in view of the petition filed by Thakar Jedo Charan Singh, your petitioner begs to file the original deed of gift and prays that your honour may be pleased to sanction the same or order a fresh grant on the same terms to be executed.”

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(1) I.L.R. 5 Bom. 232

(2) I.L.R. 11 Pat. 272

Their Lordships approved of the decision of West, J., in the following words :—

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“Their Lordships have no doubt that this track of decision is right. Though the word ‘declare’ might be given a wider meaning, they are satisfied that the view originally taken by West, J., is right. The distinction is between a mere recital of a fact and something which in itself creates a title.”

The question to be decided is, does the document in dispute, Exhibit p. 4, create any right in the vendor of the plaintiff or is it merely acknowledgment of a fact that such a right was his. If it is the latter there is no necessity for registration and in my opinion it is the latter. The document is not very artistically drafted but the purport of it seems to be that in the first portion the executants have described their shares in the properties in dispute and it becomes clearer when properties are described, i.e., where it is stated that particular properties have come to the share of particular co-sharers and moneys have been paid. This in my opinion is a mere acknowledgment of a fact that the right is in the persons rather than the document which passes the right itself. I would, therefore, hold that this document did not require registration. The plaintiff has paid Rs. 1,000 for the properties to persons who were heirs and this fact was not challenged in the Court of the Senior Subordinate Judge. I would, therefore, dismiss the appeal though for different reasons. I am of the opinion that this is a fit case in which the parties should bear their own costs throughout and I would order accordingly.