

Privy Council Appeal No. 97 of 1928.

Allahabad Appeal No. 8 of 1926.

James R. R. Skinner - - - - - *Appellant*

v.

Robert Hercules Skinner and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH JULY, 1929.

Present at the Hearing :

LORD CARSON.

LORD DARLING.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES.]

One Richard Skinner died in 1913 intestate, and his estate, which included immovable properties of considerable value, devolved upon his brother George Skinner and his sister Alice Skinner in equal shares. Richard Skinner was at the time of his death indebted to the Delhi and London Bank, and administration of his estate was granted to a Mr. Angelo, the Bank's manager. On the 18th June, 1918, while the estate was still under administration, George Skinner executed in favour of Robert Hercules Skinner, the first respondent in this appeal, a document in the following terms :—

[*The first sentence is torn out.*]

“ This day between Mr. (torn out) at present at Meerut of the one part, hereinafter called the first party, and Mr. R. H. Skinner of Hansi of the second part, hereinafter called the second party.

“ Whereas Mr. G. C. E. Skinner, the said first party (paper torn), heir to the estate of his late brother, Mr. R. R. Skinner, and the said first party therefore as heir has a (paper torn) in the property allotted to the late

Mr. R. R. Skinner by the decree of the District Judge, Delhi, of August, 1888, partitioning the joint Skinner estate; and in all the property he subsequently acquired. And that whereas my brother R. R. Skinner died in about August, 1913, and that since his death there has been constant trouble and long, expensive and ruinous litigations and family disagreement, etc., owing to which vendor has not been able to get possession up to date, nor gets any benefit from it whatsoever.

“ That whereas now Mr. R. H. Skinner of the second part, hereafter called the vendee, has agreed to purchase all these properties left me by my said late brother, Mr. R. R. Skinner.

“ Therefore I, G. C. E. Skinner of the first part, hereafter called the vendor, with my free will, wishes and consent do hereby sell all my share, I have inherited from my late brother, Mr. R. R. Skinner, to Mr. R. H. Skinner for Rs. fifty thousand, to keep the property in the family and for all what the vendee has done for me, it is therefore mutually agreed as follows :—

“ 1. That the vendee, Mr. R. H. Skinner, do pay to the said vendor, Mr. G. C. Skinner, Rs. one thousand as earnest money by cheque.

“ 2. That as all this property is in the hand of Mr. Angelo, the administrator of the estate of my late brother, Mr. R. R. Skinner, the vendor will do his best to get the vendee full possession.

“ 3. Should for any reason the vendor fail or do not satisfy the vendee, in this case the vendee has my free consent to take any action he considers proper and necessary to get full possession, and mutation of names done in the said vendee's favour.

“ 4. From the date of agreement all expenses for litigation now pending which, if the vendor chooses to hand over to the vendee or that may hereafter be filed by the vendee in the above matter, will be borne by the vendee.

“ 5. That the cases now pending and all matters with reference to these properties, the said vendor shall give a correct and complete list of all cases, also a list of all papers and books, etc., in the possession of the said vendor to the said vendee and take a receipt for any reason, the vendor fail, the vendor will be responsible for loss, etc., and not the vendee.

“ 6. In addition to the price stated above the said vendee will have to pay the Delhi and London Bank, Delhi, vendor, share of the debt left by the late Mr. R. R. Skinner, but the said vendor will pay all debts the said vendor may have contracted on this said property after the death of the late Mr. R. R. Skinner and release it for the vendee.

“ 7. That the vendor declares that he is the sole heir to this said property, but should other heirs be established . . . by order of any Court the vendor is not responsible.

“ 8. The said vendor confirms this to be a complete and conclusive sale binding on the said vendor and on all his heirs or assigns, etc., in favour of the said vendee . . . and if the vendee should ever consider necessary to execute a Registered sale-deed . . . vendor or his heirs, assigns, etc., will always be ready to execute and register the same at the expenses of the vendee.

“ 9. In virtue of this sale and agreement if the vendee considers necessary the vendor will always be ready to execute and register a power of attorney or give the vendee any other document or help the vendee may demand.

“ 10. The balance of Rs. forty-nine thousand will be paid by the vendee to the vendor the very year the vendee gets full legal possession of all the properties and the mutation of names all affected in the name of the vendee.

" 11. Should the vendee not be able to get mutation of names done in his name and get full and complete possession during the lifetime of the vendor the vendor in such case directs the vendee or his heir, Mr. J. A. R. Skinner, to pay the balance due to the heirs of the vendor.

" 12. The schedule of the properties sold is hereunto annexed as noted below :—

" (a) All the properties noted in the decree of the District Judge, Delhi, August, 1888, partitioning the joint Skinner estates. (Ingram v. Orde and other.)

" (b) All the properties acquired by the late Mr. R. R. Skinner up to the time of his death. Therefore we, the undersigned, further confirm and ratify this sale and agreement by our signatures

" Meerut, 18th June, 1918.

(Sd.) GEORGE C. E. SKINNER, Vendor.

(Sd.) R. H. SKINNER, Vendee."

This document was not registered.

George Skinner died intestate in December, 1919, and on the 11th February, 1921, the first respondent instituted the suit out of which this appeal arises. The only defendant to the suit as originally framed was Angelo, the administrator of Richard Skinner's estate, and the principal prayer of the plaint was for specific performance of " the agreement of sale dated 18th June, 1918 "—the reference being to the document above set out—and for possession of the property. It is obvious that Angelo did not represent George Skinner's estate, and it is admitted that in this respect the suit was defective, but various parties were subsequently added, including Alice Skinner, whose right to a half-share in Richard Skinner's estate was disputed in the Court of first instance, and Thomas Skinner, the third respondent, who was appointed administrator *ad litem* of George Skinner. Major Stanley Skinner was also substituted for Angelo as administrator of Richard Skinner, and on the death of Alice Skinner, pending the proceedings in India, James Skinner, the present appellant, was brought on the record as her executor.

Various matters were debated in the course of the proceedings in India, with which their Lordships have not been asked to deal, but the principal issue in the case, and that upon which the determination of this appeal depends, was whether the document of the 18th June, 1918, was admissible in evidence. This in the argument before the Board has resolved itself into two questions, viz. (1) whether the document comes within the provisions of Section 17 of the Indian Registration Act XVI of 1908 and so required registration; and (2) whether, if registration was necessary, it could form the basis of a suit for specific performance notwithstanding the provisions of Section 49.

On the first question the Subordinate Judge by whom the suit was tried was of opinion that the document was a sale deed requiring registration under Section 17, and that, being unregistered, it was not admissible in evidence, and he accordingly dismissed the suit. The High Court, on appeal, differed from this

conclusion. The learned Judges held that the document ought to be "treated as being an agreement for sale rather than as a sale deed," and that, therefore, registration was not necessary, and they made a decree for specific performance in respect of George Skinner's moiety of the property upon certain terms. Against this decree the executor of Alice Skinner has appealed to His Majesty in Council.

In the course of the arguments the document of the 18th June, 1918, has been discussed with great minuteness, but their Lordships have no doubt that the view taken of it by the Subordinate Judge was right. The language employed is perhaps not that of a trained draftsman, but it clearly purports to transfer George Skinner's interest in the immovable properties which he had inherited from Richard Skinner, particulars of which are set out in the schedule, and it accordingly comes within the terms of Section 17 of the Act and required registration.

The second question is perhaps a more difficult one, though the difficulty arises rather from the divergent views to be found in the Indian case law on the subject than from the interpretation of Section 49 of the Registration Act. It is unfortunate that this aspect of the case was not submitted to the Indian Courts, and their Lordships have therefore not had the assistance of the High Court in discussing the numerous decisions which have been referred to before them.

Their Lordships, however, think that the meaning of Section 49 is clear. The section runs as follows :—

" 49. No document required by Section 17 to be registered shall—
 (a) affect any immovable property comprised therein ; or
 (b) confer any power to adopt ; or
 (c) be received as evidence of any transaction affecting such property or conferring such power,
 unless it has been registered."

If an instrument which comes within Section 17 as purporting to create by transfer an interest in immovable property is not registered, it cannot be used in any legal proceedings to bring about indirectly the effect which it would have had if registered. It is not to "affect" the property, and it is not to be received as evidence of any transaction "affecting" the property.

In the present case the document under consideration, in addition to creating an interest in the immovable property concerned, provides as one of the terms, and therefore as an integral part of the transfer, that the vendor should, if the vendee so requires, execute a registered sale deed, and it is contended for the first respondent that, notwithstanding the non-registration, he can sue upon this agreement, putting the document in evidence as proof of it. Their Lordships are clearly of opinion that this is within the prohibition of the section. They think that an agreement for the sale of immovable property is a transaction "affecting" the property within the meaning of the section, inasmuch as, if carried out, it will bring about a change of owner-

ship. The intention of the Act is shown by the provision of Section 17 (2) (v), which exempts from registration, and therefore frees from the restriction of Section 49, a document which does not itself create an interest in immovable property, but merely creates a right to obtain another document which will do so. In the face of this provision, to allow a document which does itself create such an interest to be used as the foundation of a suit for specific performance appears to their Lordships to be little more than an evasion of the Act.

A number of cases from the Indian Reports have been referred to on either side in the argument before this Board, and it is clear that many of the decisions are irreconcilable. Their Lordships think, therefore, that no good purpose would be served by a detailed examination of them, but they have the satisfaction of knowing that the principle which has been enunciated above is in accordance with recent decisions in most of the High Courts. See *Sanjib Chandra Sanyal v. Santosh Kumar Lahiri*, I.L.R. 49 Calc. 507; *Sattya Narayana v. Chinna Venkata Rao*, I.L.R. 49 Madr. 302; *Ramling Parwataya v. Bhagwant Shambhuappa*, I.L.R. 50 Bomb. 334.

For the reasons given their Lordships are of opinion that the High Court was wrong in granting a decree for specific performance, and that the first respondent's suit should have been dismissed. They will therefore humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be set aside, and that of the Trial Judge restored. The first respondent must pay the appellant's costs both here and in the High Court.

In the Privy Council.

JAMES R. R. SKINNER

v.

ROBERT HERCULES SKINNER AND OTHERS.

DELIVERED BY SIR GEORGE LOWNDES.

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