

(1949) 10 AHC CK 0015

Allahabad High Court

Case No: L.P.A. No. 48 of 1946

Ram Gopal

APPELLANT

Vs

Dr. Baikunth Nath Sharma

RESPONDENT

Date of Decision: Oct. 7, 1949

Acts Referred:

- Limitation Act, 1908 - Article 10

Citation: AIR 1950 All 290 : (1950) 20 AWR 44

Hon'ble Judges: Malik, C.J; Wali Ullah, J

Bench: Division Bench

Advocate: J. Swarup, Shankar Sahai Verma, S.P. Kumar and G.P. Bhargava, for the Appellant; G. Kumar, G. Mehrotra and Lakchman Sarup, for the Respondent

Final Decision: Dismissed

Judgement

Malik, C.J.

This is a plaintiff's appeal in a suit for pre-emption. On 29th March 1948, Dr. Baikunth Nath Sharma purchased plots Nos. 172, 182 and the northern portion of plot No. 180 under a sale-deed dated 29th March 1943. The sale-deed was presented for registration on the same day and the vendor admitted the execution and the receipt of consideration before the sub-registrar. The sub-registrar, however, for some reason, delayed making the entries in the requisite registers and it was not till 10th May 1943, that he noted on the back of the sale-deed that it had been registered and entered in a particular volume and page of the register. The suit for pre-emption was filed on 26th April 1944.

2. Under Article 10, Limitation Act, a suit for pre-emption has to be filed within one year from the date

"when the purchaser takes under the sale sought to be impeached physical possession of the whole of the property sold or where the subject of the sale does not admit of physical possession when the instrument of sale is registered."

It is not disputed that the property transferred did admit of physical possession. As a matter of fact, there is a finding of fact recorded by both the Courts below that physical possession of the plots was taken by the vendee on 30th March 1943.

3. In the sale-deed it is mentioned that delivery of possession has been effected and the case of the vendee was that the next day after the execution of the sale-deed and its presentation in the registration office the vendee was put in actual physical possession of plot Nos. 172 and 182 and the portion purchased by him of plot No. 180 was demarcated by pegs and he was put in actual physical possession of the portion purchased by him.

4. It was alleged that on 5th April 1943, a Puja ceremony was also performed by the vendee on the land purchased by him.

5. The plaintiff's case, on the other hand, was that possession was not delivered to the vendee till several days after the sale-deed had been registered by the sub-registrar.

6. According to the evidence given by the plaintiff, the defendant was put in possession either on 15th May 1943 or on 20th June 1943. The lower Courts disbelieved the plaintiff's evidence and accepted the defendant's evidence that actual physical possession of the land was given to the vendee on 80th March 1943.

7. On this finding, the suit should have been filed within one year from the date when physical possession over the whole of the property purchased was given to the vendee.

8. Learned counsel for the plaintiff has however, urged that though the lower Courts did find that the plaintiff was put in physical possession of the whole of the property on 30th March 1943, this would not be of any avail as the vendee could not be said to have been put in possession "under the sale sought to be impeached." The argument of learned counsel amounts to this that as the property could be transferred only under a registered sale-deed there could not be said to be any sale so long as the deed was not registered by the sub-registrar on 10th May 1943. Learned counsel has urged that for purposes of Article 10, Limitation Act, no reliance should be placed on Section 47, Registration Act (Act XVI [16] of 1908) which provides that 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."

9. Mr. Lakshman Swarup on behalf of the respondent has referred us to a decision of the Oudh Chief Court, Sobhnath Singh v. Pirthipal Singh AIR 1948 Oudh 228 : 1948 AWC 14. In that case a Bench of the Oudh Chief Court has held that a document must be deemed to have been registered after the requirements of Sections 84, 35, 58 and 59, Registration Act, have been fulfilled and the endorsement made by the sub-registrar at the back is not the registration, but provides merely evidence of the

fact that the document has been registered.

10. It is not necessary for us to express any opinion on that point as Section 47 clearly provides that the document shall operate from the date of its execution. There can be no doubt that the vendee was put in possession under the sale-deed. It is neither necessary nor Article 10 required that the document should have been registered before the vendee was put in possession to enable the vendee to claim that he was put in possession of the property under the document. The sale-deed that is being pre-empted is clearly of 29th March 1913. It was provided in the sale-deed that the vendee was being put in possession of the property. The vendee took possession of the property on the basis of and by reason of the sale in his favour. We do not see how it can be urged that the vendee did not get possession of the property under the sale sought to be pre-empted.

11. There is no force in this appeal and we dismiss it with costs.