

**(1959) 09 MAD CK 0036**

**Madras High Court**

**Case No:** Second Appeal No. 691 of 1959

Ramaswami Pillai

APPELLANT

Vs

Ramasami Naicker and Others

RESPONDENT

---

**Date of Decision:** Sept. 9, 1959

**Acts Referred:**

- Registration Act, 1908 - Section 47
- Transfer of Property Act, 1882 - Section 48

**Citation:** AIR 1960 Mad 396

**Hon'ble Judges:** Ramaswami, J

**Bench:** Single Bench

---

### **Judgement**

(1) This second appeal is sought to be preferred against the decree and Judgment of the learned Subordinate Judge of Ramanathapuram at

Madurai in A. S. No. 104 of 1955 confirming the decree and judgment of the learned District Munsif of Satur in O. S. No. 272 of 1950.

(2) The facts are short. The suit property belonged to the joint family of the second defendant and his son Kanga Arumugham Pillai. Sale deeds

were got executed from the wastrel son Arumugham in favour of defendants 1 and 3 during the lifetime of the father falsely stating in the documents

that the father is insane. It has been held that the sale deed executed by the father in favour of the Plaintiff is valid and therefore the half share of the

father goes out of the picture. In regard to the rival sale deeds executed by the son in favour of defendants 1 and 3, the first defendant purchased

the suit property under Ex. B-4 dated 17-6-1950, which was registered on 26th June 1950. D. Ws. 2, 3 and 7 spoke to the execution and

passing of consideration thereunder. The sale deed in favour of the third defendant by the son under Ex. B-15 is dated 14-6-1950 and it was registered compulsorily on 12-10-1950. The contention of the first defendant was that Ex. B-15 was ante-dated and brought into existence subsequent to Ex. B-4. This contention on acceptable and relevant evidence has been upheld by both the Courts below. The learned District Munsif held that inasmuch as the sale deed in favour of the first defendant was executed anterior in point of time and in point of registration, that sale should prevail in so far as the son's share is concerned against the sale in favour of the third defendant. The learned subordinate Judge on appeal upheld this contention after examining two other alternatives viz., that the sale deed in favour of the first defendant was executed anterior in point of time to that of the third defendant and secondly, on the assumption that the sale in favour of the third defendant was anterior in point of time, and came to the conclusion, as the learned District Munsif, viz., that the first defendant's sale will prevail and dismissed the appeal.

(3) The sections of law bearing upon this point are section 47 of the Indian Registration Act and section 48 of the Transfer of Property Act. The scope of section 47 of the Registration Act has been succinctly set out in the AIR Commentaries on the Indian Registration Act. Second Edition, at pages 350 and 352 and supplement thereto brought up to 30-6-1957 page 23 and on the Transfer of Property Act. Third Edition, page 655 and supplement thereto brought up to 30-6-1957 page 37 as follows:

Prior to the Act of 1864, the rule adopted by the various regulations and Acts was that documents operated from the date of their registration, and preference was given according to priority of registration. Under the Acts of 1864 and the subsequent Acts, a registered document operated not from the date of the registration but from the date from which it would have commenced to operate if no registration thereof had been required or made. The same rule is enacted in this section 47. Stating the rule in another way, the title of a person under a registered document may be said to relate back to the time from which it would have operated if no registration thereof had been required or made. Ordinarily, the time from which

a document not required to be registered would operate would be the date of execution thereof. Thus, although a document, so long as it remains unregistered may not be valid yet as soon as it has been registered it takes effect from the date of its execution. The transaction is thereby given a retrospective effect. In *U. On Maung v. Maung Shew Hpaung*. AIR 1937 Rang 446 Roberts, C. J. observed as follows:

The requirement of registration of a document is, in my opinion, an evidentiary requirement; an unregistered transfer is inchoate and is ineffective until registered. But it nevertheless exists and when registered operates from the date of its execution.

This section operates not only as between parties to the deed but also affects the rights of third parties". (pp. 350-51).

Where two documents of transfer inter vivos are both registered, they operate respectively under this section from the time of their execution and

not from the dates of their registration. Thus, suppose document x is executed on 1-1-40 and document y on 1-2-40, but y is registered on 1-3-40

and x on 1-4-40, the operation of x and y will be from 1-1-40 and 1-2-40 respectively and not from 1-3-40 and 1-4-40. On the application of

the principle enunciated by the maxim *qui prior est tempore notior est jure* (He who is prior in time is better in right) on which section 48 of the

Transfer of Property Act is based. x will have priority over y, though the latter was registered first (pp. 353-353). *Duraisami v. Angappa*, AIR

1946 Mad. 140, *Mathura Kalwar, v. Ambika Dat*, AIR 1914 All. 313; AIR 1942 172 (Oudh) : AIR 1942 201 (Oudh); *Jeo Narayan Mahto Vs.*

*Budhan Mahto and Others, ; Sadei Sahu Vs. Chandramani Dei and Another, .*

Under Section 47 of the Registration Act, 1908, a registered document operates, not from the time of its registration, but from the time from

which it would have commenced to operate if no registration thereof had been required or made, i.e., it operates from the time of its execution.

*Lakshman Das v. Dasrat*, ILR 6 Bom 168; *Veerakutti Koundan v. Ramaswami Asari*, AIR 1917 Mad 364; *Abdullah Khalifa Vs. Bichuk Gosain*

and *Others, .* Consequently, when two documents of transfer are both registered, the priority of the one over the other must be determined with

reference to the time of its "execution," and not to the date of its registration: a document executed earlier, though registered later, than another has, therefore, priority over that another executed later"" (p. 665). V.K. Muhammad Batcha Sahib Vs. Arunachallem Chettiar, ;--Two sale deeds--The first transferee, however, having fraudulently delayed registration, was not given priority).

On these principles the conclusion that the third defendant's sale deed having been found to have been executed subsequent in point of time to that of the first defendant the first defendant's sale must prevail is correct.

(4) The Learned Subordinate Judge has taken upon himself the wholly supererogatory task of examining that even assuming that the third defendant's sale deed was executed on the date which it bears, following the decision in Gobardhan Bar Vs. Gunadhar Bar, , he held that the sale in favour of the first defendant must prevail. It was held in the Calcutta case that so far as third parties are concerned, the document would take effect only from the date of registration, though as between the parties to the document it would take effect from the date of its execution, on the footing that the registration only was notice and that the third party was a bona fide transferee without notice of the prior sale. The decision has been found to be incorrect by a Bench of the Patna High Court in Sadei Sahu Vs. Chandramani Dei and Another, . The Bench observed:

Mr. B. K. Pal argued strenuously that section 47, Registration Act, 1908, operated only as between the parties to the deed and did not affect the rights of third parties and he referred to the decision in Naresh Chandra Dutta Vs. Girish Chandra Das and Another, and U Ba Sein v. Maung San, AIR 1934 Rang 216. In so far as those decisions turn upon the wording of some other statutory provisions, such as S. 54, Provincial Insolvency Act, 1920, and S. 265, Ben. Ten. Amendment Act, 1938, they are no guide to the present question, but in so far as they purport to interpret section 47, Registration Act, 1908, they appear to me, if I may say so respectfully, to be inconsistent with the decision of the Privy Council in AIR 1927 42 (Privy Council) and of this court in Faiyazuddin Khan Vs. Mt. Zahur Bibi, , above referred to. In both these cases the effect of S. 47

upon the right of a third party was directly in issue and the immediate subject of the decision.

The Patna decision does not adumbrate the reasons for that conclusion though this can be supported by the reasons given by Chandrasekhara

Ayyar, J. in *Duraiswami Reddi Vs. Angappa Reddi and Another*, as follows:

Even if the second defendant is able to show that he purchased the properties bona fide without notice of the earlier sale deed, he cannot succeed

unless, of course, the earlier transferee is prevented from setting up his title as against the later transferee by any infirmative circumstances such as

fraud or estoppel. The question is really concluded by section 47 of the Registration Act and Section 48 of the Transfer of Property Act. The law

gives four months" period for registration and if the document is registered within that date, the subsequent transferee cannot be heard to say that

as he got his document without notice, and during this period allowed to the earlier transferee, got his own document registered, he must be

deemed to be a bona fide purchaser for value. Such a plea, if allowed, would lead to much fraud. If a later document registered earlier is to prevail

over an earlier document registered later it would always be easy for the vendor and the later purchaser to enter into a transaction within the time

given for registration of the earlier document and get the new deed registered immediately and thus defeat the purchaser under the earlier deed.

The correct proposition is set down in the following short passage in Mulla's Indian Registration Act u/s 47:

"If there is a competition registered documents relating to the same property, the document executed first in order of time has priority over the

other, though the former document may not have been registered until after the latter".

But it should be noted that Chandrasekhara Ayyar, J. does not refer to the decisions referred to by the Patna Bench.

(5) Therefore though the learned Subordinate Judge took an incorrect view and wrongly followed *Gobardhan Bar Vs. Gunadhar Bar*, for

disposing of an alternative argument put forward before him this makes no difference to the soundness of the conclusion arrived at by both the

Courts below. This second appeal is dismissed.

(6) Appeal dismissed.