

**Dayal Singh Vs. Indar Singh**

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**Court :** Mumbai

**Decided On :** Jun-24-1926

**Reported in :** (1926)28BOMLR1372

**Judge :** Viscount Dunedin, ;Atkinson, and ;Ameer Ali, J.

**Appellant :** Dayal Singh

**Respondent :** indar Singh

**Disposition :** Appeal allowed

**Judgement :**

**Viscount Dunedin, J.**

1. On March 2, 1919, Dayal Singh, the defendant-appellant, executed an agreement with Indar Singh, now deceased, but represented by the plaintiff-respondent. This agreement had for its object the undertaking of a sale of certain property, and its terms, so far as material, are as follows :-

I, Dayal Singh, son of Jivran Singh, caste Jat Garewa, resident and Lam-bardar of Chak No. 1/57, Upper Chenab, Tahsil Jarauwala, District Iyallpur, do here declare as follows:-

\* \* \* \*(here follows a description of the subject)

\* \* \* \* I have agreed to sell the above-mentioned property for Rs. 10,000 and the sum of interest, to be paid to the Government, to Indar Singh, son of Hira Singh, Havildar, caste Jat Dhami, occupation cultivation, abadkar and resident of Chak No. 188, Rakh Branch, Tahsil Lyallpur, who has agreed to purchase this land merely for the sake of Lambardarship. Out of the sale money I have at present received Rs. 1,000 by way of earnest money, Rs. 9,000 is agreed to be received before the Sub-Registrar, Lyallpur, fit the time of the completion of the sale and registration. The expenses, incurred in connection with the execution and completion of the sale-deed, shall be borne by the vendee and myself in equal halves. I shall complete the sale in favour of the vendee within forty days, i.e., before the 1st) Baisakh Sambat 1976, after making a settlement of the sum of interest (which shall be deposited by the vendee) with the Government), The vendee has been put in possession of the land sold. If I do not complete the sale, I shall pay Rs. 2,000 by way of damages to the vendee without any demur, and, besides, he shall be at liberty to have the sale completed by seeking legal remedy. As regards the filing of the interest, an application shall be made to the Deputy Commissioner of Lyallpur, and, on permission being granted, the vendee shall be made to deposit the said interest. If permission is not accorded the bargain of sale shall remain unaffected. The only agreement would then be that the sale would be completed after the interest was deposited, The land has, at any rate, been sold and the vendee has become entitled to it. I am simply entitled to receive Rs. 9 000. I have therefore executed this agreement in favour of Indar Singh, vendee, so that it may serve as an authority. I have secured an agreement to the same effect from Indar Singh, vendee.

2. This document was not registered, The appellant having refused to complete the purchase, the respondent succeeding to all rights of Indar Singh, deceased, raised this action for specific performance. The appellant pleaded that the document in question being a document which needed to be registered, and not having been registered, could not be received in evidence in terms of Section 49 of Act XVI of 1908. He also pleaded that in respect of undue influence exercised at the time of the making of the agreement specific performance should be refused. The trial Judge held that the document did not require to be registered, but held that undue influence had been proved. On appeal the Appeal Court agreed with

the trial Judge that the document did not require to be registered, but disagreed as to the other matter. They therefore decreed specific performance. The sole question in this appeal, which is ex parte, is, therefore, whether the document in question required to be registered. As the question is an important one, it will be well to trace the history of the legislation which bears on the point. Act XX of 1866, Section 17, made compulsorily registrable certain instruments:-

\* \* \* \* 17.-(2) Instruments (other than an instrument of gift) 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 one hundred rupees and upwards be or in immovable property.

(3) Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest,\* \* \* \*

And, by Section 49, declared that no instrument required by Section 17 to be registered should be received in evidence in any civil proceeding in any Court unless it had been registered. The result of that enactment may be appreciated by a perusal of the case of *Futteh Chund Sahoo v. Leelumber Singh Doss* (1871) 14 M. I.A. 129 where the Board characterised the case as a very hard one, but found that the terms of the Act were imperative. In 1677 (probably in accordance with the feeling as expressed above) in a new Act, Section 17 was repeated as before, but with this addition:-

Nothing in Clauses (b) and (e) of this section applies to

\* \* \* \*(h) any document not itself creating', declaring, assigning limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.

3. This change having been made, there came to be raised questions as to various agreements, first as to whether they fell under Section 17 (b), and,

accordingly, if they did so, whether they could be excused in respect of a, 17 (h). Examples of such cases may be found in *Burjorji Cursetji Panthaki v. Mun-cherji Kuverji*, I.L.R. (1880) 5 Bom. 143 where it was held that the agreement was not necessarily registrable, and *Ramasami v. Ramasami* I.L.R. (1882) 5 Mad. 115 where the agreement was held to be compulsorily registrable, and consequently not admissible in evidence. Their Lordships do not think it necessary to review these cases or to decide whether one of them will agree with what was said by Lord Buckmaster in *Rani Hemanta Kumari Debi v. Midnapur Zamindari Company Limited* They will assume without deciding that taking the terms of the Act of 1877 alone (the terms of which were repeated totidem verbis, though not with the same numbering of the paragraphs, in the Act of 1908, which is the Act which rules this case) the judgments of the Courts below were right in holding that the present agreement was an agreement to sell and not a sale, and was consequently exempted under Section 17 (2) (v), which corresponds with Section 17 (h) of 1877. But there is another Act to be reckoned with, which unfortunately entirely escaped the notice of the Courts below, as they say nothing about it; that is the Transfer of Property Act, 1882 (Act IV of 1882) (passed, it will be observed, after the case of *Burjorji Sorabji Panthaki*, which was in 1880). By Section 55 (6) (b) 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 with notice of the payment, 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.

4. Their Lordships are of opinion that the section applied to the agreement in this case, where the buyer had paid earnest money, and so far from refusing to accept delivery, was pressing for specific performance, and that the agreement did in itself create an interest and therefore did not allow of the application of Section 17 (2) (v). It was therefore compulsorily registrable under Section 17 and, not having

been registered, was inadmissible in evidence under Section 49.

5. Their Lordships will, therefore, humbly advise His Majesty to allow the appeal and to dismiss the suit. The appellant will have his costs before this Board ; but the costs in the lower Courts will remain as ordered by the High Court.

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