

Papireddi and ors. Vs. Narasareddi

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SooperKanoon Citation : sooperkanoon.com/795835

Court : Chennai

Decided On : Aug-19-1892

Reported in : (1893)ILR16Mad464

Judge : Muttusami Ayyar and ;Wilkinson, JJ.

Appellant : Papireddi and ors.

Respondent : Narasareddi

Judgement :

1. It is argued that the decision of the lower Court is contrary to the provisions of Section 54 of the Transfer of Property Act, by which it is enacted that the transfer of immoveable property above Rs. 100 in value can be made only by registered instrument. In this case the value of the property, which was the subject of the contract, was upwards of Rs. 2,000. All that has been found is that there was an oral contract for sale, possession given to defendant, and part-payment of the purchase money Rs. 150. We cannot concede that possession can take the place of the registered deed required by Section 54. Moreover, possession was only given pending the completion of the contract for sale. It did not amount to any transfer of the property. The cases referred to by the District Judge were decided prior to the Transfer of Property Act and have therefore no application. The decision relied on by Mr. Rama Rau in Janki v. Girjadat I.L.R. 7 All. 482 is not on all fours with this case, and the decision of the majority of the Full Bench proceeded on the ground that the vendor and vendee had colluded to defraud the

persons who had the right of pre-emption. Another point urged upon us is that defendant is entitled to claim specific performance, and that so long as he has such right, he cannot be dispossessed. We observe that a suit for specific performance was pending at the time when defendant put in his written statement, and we understand that it was dismissed on the ground that the contract, specific performance of which defendant sought, was different from the actual contract. The decree of the Court of First Instance was confirmed in appeal. It is very doubtful whether defendant can maintain a second suit for specific performance of the contract of sale and for execution of a registered deed, but, assuming that it can be done, we do not see how he can resist the present suit, as the property has not passed to him and cannot vest in him until he is in possession of a registered deed. We reverse the decree of the lower Court and give plaintiffs a decree for possession and mesne profits from 15th October 1887 to the date on which possession is given to plaintiffs to be ascertained in execution. Credit must be given to defendant for the Rs. 150 paid to plaintiffs as part-payment. Plaintiffs are entitled to their costs throughout.