

Buyer-Beware in Practice: Why Registered Contracts for Sale May Not Bind Subsequent Transferees in India

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Abstract:

Uncertainty over whether a registered contract for sale (agreement to sell) can operate as constructive notice to subsequent purchasers continues to undermine transaction certainty in Indian real estate markets. Although Section 54 of the Transfer of Property Act, 1882 characterizes a contract for sale as not creating, by itself, any interest in or charge upon immovable property, parties frequently assume that registration of such contracts strengthens priority against later transferees. This article undertakes a doctrinal analysis of Section 3 of the Transfer of Property Act (Explanation I) read with the Registration Act, 1908—particularly the distinction between instruments required to be registered and those registered voluntarily. It argues that constructive notice by registration is triggered only when the underlying transaction is one that the law mandates to be effected by a registered instrument; therefore, mere registration of a contract for sale should not, without more, be treated as constructive notice to the world at large. Using judicial reasoning on the nature of agreements to sell and on the boundaries of deemed notice, the paper clarifies due diligence expectations (caveat emptor), evaluates standards of wilful abstention and gross negligence, and draws practical implications for title searches, financing, and litigation over competing claims. The analysis aims to reduce avoidable disputes by aligning market practice with statutory design and precedent. Transfer of Property Act, 1882, constructive notice, agreement to sell, contract for sale, Registration Act, 1908, Section 3 (notice), Section 54 (sale and contract for sale), caveat emptor, due diligence, gross negligence, wilful abstention, subsequent purchaser / bona fide purchaser.

Keywords: Constructive notice, agreement to sell, contract for sale, Registration Act, 1908, Section 3 (notice), Section 54 (sale and contract for sale)

INTRODUCTION

SALE AND CONTRACT FOR SALE

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised..

Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property, according to sec-54 of Transfer of Property Act.

The pre-requirement of sale of immovable property is agreement to sell. The agreement to sell contains, terms of sale, consideration, time limit, the complete description of property agreed to be sold, terms of payment, handing over possession and rights of both the parties to enforce the agreement, and penalty for not performing the contract. Generally, the purchaser pays some amount as advance amount, earnest money to seller, which is acknowledged by the seller in the agreement. There is a practice among many to avoid the sale agreements and to go directly for sale deeds. This is very risky. Agreement to sell is required to avail the bank finance. Apart from availing finance without a sale agreement nobody is bound to execute sale deed and convey the property, who may back out at the last moment. Though the purchaser had made all the arrangements for the consideration amount and stamp duty the vendor may back out if he finds another purchaser for better consideration. Likewise, even the purchaser may also back out if he finds similar property for lesser consideration. The sale agreements bind all the parties to perform the contract. A contract for sale usually contains a description of the land being sold, the consideration, and any terms and/or conditions attached to the sale. Registration of a contract for sale serves to place the contract on public record (hence gives constructive notice to the buyer or any other person); it is not a conveyance of land.

CONSTRUCTIVE NOTICE

It means knowledge that the court imputes on a person. A person may claim that he did not know a fact, but if the circumstances surrounding him are such, that as a reasonable prudent person, he ought to have known a fact, he will be deemed to know it. It is pertinent to note that the consequences of actual or constructive notice are identical. Constructive notices can be applied by the court in five cases:

1. Willful abstention from making an inquiry
2. Gross negligence
3. Registration of the document/transaction
4. Actual possession
5. Notice to agent

Thus, a person is said to have notice of the fact when he actually knows the fact, or, when but for the willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Role of CAVEAT EMPTOR

Constructive notice in equity treats a man who ought to have known a fact, as if actually does know it. It presupposes that in property transactions, a transferee ought to ascertain and verify certain facts for safeguarding his own interest. These facts may relate to the property and the transferor. The basic objective behind these inquiries and verification is to find whether the property sought to be obtained is free from charges or encumbrances, and whether the transferor is competent to convey a valid title to the transferee. The presumption is, that when a reasonable prudent man enters the market to purchase property, or otherwise obtains an interest in immovable property in his favour, to obtain full value for his money, he would like to take the property free from charges or claims of other people over it. If the property is encumbered, the exact nature of encumbrances should be made clear to him. As the chances of deceit or misrepresentation on the part of transferor cannot be ruled out, the duty is put on the transferee to be vigilant and to ascertain these facts himself, by making inquiries from concerned persons, by inspecting all the relevant documents relating to property in possession of the transferor or even with the relevant statutory authorities. Thus the rule of 'caveat emptor' or 'buyer-beware' applies here.

According to Section 3, TP Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. This section therefore imposes a duty on the transferee to make relevant search. What the transferee has to ascertain is:

- Whether the transferor is competent to transfer the property;
- Whether there is a charge due over the property; and
- Whether any other person has a temporary or permanent claim, right or title over the property.

The transferee must carefully inspect all the relevant documents and he cannot afford to be negligent or careless, as law would not entertain his plea that he forgot to read them or he presumed that the papers would be in order.

GROSS NEGLIGENCE

It doesn't refer to an ordinary negligence, but negligence so grave, that it cannot be related to the conduct of an ordinary reasonable prudent man. Even though a person claims that he had no knowledge of a fact, the court will attribute knowledge or notice to him. For instance, if the transferee fails to read a noting on the paper stating that the property is subject to a charge, while the papers are in his possession, the court will not entertain his plea that no notice of the same can be attributed to him. Before purchasing an immovable property, the omission to search the registers kept in the Registrar's office may amount to gross negligence so as to attract the consequences which result from notice. But omission to inspect title deeds of an adjoining property which the seller is under no obligation to produce for selling the present property, is not gross negligence

WILFUL ABSTENTION FROM MAKING AN ENQUIRY

Wilful abstention hints at want of bona fides as distinguished from mere omission to make enquiries. In case of wilful abstention from making an enquiry, there should be some starting point of enquiry, some hint, some suspicion that there is, or may be, something wrong somewhere and the transaction or situation demands some probe or investigation that may reveal the truth. If, in such cases, the transferee fails to investigate, the law will presume that he had an inkling of the fact, that something is wrong, but he had a fraudulent intention not to know the truth. A person refusing to take a registered letter is imputed with constructive notice of its content and is not allowed to plead that he did not know about them. If a person omits to inspect the title deeds, the court shall presume that he knows all the facts given therein.

Problem Statement: The legal position remains contested on whether the registration of a contract for sale (agreement to sell)—which generally does not itself create any interest in immovable property—can nevertheless operate as constructive notice to subsequent purchasers or transferees. This ambiguity affects transaction certainty and due diligence standards in property markets and frequently becomes the basis of litigation over competing claims.

Thesis Statement: This paper argues that mere registration of a contract for sale does not create constructive notice, particularly because constructive notice by registration under Section 3 TPA is premised on instruments required by law to be registered.

Scope and Methodology: The study is limited to Indian property law, focusing on Section 54 TPA, Section 3 TPA (Explanation I), and relevant provisions of the Registration Act, 1908 (including Section 17 and its exceptions/explanation), supported by judicial precedents. The paper adopts a doctrinal legal research methodology, analysing statutory text and case law to clarify the legal effect of registration of contracts for sale and its relationship with constructive notice.

SUBTHESIS-

CONTRACT FOR SALE DOESNOT IN ITSELF CREATE ANY INTREST IN THE IMMOVABLE PROPERTY.

Sec-54 of Transfer of Property Act clearly says that "It (contract for sale) does not, of itself, create any interest in or charge on such property. There are also number of authorities to support this argument one such authority is:

S.Ramalingan Pillai v G.R. Jagadammu and Anr.

FACTS: The Defendant agreed to sell her land to the Plaintiff on or before 10-11-1943 for Rs. 1750/- under a contract D/- 11-10-1943. Default having been made by the Defendant, the Plaintiff filed a suit on 24-11-1943 for specific performance of the contract which was decreed on second appeal by the High Court on 23-2-1950. On 14-8-1950 the Court executed a sale deed in favour of the Plaintiff and he obtained possession on 20-10-1950. The present suit was filed on 8.12.1950 for the profits of the land from 11.10.1943 to 20.10.1950.

The plaintiff's suit must fail since possession/ profit not on execution of the contract for sale but on execution of sale deed.

In view of Section 54 of Transfer of Property Act, there is no room for the contention that the purchaser, became in equity, the owner of the estate under the contract of sale and the vendor held the property in trust for him. The duty of the vendor under contract of sale is to take much care of the property in his possession as an owner of ordinary prudence would take till possession is delivered to the purchaser. The buyer is entitled to the rents and profits of the property on the passing of the ownership to him by the execution of a sale deed by the vendor.

HELD : Contract for sale does not create any interest in the immovable property not even interest to collect profit or possession by itself. Hence the buyer is entitled to rents and profits of the property only after the sale deed is executed, not the contract for sale.

Hence it is proved that A Contract for Sale does not by itself creates any interest in the immovable property.

CONTRACT FOR SALE IS NOT COMPULSORILY REGISTERABLE. Combined reading of Section 54 of TP, Act and sections 17(1)(b) and sections 17 (2)(v) and its explanation clearly indicate that the contract for sale is not a compulsorily registered document.

Section 17 in The Registration Act, 1908

17. Documents of which registration is compulsory.-

(1) The following documents shall be registered

(b) other non- testamentary instruments 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, to or in immovable property;

(2) Nothing in clauses (b) and (c) of subsection (1) applies to-

(v) 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; or

[Explanation.-- A document purporting or operating to effect a contract for the sale of immovable property shall NOT be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

Sec-17(1)(b) provides that contract for sale may be registered, **Sec-17(2)(v)** provides that contract for sale may not be registered. Explanation further explains that the contract for sale are voluntarily and not compulsorily registered.

There is also a judicial authority to prove this:

Shree Ambarnath Mills Corporation v D.B.Godbole and Another

FACTS: Shree Ambarnath Mills Corporation (the plaintiff) was a partnership firm consisting of three partners. All the three partners of the firm were displaced persons who migrated to India as a result of the partition of 1947. Prior to 1947 Messrs. Ahmed Abdul Karim Bros Ltd. was carrying on business as manufacturers of textiles and bobbins. The properties of that company consisted if three factories with bungalows and chawls at Ambarnath in the district of Thana, a bobbin factory at Tardeo in Bombay and the goodwill and other benefits of the business. These properties were notified as evacuee property under a notification issued by the Assistant Custodian of Evacuee Property and in consequence thereof, the properties became vested in the custodian of Evacuee Property. By an indenture dated 30th August, 1952, the custodian entered into a composite agreement with the plaintiffs relating to three distinct matters. Initially, there was an agreement to grant a lease of the mills and the factory to the plaintiffs for a period of five years on the terms and conditions detailed therein.

Then there was an agreement to sell all the stock of raw materials, certain finished goods, spare parts, vehicles and other movable parts in the mills and the factory with provisions for ascertainment of the price thereof. Finally, there was an agreement to sell mills and the factory to the plaintiff subject to certain conditions.

The plaintiffs filed the suit against the Custodian of Evacuee Property and Union of India for an injunction restraining the defendants from selling or agreeing or offering to sell the properties agreed to be purchased by them.

The suit was resisted by the Custodian of Evacuee Property, who was the first defendant, on diverse grounds. It was contented inter alia that the written agreement, dated 30th August 1952, relied upon by the plaintiff, was required by law to be registered and being unregistered was inadmissible in evidence.

HELD: The Court on this contention held that even though these three agreements are incorporated in a single document, substantially there are three distinct agreements and the fact that the agreement, in so far as it relates to the demise of immovable property, may not affect the immovable property referred to therein, does not prevent the court from admitting the documents in evidence in support of the agreement to sell the mills and the factory to the plaintiffs. The agreement to sell immovable property is not by law required to be registered, and the document in so far as it relates to an agreement of sale of immovable property is admissible in evidence.

Hence my sub thesis that 'the contract for sale is not compulsorily registerable.' is proved.

REGISTRATION OF A TRANSACTION WHICH IS NOT REQUIRED BY LAW TO BE REGISTERED, DOES NOT CREATE CONSTRUCTIVE NOTICE. Transfer of Property Act, Sec-3 Explanation I.-- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub- district, or where the registered instrument has been registered under sub- section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub- Registrar within whose sub- district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated: Provided that--

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

The provision expressly says any transaction "required by law" to be registered, when registered, creates a constructive notice. This impliedly says that when a transaction which is not required by law to be registered does not create any notice. Hence the prior buyer can not take the benefit of constructive notice. We rely on two cases:

Asharfi Devi and Ors. Vs. Prem Chand and Ors.

FACTS

The disputed house was self acquired by Barati lal (grand father of the plaintiff). He dedicated his house along with some other property to Shri Thakurji Maharaj , presiding deity of temple by will dated 23/5/1908 & 12/10/1927. Father(Barati Lal) and son (Jot Prasad) remained servekar till their deaths after him, plaintiff became servekar.

Jot Prasad mortgaged the said house to Hanoman Prasad for a sum of Rs. 500. After death of Jot Prakash on 17/3/1936, his wife Bittan Devi sold the equity of redemption to Lakhpat Rai defendant appellatant Lakhpath sued Hanoman Prasad (D3) for redemption of mortgage final decree for redemption was passed on 17/9/1951 possession delivered to Lakhpat Rai on 26/4/1952.

Plaintiff alleged that they came to know only after possession passed to Lakhpat . Lakhpat mortgaged the house to Rajmal who currently had possession of the house. Lakhpat had paid Rs. 500 to Hanoman Prasad as redemption. Plaintiffs were ready to pay this amount to Lakhpat against mesne profit. Plaintiff as sarverakars filed the suit for the recovery of the possession.

Defendants contended that, it was a self acquired property and Barati Lal could not make valid wakf of this property. After death of Barati Lal partition took place between his sons and the property house allotted exclusively to Jot Prasad who validity mortgaged it to Hanoman Prasad. After Jot Prasad's death, his widow succeeded to property.

HELD

The appellants' plea that the transfer in their favour is protected by Section 41 of the Transfer of Property Act is also well-founded on the facts proved in this case. Lakhpat Rai had stated that he had made enquiries about the title of his vendor Smt. Bittan Devi not only from Smt. Bittan Devi but also from the plaintiffs and he was informed that she was the owner of the property who was competent to transfer the same. The courts below denied the protection of Section 41 to the appellants on the ground that he did not make a search of the registration records though the alleged wakf had been made by registered documents dated 28-5-1908 and 12-10-1927 and as such he will be deemed to have constructive notice of the property in suit being included in the wakf in view of Explanation 1 to the definition of 'notice' contained in Section 3 of the Transfer of Property Act which provides that where any transaction relating to Immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part thereof, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration.

This provision is not applicable to the case. For one thing, both the above documents though registered under the Registration Act were not required by any law to be so registered. Both these documents were in the nature of will and there is no provision in law which requires a will to be registered. In these documents Barati Lal had simply declared that he had set apart certain properties of which the income was being spent by him on the expenses of the temple constructed by him and that after his death his heirs would have no interest in that property. But he nowhere placed himself under an obligation that in his lifetime he would not be competent to deal with those properties or to transfer them or that he would be divested of their ownership which would henceforth vest in the presiding deity.

If there is no requirement of law that a dedication can only be made by means of registered document, the definition of 'notice' contained in Section 3 including its Explanation will not apply to a property that has been dedicated to God. Under the circumstances the transfer made by Smt. Bittan Devi who was in possession of the property since the death of her husband to Lakhpat Rai and Ghasi Ram who purchased the same for valuable consideration after making reasonable enquiries about her title **would be protected** by Section 41 of the Transfer of Property Act, On this ground also the suit of - the plaintiffs is liable to fail.

In the present case, wakf is a document that does not need to be registered by law, and its registration does not create constructive notice(by application of sec-3 explanation-I). contract for sale are also not compulsorily registerable, so, by analogy we can say that the registration of contract of sale would also not create constructive notice.

Another case in this reference is:

Hirachand Himatlal Marwadi Vs. Kashinath Thakurji Jadhav

The plaintiff was one of the creditors of defendant No. 1 for a substantial amount, and defendant No. 1 is the proprietor of two cinema houses in Poona city. On June 1, 1937, at a time when defendant No. 1 was considerably indebted to the plaintiff, he executed two documents in favour of the plaintiff, the first was a document giving the plaintiff the right to temporary possession of the cinema houses subject to certain obligations with respect to paying off the defendant's debts, and the other was an agreement to mortgage the cinema houses within three months,

on the same day and registered them both. On July 9, 1937, defendant No. 3, another of the creditors, obtained a lease of the Rainbow Talkies (one of the two cinema houses) from the defendant; and on July 16 defendant No. 4 obtained a mortgage of the same property from the defendant. On August 11, 1937, the defendant was adjudicated insolvent and receivers were appointed, now represented by defendants Nos. 2A and 2B in this suit. The plaintiff has sued for specific performance from the receivers of his agreement for a mortgage and also for a declaration of the priority of his agreement over the lease of defendant No. 3 and the mortgage of defendant No. 4. He won his suit on these three points, and defendant No. 3 now comes in appeal.

The contention of the appellant-defendant No. 3 is that his rights are protected by the fact that he had no notice of the plaintiff's agreement for a mortgage. Admittedly he did not receive actual notice. But the plaintiff mentioned the fact of the plaintiff's agreement having been registered as one ground of constructive notice having been given to defendant No. 3; and it was also alleged that he had constructive notice by the fact that the plaintiff got possession of the property under his other agreement of June 1, 1937. The plaintiff's possession, besides being inconspicuous, would not in this case give constructive notice to defendant No. 3 within the meaning of Section 3 of the Transfer of Property Act, because admittedly it came to an end before defendant No. 3's lease was executed. As to the fact of its being registered giving defendant No. 3 constructive notice (and admittedly it was registered with all necessary formalities), the answer to the question would depend, according to the definition in Section 3 of the Transfer of Property Act, upon whether the plaintiff's agreement for a mortgage was or was not compulsorily registrable. If it was compulsorily registrable and was in fact properly registered, then defendant No. 3 must be deemed to have received constructive notice; otherwise not. Ultimately the question depends upon whether the plaintiff's agreement creates a charge upon the property. If it creates a charge, then it would have to be registered. But it may be pointed out that no question of priority arises at all, unless the plaintiff has a charge over the property by reason of his agreement. If it gives him no charge, then it is merely a document giving him a 'right to receive another document', and obviously cannot give him priority over defendant No. 3's registered lease of the property.

An issue was framed by the trial Court dealing with the question of charge and the formal finding is that the agreement for a mortgage gave the plaintiff a charge over the property. But in the judgment the only passage in support of the finding appears to be one in which the learned Judge says that the agreement gave the plaintiff an equitable mortgage because the money had already been advanced.

HELD

The plaintiff does not obtain a charge over the properties and in consequence priority over defendant No. 3 by reason of his agreement for a mortgage. There was no point of priority at all, unless the plaintiff has a charge over the property by reason of his agreement. It gives him no charge, then it is merely a document giving him a right to receive another document, and obviously cannot be given priority over defendant no. 3's registered lease of property.

Agreement gave the plaintiff an equitable mortgage because money had already been advanced. It does not ordinarily give rise to an equitable mortgage.

Agreement for mortgage ought to be read with other documents namely the document under which the plaintiff gave him limited possession for four months to Defendant 3 upon certain conditions. Also it was impossible to sell the property in case of non-payment of the debt.

Hence, though the agreement for mortgage was registered created no constructive notice to benefit the mortgagee. Like the previous case, in the present case, we can draw analogy between the agreement to mortgage and contract for sale (agreement to sale). Hence the sub thesis that 'registration of a transaction which is not required by law to be registered, does not create constructive notice.' is proved.

MERE REGISTRATION OF CONTRACT FOR SALE DOES NOT CREATE CONSTRUCTIVE NOTICE.

Where registration of a document is not mandatory but only an option, then registration would not operate as constructive notice. For instance, a partition deed is not required to be registered, in fact, it is not required by law in writing, as shown in the following example. A joint family comprises of a father and his son. They together own a land and a house that the father manages, as the karta. A partition is effected and the land goes to the son while the father keeps the house. The partition deed is registered. Later, the father sells the land to B. B is supposed to be vigilant as a prospective transferee, and though the elements of gross negligence and wilful abstention from an inquiry have to be looked into independently, mere registration of partition deed would not amount to constructive notice. Thus, registration of documents voluntarily registrable would not create a constructive notice but the elements of gross negligence and wilful negligence from inquiry have to be looked into.

We have a case that strengthens our thesis:

Godhan son of Pola and others Vs. Ram Bilas son of Mahesh

FACTS

The plaintiff-respondent Ram Bilas filed a suit against the defendants-appellants Godhan and 3 others for specific performance of contract to execute the sale deed in respect of agricultural plots Nos. 116, 117 and plot No. 134 situated in some village. According to the plaintiff case on 18-11-1983, the defendant No. 1 has entered into an agreement for sale of plots in dispute to the plaintiff for a sum of Rs. 12,000/- and a sum of Rs. 1000/- was paid by the plaintiff respondent to the defendant-appellant No. 1 and it was agreed upon that when the plaintiff will require the defendant No. 1 will execute a sale deed of the above mentioned plots of land in favour of the plaintiff after having received of the balance amount of sale consideration. The agreement to execute the sale deed was executed on 18-11-1981 in writing and was registered on 19-11-1981 in accordance with the requirements of law. The plaintiff further averred that on 15-3-1982 the defendant No. 1 received a further amount of Rs. 5,000/- from the plaintiff and executed a receipt for the same in favour of the plaintiff-respondent. According to the plaintiff-respondent's case the defendant No. 1 by 15-3-1982 has thus received a total sum of Rs. 6,000/- as advanced only. The plaintiff further averred that thereafter the plaintiff required the defendant to execute a sale deed of the land in dispute in pursuance of above agreement in favour of plaintiff-respondent. The plaintiff-respondent served a written notice dated 23-6-1982 on defendant-appellant No. 1 but he did not pay any heed to that notice. According to plaintiff case subsequently on 2-8-1982, the defendant-appellant No. 1, who is the father of the appellant No. 4 Kallu executed the sale deed of plot No. 134 in favour of Kallu and two others, namely, Parbhu and Rewti and this sale deed in favour of defendants-appellants 2, 3 and 4 by appellant No. 1 was executed on 2-8-1982. The plaintiff's case is that the defendants-appellants 2 to 4 had purchased plot No. 134 which was also the subject matter of the agreement of sale. Defendants-appellants 2 to 4 had the knowledge of agreement which had been entered into between the plaintiff-respondent and defendant-appellants Nos. 2 to 4 who have been impleaded as defendants. In Paragraph-4 of the plaint, the plaintiff has averred that he the plaintiff has always been ready and willing to perform his part of contract. The defendant on the other hand was illiterate and was represented by his brothers for the sale of plots other than plot no. 137. The brothers had malicious intentions they misrepresented the case of both sides the plaintiff and defendants. They also took fraudulently thumb print of their brother on blank papers and used it for making receipts etc.

The children of D1 took the defence that they did not have notice as to the previous transaction. Their case in nut shell is that they are bona fide purchasers for valuable consideration without notice of any prior agreement between the plaintiff-respondent and the defendant-appellant No. 1.

HELD: The trial Court held that defendants-appellants 2 to 4 have failed to prove that they are bona fide purchasers for value without notice of the agreement and that it held that defendants-appellants 2 to 4 have not been bona fide purchasers of the property in dispute without notice of the agreement. Having affirmed to the findings of the Trial Court, lower appellate Court dismissed the defendant's appeal and affirmed the decree of the Trial Court and directed the defendant- appellants to execute the sale in favour of the plaintiff-respondent within a period of three months from the date of decree under the appeal. The Supreme Court took the view that they i.e. defendants-appellants 2 to 4 had full knowledge in the prior agreement to sell dated 18-11- 1981. Apart from that, from the statement of one of the defendant that he has stated, in course of cross-examination, that prior to getting the sale deed dated 2-8-1982 executed in favour of defendants 2 to 4, neither him nor any one made any effort to get the record of the registration office inspected in order to verify, with respect to land of their sale deed i.e. plot No. 134. This statement per se shows that the defendant-appellants 2 and 3 did not act in accordance with law i.e. they did not act, in accordance with standard of person of ordinary prudence before entering into the transaction of purchase of property and investing huge sums alleged by the defendants 2 to 4, to the sum of Rs. 20,000/- as they did not make enquiries about title or encumbrance on property. They did not get the record of registration inspected. **As regards the transactions which are required to be made or to be entered into by registered document under the law, it is expected of the person that he would come to know about such transaction by making inspection or by getting the record inspected** as persons of ordinary prudence are expected to behave. Section 3 of the Transfer of Property Act defines the expression when the persons is said to have notice. The relevant portion of S. 3 of the Transfer of Property Act provides as under :--

" a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.-- Where any transaction relating to Immovable property is required by law to be and has been effected by a registered instruments, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or (where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-sec. (2) of Sec. 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share of interest is being acquired, is situated).

Provided that-

- (1) The instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder,
- (2) the instrument (or memorandum) has been duly entered or filed, as the case may be, in books kept under S. 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under S. 55 of that Act."

From the reading of this provision along with Explanation-I, it comes out that the person is said to have notice of a fact when he actually knows that fact, or when but for willful abstention from making such enquiry which a person normally ought to have made he would have known it. In such cases the persons can also be deemed to have notice. According to Explanation-I, where law requires a transaction to be recorded or to be entered in, completed by registered deed then in respect of such transactions which satisfy two conditions i.e. a requirement of law that transaction is to be entered into by registered instrument only and the same has been completed by registered document, then persons shall be deemed to have knowledge of that instrument from the date of registration. **The registration of the document has taken to complete notice to world at large.**

So, the defendants in this case admitted that neither he nor other defendants made any enquiry regarding the property in question, which is a matter of gross negligence or wilful abstinence from making an inquiry. The Supreme Court decided that the lower courts were correct in not considering defendants as bona fide purchasers.

And the appeal was dismissed.

The case totally proves the thesis that mere registration of a contract for sale would not create constructive notice but when we can prove that a prudent man could have known the facts with relevant inquiry but because of their gross negligence or wilful abstinence could not have notice, the buyer will be presumed to have constructive notice.

CONCLUSION

We can conclude from the above arguments, cases cited and the statutory provisions that –

- ✓ Contract for sale does not in itself create any interest in the immovable property.
- ✓ Contract for sale is not Compulsorily Registerable.
- ✓ Registration of a transaction which is not required by law to be registered, does not create constructive notice.
- ✓ Mere Registration of contract for sale does not create constructive notice.

All the aforesaid results combine to prove my thesis that is 'Mere registration of a contract for sale does not create constructive notice, but if we consider the elements of gross negligence and wilful abstinence from the enquiry, we can conclude that the subsequent buyer had constructive notice. The contract for sale though not compulsorily registerable, does not give the benefit of constructive notice to the prior buyer(acc. To sec-3 exp-I), but this can be defeated by the main body of section-3 of transfer of property act that highlights the doctrine of **Caveat Emptor** i.e. buyer beware, and says that if such inquiries with relation to the immovable property in question that a prudent man would make before investing his money would make and with such inquiry he could have knowledge of the encumbrances, it would be presumed that the buyer had notice. Hence though Contract for sale not compulsorily registerable will create constructive notice by considering doctrine of Caveat Emptor.

Hence the thesis is proved.

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