

PETITIONER:
HAMDA AMMAL

Vs.

RESPONDENT:
AVADIAPPA PATHAR AND 3 OTHERS

DATE OF JUDGMENT 07/11/1990

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
SAIKIA, K.N. (J)
KASLIWAL, N.M. (J)

CITATION:
1990 SCR Supl. (2) 594 1991 SCC (1) 715
JT 1990 (4) 391 1990 SCALE (2) 970

ACT:

Code of Civil Procedure--Order 38 rules 5 and 10--Attachment before judgment of property after execution of sale deed but before its registration effect on the rights of the vendee.

HEADNOTE:

The appellant purchased the suit property from Govindraju Pathar, Muthulinga Asari and Gurusami Pathar--Respondents-vendors by a sale deed executed in her favour on 9.9.1970 and got the sale deed registered on 26.10.1970. Before registration of the sale deed, respondent Avadiappa filed a money suit for the recovery of the amount on 13.9.1970 against the said vendors and obtained attachment before judgment of the property in question on 17.9.1970. Later the said money suit was decreed in his favour. The appellant claimed rights in the property on the strength of the sale deed executed in her favour on 26.10.70 by filing a suit and the question that arose for consideration in the said suit was whether she was entitled to the property in question. The suit was decreed in her favour but on appeal, the High Court reversed the order of the trial court. Hence this appeal by the plaintiff appellant.

Allowing the appeal, this Court,

HELD: A transaction of sale having already taken place even prior to the institution of a suit cannot be said to have been made with the intention to obstruct or delay the execution of any decree.

The Legislature has provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order 38 rule 10, C .P.C. read together with Section 47 of the Registration Act.

Ram Saran Lal and Ors. v. Mst. Domini Kuer and Ors., [1962] 2 S.C.R. 474; Hiralal Agrawal etc. v. Rampadarath Singh and Ors. etc.,
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[1969] 1 SCR 328; Radhakishan L. Toshniwal v. Shridhar, [1961] 1 SCR 248 and Bishan Singh v. Khazan Singh, [1959] SCR 878 and Bishan Singh v. Khazan Singh, [1959] SCR 878, distinguished.

Vannarakkal Kallalathil Sreedltaran v. Chandratnaath Balakrishand Anr., [1990] 3 SCC 291; Tilakdhari Singh v. Gour Narain, AIR 1921 Pat. 150; Raja Ram v. Giraj Kishore and Anr., AIR 1964 All. 369; referred to.

Faiyazuddin Khan v. Mst. Zahur Bibi, AIR 1938 Pat. 134; Champat Rao Mahadeo v. Mahadeo Baijirao Kunbi and Ors., AIR 1937 Nagpur 143; Kalvanasundaram Pillai v. Karuppa Mooppanar and Ors., ILR 50 Madras 193, Approved.

JUDGMENT: