

The Maharaj  
Weaving Mills,  
Amritsar  
v.  
The State of  
Punjab  
and others

of a dispute regarding the compensation to the appropriate Tribunal. In the circumstances I see no force in the appeal and would accordingly dismiss it with costs.

BHANDARI, C.J.—I agree.

Falshaw, J.  
Bhandari, C. J.

B.R.T.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

PANCHAM CHAND AND OTHERS,—Appellants.

versus

KIRPA AND OTHERS,—Respondents.

Regular Second Appeal No. 827 of 1954.

1959  
Aug., 21st

*Evidence Act (I of 1872)—Section 115—Doctrine of election—Meaning of—Transfer of Property Act (IV of 1882)—Section 58(c)—Oral transaction of sale with a condition of repurchase embodied in mutation—Whether valid and requires registration—Buyer—Whether can refuse to reconvey.*

*Held*, that the “doctrine of election” means that where a deed professes to bestow a benefit to a person named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions, and renouncing every right inconsistent with them. It would obviously be inequitable and unfair if a person is allowed to claim both under the deed and adversely to it. Where such a principle applies and the person who has the choice of two courses adopts the one, he cannot afterwards assert the other.

*Held*, that a sale with a condition to repurchase is not unknown in law. Where such a transaction is oral and the conditions are reproduced in the mutation deed, no registration is required.

*Held*, that the defendants cannot refuse to reconvey the property once it is established that the transaction was

of a sale with a condition to repurchase. The defendants must either accept the transaction as a whole with all its incidents and obligations or repudiate it altogether. Having accepted the sale they are also bound by the stipulation to reconvey it to the plaintiffs. There is no question of any privity of contract as the mutation itself gives a right to the vendor to repurchase.

*Second appeal from the decree of the Court of Shri J. N. Kapur, District Judge, Hoshiarpur; Camp Dharamsala; dated the 20th May, 1954 reversing that of Shri Gulal Chand Jain, Senior Sub-Judge; Kangra at Dharamsala, dated the 24th April; 1953 and granting the plaintiffs a decree for possession of the land in suit on payment of Rs. 740 with costs throughout and further ordering that the money should be deposited by the plaintiffs-appellants in the Court of the Senior Sub-Judge by 20th June, 1954 and after that, they would be able to get the decree for possession executed.*

ATMA RAM, for Appellants.

VIKRAM CHAND MAHAJAN, for Respondents.

#### JUDGMENT

SHAMSHER BAHADUR, J.—The subject-matter of this appeal is mutation No. 199 attested on 26th of September, 1943, whereby Nawratru sold on 17th of July, 1943, by virtue of an oral sale, the suit-land in favour of Bachittar Singh, Pancham Chand, Bakhtawar Chand, sons of Bansi Ram, Tarved Chand minor son of Rangel Chand and Rajindar Chand minor son of Khem Chand, for a sum of Rs. 640. It was mentioned that if the sons of the vendor objected to the sale within 15 years, they would be entitled to have the land back from the vendees by payment of the purchase price in equal shares to all the vendees. The present suit was brought by the sons of Nawratru to enforce the repurchase clause in the mutation deed. Bachittar Singh admitted that he had agreed to reconvey the

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land on the stipulated terms, but he stated that this consent was obtained by undue influence and coercion. The defendants, other than Bachittar Singh, pleaded that Bachittar Singh was never authorised by them to make such a stipulation and his undertaking could not bind them to the reconveyance clause. The trial Court dismissed the suit of the plaintiffs on two grounds ; firstly because Bachittar Singh had no authority to bind the other defendants, the parties being governed by custom and not by Hindu law which alone could justify the *karta* in making the said stipulation. The trial Court also held that there was no privity of contract between the plaintiffs and the defendants. In appeal, however, the District Judge held that the defendants are bound under the doctrine of "election" to honour the commitment made by Bachittar Singh. They could either accept or reject the whole transaction. They could not accept a part of it and reject the other. The District Judge also held that the case is governed by clause (c) of section 58 of the Transfer of Property Act and he accordingly allowed the appeal and decreed the suit of the plaintiffs.

The defendants vendees have come in appeal to this Court in second appeal, which has been argued on their behalf by Mr. Atma Ram.

I agree with the conclusion of the learned District Judge that the defendants other than Bachittar Singh could not both approbate and reprobate the transaction, reproduced in the mutation Exhibit P. 1. The Court will not permit a person to accept and reject the same document. This principle which is well-known is Scottish Law is another name for the 'doctrine of election' in English Law and it broadly means that where a deed professes to bestow a benefit to a person

named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions, and renouncing every right inconsistent with them (*vide Codrington v. Codrington* (1), and *Lissenden v. C. A. V. Bosch, Limited* (2)). It would obviously be inequitable and unfair if a person is allowed to claim both under the deed and adversely to it. Where such a principle applies and the person who has the choice of two courses adopts the one, he cannot afterwards assert the other. As rightly pointed out by the learned District Judge, Bachittar Singh's brothers could have repudiated the entire contract but obviously they are accepting the sale and repudiating the clause making it obligatory for them to reconvey the property to the vendors in accordance with the condition in the mortgage deed. The defendants cannot be allowed to blow both hot and cold. A choice lay with them and having made a choice which must be regarded as irrevocable they cannot now assert that they are not liable to reconvey the suit-land.

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Mr. Atma Ram has contended that the proviso to clause (c) of section 58 of the Transfer of Property Act precludes the plaintiffs from claiming on the document Exhibit P. 1 as a mortgage with condition of sale as it was not a registered instrument. I think the case has not been viewed in its proper perspective by the learned District Judge. A sale with a condition to repurchase is not unknown in law. Exhibit P. 1 is plainly a transaction of sale with a condition of repurchase within a period of 15 years. The entire transaction was oral and the conditions were reproduced in the mutation deed. No registration was at all required. Both the sale and the condition of repurchase are part of the same transaction and reproduced in

(1) L.R. 7 H.C. 854(861)

(2) 1940 A.C. 412

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the mutation Exhibit P. 1. Section 58 of the Transfer of Property Act is really applicable to mortgages which are in fact ostensible sales. I do not think the principles embodied in section 58 provide any useful guidance for adjudication of the problem involved in the present controversy. The plaintiffs have based their claim on the conditions which have been set out in the mutation. As I have said before, it is no answer for the defendants to assert that while they agreed to the transaction of sale they never agreed to the plaintiffs exercising their option to repurchase as the two hang together. The defendants must either accept the transaction as a whole with all its incidents and obligations or repudiate it altogether. Having accepted the sale, they are also bound by the stipulation to reconvey it to the plaintiffs. There is no question of any privity of contract as the mutation itself gives a right to the sons of the vendor to repurchase. The conclusion of the learned District Judge is, therefore, correct and I would dismiss this appeal with costs.

B.R.T.

APPELLATE CRIMINAL.

*Before Mehar Singh and Dua, JJ.*

THE STATE,—Appellant.

*versus*

PIARE AND TWO OTHERS,—Accused-respondents.

**Criminal Appeal No. 84 of 1959.**

1959

Sep., 1st

*Code of Criminal Procedure (Act V of 1898)—Section 417—Interference with the order of acquittal—When can be made by the High Court.*

*Held, that in appeal against an order of acquittal the High Court in the absence of compelling reasons, should*