

can be made under s. 479A of the Code of Criminal Procedure.

We are therefore of opinion that s. 479A has no application to prosecution for offences other than an offence under s. 193 and cognate sections in Chapter XI and that as regards other offences ss. 476, 477, 478 and 479 continue to apply even after the enactment of s. 479A.

Whether the High Court is right or wrong in its view that the appellant appeared *prima facie* to have committed offences under s. 467 and s. 467/120B of the Indian Penal Code has not been argued before us and we express no opinion either way on that matter.

The appeal is dismissed.

*Appeal dismissed.*

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CHALIAGULLA RAMACHANDRAYYA

v.

BOPANA SATYANARAYANA & OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO  
and K. C. DAS GUPTA JJ.)

*Part performance—Transfer of interest in the property under contract—Absence of registered instrument—Indian statutory requirement—English Equitable Doctrine—Applicability—Transfer of Property Act, 1882 (Act 4 of 1882), s. 53A.*

The plaintiffs brought a suit for partition, two of them claimed to be the reversioners of Chandrappa and the third a purchaser of the interest of the reversioners, defendants 4, 5 and 7. They were thus entitled to a 5/6th share of the properties while the 6th defendant was entitled as a reversioner of Chandrappa to the remaining 1/6th share. The property was in the possession of the three sons of Nagayya, the first three

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defendants, who denied these properties ever belonged to Chandrappa and also that the plaintiffs 1 and 2 or defendants 4 to 7 were his reversioners. The main defence was that even if the properties belonged to Chandrappa, the defendants' father Nagayya became entitled to these as Chandrappa's illatom son-in-law, on the basis that Chandrappa had brought Nagayya into his family under an arrangement that the latter would marry his wife's sister's daughter Mangamma and inherit the entire property after Chandrappa's death. The trial court dismissed the suit. On appeal the High Court set aside the order and decreed the suit. On certificate, the only contention raised by the appellant in this court was that even though specific performance had not been sought, the contract itself would have the effect of transferring interest in the property to Nagayya on Chandrappa's death.

*Held* that after enactment of s. 53A in the Transfer of Property Act, the only case in which the English doctrine of equity of part performance could be applied in India is where the requirements of s. 53A are satisfied. In the instant case, 53A has no application. It must be held therefore that the considerations of equity cannot confer on Nagayya or his heirs any title in the lands which under the statute could be conferred only by a registered instrument. The appeal, therefore, must be dismissed.

*Challa Papi Reddi v. Challa Koti Reddi*, (1872) 7 Mad. H. C. R. 25; *Bha'a Nahana v. Parbhu Hari*, (1877) 2 I.L.R. Bom. 67; *Asita Mohon Ghosh Mouluk v. Mohan Ghosh Mouluk*, (1916) 20 C.W.N. 901; *Venkayamma Rao v. Appa Rao*, (1916) L. R. 43 I. A. 138; *Ariff v. Jadunath Majumdar*, (1930) I. L. R. 58 Cal. 1235, held inapplicable.

*Ariff v. Jadunath Majumdar*, (1931) L. R. 58 I.A. 91, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 334 of 1961.

Appeal from the judgment and decree dated March 29, 1956, of the Andhra Pradesh High Court in Appeal Suit No. 182 of 1950.

*B. Manavala Chowdhry* and *B. K. B. Naidu*,  
for the appellants.

*Narasiah Chowdhry* and *R. Gopalakrishnan*,  
for Respondents Nos. 1, 2 and 8.

1963. May 10. The Judgment of the Court was delivered by

DAS GUPTA J.—This appeal brought on a certificate granted by the High Court of Andhra Pradesh is against a decision of that Court reversing a decree granted by the Subordinate Judge, Masulipatnam, dismissing a suit for partition.

Of the three plaintiffs who brought the suit, two claimed to be the reversioners of Boppana Chandrappa, to whom we shall refer to as Chandrappa, and the third a purchaser of the interest of some of the reversioners, *viz.*, defendants 4, 5 and 7. According to the plaint the three plaintiffs were thus entitled to a  $\frac{5}{6}$ th share of the properties while the 6th defendant was entitled as a reversioner of Chandrappa to the remaining  $\frac{1}{6}$ th share. The property was however in the actual possession of the three sons of Nagayya who were impleaded as the first three defendants.

In contesting the suit these defendants denied that these properties had ever belonged to Chandrappa and further that the plaintiffs 1 and 2 or the defendants 4, 5, 6 and 7 were his reversioners. The main defence however was that even if the properties did belong to Chandrappa, the defendant's father Nagayya became entitled to these as Chandrappa's illatom son-in-law. The basis of this plea of illatom son-in-lawship was said to be that Chandrappa had brought Nagayya into his family under an arrangement that the latter would marry his wife's sister's daughter Mangamma and help him in cultivation and management of the properties, in consideration of which Nagayya would inherit the entire property after Chandrappa's death.

The Trial Court held that all the suit properties except a small portion did belong to Chandrappa

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and the plaintiffs would be entitled to 5/6th share of Chandrappa's properties and the 6th defendant to the remaining 1/6th share, on the death of Chandrappa's widow Ramamma. He however accepted the defence case that Nagayya had become entitled to the property on Chandrappa's death as Chandrappa's illatom son-in-law and accordingly dismissed the suit.

On appeal, the High Court held that the custom by which an illatom son-in-law inherited property could not be extended to a case where the marriage took place not with the daughter of the owner of the property but with some other relation of his. The High Court also rejected an alternative plea that appears to have been raised before it that Nagayya became entitled to the property on the basis of a contract between him and Chandrappa. In this view of the law, the High Court set aside the order passed by the Trial Court and decreed the suit.

It is no longer disputed before us that the rights of an illatom son-in-law cannot be claimed by a person who under a promise from the owner of the property that he would inherit the property marries not the daughter but some other relation of the owner of the property. The alternative contention which was raised before the High Court has however been repeated before us. It has been urged that there was a good and valid contract between Chandrappa and Nagayya, that in consideration of Nagayya marrying Mangamma and looking after Chandrappa's property, Chandrappa would make him his heir and that the consequence of this contract was that Nagayya became Chandrappa's heir. The question here is not whether on Chandrappa's death Nagayya could have obtained specific performance of the alleged contract. For, assuming that there was a contract as alleged and that it was a valid contract, enforceable at law and also such of which specific performance could

have been obtained by proper proceedings in courts, the appellants' rights would be to seek such specific performance. The contention on behalf of the appellant is that even though specific performance has not been sought or given the contract itself would have the effect of transferring interest in the property to Nagayya on Chandrappa's death.

In support of this contention the learned Counsel relied on three decisions of High Courts in India and also a decision of the Privy Council. The first decision in point of time is the case of *Challa Papi Reddi v. Challa Koti Reddi* (1). The facts there were that the defendant's father who was selected by Musalireddi, in pursuance of a special custom, as a son-in-law who should take his property as if he was a son entered into possession of the property on Musalireddi's death. He then associated with himself the plaintiff in the management of his property on promise of a share. The plaintiff continued thus for many years, aiding in the management and improvement of the property, until a short time before the suit was brought, the first defendant turned the plaintiff out of doors and refused to give him the promised share. The High Court of Madras held that the agreement by the first defendant's father was to the effect that the plaintiff was being admitted to the rights of a co-sharer and further, as there was a complete adoption or ratification of the father's contract by the first defendant he ought to be held to it and the plaintiff was therefore a co-sharer in the property.

It has to be mentioned that this case was decided long before the Transfer of Property Act, 1882 was enacted and the question whether a written document was necessary for transfer did not come up for consideration.

In *Bhalla Nahana v. Prabhu Hari* (2), which was the next case cited, what happened was that one Gosai

(1) (1872) 7 Mad. H.C.R. 25.

(2) (1877) 2 I.L.R. Bom. 67.

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Ramji induced the parents of the defendant Prabhu Hari to give him in adoption by an express promise to settle his property upon the boy but died before such settlement could be executed. Nearly 30 years after his death Ramji's widow Bhani gave effect to her husband's undertaking by executing a deed of gift of his property in her hands in favour of Prabhu Hari. The reversioner to Gosai Ramji's estate contested in a suit brought by him, the validity of this alienation. In holding that the alienation was valid, the High Court of Bombay pointed out that the performance of a husband's contracts was among the proper and necessary purposes specified by Hindu jurists under which a widow could alienate property and said further that the equity to compel the heir and legal representative of the adoptive father specifically to perform his contracts survived and the property in the hands of his widow was bound by that contract. Whether Prabhu Hari would have been entitled to the property even in the absence of the deed of gift did not fall for consideration in that case.

It also deserves to be mentioned that this case was also decided several years before the Transfer of Property Act came into force.

In *Asita Mohon Ghosh Mouluk v. Mohan Ghosh-Mouluk* (1), one of the questions in dispute was whether the adopted son could take an equal share with the son. Answering the question in the affirmative, the High Court of Calcutta after deciding that under the Hindu Law the adopted son was entitled to an equal share, also referred to an Ikrarnama which had been executed by the adoptive father, and holding that the Ikrarnama was valid and operative, said that even apart from the law, the adopted son would be so entitled. It is difficult to see how this can be of any assistance in solving our present problem.

(1) (1916) 20 C.W.N. 901.

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Lastly, the learned Counsel relied on the decision of the Privy Council in *Malraju Lakhmi Venkayamma v. Ventaka Narasimha Appa Rao* <sup>(1)</sup>. The main question in controversy in that case was whether there was a completed contract by which the Rani, the former owner of the property had agreed that the possession of the property would be given to her niece Venkayamma Rao immediately upon the expiry of her life interest. The Privy Council held that there was such completed contract and directed the Receiver to deliver possession "upon the terms of the contract now affirmed".

It may be mentioned that this decision in *Venkayamma Rao's Case* <sup>(1)</sup>, was among the authorities on which the Calcutta High Court relied in *Ariff v. Jadunath Majumdar* <sup>(2)</sup>. The High Court held that the result of equitable principles which had been applied in many cases in England and were also applied by the Privy Council in *Venkayamma Rao's Case* was that the defendant had acquired the rights of a permanent tenant. When this very case went up to the *Privy Council in appeal* <sup>(1)</sup>, the High Court's decision was reversed. The Privy Council pointed out that the dicta in *Venkayamma Rao's Case* did not mean "that equity can override the provisions of a statute and (where no registered document exists and no registrable document can be procured) confer upon a person a right which the statute enacts, shall be conferred only by a registered instrument".

This decision of the Privy Council in *Ariff v. Jadunath Majumdar* <sup>(2)</sup>, was given in January 1931. Nearly two years before that s. 53A had been enacted in the Transfer of Property Act introducing in a limited form the doctrine of equity of part performance. There can, in our opinion, be no doubt that after s. 53A was enacted the only case in which the English doctrine of equity of part performance could

(1) (1916) L. R. 43 I. A. 138. (2) (1930) I. L. R. 58 Cal. 1235.

(3) (1931) L. R. 58 I. A. 91.

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be applied in India is where the requirements of 53A are satisfied. Quite clearly, s. 53A does not apply to the facts of the present case. It must therefore be held that the considerations of equity cannot confer on Nagayya or his heirs any title in the lands which under the statute could be conferred only by a registered instrument.

Our conclusion therefore is that the High Court was right in holding that Nagayya or his heirs had acquired no right in the property. The appeal is accordingly dismissed. In the circumstances of the case, we make no order as to costs.

*Appeal dismissed.*

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KIRPAL SINGH

v.

STATE OF U.P.

(B. P. SINHA C. J., J. C. SHAH & N. RAJAGOPALA  
AYYANGAR JJ.)

*Criminal Law—Committal proceedings—Powers and duties of the Magistrate—Desirability to examine all the witnesses to the actual commission of the offence—Code of Criminal Procedure, 1898 (Act 5 of 1898), as amended by Act 26 of 1955, ss. 173, 207A (4).*

The appellant was convicted by the Sessions Judge of the offence of murder of K. and sentenced to death, and the conviction and sentence were confirmed by the High Court. The committal proceedings disclosed that the Magistrate committed the accused to the Court of Session without recording the evidence of the witnesses to the actual commission of the offence.

*Held* that under s. 207A of the Code of Criminal Procedure, 1898, as amended by Act 26 of 1955, a Magistrate has