PRIVY COUNCIL.

MATILAL

v.

NANHELAL.

P. C.* 1930 *July* 17, 18, 29.

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.]

Specific Performance—Contract for sale of cultivation rights in sir *lands—Implied term—Sanction of revenue officer—Form of decree—Central Provinces Tenancy Act (C. P. I of 1920), s. 50, sub-s. (1).*

Where a proprietor of land, subject to the Central Provinces Tenancy Act, 1898, contracts to sell a share of it "with *sir* and *khodkâst*," the contract is one for the transfer of proprietary rights of *sir* land without reservation of the right of occupancy, and there is an implied term that the vendor will apply to the revenue-officer for sanction to the transfer of the *sir* lands. Under the Specific Relief Act, 1877, the court can enforce the contract by a decree ordering the vendor to apply for the sanction, and that he shall convey the land upon receiving sanction; Order XXI, rule 35 (5) provides for the carrying out of a decree of that nature.

Decree of the Court of the Judicial Commissioner, Central Provinces, affirmed.

APPEAL (No. 52 of 1929) from a decree of the Court of the Judicial Commissioner, Central Provinces (April 8, 1926), reversing a decree of the District Judge of Hoshangabad (September 30, 1924).

The appeal arose out of a suit for specific performance of a contract for the sale of a share of a *mouzâ* subject to the provisions of the Central Provinces Tenancy Act, 1898, "with *sir* and *khodkâst*." The first appellant was the son of the vendor, who was defendant No. 1; the other appellants were mortgagees from the vendor. The respondents were the assignees of the purchaser, Musammat Jankibai, who was plaintiff in the suit.

The facts appear from the judgment of the Judicial Committee.

The appellate court (reversing the trial judge) made a decree in favour of the plaintiff in the terms appearing in the present judgment. The assignment

*Present: Lord Thankerton, Sir Lancelot Sanderson and Sir George Lowndes.

by Jankibai to the respondents was made after the decree, and the respondents' names were ordered to be substituted for her's as respondents to the present appeal.

Dunne K. C. and *Wallach* for the appellants. The arguments appear from the judgment.

DeGruyther K. C. and *Parikh*, for the respondents, were not called upon.

The judgment of their Lordships was delivered by

SIR LANCELOT SANDERSON. This is an appeal from a decree of the Court of the Judicial Commissioner, Central Provinces, dated the 8th April, 1926, which reversed a decree of the District Judge of Hoshangabad, dated the 30th September, 1924, and decreed the plaintiff's suit with costs.

The appeal is brought by Seth Matilal, the son of Seth Sobhagmal, who was the first defendant in the suit, and who is now dead, and Seth Lachmandas and Seth Manakchand, the second and third defendants in the suit.

The respondents are the assignees of the plaintiff, Musammat Jankibai, widow of Govindram Chaudhuri. The plaintiff assigned all her interest in the subject matter of the suit and in the decree appealed against, to the respondents, whose names by order of the court, dated the 7th October, 1927, were substituted for that of the plaintiff, as respondents in the appeal.

The material facts are as follows:—

On the 9th July, 1914, Musammat Jankibai, the plaintiff, had agreed to buy from Seth Jiwandas and the latter had agreed to sell to the former a four anna four pie share of *mouzâ* Raisalpur, including *sir* and *khodkâst* lands, with cultivating rights in the *sir*, for Rs. 46,100. Jankibai paid Rs. 5,000 as earnest-money, but being unable to raise the balance of the purchase money, arranged with Seth Sobhagmal (defendant No. 1) that he should have the benefit of her contract with Jiwandas, pay the balance, take

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the sale-deed in his name, and convey to her the said share at any time within ten years on her paying him (Sobhagmal) Rs. 41,100.

On the 25th August, 1914, Seth Sobhagmal, accordingly, took a sale-deed from Jiwandas and paid him the balance of the purchase money. The full consideration for the sale was Rs. 46,100.

On the 4th September, 1914, two agreements were executed, one by Seth Sobhagmal in favour of Jankibai, and the other by the latter in his favour, stating the arrangement already mentioned.

On the 18th March, 1918, Seth Sobhagmal mortgaged a four anna share to the defendants Nos. 2 and 3.

On the 9th October, 1919, Jankibai gave notice to Sobhagmal that she was prepared to pay him the price and called upon him to carry out his contract with her, but he took no notice of it.

Consequently, the plaintiff instituted the present suit against Seth Sobhagmal and his mortgagees (the second and third defendants), praying for a decree that the defendants should be ordered to execute a sale-deed in favour of the plaintiff for the said share of the said village with cultivating rights in the *sir* land, after obtaining sanction under the Central Provinces Tenancy Act for the transfer of the *sir* lands on payment by her of the sum of Rs. 41,100 and other sums that might be due under the agreement.

The plaint contained other alternative reliefs, which it is not necessary to mention in detail at present.

At the trial, many issues were raised; most of them are not now material. The learned District Judge dismissed the suit. He came to the conclusion that the litigation was speculative and opposed to public policy: that it had been engineered by Seth Nanhelal, the first respondent, to get the defendants out of the village, as they were undercutting him by lending grain and money at lower rates than he did in the village.

With regard to this ground, it is only necessary to say that it is not relied upon by the appellants in this appeal.

The plaintiff appealed to the Court of the Judicial Commissioner, which allowed the appeal, and on the 8th of April, 1926, made a decree in the plaintiff's favour as follows:—

The decree of the lower court is set aside and it is ordered that the first defendant Sobhagmal shall apply within one month to a revenue officer for sanction to transfer to the plaintiff Jankibai the cultivating rights in the *sir* pertaining to the share in the village of Raisalpur mentioned in the agreement of the 4th of September, 1914, and further that within one month of receipt of that sanction he shall convey to the plaintiff the said share in accordance with the terms of that agreement, after redeeming the mortgage on the share held by the other defendants, Seth Lachmandas and Manakchand, and further that he shall pay the whole of the costs incurred by the plaintiff in both courts by deduction from the amount to be paid to him for the transfer.

From this decree the appellants have appealed.

The first point urged on their behalf was that the agreements of the 4th September, 1914, between Jankibai and Sobhagmal did not cover the cultivating rights in the *sir* land, and therefore that the plaintiff was not entitled to call for a conveyance thereof from Sobhagmal.

This is a question of construction.

The agreement signed by Sobhagmal may be taken for consideration of this matter. It is as follows:—

Deed of agreement executed in favour of Janki Chaudhuran, widow of Govindram Chaudhuri, caste Kurmi, of *mouzâ* Raisalpur, *tehsil* and district Hoshangabad, by Seth Sobhagmal, son of Seth Giyanmalji, caste Oswal, of Ichhawar, Bhopal State, to the following effect :—

You agreed to purchase a four anna four pie share of *mouzâ* Raisalpur, *tehsil* and district Hoshangabad, for Rs. 46,100 from Rai Bahadur Seth Jiwandasji, son of Raja Gokuldasji, of Jubbulpur, and paid Rs. 5,000 as earnest-money to the said Seth. But you could not arrange for the remaining amount and Seth Jiwandasji would have recovered from you whatever damages there might have been, besides the earnest-money. So you gave up, of your own accord, the earnest-money and purchase rights in respect of the *mouzâ* and had the share of the village sold to me by Seth Jiwandasji for Rs. 41,100 (in words, forty-one thousand and one hundred rupees). But I agree with you as follows :—I will execute a sale-deed in your favour in respect of the entire four anna four pie share of this *mouzâ* with *sir* and *khud-kâst* at any time you pay in full, within ten years, Rs. 41,100 cash together with registration and other expenses of the sale-deed and rental arrears that may be due to me from tenants. If you fail to pay the full amount within the stipulated period and take a sale-deed, the deed of agreement shall be held to have been null and void and (you) shall have no right left to get a sale-deed executed. If I fail to execute a sale-deed after the full

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amount as above is paid, you may pay the amount in court and get a sale-deed executed by me through court under this deed of agreement. So the deed of agreement is executed. It is true and may be of use when necessary. *Mitti Lhadi Sudi* 15, Samvat 1971, corresponding to 4th September, 1914. By the pen of Amritlal, Agent, Raisalpur.

It is to be noted that this agreement was made on the 4th of September, 1914, ten days after the deed by which Jiwandas sold the share in the village to Sobhagmal.

There is no doubt that, by the last-mentioned deed, the cultivating rights in the *sir* land were transferred by Jiwandas to Sobhagmal, with the sanction of the revenue officer.

The recitals in the agreement of the 4th September, 1914, the price which Jankibai was to pay, *viz.*, Rs. 41,100, which, added to the Rs. 5,000 earnest-money already paid by her, made up the total of Rs. 46,100, which corresponded to the purchase price of the sale-deed, and the operative words of the agreement go to show, in their Lordships' opinion, that the subject matter of the agreements of the 4th September, 1914, between Jankibai and Sobhagmal was the same as the subject matter of the sale-deed of the 25th August, 1914.

As already stated, there is no doubt that by the said sale-deed the cultivating rights in the *sir* land were conveyed to Sobhagmal, and their Lordships are of opinion that the true construction of the agreements of the 4th of September, 1914, is that Sobhagmal agreed to transfer to Jankibai the cultivating rights in the *sir* land as well as the share in the village and the other matters specifically mentioned therein. It is to be noted that this opinion agrees with the construction placed upon the agreements by the learned District Judge, and that, so far as can be ascertained from the judgment of the appellate court in India, the above-mentioned construction was not disputed in that court.

The next point, on which the appellants relied, was that a decree for specific performance of the agreements of the 4th September, 1914, should not be made, because such performance would necessitate an application by or on behalf of the defendants or

one of them to the revenue officer for sanction to transfer the cultivating rights in the *sir* land, and that the court had no jurisdiction to require the defendants or any one of them to make such an application.

The material section which was in force at the time of the agreements was section 45 (*2*) of the Central Provinces Tenancy Act (XI of 1898). That Act was repealed by the Central Provinces Act of 1920, and the corresponding section of the 1920 Act is section 50 (*1*), which is as follows :—

> If a proprietor desires to transfer the proprietary rights in any portion of his *sir* land without reservation of the right of occupancy specified in section 49, he may apply to a revenue officer and, if such revenue officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer.

In view of the above-mentioned construction of the agreements of the 4th September, 1914, *viz.*, that Sobhagmal agreed to transfer the cultivating rights in the *sir* land, there was, in their Lordships' opinion, an implied covenant on his part to do all things necessary to effect such transfer, which would include an application to the revenue officer to sanction the transfer.

It is not necessary for their Lordships to decide whether in this case the application for sanction of transfer must succeed, but it is material to mention that no facts were brought to their Lordships' notice which would go to show that there was any reason why such sanction should not be granted.

In these circumstances, their Lordships are of opinion that the appellate court had jurisdiction under the provisions of the Specific Relief Act to make the decree, against which the appeal is directed, and that the terms of Order XXI, rule 32(*5*) are sufficient to provide for the decree being carried out.

Inasmuch as their Lordships are of opinion that the decree for specific performance of the agreements was properly made, it is not necessary to consider or express any opinion upon the points raised on behalf of the appellants with regard to the question of damages.

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For these reasons, their Lordships are of opinion that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitors for appellants: *T. L. Wilson & Co.*

Solicitors for respondents: *Stanley Johnson & Allen.*

A. M. T.