

I understand the section to aim at contracts, by which a person precludes himself altogether either for a limited time or over a limited area from exercising his profession, trade or business, not contracts by which, in the exercise of his profession, trade or business, he enters into ordinary agreements, with persons dealing with him which are really necessary for the carrying on of his business. I think I am supported in this decision by the Calcutta cases of *Carlisles Nephews & Company v. Ricknauth Bucklearmull*(1) *Prem Sook v. Dhuram Chand*(2) and by the principles which govern the English decisions upon the subject.

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I find the additional issue for plaintiffs as far as clause 12 of the contract is concerned. The case must proceed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

RAGAVAYYA AND OTHERS (PLAINTIFFS), PETITIONERS,

v.

SUBBAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889.
Aug. 7.
Sept. 3.

This was a petition under Provincial Small Cause Court Act of 1887, s. 25, praying for the revision of the proceedings of T. Ramachendru Row, District Munsif of Nellore, in small cause suit No. 664 of 1887. The plaint, as summarised by the District Munsif, was as follows:—

The plaint sets forth that in 1883 defendant No. 1 obtained a license to sell salt in the Salt Factory at Krishnapatam: that, on 15th July 1884, he executed an agreement, along with some others, to Messrs. Mulam Krishnayya and Company providing (1) that defendant No. 1 should manufacture salt in the said factory as long as the excise system would be in force and deliver the same to plaintiffs for sale; (2) that plaintiffs should pay him at 12 rupees per garce for kudivaram, &c.; (3) that defendant No. 1 should receive 4 rupees per garce in advance for manufacturing expenses; (4) that, after delivery of salt defendant No. 1 should receive from plaintiffs the balance of money due as kudivaram, after deducting the advances made; (5) that plaintiffs should execute all the necessary repairs in the said factory, except those for salt pans; and (6) that plaintiffs should be responsible for any loss that might result from failure to execute the repairing; that, relying on the said agreement, plaintiffs executed, at great cost, permanent, as well as temporary repairs; that defendant No. 1 delivered to plaintiffs the salt manufactured by him in 1885, and received all his dues; that defendant No. 1 received advances from

(1) I.L.R., 8 Cal., 809.

(2) I.L.R., 17 Cal., 320.

* Civil Revision Petitions, Nos. 3 to 16 of 1889.

RAGAVAYYA
F.
SREBHAYYA.

plaintiffs up to 15th April 1883; that, in violation of the contract, defendant No. 1 sold to defendant No. 2 the 18 garce of salt manufactured by him in 1883, and put plaintiffs to great loss; that interest is charged on the advances made to defendant No. 1, though not provided for in the registered deed, as there was an oral agreement on the subject; and that defendant No. 2 also is responsible, as he purchased the salt with notice of the contract between defendant No. 1 and plaintiffs. Hence the suit against both defendants to recover (1) Rs. 132-10-9, advances received by defendant No. 1 and interest thereon and (2) Rs. 852-12-0, as damages for the breach of contract on the part of defendant No. 1, or, in all, Rs. 985-6-9.

Rema Rem for petitioners.

Anudakherlu for respondents.

Judgment having been reserved was delivered as follows:—

MITTASAMI AYYAR, J.—It is contended in support of this petition that the Small Cause Court was in error in holding that the agreement sued on was in restraint of trade and void as such under section 27 of the Indian Contract Act. The petitioners-plaintiffs are dealers in salt and the first counter-petitioner-defendant was a licensee entitled to manufacture and sell salt in the Salt Factory at Krishnampatam. On the 15th July 1884, the agreement sued on was entered into between defendant No. 1 and others on the one part and the plaintiffs and their partners on the other part. It was to be in force as long as the excise system was in force and it provided *inter alia* that defendant No. 1 was to deliver all the salt he manufactured to the plaintiffs for sale and to sell it to no one else, and that in return the plaintiffs were to pay him Rs. 12 per garce for kudivaram and to execute all the necessary repairs in the factory save those which might be required for the salt pans. As licensee, defendant No. 1 would be at liberty but for the agreement to sell the salt manufactured by him to any one he liked and at such price as he might fix. But the agreement in question debarred him from selling the salt to any but the plaintiff and demanding as its price more than the stipulated kudivaram. The question for decision is whether, by reason of such restraint, the agreement is void under section 27 of Act IX of 1872. That section provides that “every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.” Of the three exceptions to that section, the second and the third pre-suppose the relation of partners between the parties and the first premises that of the buyer and the seller of the good-will of a business, and, in dealing with this revision petition, I may dismiss them from consideration. The rule of English law on the subject, as laid down in the case of *Mitchel v. Reynolds*(1) is that law favors trade much, and all restraints of trade are bad, subject, however, to the exception among others recognised by that leading case, viz., when the restraint is only partial in respect to time or place and there is good consideration given to the party restrained, the restraint is not unlawful. A partial restraint is again good or bad according as the consideration given for it is adequate or inadequate. On a comparison of the rule, as illustrated by English decisions with the rule embodied in section 27 of the Indian Contract Act, two questions arise for consideration, viz., (1) whether section 27 intended to vary the English rule, and (2), if not, whether the restraint imposed by the agreement in the case before me can be upheld according to English cases.

(1) 1 Sm. L.C., 406.

As to the first question, the omission to make an exception in favor of a partial restraint of trade to the general prohibition contained in section 27 clearly indicates an intention not to give legal effect to such restraint in this country. It was so held by KINDERSLEY, J., in *Oakes v. Jackson*(1), though he was also of opinion that the covenant in that case was unreasonable even under the English law. In *Madhule Chander Parmanick v. Rajcoomar Doss*(2), CORCH, C.J., and PONTIFEX, J., held that the words in section 27 "Restrained from exercising a lawful profession, trade or business" do not mean an absolute restriction and are intended to apply to a partial restriction also. That decision was followed by the High Court at Calcutta in *Brahmaputra Tea Company v. Searith*(3). The conclusion I come to, therefore, on the first question, is that the agreement, so far as it restrains the sale to others than the plaintiff, is bad.

In this view it is not necessary to decide the second question. I may add, however, that the restriction is to endure according to the agreement so long as the excise system is in force and it is not confined within a reasonable limit in respect of time. Practically, the agreement was intended to debar the first defendant from dealing in salt which he might manufacture for an indefinite period, except with the plaintiffs and for the stipulated kudiwaran. It seems to me that such agreement would be unreasonable even if legal effect could be given to a partial restraint. The decision of the District Munsif is not illegal, and I dismiss this petition with costs.

RAGAVAYYA
v.
SUBBAYYA.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Weir.

SAMA (PLAINTIFF), APPELLANT,

v.

STRINIVASA (DEFENDANT), RESPONDENT.*

1890.
Aug. 6.

Revenue Recovery Act (Madras)—Act II of 1864, ss. 42, 44—Sale of part of a holding for arrears of revenue due on another part.

The plaintiff sued, as the purchaser under a court-sale, for possession of certain land, which the defendant's vendor had purchased at a sale held under the Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment-debtor:

Held, the suit should be dismissed.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 246 of 1887, reversing the decree of T. S. Krishna Ayyar, District Munsif of Krishnagiri, in original suit No. 123 of 1887.

(1) I.L.R., 1 Mad., 134. (2) 14 B.L.R., 76. (3) I.L.R., 11 Cal., 545.

* Second Appeal No. 1298 of 1889.