

## APPELLATE CIVIL.

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

MOIDIN (DEFENDANT No. 2), APPELLANT,

and

AVARAN AND ANOTHER (PLAINTIFF AND DEFENDANT No. 1),  
RESPONDENTS.\*

1887.  
Dec. 6, 20.

*Contract to sell land—Rescission—Resale by registered deed.*

A sued to recover certain land which he claimed under a registered deed of sale executed by the owner. Prior to the date of this sale to A, M had been put in possession of the land under an agreement to purchase the land for Rs. 300. The sale-deed to M had not been executed because only Rs. 200 of the purchase money had been paid to the owner :

*Held* that A could not recover, as it was not open to his vendor to rescind the contract with M.

APPEAL from the decree of V. P. deRozario, Subordinate Judge at Palghat, confirming the decree of B. Kamaran Nayar, District Munsif of Betutnad, in suit No. 364 of 1885.

The facts necessary, for the purpose of this report, appear from the judgment of the Court (Collins, C.J., and Parker, J.).

*Srinivasa Rau* for appellant.

*Sankara Menon and Rajarathna Mudaliar* for respondents.

JUDGMENT.—The plaintiff sues on a deed of sale executed to him by first defendant on 10th September 1885. The second defendant is in possession of the property and has been in possession since 1881. Both courts find that he was put into possession by first defendant under a contract of sale on his promise to pay Rs. 300 for the land. He has only paid Rs. 200, and, in consequence, the sale-deed in his favor, though it has been drawn up, has never been executed or registered. It is found that the sale to plaintiff was *bonté fide* and for valuable consideration, and that the transaction between defendants 1 and 2 was not completed in consequence of second defendant's failure to pay the balance of the money within the time stipulated to Pakelt Mana on behalf of first defendant.

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\* Second Appeal No. 262 of 1887.

MOIDIN  
2.  
AVARAN.

The question is whether the property passed to second defendant. It is found that part of the purchase money has not been paid, but on account of this it is not open to the vendor having given possession to rescind the contract and recover possession, though he may have a lien upon the property for the unpaid balance of the purchased money—see *Trimabdv Raghavendra v. The Municipal Commissioners of Hubli*(1). The appeal must be allowed and the decrees of the courts below reversed, the plaintiff's claim being dismissed with all costs throughout.

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## APPELLATE CIVIL.

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

DAVUD BEG (DEFENDANT), PETITIONER,

and

KULLAPPA (PLAINTIFF), RESPONDENT.\*

*Small Cause Court Act (Mufassal), 1865—Rent Recovery Act, 1865—Suit to recover  
movable property.*

A suit to recover movable property attached under colour of the Rent Recovery Act (Madras Act VIII of 1865) is cognizable by a Court of Small Causes constituted under Act XI of 1865.

APPLICATION, under s. 622 of the Code of Civil Procedure, to set aside the decree of P. V. Rangacharyar, District Munsif of Sholinghur, in Small Cause suit No. 34 of 1887.

On the 25th January 1887 defendant, purporting to act under the provisions of the Rent Recovery Act, 1865, and alleging himself to be plaintiff's landlord, seized a buffalo calf for arrears of rent.

Plaintiff sued defendant in a Small Cause Court to recover the calf, or its value Rs. 2, and Rs. 2-4-0 damages. Defendant, *inter alia*, objected to the court's jurisdiction. The objection was overruled and plaintiff obtained a decree for the calf and costs Rs. 5.

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(1) I.L.R., 3 Bom., 172.

\* Civil Revision Petition No. 100 of 1887.