# APPELLATE CIVIL.

*Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.*

RAJAH KAVALI ARUNACHELLA ROW BAHADUR (PLAINTIFF), APPELLANT, IN APPEAL SUIT No. 22 OF 1903

*v.*

SRI RAJAH RANGIAH APPA ROW BAHADUR AND OTHERS (DEFENDANTS), RESPONDENTS, IN APPEAL SUIT No. 22 OF 1903.

1906. July 12, 31.

GOPI SETTI NARAYANASWAMI NAIDU GARU, RECEIVER APPOINTED BY THE COURT AND OTHERS (DEFENDANTS), APPELLANTS, IN APPEAL SUIT No. 23 OF 1903

*v*

RAJAH KAVALI ARUNACHELLA ROW BAHADUR (PLAINTIFF), RESPONDENT, IN APPEAL SUIT No. 23 OF 1903.*

*Transfer of Property Act IV of* 1882, s. 55 (5)(*d*)-*Where no contract to the contrary, liability to pay public charges attaches to vendee on the passing of property-Condition precedent to liability—Limitation Act XV of* 1877, *s.* 19-*Requisites of a valid acknowledgment.*

Under section 55 (5) (*d*) of the Transfer of Property Act, the liability of the vendee to pay the public charges on the property sold attaches, in the absence of a contract to the contrary, as an incident of the transfer and is complete when the property passes.

Where the adjustment of matters, which form part, but are not the essence and substance of the contract, cannot be carried out in the mode contemplated, the Court will do whatever may be right and proper to effect such adjustment itself.

*Dinham* v *Bradford*, (L.R., 5 Ch., App. 519), referred to.

Where a deed of sale provides that the vendee shall pay "the amount due, as per sub-division of the peshkush due to Government", and the deed contains no other words to show that the sub-division was a pre-requisite to the vendee's liability, the mere use of the words *as per sub division* does not make it such, and where no sub-division is effected, and the vendor pays the whole peshkush, the Court will ascertain as between the vendor and vendee the proportion payable by the latter, and direct payment thereof.

An acknowledgment of a conditional liability will not, under section 19 of the Limitation Act, give a fresh start as long as the condition remains unfulfilled. There must be an unqualified admission or an admission qualified by a condition which is fulfilled.

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* Appeal Nos. 22 and 23 of 1903, presented against the decree of F. H. Hamnett, Esq., District Judge of Godavari, in Original Suit No. 28 of 1901.

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SUIT to recover money. The amount was made up of a sum of Rs. 4,037 being the balance of the consideration money due under a sale deed executed on the 24th March 1893 in favour of Raja Papamma Rao, the predecessor in title of the defendants, by the plaintiff and his deceased undivided brother, and the sum of Rs. 2,962 being the amount, with interest, of the peshkush on the village sold which was paid by the plaintiff from the date of sale, *i.e.*, from fasli 1302.

The lower Court awarded Rs. 1,007 with interest on account of the balance of purchase money and peshkush from fasli 1305. The claim for faslis 1303 and 1304 was held to be barred by limitation as the suit was filed more than six years after payment; and the claim for fasli 1302 was included in the sum of Rs. 1,007 awarded for balance of the purchase money. The plaintiff preferred this appeal in respect of the portion of his claim which was disallowed, and the defendants appealed against the items allowed the plaintiff. The contention on appeal was confined to the amount of peshkush allowed and disallowed.

The plaintiff contended that the claim for faslis 1303 and 1304 was not barred as exhibit B, which was within six years of suit contained an acknowledgment of liability.

The defendant contended that the plaintiff was not entitled to sue on account of peshkush paid by him, as the liability of the defendants to pay the peshkush of the village was conditional on the sub-division of the village under the terms of the sale deed, and as no sub-division was effected the plaintiff had no cause of action in respect of the same.

*V. Krishnaswami Ayyar* and *K. Subrahmania Sastri* for appellant.

*P. R. Sundaram Ayyar* and *P. Nagabhushanam* for respondents.

JUDGMENT.—The questions for decision in these two appeals are whether, as contended by the appellant in Appeal No. 23 of 1903, the suit is premature, and, whether, if that is not the case, the suit in respect of the amount claimed as having been paid by the plaintiff respondent—on account of peshkush for faslis 1303 and 1304, is, as held by the District Judge, time barred.

The facts are shortly these. The village of Repudi, which formed part of the Zamindarni of Reddigudem, was conveyed on

the 24th March 1893 by the plaintiff and his deceased brother to the late Papamma Rao, Zamindarni of Nidadavolu, for the sum of Rs. 40,000. A duly registered conveyance was executed and delivered by the vendors to the vendee, and possession of the property was given to her. The village has ever since remained in the hands of the vendee or her representatives, the income thereof being received by them. The price was not paid to the vendors but was retained by the vendee in order that the debts payable by the vendors, and mentioned in the conveyance, might be liquidated therefrom by her and the balance, if any, paid to the vendors. When the conveyance was executed, the vendors and the vendee applied to the Collector of the district that the village be sub-divided and registered in the name of the vendee and that the proportionate peshkush payable in respect of it be ascertained and assessed. In the instrument of conveyance the vendors entered into a covenant to do at the request of the vendee any further acts that might be necessary in respect of the sub-division, registration and separate assessment of the village. With reference to the communications made to the Collector by the vendors and the vendee as aforesaid, the Collector, on the 20th April 1893, informed Papamma Rao that as the village was registered in the names not only of the vendors but of one, Chendramowli Rao also, her request for sub-division, etc., would not be granted unless "a duly authenticated document bestowing on the two proprietors above named the power of disposing the property of Chendramowli Rao also is produced." This was made known to one Lingiah, now deceased, a pleader who had taken part in bringing about the purchase, and who was a lessee under the plaintiff. Lingiah was asked to obtain certain information from the plaintiff with reference to the point raised by the Collector. There is no direct evidence that Lingiah called upon the plaintiff to furnish the information wanted, but there can be no doubt that the fact that the Collector was raising objections to the sub-division, etc., must have been brought to the notice of the plaintiff in the course of what subsequently took place. For exhibit B, a settlement of account which took place in June 1898 between the agents of the plaintiff on the one hand, and the agent of Papamma Rao, on the other (proved to have been authorised by the respective principals to make a settlement), refers to correspondence between the plaintiff and Lingiah in regard to the

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adjustment of the accounts connected with the purchase money left with the vendee, and it is expressly recorded therein that the settlement is made conditional, among other things, upon the plaintiff procuring the sub-division and the registry of the property in the name of Papamma Rao, and this condition as to the sub-division and registry implies, we think, that the plaintiff was aware why the sub-division and registry had not been effected. Papamma Rao and, after her death, her representatives, abstained from paying any amount towards the public revenue due in respect of the village, and the plaintiff has had to pay the Government demand on the whole zamindari, including the proportionate share that would have been payable by the defendant on account of Repudi if it had been sub-divided and separately registered, as intended by the parties.

Such being the facts, the contention of Mr. Sundara Aiyar for the defendants appellants in Appeal No. 23—was that, under the terms of the conveyance, the plaintiff is not entitled to make any claim with reference to the payments made by him unless and until the exact amount payable in respect of the village has been fixed by the revenue authorities.

We are unable to accept this contention. Now under section 55 (5) (*d*) of the Transfer of Property Act the buyer is bound to pay all public charges subsequent to the date of passing of the property to him, in the absence of a contract to the contrary. So far as fasli 1302 was concerned the parties to the instrument did enter into a special arrangement which was to the effect that the vendors were to deduct out of the incomes already derived by them from the village for that fasli what was payable for that year in respect of the peshkush of the village and to account for the remainder only to Papamma Rao. As regards subsequent faslis there was no special agreement, the instrument stating generally, in more than one place, that the vendee was to be responsible for the public demand on account of the village and that the vendors should in no way be liable for it. No doubt the words "as per sub-division" occur between the words "the amount due" and "of the peshkush payable to Her Majesty's Government of India" in the passages dealing with the matter. But it seems to us that the introduction of those two words was not for the purpose of making the right of the vendors to claim reimbursement from the vendee of what the vendors might be

compelled to pay in consequence of the vendee's omission to meet her proportion of the public demand, conditional upon an actual sub-division. The reasonable meaning of the language used is, in our opinion, no more than that the vendee should from and after fasli 1303 be liable for her share of the peshkush, as she would be in the usual course in the absence of a contract to the contrary. Considering that possession of the village had been parted with by the vendors and that all the rents of the village were to be received by the vendee from fasli 1303, there was no sufficient reason for imposing on the vendee only a conditional liability in respect of what was a first charge on the incomes of the village in her hands and which the vendors would not have been required to meet except for her default. If it was the intention of the parties to make any such exceptional terms it would have been done in far clearer words. In our opinion the instrument does in this respect but put in express words the covenant implied by law on the part of the vendee under the provision of the Transfer of Property Act already referred to. The present case cannot be likened to one in which the parties to a transaction agree to an arbitrator doing something with reference to the substance of the matter as a condition precedent to the accrual of a right or liability. The power of the revenue authorities to determine the amount of the separate assessment is not derived from the consent of the parties, but is conferred by the statute, alike in the interests of the private persons concerned, as well as of the Government. Further, the matter for determination has no reference to the liability itself, which attaches as an incident of the transfer and is complete when the property passes. *Dinham* v. *Bradford*(1) may be referred to by way of analogy. There, two partners made an agreement containing a provision that on the determination of the partnership one partner should purchase the share of the other at a valuation to be made by two persons, one appointed by each partner, and the partnership was carried on for some time under that agreement. It was held that though the valuation could not be so made because no umpire was appointed, the Court would carry the partnership agreement into effect by ascertaining the value of that share. In the course of his judgment Hatherly, L.C., says "It is much more like the case of an estate sold and

(1) L.R., 5 Ch., App. 519.

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the timber on a part to be taken at a valuation, the adjusting of matters of that sort forming part of the arrangement, but being by no means the substance of the agreement, and in such cases the Court has found no difficulty. If the valuation cannot be made *modo et forma* the Court will substitute itself for the arbitrators. It is not the very essence and substance of the contract so that no contract can be made except through the medium of the arbitrators. Here the property has been had and enjoyed, and the only question is what is right and proper to be done with regard to settling the price." It seems to us that the present case is even stronger, and if the parties are unable to agree as to the amount of the proportionate peshkush for Repudi, it is competent to the Court to decide that as between them, pending the determination of the amount by the revenue authorities so as to conclude the question between them and the Government. That here the parties themselves did not consider any action of the revenue authority in the way of fixing the assessment a pre-requisite to the plaintiff's right to claim payment, is clear from their having included in the settlement made by them in 1898, this matter also of the payments by the plaintiff for the peshkush of Repudi up to that time. The question as to whose duty it was to have the sub-division and separate assessment effected does not appear to us to have any real bearing upon the decision of the question under consideration. Assuming for argument that it was the plaintiff's duty to do so, his failure in this respect would, at most, only entitle the other party to damages. But no claim under such a head has been made in the present case as against the plaintiff, and it is unnecessary to pursue this point. We hold that the suit is not premature, and we dismiss Appeal No. 23 with costs.

As regards the other question, viz., of limitation in regard to the payments towards the peshkush for faslis 1303 and 1304, it is to be observed that no charge against immovable property in respect of those payments is sought to be enforced in the present suit. The period of limitation applicable is, therefore, six years, and the suit, in so far as it relates to these faslis, having been instituted more than six years after the time when the plaintiff made the payments, must be held to be barred, unless exhibit B operates as an acknowledgment within the meaning of section 19 of the Limitation Act. The concluding portion of the settlement

provides: "the Kavalai people (the vendors) should get the Zamindar's name entered in the Sircar Accounts, effect the subdivision, and bring and deliver Vallankivaru's mortgage deed. The said settlement has been agreed to subject to this condition." As one of the things thus prescribed, viz., the effecting of the subdivision has not been fulfilled, the plaintiff is not entitled to rely on the document as an acknowledgment. The recent decision of the Judicial Committee in *Maniram* v. *Seth Rupchand*(1), to which we drew attention in the course of the argument, is decisive on the point. Though so far as the specific cases provided for in the explanation to section 19 of the Limitation Act are concerned, the Indian is not the same as the English law, yet there can be no doubt that here as well as in England an acknowledgment of a conditional liability such as the present would not give a fresh start so long as the condition remains unfulfilled. "The question" observes Sir Alfred Wills in the course of the judgment "is whether a given state of circumstances falls within the natural meaning of a word which is not a word of art, but an ordinary word of the English language, and this question is clear of any extraneous complication imposed by the statute Law of either England or India. In a case of very great weight, the authority of which has never been called in question, Lord Justice Mellish laid it down that an acknowledgment to take the case out of the statute of Limitations must be either one from which an absolute promise to pay can be inferred, or, secondly, an unconditional promise to pay the specific debt, or, thirdly, there must be a conditional promise to pay the debt and evidence that the condition has been performed. *Re. River Steamer Co., Mitchell's claim*(2). . . . . The Indian Limitation Act, however, says nothing about a promise to pay and requires only a definite admission of liability as to which there can be no reason for departing from the English principle that an unqualified admission and an admission qualified by a condition which is fulfilled stand upon precisely the same footing."

A further question was argued as regards interest. The decree is not in accordance with the judgment, as the decree allows interest on the peshkush from the date of the plaint, whereas the time in the judgment is from the 1st November 1893. The decree

(1) I.L.R., 33 Calc., 1047. (2) L.R., 6 Ch., App. 822 at p. 828.

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will be modified in this respect, and in other respects confirmed. Subject to the above modification Appeal No. 22 is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice S. Subrahmania Ayyar and Mr. Justice Benson.*

1906. July 13, 18, 19.

ALAGAPPA CHETTY (PLAINTIFF), APPELLANT,

*v.*

CHIDAMBARAM CHETTY AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Merchant Shipping Act, 57 and 58 Vict., Chap. 60, ss. 24, 57—No bill of sale necessary where vendor sells only equitable interest.*

The purchaser of an equitable interest in a ship can sue to establish his right to such interest and the income thereof without a registered bill of sale.

Section 24 of the Merchant Shipping Act of 1894, which makes a bill of sale compulsory, does not apply to transfers of equitable interests which are governed by section 57 of the Act.

*Ramanadan Chetti* v. *Nagooda Maracayar*, (I.L.R., 21 Mad., 395), dissented from.

*Chasteauneuf* v. *Capeyron* (L.R., 7 A C., 127), followed.

SUIT for a declaration that the plaintiff was entitled to a one-fourth share of a ship and the income thereof. The plaintiff claimed as the purchaser of the first defendant's one-fourth share in the ship. It was not alleged that the sale was effected by a bill of sale. The plaint ship admittedly belonged to defendants Nos. 1 to 3 and was registered in the name of the fourth defendant, to whom the plaintiff alleged that the first defendant had sold his share *benami* to effect the registration, the first defendant remaining the beneficial owner of such share.

The defendants pleaded *inter alia* that the sale to the plaintiff not being effected by a bill of sale as required by section 24 of the Merchant Shipping Act, was not valid and enforceable.

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* Appeal No. 63 of 1903, presented against the decree of M.R.Ry. W. Goplachariar, Subordinate Judge of Madura (East), in Original Suit No. 44 of 1902.