"action should not injuriously affect the special rights conferred upon the transferee with respect to the trees, etc.," and the enjoyment of those rights would evidently have been irreconcilable with the retention of any substantial enjoyment by the transferor. Here it has not been explained and it does not appear how any ordinary use of the land could affect the nutriment it afforded to the trees, their juice or their fruit. It is therefore possible to give unrestricted effect to the reference to the juice of trees in the definition of moveable property in section 2 of the Act and to hold that Exhibit A transferred no interest in immoveable property.

Concurring with the learned CHIEF JUSTICE I would dismiss the appeal with costs.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar.

SUBBAROYA REDDIAR (PLAINTIFF), PETITIONER,

v.

RAJAGOPALA REDDIAR AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

1914. February 19 and 24.

Limitation Act (IX of 1908), arts. 62 and 97—Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money, only on dispossession.

A who had a title to certain immoveable property, voidable at the option of *C*, sold it to *B* and put *B* in possession thereof. *C* then brought a suit against *A* and *B*, got a decree and obtained possession thereof in execution.

Held, that *B*'s cause of action for the return of the purchase money arose not on the date of the sale but on the date of his dispossession when alone there was a failure of consideration and that the article applicable was article 97 of the Limitation Act.

Cases on the subject reviewed.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of A. N. ANANTARAMA AYYAR, the Subordinate Judge of Tinnevelly, in Small Cause Suit No. 1934 of 1912.

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* Civil Revision Petition No. 390 of 1913.

SUBBAROYA v. RAJAGOPALA.

The necessary facts are given in the judgment.

C. S. Venkatachariyar for the petitioner.

S. T. Srinivasagopalachariyar for the respondents.

SESHAGIRI AYYAR, J.

JUDGMENT.—The facts of this case are not in dispute. One Subbaroya Reddiar was the original owner of the properties conveyed to the plaintiff. At Subbaroya's death, his widow Kanthammal took possession of the properties of her husband; Gnanammal, the mother of Subbaroya Reddiar, executed in 1892 a deed of release of her claims in favour of Kanthammal. On the 23rd August 1900 Kanthammal executed a release of her rights in favour of the father of defendants Nos. 1 and 2 and the third defendant: they are said to be the reversioners to the estate of Subbaroya Reddiar. In this release deed executed by Kanthammal reference is made to the release obtained by her from her mother-in-law. The father of defendants Nos. 1 and 2 and the third defendant by his guardian executed on the same day a sale deed to the plaintiffs. Plaintiffs were put in possession. Kanthammal died in 1904. In 1910 Gnanammal brought a suit to recover possession of the properties from the plaintiffs on the ground that her release of 1892 only related to her right to maintenance and that her right to succeed to her son's estate which accrued to her after the death of Kanthammal was not affected by the release. To that suit the plaintiffs and defendants were all parties. Gnanammal succeeded in her suit and she obtained possession of the property from the plaintiffs in 1911. The said suit was brought within a year of the dispossession. The plaintiffs' present suit is to recover the amount paid by them to the father of defendants Nos. 1 and 2 and the mother of the third defendant on the ground that the consideration for the sale failed when Gnanammal deprived the plaintiffs of possession of the properties. If article 62 or 97 of the Limitation Act applied, the suit would be in time. Mr. Srinivasagopalachariyar contended that no such suit would lie and if the suit were entertainable, the cause of action having arisen on the date of the sale, viz., the 23rd August 1900, the suit was barred by limitation. Upon the first question as to whether a suit lies I have come to the conclusion that it does. The contention for the counter-petitioner is that as there is no express covenant for title and as the plaintiffs took with full knowledge of the infirmities of title, the principle of *caveat emptor* applies

and there is no cause of action. In India, there is a statutory guarantee for good title unless the same is excluded by the contract of parties [*vide* section 55, clause (2) of the Transfer of Property Act]. The question of the knowledge of the purchaser does not affect the right to be indemnified under the Indian Statute Law. Even in England, if on the face of the conveyance a *primâ facie* title is secured, knowledge of facts which may lead to the discovery of flaws will not affect the claim to compensation. See *Page* v. *Midland Railway Company*(1). In the present case, the conveyance was *primâ facie* unimpeachable, and I do not think the construction to which the release of Gnanammal lent itself in the eye of law, can be said to amount to a knowledge of the defect of title. On the second question as to when the cause of action for damages arose, a very large number of cases were quoted before me. These cases can roughly speaking be classified under three heads: (*a*) where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property; (*b*) where the sale is only voidable on the objection of third parties and possession is taken under the voidable sale; and (*c*) where though the title is known to be imperfect, the contract is in part carried out by giving possession of the properties. In the first class of cases, the starting point of limitation will be the date of the sale. That is Mr. Justice BAKEWELL's view in *Ramanatha Iyer* v. *Ozhapoor Pathiriseri Raman Nambudripad*(2); and I do not think Mr. Justice MILLER dissents from it. However, the present case is quite different. In the second class of cases the cause of action can arise only when it is found that there is no good title. The party is in possession and that is what at the outset under a contract of sale a purchaser is entitled to, and so long as his possession is not disturbed, he is not damnified. The cause of action will therefore arise when his right to continue in possession is disturbed. The decisions of the Judicial Committee of the Privy Council in *Hanuman Kamat* v. *Hanuman Mandur*(3) and in *Bassu Kuar* v. *Dhum Singh*(4) are authorities for this position. In the third class of cases also it is said that the cause of action will arise only on the disturbance

(1) (1894) 1 Ch., 11.
(2) (1913) 14 M.L.T., 524.
(3) (1892) I.L.R., 19 Calc., 123 (P.C.).
(4) (1889) I.L.R., 11 All., 47 (P.C.).

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SESHAGIRI AYYAR, J.

of possession. No question of concurrence of third parties either to avoid or perfect the title arises in this case. The most recent authority for this proposition is *Narsing Shivhakas* v. *Pachu Rambakas*(1). Mr Justice MILLER in *Ramanatha Iyer* v. *Ozhapoor Pathiriseri Raman Nambudripad*(2) gives a qualified assent to the proposition laid down in that case. I do not find Mr. Justice BAKEWELL expressing his dissent from the view taken in it. I agree with the view taken by Mr. Justice MILLER that it is impossible to see "how the sale can be said to have been without consideration and consequently void *ab initio* where possession has been given under the contract of sale." The case before me, properly speaking, comes under the second class. If the widow Gnanammal did not recover possession, the plaintiff would never have been disturbed. The sale was not void *ab initio*. It was only voidable if Gnanammal chose to avoid it. Even if this view is not correct, I am prepared to hold that this case comes under the third class of cases where under an invalid contract possession had been given; until that possession is interfered with, the purchaser is not bound to ask for the return of his purchase money on the possible ground that at some future time his sale may be impeached. I therefore hold that the cause of action for this suit arose when under the decree obtained by Gnanammal, the possession of the plaintiff was disturbed. The decisions in *Ardesir* v. *Vajesing*(3), in *Shivram* v. *Bal*(4) and *Amrita Lal Bagchi* v. *Jogendra Lal Chowdhury*(5) all relate to cases where no possession passed to the vendee and consequently the consideration failed at the date of the sale. They have no bearing on the present case. On the other hand the judgments in *Rajagopalan* v. *Tirupananthal Thambiran*(6), *Sriramulu* v. *Chinna Venkatasami*(7) and *Venkatanarasimhulu* v. *Peramma*(8) are cases where possession passed to the vendee and there was subsequent deprivation of possession. The Subordinate Judge is therefore wrong in holding that the plaintiff was not entitled to bring the suit to recover the purchase money, that the cause of action arose on

(1) (1913) I.L.R., 37 Bom., 538.
(2) (1913) 14 M.L.T., 524.
(3) (1901) I.L.R., 25 Bom., 593.
(4) (1902) I.L.R., 26 Bom., 519.
(5) (1913) I.L.R., 40 Calc., 187.
(6) (1907) 17 M.L.J., 149.
(7) (1902) I.L.R., 25 Mad., 396.
(8) (1895) I.L.R., 18 Mad., 173.

the date of the sale and that the suit was barred by limitation. I reverse the decree of the Subordinate Judge and direct him to restore the case to his file and dispose of it according to law Costs to abide the result.

SUBBAROYA v. RAJAGOPALA. SESHAGIRI AYYAR, J.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Seshagiri Ayyar.

UPADRASTA VENKATA SASTRULU (PLAINTIFF), APPELLANT IN ALL,

v.

DIVI SITARAMUDU AND EIGHTEEN OTHERS (DEFENDANTS), RESPONDENTS.*

1912. September 23 and 27 and 1914. March 18.

Madras Estates Land Act (I of 1908), sec. 3, cl. (2) (d); sec. 8, excep.—Grant of village as inam—Village composed of cultivated lands and waste lands—Grant of melvaram—Tenant of waste lands, without occupancy right—Village, an estate—Surrender by tenant—No acquisition of kudivaram by Inamdar—Suit in ejectment—Jurisdiction of Civil Courts.

A village, granted as an inam in A.D. 1748, was comprised at the time of the grant partly of lands under cultivation and party lof waste lands. The waste lands were subsequently given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right. The inamdar brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit.

Held, that the village as a whole must be considered to be an 'estate' within the definition of section 3, clause (2) (*d*) of the Estates Land Act.

Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to section 8 of the Estates Land Act.

An inamdar cannot acquire the kudivaram right by surrender from a tenant who had himself no occupancy right in the holding.

Held, consequently, that the Civil Court had no jurisdiction to entertain the suit.

APPEALS against the orders of F. A. COLERIDGE, the Acting District Judge of Kistna, in Appeals Nos. 293 to 392 and 432 of 1910,

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* Appeals Against Orders Nos. 186 to 196 of 1911.