

ROSS  
v.  
SECRETARY  
OF STATE  
FOR INDIA.  
—  
BAKEWELL, J.

foresee—*Sharp v. Powell*(1); and I am of opinion that the District Magistrate could not be expected to foresee that his act in closing the depot would result in so injuring the business of the plaintiff's principals that further damage would result to the plaintiff himself. The observations of Lord PENZANCE in *Simpson v. Thomson*(2) relate to a negligent act but indicate the manner in which the Court will limit the liability of a tort-feasor.

I am of opinion that the plaintiff has failed to show that the damage complained of was the consequence of the Magistrate's act, and that in any case it is too remote to give a cause of action.

I agree with the judgment of the learned CHIEF JUSTICE with respect to the claim for damages for defamation and with the order proposed by my learned brother.

N.R.

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## APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

1915,  
April 30.

RANGASAMI AYYANGAR (DIED) (REPRESENTED BY RAMANUJA  
AYYANGAR, MINOR, THROUGH HIS NEXT FRIEND LAKSHMI  
AMMAL (DEFENDANT)), APPELLANT,

29M.L.J.229

v.

SOURI AYYANGAR (PLAINTIFF), RESPONDENT.\*

*Indian Evidence Act (I of 1872), sec. 92, cl. (a)—Mistake in sale-deed to the defendant resisting suit for possession—Specific Relief Act (I of 1877), sec. 31—Plea of mistake without previous rectification of sale-deed, maintainability of.*

The combined effect of section 92, clause (a) of Indian Evidence Act (I of 1872) and of section 31 of Specific Relief Act (I of 1877), is to entitle either party to a contract whether plaintiff or defendant to protect his right by proving a mistake in a written contract, as e.g., in this case, a mistake in the description of the property sold by giving a wrong survey number to the same. The facts that the party who is obliged to prove the mistake happens to be a defendant in the suit resisting a claim for possession of that property and that he has not previously obtained a rectification of his sale-deed are no bar to the advancement of the plea.

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(1) (1872) L.R., 7 C.P., 258. (2) (1877) L.R., 3 A.C., 279 at p. 289.

\* Second Appeal No. 808 of 1914.

*Mahendra Nath Mukherjee v. Jogendra Nath Roy Chaudry* (1897) 2 C.W.N., 260, followed. RANGASAMI  
v.  
SOURI.

*Mahadeva Ayyar v. Gopala Ayyar* (1911) I.L.R., 34 Mad., 51, referred to.

SECOND APPEAL against the decree of G. KOTHANDARAMANJULU NAYUDU, the Temporary Subordinate Judge of Tanjore, in Appeal No. 464 of 1913, preferred against the decree of C. V. KRISHNASWAMI AYYAR, the District Munsif of Tiruvalur, in Original Suit No. 73 of 1912. The facts are given in the judgment.

*K. Parthasarathi Ayyangar* (and *A. Srirangachariyar* for *R. Rangaswami Ayyangar*) for the appellant.—Either party to a contract may show that the contract as written contains a mistake—vide section 92, clause (a) of the Evidence Act, and this can be done even by a defendant resisting a suit for possession by showing that a mistake has crept in his sale-deed in that a wrong survey number was given to the property sold to him—vide, *Mahendra Nath Mukherjee v. Jogendra Nath Roy Chaudry*(1). The reported cases of this Court, viz., *Karuppa Goundan alias Thoppala Goundan v. Periatambi Goundan*(2) and *Mahadeva Ayyar v. Gopala Ayyar*(3) relate to the case of a plaintiff trying to prove a mistake and *Mahadeva Ayyar v. Gopala Ayyar*(3) actually decides that a prior rectification of the deed is not necessary to the advancement of a plea. I submit it is likewise for the defendant.

*T. Narasimha Ayyangar* for the respondent.—The case of a plaintiff and that of a defendant are different. A plaintiff can claim relief of rectification as ancillary to his main relief based on the contract and his position is such that he can even amend his plaint by a later addition of a prayer for rectification and all reliefs can be prayed for and given to him in the same suit, whereas the same cannot be the case with the defendant. Moreover, the questions to be determined under section 31 of the Specific Relief Act such as whether the plaintiff has been prejudiced or not, have not been gone into in this case. On the facts, there is no mistake which can be availed of by the defendant. Reliance was also placed on section 94 of the Evidence Act.

(1) (1897) 2 C.W.N., 260.

(2) (1907) I.L.R., 30 Mad., 397.

(3) (1911) I.L.R., 34 Mad., 51.

RANGASAMI  
v.  
SOUKI.

—  
SESHAGIRI  
AYYAR AND  
NAPIER, JJ.

The following JUDGMENT of the Court was delivered by  
SESHAGIRI AYYAR, J.—This is a suit to recover possession.  
Plaintiff's case was that he purchased Survey No. 92-B from the  
owners in April 1911 and that the defendant is wrongfully in  
possession of it. The defendant pleaded that the same vendors  
conveyed to him the property in dispute in 1908 and that  
although the conveyance (Exhibit III) describes the land sold as  
Survey No. 90-B, his vendors intended to sell and he intended  
to purchase only Survey No. 92-B. He also alleged that he  
was put in possession of this latter number under the sale-deed.

The issue raised in the case was whether it was Survey  
No. 90-B or 92-B, that was sold to the defendant. The Munsif  
agreed with the defendant's contention and dismissed the suit.  
In appeal, the Subordinate Judge held that evidence to prove  
that what was described in the document was not what was  
actually sold was inadmissible under section 92 of the Evidence  
Act and decreed the plaintiff's claim.

We think the Subordinate Judge is wrong. The written  
statement clearly sets up a case of mistake in the description of  
the property sold. There can be no doubt that on the allegations  
contained in the written statement, the defendant would be  
entitled to claim rectification of his sale-deed under section 31  
of the Specific Relief Act. Under section 92, clause (a), any fact  
may be proved which would entitle any person to any decree on  
the ground of "mistake of fact or law." Thus it is clear that if  
he went to Court as plaintiff, the defendant could have claimed  
relief by way of injunction against the plaintiff from interfering  
with his possession, and to have his sale-deed rectified. Does  
the fact that the defendant is resisting the plaintiff's claim  
disable him from setting up the plea which could have availed  
him as plaintiff? We think not. We find nothing in the  
language of section 92, clause (a), which indicates that this bene-  
fit can be invoked only by the plaintiff. In *Mahendra Nath  
Mukherjee v. Jogendra Nath Roy Chaudry*(1), it was held that  
the defendant can protect himself by such a plea. See *Dagdu v.  
Bhana*(2). In this Court it was decided in *Karuppa Goundan  
alias Thoppala Goundan v. Periatambi Goundan*(3) and *Mahadeva*

(1) (1897) 2 C.W.N., 260.

(2) (1904) I.L.R., 28 Bom., 420.

(3) (1907) I.L.R., 30 Mad., 397.

*Ayyar v. Gopala Ayyar*(1), that a plaintiff can sue to recover the right property notwithstanding misdescription in his document of title. Reliance was placed in these two cases on the proviso to section 92. None of these cases have been considered by the Subordinate Judge. It is true that section 94 has no application as pointed out by him, but the combined effect of section 92, clause (a), and of section 81 of the Specific Relief Act leaves no room for doubt that the defendant can resist the suit on the ground that what was sold to him was different from what the document described.

Mr. Narasimha Ayyangar contends that on the facts he will be able to show that there was no mistake. We must reverse the decree of the Subordinate Judge and remand the appeal for disposal on the merits. Costs to abide the result.

N.R.

RANGASAMI  
v.  
SOUBI.  
—  
SESHAGIRI  
AYYAR AND  
NAPIER, JJ.

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## APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice  
Srinivasa Ayyangar.*

SREE RAJAH V. V. S. JAGAPATIRAJU BAHADUR GARU  
(DIED) AND ANOTHER (PLAINTIFFS), APPELLANTS,

1915.  
July  
26 and 27.

v.

29 M. L. J 639

SREE RAJAH T. P. R. S. L. R. SADRUSANNAMA ARAD  
DUGARAZU D. K. D. R. BAHADUR GARU AND FIVE  
OTHERS (DEFENDANTS), RESPONDENTS.\*

(Indian) Contract Act (IX of 1872), ss. 69 and 70—*Suit for contribution—Co-owners—Purchasers of different portions of zamindari—Attachment for arrears of revenue—Payment by a purchaser of the whole amount of arrears—Suit by him for the entire amount against the zamindar and the other purchaser—Personal liability of registered holder only—Liability of share of the other purchaser—Zamindar liable, only for proportionate share—Sale-proceeds of zamindari, liability of—Property partly in Agency Tracts—Defendant-purchaser, resident therein—Jurisdiction of Subordinate Court.*

The plaintiff was a purchaser, in an auction sale held in execution of a decree, of some villages in a zamindari of which the first defendant was the registered

(1) (1911) I.L.R., 34 Mad., 51.

\* Appeal No. 93 of 1911.