

SUNDARASAN
 v.
 KING-
 EMPEROR.
 SPENCER, J.

Another case, *Jhuna Lal Sahu v. The King-Emperor*(1), was quoted to us. But, as I understand that case, there was a complaint in writing, of which the Magistrate might have taken cognizance under section 190, sub-section (1) (a), and the learned Judges were of opinion that, having such a complaint before him, the Magistrate was not justified in taking cognizance of the same under section 190, sub-section (1) (c), as if it was a matter that had come to his knowledge from a source other than a complaint of facts constituting an offence, as 'complaint' is defined in the Code.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Coutts Trotter.

YELLA KRISHNAMMA (PLAINTIFF), APPELLANT,

v.

KOTTIPALLI MALI (DEFENDANT), RESPONDENT.*

Sale of land—Non-payment of price—Right of vendee to sue for possession—Decree for possession, whether can direct payment of price or be conditional on payment—Transfer of Property Act (IV of 1882), ss. 54 and 55.

A vendee who has not paid the purchase money for the lands bought by him, is entitled to a decree against the vendor for possession of such lands. The Court cannot make the decree conditional on payment of the purchase money, nor can it decree payment of the price to defendant in the vendee's suit.

SECOND APPEAL against the decree of K. KRISHNAMA ACHARIYAR, Temporary Subordinate Judge of Coacanada, in Appeal Suit No. 120 of 1918, preferred against the decree of K. PURUSHOTTAM PANTULU GARU, District Munsif of Amalapuram, in Original Suit No. 943 of 1916.

The plaintiff sued to recover possession of the suit lands sold to him by the defendant under a registered sale-deed executed by the latter on 16th January 1913. The sale-deed recited that the vendor had already received the purchase money. The

(1) (1917) 2 Patna L.J., 657.

* Second Appeal No. 499 of 1919.

plaintiff sued to recover possession from the vendor, and alleged in the plaint that he had paid the full amount of the purchase money. The lower Courts found that no portion of the purchase money was paid by the vendor; the District Munsif passed a decree, directing delivery of possession on the plaintiff paying the full amount of the price to the defendant within one month, and in case of default that the suit should stand dismissed. On appeal by the plaintiff, the lower Appellate Court modified the decree by omitting the direction for dismissal of the suit, and by substituting in its place a direction that 'the plaintiff will be entitled to recover possession of the property on his paying to defendant or into Court the amount of the purchase money.' The plaintiff preferred this Second Appeal, and contended that the lower Courts were wrong in passing a decree for possession, conditional on his paying the purchase amount.

KRISHNAMMA
v.
MALL.

K. Ramamurti for the appellant.

A. Satyanarayana for the respondent.

COURTS TRUTTER, J.—The short point in this Second Appeal is whether a plaintiff who has not paid the purchase money of a property which has been conveyed to him can maintain a suit for possession without paying for it, or submitting to a decree for payment, or a condition attached to the decree as to the purchase money which he had agreed to pay. No doubt it seems very reasonable that a man who comes to enforce his right against the property should be expected to do what is just and pay the price. But we think that there is no doubt whatever that the law in this country, following the English law, is otherwise. Two benches of this Court, in *Subrahmaniam Ayyar v. Pooran* (1) and in *Rama Aiyar v. Vanamamalai Aiyar* (2), have held that in such cases as the present the vendee can be compelled to pay the purchase money in extinction of the lien of the vendor before he gets a decree for possession. That must proceed on two assumptions. The first is, that the vendor is entitled to a possessory lien in respect of his unpaid vendor's lien, and the other is that you can give relief against the consequences laid down in the Transfer of Property Act as following from a transfer by sale-deed and conveyance. With regard to the first of these propositions, we

COURTS
TRUTTER, J.

(1) (1904) I.L.R., 27 Mad., 28.

(2) (1915) 27 I.C., 326.

KRISHNAMMA
 "MALLI.
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 COURTS
 TRUSTEE, J.

think that it is an oversight of the learned Judges to have treated an unpaid vendor's lien, which only creates a charge on the property sold, as a possessory right exercisable in the face of the claim of the vendee to possession. With regard to the second, the matter was very carefully considered by two learned Judges of this Court, the late Chief Justice and the present Chief Justice, in *Velayutha Chetty v. Govindaswamy Naicken*(1), where they pointed out that the broad proposition involved is this: Can Courts give equitable relief to mitigate or suspend the consequences laid down by a statute; and they came to the conclusion that the proposition that the plain words of the statute could be whittled away by the application of the so-called equitable doctrines, was an absolutely untenable one and they expressed their dissent from the contrary decision in *Bajinath Singh v. Paltu*(2). The same principle was really involved in the decision of the Full Bench of this Court in *Kandasami Pillai v. Ramasami Mannadi*(3). That was a case where it was part of the terms of a lease deed or demise that the lessee should discharge a prior hypothecation on the land. It was found that this was not in the nature of a condition precedent, but was merely a concurrent covenant with the other obligations of the parties to the document, and it was held by the Full Bench that the creation of a present demise involved the right to immediate possession by the person to whom the demise was made, unless it could be shown that any of the stipulations imposed upon him for performance were in the nature of conditions precedent.

The learned Judge in this case refers to the case of *Nilmadhab Parhi v. Haraprosad Parhi*(4), besides the decisions in Madras which we feel constrained to hold are no longer good law in view of the Full Bench ruling and of the ruling in *Velayutha Chetty v. Govindaswamy Naicken*(1). We think that the learned Judge clearly misconstrued the effect of the decision, because the ground upon which the judgment really proceeds is that there was evidence of an intention that a registered document was not to take effect *ipso facto* at once on execution and was not intended to be performed till something else had been done. Now if there

(1) (1911) I.L.R., 34 Mad., 543.

(2) ('98) I.L.R., 20 All., 125.

(3) (1919) 36 M.L.J., 313.

(4) (1913) 17 C.W.N., 1161.

had been any evidence in this case that it was the intention of the parties that this sale-deed, which is absolutely unqualified on the face of it, should only come into effect when in fact the consideration had been paid, no doubt any Court would have the right to give effect to such a contract and to hold that there was such an intention. The section of the Transfer of Property Act which enumerates the respective duties of vendor and vendee is expressly qualified by the words "in the absence of a contract to the contrary". The Calcutta case held, on the particular facts, that there was a contract to the contrary and that therefore clearly the consequences of the statute did not necessarily ensue.

The appeal must be allowed with costs.

AYLING, J.—I agree.

K.R.

AYLING, J.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

CHEBIA KUNHAMMAD AND KALLIYANI (DEFENDANTS
Nos. 3 AND 4), APPELLANTS,

1920,
January, 21.

v.

KUNHUNNI ALIAS KIZHAKKAYIL NAIR AND ANOTHER
(PLAINTIFFS AND FIFTH DEFENDANTS), RESPONDENTS.*

Malabar Law—Karnavan—Lease four years before expiry of a prior lease—No necessity or justification for such lease—Expiry of prior lease when grantor was karnavan, effect of, on subsequent lease—Lease, whether valid or binding on succeeding karnavan.

Where a karnavan granted a lease to take effect on the expiry of a prior lease whose term was to expire four years later, and it was found that there was no necessity or justification for granting the subsequent lease four years prior to the expiry of the term of the prior lease,

Held, that the subsequent lease was not valid or binding on the succeeding karnavan, even though the prior lease expired when the grantor continued to be the karnavan.

SECOND APPEAL against the decree of V. S. NARAYANA AYYAR, Temporary Subordinate Judge of Tellicherry, in Appeal Suit No. 554 of 1913, preferred against the decree of P. N. RAMASWAMI AYYAR, District Munsif of Payyoli, in Original Suit No. 432 of 1911.

* Second Appeal No. 1357 of 1918.