

## PRIVY COUNCIL.\*

SUBBARAYA PILLAI (SINCE DECEASED) AND OTHERS  
(PLAINTIFFS),

1922,  
May 21.

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v.

RAJA OF KARVETNAGAR (PLAINTIFF) AND OTHERS  
(DEFENDANTS).

[On Appeal from the High Court of Judicature  
at Madras.]

*Limitation—Suit for possession—Alleged benami holding—Contract for “sale”—Construction—Specific performance—Judicial Committee practice—Mortgage between co-defendants—Reversal of decree for plaintiff—Order preserving mortgagee’s rights—Indian Limitation Act (IX of 1908), Sch. I, art. 113.*

A suit was brought in 1900 for possession of villages on payment of such sum as might be found due. The plaintiff alleged that the villages had been purchased by the first defendant in 1883 as benamidar for the plaintiff’s father (deceased), and that in 1888 the first defendant had contracted to convey them to the plaintiff upon payment of a sum then found to be due. The contract of 1888 was expressed to be for a “sale” of the villages to the plaintiff and, in the view of the Judicial Committee (reversing the High Court, its terms were consistent only with the first defendant being the legal and beneficial owner.

*Held*, that whatever was the original nature of the purchase, the suit must be regarded as one for specific performance of the contract of 1888, and that it was accordingly barred by the Indian Limitation Act, 1908, Schedule I, article 113.

The first defendant had in 1894 and 1898 mortgaged one of the villages to the third defendant, and the decree of the High Court in favour of the plaintiff had provided for payment of the mortgage. The first defendant not opposing an order preserving the mortgagee’s rights from being affected by the Limitation Act, the Judicial Committee, in allowing the first defendant’s appeal, so determined.

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\* Present: Lord PHILLIMORE, Lord CARSON and Sir JOHN EDGE.

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APPEAL (No. 22 of 1919) from a judgment and decree of the High Court (January 14, 1916) reversing a decree of the Subordinate Judge of North Arcot.

The suit was instituted on August 24, 1900, by the Court of Wards on behalf of the first respondent to obtain possession of five villages in circumstances stated in the judgment of the Judicial Committee. The plaint alleged that the villages had been sold in 1883 under a decree against the plaintiff's father, and had been purchased by the first defendant as agent for, and at the request of, the plaintiff's father, and that by an agreement in writing made on August 25, 1888, the first defendant had agreed to convey them to the plaintiff upon Rs. 99,568, the sum then found to be due, being paid or secured by mortgage. The plaintiff claimed a declaration of title, and possession upon payment of, or execution of a mortgage for, such sum as should be found due on taking accounts. The other defendants were mortgagees under mortgages executed by the first defendant; the plaintiff was willing that provision should be made for their discharge if they were valid, which he denied. The defendants denied that the first defendant was a trustee, and contended that the rights of the parties were governed by the agreement of 1888, and that any suit for specific performance of that agreement was barred by limitation; the mortgagee defendants also pleaded that they were bona fide purchasers for value. The mortgages to the third defendant were made in 1894 and 1898.

The terms of the agreement of August 25, 1888, sufficiently appear from the judgment.

The Subordinate Judge held that the rights of the parties depended upon that agreement. In his view, it did not constitute a charge upon the property, and the

remedy of the plaintiff was for specific performance, and that remedy was barred by limitation.

On Appeal the learned Judges of the High Court (Sir S. SUBRAHMANYA AYYAR, Officiating C.J., BENSON and BHASHYAM AYYANGAR, JJ.) agreed that the legal relation of the parties was settled and determined by the agreement of 1888, but held that the agreement proceeded on the footing that the plaintiff was the beneficial owner, the word "sale" being used in the sense of a conveyance by a legal to a beneficial owner. They held therefore that the suit was really one by a beneficial owner for possession on payment of such sums as were due, and consequently was not barred as it would have been if it were for specific performance of the contract of 1888. They remitted the case for further findings, and after certain further proceedings the High Court delivered its final judgment. A formal decree was passed which settled the amounts due by the plaintiff to the first respondent, and by the first defendant to the other defendants, and provided for payment of the mortgages out of the sum to be paid by the plaintiff (defendant No. 5, being found to be a bona fide purchaser, in full; the other mortgagee defendants, being found not to be so, proportionately), for a conveyance to the plaintiff on payment, and for a sale if the plaintiff failed to make payment.

*De Gruyther*, K.C., and *Dube* for the appellants.—The plaintiff is precluded from asserting any title, legal or equitable, to the villages by section 317 of the Code of Civil Procedure, 1882. The plaintiff's claim, if any, is for specific performance of the agreement of 1888, and that claim is barred by the Indian Limitation Act, 1908, Schedule I, article 113. The agreement, upon its true construction, was one for the sale of the villages; its terms are consistent only with the first defendant being the beneficial owner. If this Appeal succeeds the

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appellants do not oppose the making of an order preserving the rights of defendant No. 3 as a mortgagee.

*Parikh* for respondents Nos. 8, 9, 10, being the legal representatives of defendant No. 3.—These respondents are concerned only with the preservation of their rights as mortgagees. An order should be made to preserve the rights of this defendant from being barred; the delay in enforcing them not being due to any fault or laches.

*The other respondents did not appear.*

Lord  
CARSON.

The JUDGMENT of the Judicial Committee was delivered by

LORD CARSON.—In this suit the present Raja of Karvetnagar seeks to recover possession from the defendants of certain villages on payment of such sum, if any, as may be found due.

Both the Subordinate Judge of North Arcot and the Judges of the High Court of Judicature at Madras were in agreement that the legal relation between the plaintiff and the first defendant is settled and determined by a contract in relation to the said villages entered into on August 25, 1888, between Sri Maharajulangaru, the plaintiff's father, and the first defendant, Saravana Pillai, who was the first defendant, is now dead, but is represented in this Appeal. The remaining defendants claimed to be bona fide purchasers for value from the first defendant without notice of any claim by the plaintiff. The Subordinate Judge held that upon the construction of the said contract Saravana Pillai was the owner of the villages, and agreed to sell the same to the plaintiff for a consideration of Rs. 99,568-15-6, to be paid or secured as stated in the fifth paragraph of the said contract of August 25, 1888. The High Court, on the other hand, held that upon the true construction of the contract the

plaintiff was the beneficial owner of the villages and Saravana Pillai only the legal owner, and that in the matter of pecuniary obligations incurred by Saravana Pillai in connexion with the purchase of the villages, and in the matter of the other money dealings between him and the plaintiff, there was found due from the plaintiff a sum of Rs. 99,568-15-6 in settlement of accounts. It is admitted in the judgments of the High Court that if the said contract were a contract for sale the suit would essentially be one for the specific performance of a contract, and in that case it would be clearly barred under article 113 of the Indian Limitation Act. It is well to bear in mind that the terms of that article relate to any contract.

On the view taken by the High Court of the contract, however, it was held that the suit is really one for the possession of immovable property by a beneficial owner thereof against the legal owner on payment, if necessary, of such sum if any, as may be found due; that the execution of a conveyance by the first defendant to the plaintiff was not essential, and is unnecessary if he gets a decree for the recovery of the villages as beneficial owner.

The villages in question originally belonged to the plaintiff's late father—the then Raja of Karvetnagar. They were sold in 1883 in Court auction in Original Suit No. 5 of 1879, and purchased by the first defendant as stated in the contract. It is alleged by the plaintiff that this purchase was made on behalf of the plaintiff's father, that a part of the purchase money was paid out of his funds and the balance obtained from one Krishnama Chari, to whom the villages appear to have been sold by the first defendant, subject to a condition of reconveyance on payment of a stipulated sum. A suit to compel such reconveyance was instituted

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in the High Court at Madras, and on October 16, 1889, a decree directing reconveyance was made. In pursuance thereof a conveyance was duly executed on February 7, 1890, and since that date the first defendant had until he died been in possession of the villages, acting as the absolute owner thereof. The contract of August 25, 1888, was entered into during the pending of the original suit. It recites briefly the facts above stated and refers to the pendency of the said suit, and then proceeds as follows :

“ Under these circumstances, under the order of Sri Maharajulanguaru the accounts were looked into in their presence in respect of items due to the said Saravana Pillai relating to the said villages, and also relating to all money transactions between Saravana Pillai and Sri Maharajulanguaru. On looking into the accounts, the amount found due to the said Saravana Pillai was Rs. 99,568-15-6. Saravana Pillai consented to receive this sum of rupees, etc., and sell the aforesaid villages to Sri Maharajulanguaru.”

Whatever may have been the original nature of the purchase by Saravana Pillai, or the arrangements entered into to raise the purchase money, this contract was a settlement of questions of account in relation to the said villages and other matters, and under the terms of it Saravana Pillai is treated as the legal and beneficial owner. The second clause of the contract further strengthens this construction. It provides that as soon as Saravana Pillai obtains a decree in the suit already referred to (which, as pointed out, he did obtain), he should sell the villages to Maharajulanguaru, and the said Maharajulanguaru should purchase the same for the sum of Rs. 99,568-15-6. “ He should not sell to others without the consent of the Maharajulanguaru ”—a provision which would be meaningless unless he was the legal and beneficial owner. The fifth clause of the agreement provides for payment of interest on the purchase money until paid, and that until the principal

and interest are paid the Maharajulangaru should mortgage the villages "which Saravana Pillai has consented to sell, or other villages, etc."—properties which are acceptable to Saravana Pillai as security for the said principal and interest—and execute a document therefor. The plaintiff took no further action in the terms of the said contract. In the year 1899 his estate was taken under the management of the Court of Wards, and this suit was instituted by the manager appointed by the Court of Wards on August 24, 1900. Before instituting this suit, it is to be observed that on August 23, 1900, the acting Secretary to the Court of Wards, by a notice in writing, called upon the first defendant to execute a conveyance of the villages to him on behalf of the plaintiff and to tender a mortgage for execution by him on behalf of the plaintiff.

Their Lordships agree with the Subordinate Judge that no charge is created by the contract over the villages in question, and that the plaintiff had no right to recover possession of the property absolutely or conditionally on his executing a mortgage deed or making a payment to the first defendant.

The suit, therefore, becomes one for the specific performance of a contract which is barred by the section of the Limitation Act already referred to.

This Board are, for the reasons stated, of opinion that this Appeal should be allowed and the judgment of the Subordinate Judge restored, and that the appellants should have their costs in the Courts below and of the Appeal.

It is unnecessary, having regard to this conclusion, to consider the case of the respondents, the legal representatives of defendant No. 3—for whom Mr. Parikh appeared—further than to say that it was agreed in the course of the argument by Mr. De Gruyther, counsel on behalf of the appellants, that the interests of Mr.

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Parikh's clients should not be affected by any question of any Statutes of Limitation which might be raised in answer to their claim, owing to the delay which has been occasioned by the institution and the carrying out of the proceedings in this suit, and their Lordships so determine.

Their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellants: *John Josselyn*.

Solicitors for respondents 8, 9 and 10: *Barrow, Rogers and Nevill*.

A.M.F.

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### APPELLATE CIVIL—FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., Chief Justice, Mr. Justice Ayling, Mr. Justice Coutts Trotter, Mr. Justice Kumaraswami Sastri and Mr. Justice Devadoss.*

1922,  
January 12.

YERUKOLA *alias* PENTA JOGULU (DEAD) AND OTHERS  
(PLAINTIFF'S LEGAL REPRESENTATIVES), APPELLANTS,

v.

YERUKOLA *alias* PENTA TATAYYA AND SIX OTHERS  
(DEFENDANTS 1 TO 3 AND 5 TO 8), RESPONDENTS.\*

*Limitation Act (IX of 1908) arts. 89, 120, 109, 127—Joint Hindu family—Division of property not completed—Properties left in the hands of the different members—Suit for partition and account—Money received from debtors—Rents and profits—Limitation.*

Three brothers, members of a joint Hindu family, became separated. Arbitrators were appointed to divide the properties by metes and bounds, but only some of them were so divided, and the rest remained in the hands of the different members, who collected outstandings from debtors and rents from tenants. In a suit brought by one of the brothers against the others for partition and an account,

*Held* that the properties remaining undivided were held by the brothers as tenants-in-common, that the article of the

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\* Appeal No. 367 of 1918.