

APPELLATE CIVIL.

1878
January 18.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*GUMANI AND ANOTHER (PLAINTIFFS) v. RAM CHARAN AND OTHERS
(DEFENDANTS).**Contract—Specific Performance—Act I of 1877 (Specific Relief Act), s. 27, cl. (b)
—Misjoinder of Causes of Action.*

The plaintiffs sued to enforce an agreement for the execution of a conveyance of certain immoveable property, and for the possession of such property, making the party to such agreement and the persons who had, subsequently to the date of the same, purchased such property in execution of decree, defendants in the suit, on the allegation that such persons had purchased in bad faith and with notice of the agreement. *Held*, with reference to s. 27 of Act I of 1877, that, under such circumstances, there was not necessarily a misjoinder of causes of action.

RAM Padarath and Ram Charan, two brothers, claimed a certain share in a certain village as their joint and undivided property. To enable them to sue for this property the deceased husband of Gumani and Harbansa advanced them certain monies. In consideration of the loan, Ram Padarath, on the 7th May, 1873, and Ram Charan, on the 10th December, 1874, agreed in writing to execute in favour of the deceased a deed of sale of three-fourths of the share should they obtain a decree in respect of it. The brothers sued for possession of the share and obtained a decree. On the 20th June, 1876, the rights and interests of Ram Charan in such decree were sold in execution of decree, and were purchased by Nakhed and certain other persons. On the 21st August, 1876, the rights and interests of Ram Padarath in such decree were sold, and were also purchased by Nakhed and the other persons, who obtained possession of the share. Gumani and Harbansa brought the present suit against Ram Charan and Nakhed and the other persons to enforce the agreement dated the 10th December, 1874, and for possession of three-fourths of the share. They also brought at the same time a suit against Ram Padarath and Nakhed and the other persons to enforce the agreement dated the 7th May, 1873. The Court of first instance dismissed both suits on the ground that the auction-purchasers were not parties to the agree-

* Special Appeal, No. 1053 of 1877, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 13th July, 1877, affirming a decree of Shah Rahat Ali, Munsif of Bansi, dated the 1st June, 1877.

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ments and there was consequently in the suits a misjoinder of causes of action, and its decrees were on the same ground affirmed by the lower appellate Court on appeal by the plaintiffs.

On special appeal to the High Court in the present suit it was contended by the plaintiffs that there was no misjoinder of causes of action.

Pandit *Ajudhia Nath* and Babu *Beni Prasad*, for the appellants.

Lala *Lalta Prasad* and Munshi *Sukh Ram*, for the respondents.

The judgment of the Court was delivered by

SPANKLE, J.—We think that the lower appellate Court has too readily assumed that, because the auction-purchaser was no party to the contract to sell to plaintiff, the suit is bad for misjoinder. It is part of the plaintiff's case that the auction-purchaser at the time of his purchase was aware of the original contract in favour of the plaintiff, and that he and the defendant Ram Charan were acting in collusion and to the injury of the plaintiff. Under cl. (b), s. 27, Act I of 1877, a contract may be enforced against any party to it or any other person claiming under him by a title arising subsequently to the contract, *except* a transferee for value who has paid his money in good faith and without notice of the original contract. The claim therefore is not necessarily bad for the reason assigned by the lower Courts. The defendants who were parties to the original contracts in the cases before us may be said to have admitted them, as Ram Charan did not defend the suit against him, and Ram Padarath in the other suit acknowledged the justice of the claim. It is true that the auction-purchaser contends that these defendants are in collusion with the plaintiff to injure him.

The Court would have to determine first whether or not there was any agreement enforceable by law between the contracting parties, and, if so, was the contract one specifically enforceable by law, as being one for which compensation in money would be no adequate relief. If the lower appellate Court found that the contract was one specifically enforceable, it would have to determine whether or not it was a contract entered into at the time it professes to have been made in good faith between the contracting parties, or, as alleged by the auction-purchaser, the transaction was

not made *bond fide* and was prepared in fraud of himself. If the lower Court found that there was a genuine contract of sale, the Court would then have to determine whether or not the auction-purchaser at the time of his purchase was aware of the original contract.

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With this view of the case we annul the finding of the lower appellate Court, and remand the case, under s. 351 of Act VIII of 1859, with directions that it may be restored to its original number on the file, and be tried on its merits by the lower appellate Court. Costs will abide the result.

Cause remanded.

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Before Sir Robert Stuart, Kt, Chief Justice, and Mr. Justice Oldfield.

FAZAL HAQ (PLAINTIFF) v. MAHA CHAND AND ANOTHER (DEFENDANTS). *

Public Thoroughfare—Easement—Act XV of 1873 (North-Western Provinces and Oudh Municipalities' Act), ss. 27, 32, 38—Special Damage—Right of Action—Municipal Committee, powers of.

While certain land formed part of a certain public thoroughfare *F* had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to *M* and constructed a new thoroughfare. *M* used and occupied such land so as to obstruct *F*'s access to the new thoroughfare and his use of the drain. *F* therefore sued him to establish a right of access to the new thoroughfare over such land and a right to the use of such drain. *Held* that, having suffered special damage from *M*'s acts, *F* had a right of action against him, and that such right of action was not affected by the circumstance that *M* had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old thoroughfare to the special injury of *F*, and had it closed the same would have been bound to provide adequately for his access to the new thoroughfare and for his drainage.

THIS was a suit to establish a right of access to a certain public thoroughfare and to the use of a certain drain, the plaintiff alleging that he had peaceably enjoyed such access and the use of such drain, as easements and as of right, without interruption and for twenty years. The facts of the case and the manner in which the lower Courts dealt with the suit are sufficiently stated in the order of remand made by the High Court, to which the plaintiff appealed against the decree of the lower appellate Court. That decree

* Special Appeal No. 1009 of 1877, from a decree of Rai Shankar Das, Subordinate Judge of Saharanpur, dated the 5th July, 1876, affirming a decree of Muhammad Inad Ali, Munsif of Saharanpur, dated the 18th May, 1876.