

880

CHIEF
JUDGE
V.
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perty of the obligors, sufficient for the discharge of the debt, is hypothecated to him in the deed, and besides this another person became surety, I am disposed to regard the very high rate of interest imposed in case of default as being of a penal character. At the same time the money was lent in the first instance without interest, and the deed hypothecates the property both for the payment of the debt and interest; the appellant therefore may have some ground for contending that the interest named in the bond is the consideration agreed to be paid by the borrower to the lender for the use of the money. Still the rate of interest imposed by the terms of the bond is so excessively high, and specially so when the security appears to be good and the risk therefore less, that it seems impossible not to regard the clause respecting interest as a penal one, in case of default, and as there was default, I would give the plaintiff-appellant reasonable compensation, and this I think would be half the rate imposed by the bond to the date of the decree of the Court of first instance, and after that I would allow interest at six per cent per mensem. But if the learned Chief Justice considers that a less rate should be allowed, I am willing to reduce it to twelve per cent.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Straight.

880

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SHEO PRASAD AND ANOTHER (PLAINTIFFS) v UDAI SINGH (DEFENDANT).*

Vendor and purchaser—Transfer of immoveable property—Specific performance of contract—Act XV of 1877 (Limitation Act), sch. ii, arts. 113, 136, 144.

On the 27th October, 1865, the vendor of certain immoveable property executed a conveyance of such property to the purchasers. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree against which an appeal was pending. The conveyance did not contain any express promise or undertaking on the vendor's part to put the purchasers into possession. On the 24th February, 1870, the vendor obtained possession of the larger portion of the property and on the 23rd August, 1872, of the remainder. On the 5th October, 1877, the purchasers sued the vendor for the possession of the property, stating that "possession was agreed to be delivered on the receipt of possession by the vendor," and that the cause of action was that the vendor had not put them into possession. *Held* that the suit was not one for

* First Appeal, No. 55 of 1879, from a decree of Babu Kasli Nath Biswas, Subordinate Judge of Meerut, dated the 17th February, 1879.

the specific performance of a contract to deliver possession to which art. 113 of sch. ii of Act XV of 1877 was applicable, but one to obtain possession in virtue of the right and title conveyed to the purchasers to which either arts. 136 or 144 of sch. ii of that Act was applicable, and that, whichever of them was applicable, the suit was within time.

1881
SHEO PR
v.
UDAI SI

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the plaintiffs appealed from the decree of the Court of first instance dismissing their suit.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), Pandit Ajudhia Nath, and Babu Oprokash Chandur Mukarji, for the appellants.

The *Senior Government Pleader* (Lala Juala Prasad), for the respondent.

The judgment of the High Court (PEARSON, J., and STRAIGHT, J.), was delivered by

PEARSON, J.—This purports to be a suit to obtain possession of landed property sold by the defendant to the plaintiffs on the 27th October, 1865. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree of the late Sudder Dewany Adawlat, North-Western Provinces, dated 9th August, 1864, against which an appeal was pending before the Privy Council. But he obtained possession of the larger portion of the property on the 24th February, 1870, and of the remainder on the 23rd August, 1872, and the cause of action in this suit is that he has not put the plaintiffs in possession of it.

The lower Court has held the suit to be one for the specific performance of a contract to which art. 113, sch. ii, Act XV of 1877 is applicable, and has dismissed the suit as barred by efflux of time, it having been instituted on the 5th October, 1877, or more than three years after the dates above mentioned.

On examining the deed of sale, we find that it does not contain any express promise or undertaking on the vendor's part to put the vendees in possession. It recites that he has sold to them and received the sale-consideration, and goes on to declare that they

1880

PRASAD
v.
SINGH.

regarding themselves as the absolute proprietors thereof, shall remain in possession of it from the date on which he may obtain possession of it in execution of the decree aforesaid.

Such being the terms of the deed, the plaintiffs are not in a position to sue that the defendant may be compelled to put them in possession in fulfilment of a specific engagement to do so, nor is such the prayer of their plaint. As we have already observed, they sue to obtain possession in virtue of the right and title conveyed to them by the sale-deed.

In the 3rd paragraph of the plaint they say that the possession was agreed to be delivered "on the receipt of possession by the vendor," but, inasmuch as there was not really any such express agreement, we must understand what they say to mean no more than that he was bound by an implied agreement to put them in possession.

Taking this view of the nature of the suit, we are unable to concur in the ruling that art. 113, sch. ii, Act XV of 1877, is applicable to it, and we rule that either art. 136 or art. 144 is applicable, and that, whichever of them be applicable, the suit is within time. (The judgment then proceeded to determine the appeal on its merits).

1880
January 28.

FULL BENCH.

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

RAM PRASAD (DEFENDANT) v. SUKH DAI (PLAINTIFF).*

Declaratory decree—Consequential relief—Act VII of 1870 (Court Fees' Act), s. 7, cl. iv. (c), and sch. ii, art. 17 (iii)—Suit to establish right to attached property—Act X of 1877 (Civil Procedure Code), s. 283.

In a suit, under s. 283 of Act X of 1877, for a declaration of her proprietary right to certain immovable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." Held, that consequential relief was claimed in the suit and court-fees were therefore leviable under s. 7, cl. iv. (c), and not under sch. ii, art. 17 (iii), of Act VII of 1870.

* Second Appeal, No. 499 of 1879, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 24th February, 1879, affirming a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 3rd May, 1878.