

recovery of possession of land of which a tenant has been wrongfully dispossessed, do not apply to the present case, in which there was no wrongful dispossession within the meaning of the Rent Act, and that the claim of the plaintiff was not one for which a remedy was available under s. 95 of that Act, and, therefore, the Civil Court had jurisdiction. Holding this view, it follows that the limitation of s. 96 of the Rent Act does not apply. So, we think that the Judge was wrong in dismissing the claim for the rent of the "*khud-leaseh*" land which defendant let to tenants. The effect of the decree against the present plaintiff, when executed, put him out of possession of the entire estate which he held as lessee, and defendant took possession of all the lands. Therefore plaintiff is clearly entitled to a refund of all rents to which the lessee alone had a claim, if he had chosen, as defendant did, to let a portion of his sir.

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SAWAI R
v.
GIR PRA
SINGH

Appeal allowed.

Before Mr. Justice Pearson and Mr. Justice Straight.

1880

February

RAM LAKHAN RAI (PLAINTIFF) v. BANDAN RAI AND OTHERS (DEFENDANTS).*

Vendor and Purchaser—First and Second Purchasers.

The proprietor of certain immoveable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it but had been ousted by the second purchaser. *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that, the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and entitled to receive the purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad* and *Sukh Ram*, for the appellants.

Lala *Lalta Parshad* and *Babu Lal Chand*, for the respondents.

* Second Appeal, No. 725 of 1879, from a decree of *Maulvi Abdul Majid Khan*, Subordinate Judge of Ghazipur, dated the 27th March, 1879, modifying a decree of *Maulvi Mir Badshah*, Munsif of Saidpur, dated the 21st December 1878.

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AN LAKHAN
RAI
v.
KIDAN RAI.

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

PEARSON, J.—The plaintiff sued to recover possession of an eight gandas share in mauza Chandipur under a sale-deed executed in his favour by Ram Bakhsh, defendant, on the 7th August, 1874, on the averment that after his purchase he had been put in possession of the property, but had been ousted from it by the other defendants, to whom Ram Bakhsh had ostensibly conveyed the same property by a sale-deed dated 11th December, 1877. The defendant Ram Bakhsh admitted the receipt of the sale-consideration, Rs. 600, from the plaintiff and the truth and justice of his claim. The other defendants contended that the sale-deed of the 7th August, 1874, had been invalidated by the non-payment of the sale-consideration therein mentioned, and that consequently Ram Bakhsh was competent to sell the property, the subject thereof, to them, and that they were lawfully in possession of it under the sale-deed executed in their favour. The Court of first instance allowing these contentions dismissed the suit with costs. The lower appellate Court concurred with the Munsif in finding that the plaintiff had neither paid the sale-price, nor been put in possession of the property, nor been ejected from it by the second vendees, but nevertheless held that the vendor was not free or competent to avoid the first sale. The Subordinate Judge was of opinion that Ram Bakhsh had only a right to sue for the sale-consideration, or to refuse possession of the property to the plaintiff until receipt of that consideration. The Subordinate Judge further ruled that the plaintiff was not entitled to obtain possession of the property without payment of Rs. 600, the sale-consideration, which was payable to the defendants, the second vendees, as representatives of the vendor, whatever rights and interests he had in the disputed property against the plaintiff having passed to them, and that they were accordingly entitled to receive the sale-consideration, or until its receipt to retain possession of the property in question.

The respondents have not taken any objections to the lower appellate Court's decision, and we are bound therefore to accept the ruling that the first sale is not void by reason of the non-payment of the sale-consideration, and that the second sale is invalid as

having been made by a person who had no rights and interests remaining in the property. This being so, we cannot assent to the view that the second vendees are representatives of the vendor and entitled to receive the sale-consideration, found to be still owing to him, and retain possession of the property in suit until the receipt of that consideration. What he sold to them was not the right to receive that consideration, but the property in suit. They were doubtless at liberty to resist the plaintiff's claim on the ground that the sale made to him had been invalidated by his failure to pay the sale-price; but they have not challenged the ruling that it was not so invalidated, and they must submit to the conclusion that the sale made to themselves is invalid, and that they are not entitled to retain possession of the property thereunder.

If then they are not entitled to retain possession of the property until receipt of Rs. 600 from the plaintiff, the question remains whether that sum should be paid to the vendor. To him, if it be due at all, it is due from the plaintiff, but he admitted its receipt in the Court of first instance, and has not claimed it here. From him and not from the plaintiff the second vendees are entitled to recover the price which they paid to him for the property, which the lower appellate Court has ruled that he was not free and competent to sell to them.

For the above reasons we must decree the appeal with costs, and modify the lower appellate Court's decree by reversing that portion of it which directs the plaintiff to pay Rs. 600 and to bear his own costs. Those costs must be paid by the defendants, second vendees.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Pearson.

EMPRESS OF INDIA v. KISHINA AND ANOTHER.

Act XLV of 1860 (Penal Code), s. 201.

K and B, having caused the death of J in a field belonging to B, removed J's dead body from that field to his own field with the intention of screening themselves from punishment. K was convicted on these facts of an offence under s. 201

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RAM LAKH.
BAI
v.
BANDAN RA

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