

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice
Muhammad Rafiq.

1916

February, 7.

ALI HUSAIN AND OTHERS (DEFENDANTS) v. HAKIM-ULLAH, (PLAINTIFF)
AND MUHAMMAD SIDDIQ AND OTHERS (DEFENDANTS).*

Construction of document—Covenant in sale deed that vendee would pay revenue due on other land of the vendor—Land subsequently transferred—Regulation No. XXXI of 1803, section 6.

In 1884 one Altaf Husain sold certain land to the predecessor of the defendants and reserved some land for himself. The sale-deed contained a covenant to the effect that the vendee would pay the Government revenue not only for the land purchased by him but also for the land reserved by the vendor for himself. The vendor subsequently sold the reserved land to the plaintiff, who, when the representatives of the original vendee refused to pay the Government revenue, paid it himself and sued to recover from them the amount so paid which the plaintiff had to pay owing to the defendants' refusal to pay.

Held (1) that the agreement was void under Regulation XXXI of 1803 which was in force in 1884 and (2) that in any case the covenant was a personal one and the plaintiff had no right to sue in respect of its breach. *Sahib Ali v. Subhan Ali* (1), *Sri Thakurji Maharaj v. Lachmi Narain* (2) and *Ram Gobind v. Sri Thakurji Maharaj* (3) referred to.

THIS was a suit to recover a sum of money paid as Government revenue under the following circumstances. According to the plaintiff one Altaf Husain, in the year 1884, sold certain land to the predecessor in title of the defendants, who covenanted that he would pay the Government revenue which might from time to time be due upon certain other land of the vendor which he did not sell. Subsequently the plaintiff purchased the land in respect of which the said covenant was made. He asked the defendants, according to their covenant, to pay the revenue due in respect of the said land, but they refused to do so. The plaintiff then paid it himself and brought the present suit. The courts below decreed the claim. The defendants appealed to the High Court.

The Hon'ble Mr. *Abdul Raouf*, for the appellants.

Mr. *S. A. Haidar*, for the respondent.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—This appeal arises out of a suit in which the plaintiff alleges that one Altaf Husain had sold certain property to the predecessor of the

* Second Appeal No. 1917 of 1914, from a decree of H. E. Holme, District Judge of Aligarh, dated the 4th of September, 1914, confirming a decree of Sushil Chandra Banerji, Additional Subordinate Judge of Aligarh, dated the 2nd of September, 1913.

(1) (1898) L. L. R., 21 All., 12. (2) (1913) 11 A. L. J., 212.

(3) (1913) 11 A. L. J., 231.

defendants, reserving to himself 10 bighas, that in the sale-deed Inayat Husain, the vendee, covenanted that he would pay the Government revenue not only of the land he purchased but also of the ten bighas which the vendor reserved. The plaintiff says that Altaf Husain subsequently sold to him the ten bighas reserved, that the defendants recently refused to pay the Government revenue on the ten bighas; that he had to pay it himself under protest, and that he now brings the suit to recover the amount which he has paid to Government. The courts below have decreed the plaintiff's claim. Two objections are taken on appeal. First, that on the authority of *Sahib Ali v. Subhan Ali* (1), which was followed by another Bench of this Court in Second Appeal No. 275 of 1910, decided on the 8th of December, 1910, the agreement was void under Regulation XXXI of 1803, and, secondly, that the agreement does not give any right to the plaintiff to enforce it against the defendants. We find it impossible to distinguish the circumstances of the present case in principle from those in the authorities cited. It is true that the regulation has been repealed, but it was in force in 1884, when the sale to Inayat Husain was made. With regard to the agreement, we may mention that the covenant was a covenant that the ten bighas reserved should always remain free of revenue with the vendor. No mention is made in the sale-deed of the transferees or even of the heirs of Altaf Husain, the vendor. The covenant was a personal covenant, and it is difficult to see how the present plaintiff has any right to sue for a breach of a personal covenant which was entered into between his vendor and the predecessor in title of the defendants. On this part of the case the appellants rely on the case of *Sri Thakurji Maharaj v. Lachmi Narain* (2), and also on the case of *Ram Gobind v. Sri Thakurji Maharaj* (3). In both these cases the circumstances were very similar. We think that the appeal has force, but under the circumstances we think the parties should pay their own costs in all courts. We accordingly allow the appeal, set aside the decrees of both the courts below, and dismiss the plaintiff's suit, and direct that the parties pay their own costs in all courts.

Appeal allowed.

(1) (1898) I. L. R., 21 All., 12.

(2) (1913) 11 A. L. J., 212.

(3) (1913) 11 A. L. J., 231.