

*personam*. But the tendency of the Courts in England at the present time is not to grant relief out of their jurisdiction,—see *DeSousa v. British South African Company* (1) decided on the 20th February 1892 by Lawrance and Wright, JJ., where all the late cases on the subject are cited. What is intended by the words “suit for land” in clause 12 of the Letters Patent is the sole question.

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In *In re Hawthorne, Graham v. Massey* (2) the Court held that a contested claim to land situated in a foreign country, the parties being resident in England, could not be heard for want of jurisdiction.

TREVELYAN, J.—A similar question was, I think, raised before me in the case of *Kanti Chunder Pal Chaudhry v. Kissory Mohun Roy*\* and there argued.

\* Regular Suit No. 298 of 1886.

Before Mr. Justice Trevelyan.

KANTI CHUNDER PAL CHAUDHRY v. KISSORY  
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THIS suit came on for hearing on settlement of issues on January 12th, 1887. The facts of the case, in so far as they have any bearing upon the question of jurisdiction, are sufficiently stated in the judgment of the Court, which, omitting the immaterial portion, was as follows:—

TREVELYAN, J.—In this case there was an application to take the plaint off the file, and at my suggestion the suit was set down for settlement of issues.

As originally framed, the plaint recited a mortgage to secure the sum of Rs. 10,000 with interest at 36 per cent. per annum. The 3rd paragraph alleged, that of that sum of Rs. 10,000 the plaintiff received Rs. 1,000 only from the defendant, and the defendant refused to pay the balance to the plaintiff or spend the same on his behalf, though frequently requested so to do. The 4th and last paragraph stated that the plaintiff was willing to repay the said sum of Rs. 1,000 received from the defendant, together with such interest as the Court might order.

The 1st paragraph of the prayer of the plaint asked that the defendant be ordered, on the payment of the sum of Rs. 1,000, together with interest, to re-convey the mortgaged premises to the plaintiff at the cost of the defendant. The 2nd paragraph asked that the defendant be ordered

(1) *Times' Law Reports*, Vol. VIII, p. 369. (2) L. R., 23 Ch. Div., 743.

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Mr. Jackson.—The case of *Ramdhone Shaw v. Sreemutty Nobu-money Dossee* (1) completely fails to bear out what is said about it by Mr. Bourke; such a suit ought not to lie here.

TREVELYAN, J.—In that case there was an appeal which was heard before Morgan and Phear, JJ., and the latter said that the proper Court to sue in was the Zillah Court, but did not say that such a suit could not be brought in the High Court. He dismisses the suit as against Sumboo Chundra, the person outside the jurisdiction.

Mr. Jackson.—In *Bagram v. Moses* (2) Morgan, J., doubted if there was jurisdiction at all, and in *Juggodumba Dossee v. Puddo-money Dossee* (3) where the land was outside Calcutta, the parties dwelling in Calcutta, the Court held that it had jurisdiction, and that it was not a suit for land. You cannot create jurisdiction so as to bring a case within the principle of the Chancery

to pay such compensation to the plaintiff as to this Court shall seem right. There were then prayers for costs and for further and other relief.

When the first application was made to take the plaint off the file, I gave the plaintiff leave to amend the plaint. He has altered the 3rd paragraph by charging collusion between the defendant and some persons who are not parties to this suit. He has altered the 4th paragraph by submitting his willingness to pay the Rs. 1,000 and interest, "should the Court so order," and he has added a 5th paragraph in the following words:—

"That the plaintiff would not have executed the said mortgage deed but for various false representations and inducements by the said defendant that the said rupees ten thousand would be paid to him or spent on his behalf for the purposes of the said appeal, and the release of his said attached properties, but the said money has not been so paid or spent."

He has also substituted for the 1st paragraph of the prayer the following:—

"1. That the mortgage contract be declared void and the mortgage deed of the 13th of October 1885 be cancelled and set aside."

(His Lordship then proceeded to deal with other questions raised at the hearing and continued)—Two other questions have been argued before me. The first raises a question of jurisdiction: the second has reference to another suit, which was filed before this suit, and raises the question

(1) Bourke, 218.

(2) 1 Hyde, 284.

(3) 15 B. L. R., 318.

cases in England. Both Markby and Pontifex, JJ., in *Juggochumba Dossee v. Puddomoney Dossee* (1) say that every suit with reference to land is a suit for land within the meaning of clause 12. In *Juggernaath Doss v. Brijnath Doss* (2) it is said that a suit to recover title deeds, although it may involve a question of title, is not a suit for land; but this is contrary to Wright, J.'s case reported in the *Times' Law Reports*, in which he says "wherever you get a question of title to land at once the jurisdiction is gone." In *Jairam Narayan Raje v. Atmaram Narayan Raje* (3) a suit for partition was held to be a suit for land.

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TREVELYAN, J.—In clause 12 the words "or in all other cases if the cause of action shall have arisen" should be treated as being in brackets.

Mr. Jackson.—The words of the clause are to be construed in the ordinary way. A suit "for land" means a suit "for or

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whether a portion of this suit should not await the decision of the other suit.

The 1st of those questions is whether this is a "suit for land" within the meaning of the Charter.

The land which was charged by the mortgage is outside the limits of Calcutta. The decision of this question of jurisdiction does not, however, dispose of the suit, as the only issue of fact, viz.—"What sum was advanced by defendant to plaintiff on the security of the mortgage deed mentioned in the plaint" must be tried.

There is in the mortgage deed a covenant for the repayment of the money, and as the defendant resides in Calcutta, and also as the contract was made in Calcutta, this Court has jurisdiction to try this issue, and, with reference to the personal covenant, to make a declaration as to the amount of money advanced. The following issue must be tried, namely:—

What sum was advanced to the plaintiff by the defendant on the security of the mortgage deed mentioned in the plaint?

If the plaintiff failed in this issue, it would become unnecessary to try the question of jurisdiction, but as it has been fully argued before me, I think that I ought to decide it now.

The plaintiff's case is that he executed in favour of the defendant a deed charging his property with a sum of Rs. 10,000, yet that the defendant only advanced him Rs. 1,000. The relief that the plaintiff would be entitled to

(1) 15 B. L. R., 318.

(2) I. L. R., 4 Calc., 322.

(3) I. L. R., 4 Bom., 482.

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concerning land." Here the suit is for the purpose of compelling the defendant to fulfill an agreement to buy land. The case of *Kellie v. Fraser* (1) is put upon the ground of *Paget v. Ede* (2) and *Pen v. Lord Baltimore* (3), but the authors of *White and Tudor's Leading Cases in Equity* (6th ed.), vol. 2, p. 1075, say that "the claim to affect foreign lands though the person of the party must be strictly limited to those cases in which the relief decreed can be entirely obtained though the party's personal obedience."

Mr. *Pugh* in reply.

TREVELYAN, J.—This case has come before me on settlement of issues. The issue which I have now to decide is as to whether this Court has any jurisdiction to try this suit. The remaining issues will have to be determined hereafter.

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would be a declaration releasing the property from the charge of Rs. 9,000 and the interest thereon. He is not entitled to sue for redemption, as the time fixed for the payment of the money has not yet expired. As there has been a default in payment of interest, the mortgagee can enforce payment of the principal, but I think it is clear that the plaintiff cannot take advantage of his own default and sue for redemption.

There have been, as I have pointed out, certain amendments in the prayer of the plaint, but those amendments are not, I think, very material, and they do not alter the real object of the suit.

The leading cases on the construction of clause 12 of the Charter have been cited. It is, I think, settled law that suits for foreclosure or sale and suits for redemption are suits for land within the meaning of clause 12.

The present suit has been compared to a suit for specific performance of an agreement to sell land, which, according to Mr. Justice Norman in a case reported in Bourke's reports, is not a suit for land, but according to Pontifex, J., in the case of *Sreenath Roy v. Cally Doss Ghose* (4), is a suit for land, but I do not think that this suit is on the same footing as a suit for specific performance. It seems to me that a suit of this kind, although in form not a suit for redemption, has much in common with a suit for redemption. A suit for redemption is brought to relieve the property from a charge and to obtain a reconveyance of the property. The object of this suit is to release mortgaged property from the effect of

(1) I. L. R., 2 Calc., 445.

(3) 1 Ves., Sen., 444.

(2) L. R., 18 Eq., 118.

(4) I. L. R., 5 Calc., 82.

The suit is brought by the vendor of a patni taluk situate in the Burdwan district to enforce specific performance of the contract. A portion of the contract was made in Calcutta, and leave to sue has been obtained. The title is accepted in the contract. All the plaintiff really wants is the money for which he has contracted to sell the patni, though of course the relief is more complicated than in a mere suit for money. I will only now consider the (a) and (c) portions of the prayer of the plaint. The first seeks the ordinary relief in a suit for specific performance, viz., that the agreement may be specifically performed, that a proper transfer may be settled, and that upon the execution and registration of the transfer the defendant may be ordered to pay the money. The (c) portion asks for damages.

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The question is whether this is a suit for "land" within the meaning of the Letters Patent.

a mortgage deed, and this suit in reality seeks to re-transfer property to the mortgagor freed from the charge.

In *The Delhi and London Bank v. Wordie* (1), a suit for land is defined as being a suit for the purpose of acquiring title or control over land. In the later case of *Kellie v. Fraser* (2), the then Chief Justice, Sir Richard Garth, says:—"It will be observed, however, that in all, or almost all, the cases upon which the appellant relies, the suit was brought for the purpose of acquiring the possession of, or of establishing a title to, or an interest in, the property which was the subject of dispute, more particularly in the case of *The Delhi and London Bank v. Wordie*, (1) where the object of the petitioner was to establish the title of certain trustees to a share in a portion of the trust property claimed by a person of the name of Lightfoot, and the establishment of this title was an essential element of the entire claim." Macpherson, J., also points out that in *The Delhi and London Bank v. Wordie* (1) the question of title arose and the suit was held to be for land.

A suit for the purpose of declaring an interest in land is a suit for land, and that is in reality the object of this suit.

I must hold here that, so far as the suit seeks to discharge the land from the obligations imposed on it, it is a suit for land, and that I can only deal with this suit so far as it seeks to obtain a declaration with regard to the covenant to pay the money.

(His Lordship then dealt with the remaining questions raised in the suit, and directed the case to be set down in due course for trial of the issue of fact.)

(1) I. L. R., 1 Calo., 249 (263).

(2) I. L. R., 2 Calc., 445 (463).

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A great many authorities have been cited to me, but I do not think that, so far as their application to the present case is concerned, there is any difference between them. The chief cases cited before me were *Ramdhone Shaw v. Sreenuttty Nobumoney Dossee* (1), *The Delhi and London Bank v. Wordie* (2), *Kellie v. Fraser* (3), *Sreenath Roy v. Cally Doss Ghose* (4), and *Holkar (H. H. Shrivant Maharaj Yashwantrav) v. Dadabhai Cursetji Ashburner* (5). *Ramdhone Shaw v. Nobumoney Dossee* (1) has not been very accurately reported, but I have referred to the original judgment, and I think it clear that in that case Mr. Justice Norman held that a suit for specific performance would lie. That was a purchaser's suit.

It seems to me that, having regard to the expressions used in *Kellie v. Fraser* (3) and *The Delhi and London Bank v. Wordie* (2) as to the meaning of a "suit for land," that there is a distinction between a vendor's suit and a purchaser's suit for specific performance.

The question as to whether a purchaser's suit would lie is one which I need not decide here.

In *The Delhi and London Bank v. Wordie* (2), Garth, C.J., at page 263 of the Report, defines a "suit for land" as a suit for the purpose of acquiring title to or control over land. In *Kellie v. Fraser* (3) the same learned Judge says:—"It will be observed, however, that in all, or almost all, the cases upon which the appellant relies, the suit was brought for the purpose of acquiring possession of, or establishing a title to, or an interest in, property which is subject to dispute."

In *Sreenath Roy v. Cally Doss Ghose*, (4) Mr. Justice Pontifex held that a suit for specific performance was a suit for land within the meaning of the Letters Patent. But that was a purchaser's suit, and as the object of a purchaser's suit is to get possession of the land, it might be properly described as a suit for land.

The Bombay case to which I have been referred goes much further than it is necessary for me to go in this case. That was practically a purchaser's suit and was put upon the authority of

(1) Bourke, 218.

(3) I. L. R., 2 Cal., 445.

(2) I. L. R., 1 Cal., 249.

(4) I. L. R., 5 Cal., 82.

(5) I. L. R., 14 Bom., 353.

*Paget v. Ede* (1). Mr. Jackson has cited a decision of Mr. Justice Lawrance and Mr. Justice Wright, decided on the 20th of February last [*DeSousa v. British South African Company* (2)]. That case, there is no doubt, shows the present tendency of the English Courts to abstain from interfering even *in personam* where the matter concerns land outside their jurisdiction. But I do not think, myself, that this case depends on those English cases. It depends entirely on what is a "suit for land" within the meaning of the Letters Patent.

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So far as the paragraphs of the prayer of the plaint in this case under the headings (a) and (c), I do not think that this is a suit for land. It is not a suit to sell or acquire possession of or title to land in any sense. Clearly it does not come within the definitions given by Sir R. Garth. I decline to hold that wherever land has anything to do with a suit it is therefore a "suit for land." I must go so far as that to accept Mr. Jackson's argument.

If the framers of the Letters Patent had intended to exclude the jurisdiction of this Court in the way suggested, they would have used different words.

I hold that, having regard to everything except paragraph (b) of the prayer of the plaint, this is not a suit for land. I am inclined to hold that, so far as that paragraph is concerned, this is a suit for land, but it is not necessary to determine that question now, as the right to relief under that prayer cannot be determined until the facts are found.

The case must be set down for final disposal for determination of the remaining issues, which are—

- (1) Was there a concluded and binding arrangement for the sale of the property mentioned in the plaint?
- (2) If so, what is the legal effect thereof?
- (3) To what relief, if any, is the plaintiff entitled?

The case must go to the bottom of the remanet list. The costs of the settlement of issues will be costs in the cause.

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T. A. P.

- (1) L. R., 18 Eq., 118.      (2) *Times' Law Reports*, Vol. VIII, p. 369.