

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

IKBAL BEGAM (DEFENDANT) v. GOBIND PRASAD (PLAINTIFF)*

1880
July 20

Vendor and purchaser—Contract of Sale.

The vendor of certain immoveable property agreed to sell such property and the purchaser agreed to purchase it on the understanding that the purchaser should retain a part of the purchase-money and therewith discharge certain bond-debts due by the vendor for the payment of which such property was hypothecated in the bonds. On such understanding the vendor executed a conveyance of such property to the purchaser. *Held*, in a suit by the purchaser for the possession of such property in virtue of such conveyance, that, the purchaser not having paid such bond-debts or done anything to account for such part of the purchase-money according to such understanding, the contract of sale had not been completed and the suit was therefore not maintainable.

THE plaintiff in this suit claimed possession of a village called Pheri in virtue of a deed of sale executed in his favor by the defendant on the 29th June, 1876, and registered on the 25th August, 1876. This deed declared that out of the purchase-money, Rs. 16,000, Rs. 14,000 remained with the plaintiff to be paid in satisfaction of three bonds dated severally the 15th August, 1868, the 14th October, 1869, and the 15th April, 1871, in which the property conveyed was hypothecated, and that the defendant had received Rs. 2,000 in cash. In his plaint the plaintiff alleged as follows: "In part payment of the consideration-money Rs. 900 was paid to the vendor after the execution of the sale-deed and before its registration, and Rs. 1,100 was paid to the vendor subsequent to registration: thus the defendant-vendor received in part of the purchase-money Rs. 2,000 in cash, and the vendor left with the plaintiff-vendee Rs. 14,000 for liquidation of debts for which the said village together with other property stood pledged: in this way the vendor received the whole of the purchase-money, and a detail of the payment of the consideration-money, as well as of the debts to the payment of which Rs. 14,000 were credited, is given below: the defendant-vendor, on receipt of Rs. 1,100, made over the sale-deed to the plaintiff and put him in proprietary possession of the village: he remained in possession of the village for a few months and collected rent from the tenants, paid the revenue-instalments to the

* First Appeal, No. 64 of 1879, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Meerut, dated the 31st March, 1879.

1880

S. AL BEGAM
 v.
 HIND PRA-
 SAD.

Government, and sold the *dhak* and *beri* produce in the said village : the defendant visited the said village in March, 1877, and forcibly dispossessed the plaintiff therefrom, and on the 9th April, 1877, she stated in the case of mutation of names that she had not given possession to the plaintiff : accordingly the Assistant Collector, on this very ground, on the said date, refused to effect mutation of names in the plaintiff's favor, and his decision was affirmed on appeal on the 9th June, 1877: this is the cause of action which the plaintiff has against the defendant."

The defendant stated in her written statement that she had only consented to sell the property in suit "for the purpose of liquidating the bond-debts mentioned in the sale-deed, for preventing the accumulation of interest on the said debts, and for freeing herself from liabilities", and that the plaintiff had agreed to pay the bond-debts and to cause the bonds to be returned to her, but had failed to carry out his agreement. She further stated as follows:—"Consequently the sale transaction remained incomplete, and it was on this very account that the defendant neither gave possession of the property to the plaintiff, nor obtained mutation of names; now the plaintiff, who having fraudulently caused the sale-deed to be executed by the defendant's agent took it, and for whose fault and breach of promise the sale was not concluded and completed, is not competent, in point of justice and according to law, to claim possession of the property in suit in virtue of the said sale: granting that the sale-transaction has not become void, still until the plaintiff causes the bonds to be returned, he cannot, in point of justice, be entitled to the possession of the disputed property yielding an annual income of more than Rs. 700 by paying only Rs. 2,000: the plaintiff's dishonest motive, his fraudulent practice, and his breach of promise are evident from the circumstance that, even up to this time, he has not expressed his readiness to pay off the debts, to cause the said bonds to be returned, and to free the defendant from the said debts."

The Court of first instance gave the plaintiff a decree for the possession of the property, the material portion of its decision being as follows: "Leaving out of consideration the particulars of the transaction of Rs. 14,000, the Court is of opinion that, as the sale-

deed was executed, and registration also completed, and Rs. 2,000 out of the purchase-money was also received, the sale-transaction was undoubtedly complete. Even if Rs. 14,000 be held not to have been paid, still that cannot affect the completion or validity of the sale-transaction. The defendant is not competent to ignore the sale or declare it to be null, supposing there was any such condition as is alleged by the defendant (the existence of which is not proved), and in consequence of its non-fulfilment the defendant suffered a loss, having had to pay interest on the money she was not bound to pay; in that case the defendant should have instituted a suit for damages or one of some other kind, as she thought proper. The sale-transaction, which was altogether conclusive, cannot be objected to by her. Therefore, the Court is of opinion that the sale-transaction was valid and had become conclusive. The defendant's objections against it are not proved and are wrong. The plaintiff's statement in respect of possession and his subsequent dispossession is in the opinion of the Court untrue. The plaintiff is not proved to have held possession. But this creates no defect which could bar the plaintiff's claim for possession being decreed".

1859
 LUDAL BLAG
 7.
 GORIND P.
 SAB. 1

The defendant appealed to the High Court, the principal grounds of appeal being (i) that the plaintiff, having by means of a proviso which he did not mean to perform, induced the defendant to execute the deed of sale, had been guilty of fraud, and was not entitled to any relief; and (ii) that the plaintiff, having failed to perform his part of the contract of sale, was not entitled to a decree under that contract, and his suit should have been dismissed.

Mr. *Conlan* and *Mir Zahur Husain*, for the appellant.

Munshi Hanuman Prasad, for the respondent.

The judgment of the High Court (STUART, C. J., and STRAIGHT, J.), so far as it related to the above contention, was as follows:

JUDGMENT.—This is a first appeal in which the defendant-appellant complains of the judgment of the Subordinate Judge of Moradabad, by which that officer allowed the plaintiff's claim under a sale-deed, dated 29th June, 1876, and registered on the 25th August, 1876, on the ground of the plaintiff's failure to perform his part of

1880

SABAL BEGAM
v.
GOBIND PRASAD.

the contract, that the sale-transaction is therefore incomplete, and that the plaintiff was not entitled to the possession of the property which he claims.

As the appellant desires our judgment on the merits of the case, the first two reasons of appeal disputing the legality of the registration of the deed of sale are not pressed by his counsel, and it is unnecessary for us therefore to express our opinion on the validity or otherwise of the registration that was made.....

.....On the merits we are clearly of opinion that the defendant's contention is right and that this appeal must be allowed. The views of the Subordinate Judge on the transaction between the plaintiff and defendant are entirely conjectural, and are not only inconsistent with the admitted facts which led to the contract of sale, but are positively disproved by the evidence. The consideration in the sale-deed was Rs. 16,000, Rs. 2,000 of which was paid in cash, and the remaining Rs. 14,000 were to be applied by the plaintiff towards the payment and discharge of three bonds dated respectively 15th August, 1868, 14th October, 1869, and 15th April, 1871. If this engagement had been fulfilled by the plaintiff, it would have been his duty to have returned the discharged bonds to the defendant; but this he has not done, nor has he paid the bond-debts, or done anything to account for the Rs. 14,000 in the manner provided by the sale-deed. In fact the plaintiff himself does not even allege in his plaint that he has applied the Rs. 14,000 in this manner, while one of his own witnesses, one Assad Ali, a mukhtar, makes a statement in his deposition which may explain the plaintiff's failure to apply the Rs. 14,000 as stipulated in the sale-deed. This witness says that he had learnt that there was money due by the plaintiff to Sheo Prasad (since deceased), and he had learnt this from Debi Dial, Sheo Prasad's son, and he adds that he had learnt this fact before as well as after the execution of the deed by the defendant to the plaintiff. He then goes on to say:—"In my opinion the nature of the account was this, that Gobind Prasad was imprisoned by the Nawab of Rampur for default of payment of revenue, and Sheo Prasad had paid that amount, and Gobind Prasad had promised that he would give credit for that amount in the account of the joint bonds, and this was the account which could not be adjusted." In other

words, the plaintiff had used the defendant's bonds for his own benefit on account of his indebtedness to Sheo Prasad, and afterwards to Debi Dial, and not as he had arranged with the defendant. The contract between the plaintiff and defendant was therefore incomplete, and indeed merely inchoate, and the property, possession of which he claims, did not pass to him. On this subject our attention was directed to Sugden's Vendors and Purchasers, 14th ed., p. 241, where it is laid down that "a purchaser cannot maintain an action for breach of contract without having tendered a conveyance, and the purchase-money;" which appears directly in point in the present case; for here, although there was an intended contract and the execution of a conveyance or sale-deed, there has been a manifest withholding of the purchase-money, and therefore the plaintiff cannot maintain his suit. The Subordinate Judge has taken an entirely erroneous view of the case, and we must reverse his judgment and decree, and allow the present appeal with costs in both Courts.

1880
 IKBAL BEG.
 v.
 GOBIND PR
 SAD,

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

1880
 July 20.

MUHAMMAD ABU JAFAR (PLAINTIFF) v. WALI MUHAMMAD AND OTHERS
 (DEFENDANTS.)*

Jurisdiction of Civil and Revenue Courts—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 10, 36, 39, 95—Ejection of Tenant—Determination of nature and class of tenancy—Determination of title—Res judicata.

A suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejection at will, and not under a perpetual lease at a fixed rate of rent, and for the defendant's ejection, is one cognizable by the Civil Courts.

In such a suit, if the relationship of landholder and tenant between the parties be established, then the Revenue Court only can make an order for the defendant's ejection, or for determining the nature and class of his tenure, that is to say, whether he is a tenant at fixed rates within the meaning of s. 4 of Act XVIII of 1873, or an ex-proprietary tenant, or an occupancy-tenant, or a tenant without a right of occupancy.

The question of title raised in such a suit is not concluded by the orders of the Revenue Courts establishing the relationship of landlord and tenant between

* Second Appeal, No. 1183 of 1879, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 9th September, 1879, reversing a decree of Maulvi Kaimar-ud-din Ahmad, Munsif of Azamgarh, dated the 11th June, 1879.