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MAUNG PWA AND OTHERS v. MAUNG PO SA AND OTHERS.

BROWN, J.

where the possession has been less than twelve years and where the title of the previous owner is admitted, the onus may properly be put on the person in possession who alleges an outright sale. I add this by way of qualification of the remark made in my judgment in Indian Law Reports, IV Rangoon, at page 372.

The appeal is allowed and the suit dismissed with costs in both Courts.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

1927

July 19.

K.K.S.A.R. FIRM

v

MAUNG KYA NYUN AND ONE.*

Civil Procedure Code (Act V of 1908), *O.* 47, *r.* 1—"*Any other sufficient reason*," *meaning of*—"Ejusdem generis," *meaning of.*

The words "any other sufficient reason" occurring in O. 47, rule 1 of the Civil Procedure Code, mean a reason sufficient on grounds at least analogous to those specified immediately previously. The Latin phrase "*ejusdem generis*" which means "of the same kind" is more restricted than the word "analogous."

Chhajju Ram v. *Neki and others*, 3 Lah. 127 (P.C.)—*followed.*

Ganguli—for Appellants.

Basu—for Respondents.

This is an application for a certificate under Clause 13 of the Letters Patent that it is a fit case for appeal.

As the point involved is one of construction to be put upon the phrase "any other sufficient reason" used in Rule 1 of Order 47, Civil Procedure Code, I have allowed both sides to argue that point. The applicant Chettyar firm brought a suit against the respondents on a promissory-note, and the respondents denied execution of that note. In the evidence

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tendered by the applicants it was alleged that the writer of the note was one Ma Tin U, but the applicants made no attempt to produce her. Consequently the respondents applied to the trial Judge for an adjournment to enable them to produce her in order to rebut the evidence tendered against them. The learned Judge accordingly adjourned the case. The respondents took out a summons, but as the witness was not to be found at her old address the summons was returned unserved. The respondents then applied to the Judge to give them another adjournment to enable them to make further efforts to secure that witness. But the Judge, who was presumably actuated by a desire to show short duration, refused to grant any more adjournment and proceeded with the trial which resulted in a decree being passed against the respondents. The respondents subsequently succeeded in finding the witness and applied to the trial Court for a review. The Judge granted the review and gave the following reason : "I see every effort was made by the applicants to bring Ma Tin U into the witness-box but as she could not be found applicants were obliged to close their case as no further adjournment was allowed. The reason why this Court declined to allow any further adjournment by that time was to save the case pending idly for many months and not with reason to object to the examination of Ma Tin U. Since the Court has no objection to examination of Ma Tin U, I consider this application on this ground is a fit one to be admitted." Against that order the applicants went upon appeal to the District Court. The learned District Judge dismissed the appeal recording the following reason : "The lower Court was satisfied that respondents had made every effort to bring Ma Tin U to Court. There was documentary evidence on the record showing how respondents had taken out a

summons and how that summons was returned with a report that Ma Tin U's whereabouts were unknown. In my opinion the provisions of Order 47, Rule 4, sub-clause (2) (*b*) have been complied with and so there is no cause for interference." The Chettyar firm were still not satisfied and came up to this Court on revision. I dismissed that application for revision saying, "On taking account of the circumstances under which the respondents were not given an opportunity of producing the rebutting evidence, I consider that those circumstances constituted a 'sufficient reason' within the meaning of Rule 1 of Order 47, Civil Procedure Code. That reason need not be *ejusdem generis* with the other two specific grounds mentioned in that rule. It must be one sufficient to the Court or Judge dealing with the application for review. The question of the sufficiency of any reason must depend upon the circumstances of each particular case."

It is now contended that my view, namely, "that reason need not be *ejusdem generis* with the other two specific grounds," is incorrect. In support of this contention the case of *Chhajju Ram* v. *Neki and others* (1), decided by a Full Bench of the Privy Council has been quoted. Viscount Haldane, who delivered the judgment of the Board, construed the phrase "any other sufficient reason" in the following words: "Their Lordships think that Rule 1 of Order XLVII must be read as in itself definitive of the limits within which review is to-day permitted, and the reference to parctice under former and different statutes is misleading. So construing it they interpret the words 'any other sufficient reason' as meaning a reason sufficient on grounds at least analogous to those specified

(1) (1922) 3 Lah. 127.

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immediately previously." In my opinion there is a distinct difference between the words "*ejusdem generis*" and "at least analogous." The Latin phrase "*ejusdem generis*" according to Chambers' Twentieth Century Dictionary means "of the same kind." The same Dictionary defines "analogous" as "bearing same; correspondence with; or resemblance to; similar in certain circumstances or relations." So in my opinion the phrase "*ejusdem generis*" is more restricted than the word "analogous." In Byrne's Law Dictionary "*ejusdem generis*" is defined as follows: "It is a rule of legal construction that general words following enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration and to be construed as including only all other articles of the like nature and quality." So I am of opinion that my statement that "the reason need not be *ejusdem generis* with the other two specific grounds" is not inconsistent with the construction put by their Lordships of the Privy Council, *viz*: "that the reason must be sufficicent on grounds at least analogous to those specified immediately previously." I therefore still hold that the particular circumstances of the present case constituted a reason analogous to the other two reasons previously mentioned in Rule 1, namely discovery of new and important matter and error apparent on the face of the record.

For the above reasons I do not consider that a case is made out for granting the certificate applied for under the Letters Patent. The application is accordingly dismissed with costs—advocate's fee three gold mohurs.