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MA KIN
v.
MA BWIN.

HEALD, J.

constrained to hold that that article applies, and that the conveyance can only be avoided within three years from the time when the facts entitling Ma Bwin to avoid it became known to her.

The question of limitation was not put in issue in the lower Court and I would therefore frame the following issue and would refer it to the lower Court for trial. When did the facts entitling Ma Bwin to avoid conveyance of the 7th of June 1919 first become known to her ?"

The District Court will proceed to try that issue and will return the evidence to this Court together with its finding thereon and the reasons therefor.

CUNLIFFE, J—I agree.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

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Mar 8.

M. E. MOOLLA & SONS, LTD., AND ONE
v.
THE CORPORATION OF RANGOON.*

City of Rangoon Municipal Act (Burma Act VI of 1922), sections 3 (iv), 80, 86—Machinery and plant to be included in assessing building—Machinery fixed by tenant—Liability of owner for assessment.

Held, that the Corporation has the right to take into consideration the machinery and plant in any building in assessing the building, and also to hold the owner of the building responsible for the tax, although the machinery and plant may have been fixed up by his tenant.

The Chetty Firm of R.M.P.V.M. and one v. *The Corporation of Rangoon*, (1926) 4 Ran. 178 ; *Maung Po Yee and Brothers* v. *The Corporation of Rangoon*, (1927) 5 Ran. 161—*followed.*

Young—for Appellants.

N. M. Cowasjee—for Respondents.

* Civil Miscellaneous Appeals Nos. 116 and 117 of 1926.

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M. E. MOOLLA & SONS, LTD. AND ONE. v. THE CORPORATION OF RANGOON.

RUTLEDGE, C.J.—These appeals have been brought from the judgments of the Chief Judge of the Small Cause Court confirming the Commissioner's order on the assessment of the appellants' premises.

The main ground raised by both appellants is that machinery and plant cannot be taken into account in ascertaining the annual value of the premises. Mr. Young admits that this question has already been decided by this Bench in the *The Chetty Firm of R.M.V.M. and one* v. *The Corporation of Rangoon* (1), and *Maung Po Yee and Brothers* v. *The Corporation of Rangoon* (2), but urges that neither of these decisions has taken into consideration the definition of "Building" in the Rangoon Municipal Act, 1922, section 3 (iv). I was a party to the decision in both cases, and the definitions of both "Building" and "Land" were present in the Court's mind when construing section 80 of the Rangoon Municipal Act. The learned Chief Judge of the Small Cause Court has rightly followed those decisions which are binding on him as well as on us until they are modified or overruled by a superior tribunal.

A further point has been raised on behalf of the appellants in Civil Miscellaneous Appeal No. 116 of 1926, namely, that the machinery belongs to the tenant and not to the appellants, and that they, consequently, should not be rated in respect of it. Section 86 of the Rangoon Municipal Act seems to be conclusive on this point, as sub-section (1) lays down :—

"Property taxes in respect of any building or land shall be leviable jointly and severally from all persons who have been either owners or occupiers of the building or land at any time during the period

(1) (1926) 4 Ran. 178. (2) (1927) 5 Ran. 161.

in respect of which any instalment of such property taxes is payable under this Act."

It may be that the Corporation might have recovered the taxes from the tenant, but they were under no liability to do so. The Corporation were within their rights in fixing the annual value of the premises as they stood, whatever machinery or plant necessary for carrying on the business may have been on the premises, and they were under no obligation to make any further enquiry as to who was the actual owner of that machinery and plant. It is for the appellants to make their own arrangements with their tenant as to who should pay the extra rate due to the premises having machinery and plant thereon.

A further objection has been made that the valuation is on a wrong basis and excessive. This Court will only interfere on a question of principle. In *Maung Po Yee and Brothers'* case, already referred to, this Court has discussed the application of the contractor's test as a means of discovering what rent a hypothetical tenant would give for the premises as they stand, and I do not propose to go beyond what was said in that case.

From a perusal of the Commissioner's order and a consideration of the materials before him, I do not consider that the basis of his valuation was wrong. I am consequently of opinion that the judgments appealed from are correct, and that the appeals must be dismissed with costs, five gold mohurs in each case.

BROWN, J.—I concur.