

XXI, rule 63, can be regarded as giving a statutory right of suit. It seems to me that although the Civil Procedure Code is a code of procedure it does in this instance give a definite right to bring a suit, with a period of limitation of its own as shown by Article 11 of Schedule 1 of the Limitation Act. This, however, does not affect the result of the appeals, for there can be no question but that what one statute may give a later statute may take away or limit. The Provincial Insolvency Act being of a later date than the Civil Procedure Code, it must in this respect be regarded as limiting, so far as creditors of insolvents are concerned, a statutory right that they may have obtained under Order XXI, rule 63.

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ORIGINAL SIDE.

Before Mr. Justice Cunliffe.

A. SWAMI IYAH NADAR

v.

THE COMMISSIONERS FOR THE PORT OF
 RANGOON.*

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 Dec. 4.

Letters Patent, Clause 10—High Court's jurisdiction— "Suit for land or other immoveable property", meaning of— Substantial question relating to right and title in land—Plaint framed in tort—Indian Sale of Goods Act (III of 1930), s. 2 (7)—General Clauses Act (X of 1897), s. 3 (25).

The term "suits for land or other immoveable property" in clause 10 of the Letters Patent means suits in which, having regard to the issues raised in the pleadings, the decree or order will affect directly the proprietary or possessory title to land or other immoveable property.

Where the real dispute between the parties is as to title to immoveable property outside the jurisdiction of the High Court the fact that the plaint is framed in tort will not give that Court jurisdiction to entertain the suit.

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Where the legal nexus between the parties is not directly a contract of sale of goods, S. 2 (7) of the Indian Sale of Goods Act has no application and the term "goods" as therein defined cannot override the definition of "immovable property" in sec. 3 (25) of the General Clauses Act.

Goculdas v. Chaganlal, I. L. R. 54 Cal. 655; *Lodna Co. v. Bipin Bose*, I. L. R. 29 Cal. 739; *Sudamdik Co. v. Empire Co.* I. L. R. 42 Cal. 942—*referred to.*

Clark for the plaintiff.

McDonnell for the defendants.

CUNLIFFE, J.—This is a suit brought against the Commissioners for the Port of Rangoon.

The plaintiff is one A. Swami Iyah Nadar, a Government Contractor. By an agreement in writing dated the 15th of March, 1929, between the plaintiff and the Secretary of State, the plaintiff purchased certain buildings and materials situated at Syriam and undertook to remove them within a given period. Subsequently the defendants who had become the owners by purchase of the land at Syriam in question extended the time for the removal of the said buildings up till the 31st of May 1930. The complaint put forward against the defendants is framed in tort and consists of an allegation that they have prevented him from carrying out his contract to remove the buildings and materials set out in his original agreement. The plaintiff seeks an injunction and damages. The answer of the defendants is that the buildings and materials in dispute, or some of them, are their property and are not covered by his contract and he is not entitled to take them away.

A preliminary plea to the jurisdiction has been set up by the defendants. They contend that this action is wrongfully brought in this Court as it relates to immovable property and should have been launched in the District Court of Hanthawaddy. In support of their contention the defendants rely on Clause 10 of

the Letters Patent of this High Court and also upon a provision in the General Clauses Act of 1897. Clause 10 of the Letters Patent runs as follows :—

“ And we do further ordain that the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original civil jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits ; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Rangoon Small Cause Court. ”

The provision relied on in the General Clauses Act is contained in general definition 25, which is in these terms : “ Immoveable property shall include land, the benefits to arise out of the land and goods attached to the earth or permanently fastened to anything attached to the earth. ”

The plaintiff resisted the plea on the ground that his action does not relate to immoveable property, and he prays in aid section 2 of the Indian Sale of Goods Act of 1930, sub-section 7, which is in these words :— “ goods ” means every kind of moveable property other than actionable claims and money ; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. ” I may say at once I think that the provisions of the Indian Sale of Goods Act cannot possibly apply here. The legal nexus between the parties is not directly a contract of sale. They are neither of them vendors or purchasers *vis-à-vis* one another, and I cannot think that the provisions of a special Act of the Legislature such as the Sale of Goods Act can possibly, except in

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the branch of the Law to which it especially applies, overrule a statute of the nature of the General Clauses Act

The question, however, has been considered before and notably in three Calcutta cases concerned with trespass. The first two are *Lodna Colliery Company, Limited v. Bipin Bihari Bose* (1) and *Sudamdih Coal Company, Limited v. Empire Company, Limited* (2). In the second case where the construction of Clause 12 of the Letters Patent of the Calcutta High Court, which is in terms similar to our own Clause 10, was under consideration, Sir Lawrence Jenkins said at page 951 :—

“ But on behalf of the plaintiff it is contended that having regard to the pleadings it cannot be said that it is a suit for land or other immoveable property. The question is what was intended by that expression. It appears to me that it was not a mere formal test that was proposed—a test to be determined by the precise form in which a suit might be framed ; but that regard was to be had to the substance of the suit.”

In the third and much more recent case *Goculdas v. Chaganlal and others* (3), decided 1927, Page, J., now Chief Justice of this Court, the learned Chief Justice made use of these words at page 661 : “ As I apprehend the matter the framers of the Letters Patent of 1865, when prescribing the local limits of the High Courts in India, intended to apply the rule that was followed *ex comitate* in other countries. In my opinion, the term “ suits for land or other immoveable property ” in Clause 12 of the Letters Patent means suits in which, having regard to the issues raised in the pleadings, the decree or order will affect directly the proprietary or possessory title to land or other immoveable property.” And, again at page 662, he said : “ For instance, judged

(1) (1912) I.L.R. 39 Cal. 739.

(2) (1915) I.L.R. 42 Cal. 42

(3) (1927) I.L.R. 54 Cal. 655

by this test, a suit brought to recover damages for trespass to land beyond the jurisdiction of the Court will or will not be a suit for land according to the issues that fall to be determined. If, having regard to the pleadings, no issue is raised as to the title of the plaintiff, and the issue to be tried is merely whether the *factum* of the trespass by the defendant has been proved, then, if the defendant is within the jurisdiction, the Court will hear the suit, for the suit is not a suit for land."

Applying these test principles which have been laid down as above, I am of the opinion that the real dispute between the parties in this case is with reference to the title to certain immoveable property. It is true that the plaintiff brings his action claiming an injunction and damages for the wrongful and tortious act of the defendants. On the other hand, the defence set up by the defendants is a direct challenge to the plaintiff's right and title to the immoveable property under dispute. I should not be prepared to go so far as to say that any minor issue on the pleadings relating to the question of title could really govern the legal nature of the suit. It is, I think, the main or broad issue between the parties which must be considered. Accordingly I order the transfer of this case to the District Court of Hanthawaddy.

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