

such a suit will lie, was decided by the Full Bench at Allahabad in *Munna Singh v. Gajadhar Singh* and we see no reason to dissent from the views there expressed.

The District Judge has dismissed the suit on the ground that it was barred by the law of limitation, taking the cause of action to arise on the date when it was found by the decree that the judgment-debtor had no saleable interest in the property, but the words of the section are "when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold *and* the purchaser is for that reason deprived of it." The cause of action under this clause of the section does not, in our opinion, accrue till the purchaser is deprived of property which was sold to him. The double event must occur before he can sue: (1) the property must be found not to have belonged to the judgment-debtor, and (2) the purchaser must be deprived of it. Till the latter event occurs, the cause of action is not complete. The Subordinate Judge has not awarded interest, because the purchaser has received the mesne profits, and the latter and the interest nearly balance one another. That, we think, was a correct course to adopt.

The decree of the District Judge must be reversed and that of Subordinate Judge restored, with costs throughout on defendants.

Decree reversed.

APPELLATE CIVIL.

*Before Sir C. F. Farran, Kt., Chief Justice, Mr. Justice Parsons,
and Mr. Justice Candy.*

VOHRA MAHAMADALI LUKMANJI, PLAINTIFF, *v.*
RAMCHANDRA ANANT, DEFENDANT.*

*Stamp—Stamp Act (I of 1879), Sec. 3, Cl. (9), Sch. I, Arts. 5 and 21; Sch. II,
Art. 2—Interest in land—Agreement to sell standing trees.*

A document bearing a stamp of one rupee stated (*inter alia*) "I have sold to you the standing trees of the two villages for Rs. 1,601 on conditions that those young trees, whose trunks do not exceed two feet in circumference, should not be cut by you, and that I will give you written information to cut the trees of the

* Civil Reference, No. 8 of 1897.

1897.

said villages when you shall have to cut the trees and remove them within two years, &c."

VOHRA
MAHAMADALI
v.
RAM-
CHANDRA.

Held, that the document was sufficiently stamped.

REFERENCE by Ráo Sáheb Chunilal Harilal Vakil, Subordinate Judge of Godhra, in the Ahmedabad District, under section 49 of the Indian Stamp Act (I of 1879).

In Suit No. 371 of 1895 filed in the Court of the Subordinate Judge of Godhra, the plaintiff tendered in evidence a Gujaráti document written on an impressed stamp paper of one rupee. The following is the translation of the document:—

"Dated the Aso Sud 2nd, Samvat 1942, corresponding with 11th October, 1893, A.D. To Vohra Mahamadali Lukmanji, resident of Godhra, writer (to this bond). I, Rájeshri Ramchandra Anant, resident of the same village, write that we have inámi villages Govindi and Kanku Thanka, in the Godhra Taluka, of Shri Vitthal Mandir (temple), that we (I) have sold to you my half share of the standing mahuda trees of the said two villages for Rs. 1,601, sixteen hundred and one, British currency, on conditions that—1, there is inámi land of Rájeshri Krishnarao Govind in Kanku Thanka, you have no right on the trees of that land; 2, those young (mahuda) trees in the said two villages, whose trunks do not exceed two feet in circumference at one foot height from the surface of the earth, should not be cut by you; 3, I have received one-fourth of the above-mentioned purchase-money, deducting this, the remaining money should be paid when we (I) give you pass books, and you shall have to pay also the price of the pass books; 4, we (I) will give you written information to cut the trees of the said villages when you shall have to cut the trees and remove them within two years (from that date); or if by reasonable cause you cannot remove them within that period, you can get six months' more time by our permission.

"On the above conditions we (I) have sold my half share of the mahuda trees of the said villages, and for that I have written this deed of contract of our (my) own free will and good sense. This I admit."

The Subordinate Judge doubted whether a rupee stamp was sufficient for the document: he, therefore, referred the following questions for decision:—

"1. Whether the document in question is exempted under article 2, clause (a), of the second schedule of the Stamp Act?

"2. If not, is it sufficiently stamped?

"3. If it is not sufficiently stamped, what stamp should it bear?"

The opinion of the Subordinate Judge on the above questions was (1) that the document was not exempted under article 2, clause (a), of the second schedule of the Stamp Act; (2) that it was not sufficiently stamped; and (3) that it should bear a stamp of twenty rupees.

The reference being called on for hearing, the following judgments were recorded:—

FARRAN, C. J.:—The document in this case is not one which in my opinion needs to be stamped as a conveyance under section 3, clause (9), and article (21) of Schedule I of the Indian Stamp Act. Whether it be taken as a sale of trees when cut by the purchaser, in which case it would be a memorandum relating to the sale of “goods and merchandize,” or an agreement to allow the contractor to cut and remove the trees on certain conditions, it is, in my opinion, sufficiently stamped either under article (2) of Schedule II or under article (5) of Schedule I of the same Act. The expression “goods and merchandize” is not an equivalent for moveable property, but is borrowed from the English Stamp Act, the language of which is again taken from that of the Statute of Frauds. The cases upon the distinction (often a fine one) between the sale of goods and merchandize in the shape of trees and other produce of land to be cut and removed and a contract for an interest in land will be found collected in Benjamin on Sales, Book I, Part II, Chap. 2. It is unnecessary for me, I think, to decide in this judgment under which category the document in question falls, as in either view it is sufficiently stamped.

I would answer the second question in the affirmative and give no answer to the other questions, as it is unnecessary for us to answer them.

PARSONS, J.:—I concur in the above answer to the questions.

CANDY, J.:—It would seem, from the general proposition stated at p. 121 of the 4th edition of Benjamin on Sales, that the agreement in question would, in England, have been taken as coming within the 4th section of the Statute of Frauds, as being a contract or sale of lands.....or any interest in or concerning them. Though the ownership of the trees may not at once have been transferred, the agreement vested an interest in them in the purchaser before

1897.

VOHRA
MAHAMADALI
v.
RAM-
CHANDRA.

1896.

VOMRA
MAHAMADALI
v.
RAM-
CHANDRA.

severance. He had under the contract a right to enter on the land and within the space of two years cut such trees as within that period attained a certain size. The intention was that the trees should remain in the land for the benefit of the purchaser, and derive benefit from so remaining. Thus part of the subject-matter of the contract was an interest in land.

But though possibly there was here a contract for the sale of an interest in land within the meaning of section 4 of the Statute of Frauds, and though the subject-matter of the agreement may be within the definition of immoveable property in section 2 (5) of the General Clauses Act, 1868, it does not follow that the document in question is a "conveyance" or anything more than an agreement for sale. Under section 3 of the Transfer of Property Act, immoveable property does not include standing timber; and by section 4 the chapters and sections of the Act, which relate to contracts, shall be taken as part of the Indian Contract Act, 1872.

Here there was no sale of ascertained moveable property. There was a contract or agreement by which the purchaser was to be at liberty to cut and take such trees as might within two years attain a certain size. Such trees as he did not cut before the expiration of the period, remained the property of the vendor. In my opinion, the document was not a "conveyance," but an agreement for sale, and it is sufficiently stamped. I concur in answering the second question in the affirmative.

Order accordingly.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

MAHADEV (ORIGINAL PLAINTIFF), APPELLANT, v. MAHADU
(ORIGINAL DEFENDANT), RESPONDENT.*

1897.
July 19.

Dekhan Agriculturists' Relief Act (XVII of 1879), Secs. 44 and 56—Agreement executed before a village conciliator—Agreement evidencing an intention to create a mortgage—Admissibility and validity of such agreement—Evidence.

On the 1st December, 1891, defendant executed before a village conciliator a *kafulayat* to the following effect:—

* Second Appeal, No. 57 of 1897.