

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

SAGAJI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. NAMDEV  
(ORIGINAL DEFENDANT), RESPONDENT.\*

1899.

January 11.

*Vendor and purchaser—Contract of sale—Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 47.*

The plaintiffs owned certain land on which the defendant, with the plaintiffs' leave, built a house. Disputes arose between plaintiffs and defendant, and in February, 1893, the defendant obtained an order from the Māmlatdār in a possessory suit against the plaintiffs directing the plaintiffs to give up possession of the property to him. In August, 1893, an agreement was made between them, in pursuance of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of Rs. 100. On the 25th November, 1896, the plaintiffs brought this suit for possession, alleging that the defendant refused to give up the property. The District Judge dismissed the suit, finding that the plaintiffs had not paid the Rs. 100, and holding that the defendant was, therefore, justified in putting an end to the contract contained in the rent-note. He further held that the suit was barred by limitation, not having been brought within three years from the date of the Māmlatdār's order of 28th February, 1893. See Limitation Act (XV of 1877), Sch. II, Art. 47.

*Held* (reversing the decree) that the evidence showed the transaction to be a sale of the property by the defendant to the plaintiffs for Rs. 100, possession being given to the plaintiffs under the lease for four months; that the sale was a completed transaction although the Rs. 100 had not been paid; and that the only remedy of the defendant was to sue for the amount.

*Held*, also, that the contract between the parties dissolved the order of the Māmlatdār in the possessory suit and rendered it unnecessary for the plaintiffs to sue to set it aside. The present suit, which was based on the contract of sale, was, therefore, not barred by article 47 of the Limitation Act.

SECOND appeal from the decision of C. II. Jopp, District Judge of Ahmednagar, reversing the decree of the Subordinate Judge of Nevāsa.

Suit for possession of a piece of land with a house standing upon it. The plaintiffs alleged that the land was their ancestral property, which the defendant and his father before him had occupied as tenants-at-will.

\* Second Appeal, No. 273 of 1898.

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It appeared that the defendant, with the plaintiffs' leave, built the house on the land in question. Disputes had arisen between them, and on the 28th February, 1893, the defendant had obtained an order from the Mámlatdár in a possessory suit for the possession of the house and the open space in front of it.

On the 30th August, 1893, the parties settled their disputes, the defendant then executing a rent-note to the plaintiffs, agreeing to give up possession of the property at the end of four months on payment by the plaintiffs of Rs. 100.

The plaintiffs brought this suit on the 25th November, 1896, alleging that the defendant had refused to give up the property as agreed upon.

The defendant pleaded (*inter alia*) that the property was his, and that the plaintiff had not paid him the Rs. 100, and that the rent-note had been executed by him under coercion. He further contended that the suit was barred by limitation, not having been brought within three years from the date of the Mámlatdár's order of the 28th February, 1893. See Limitation Act (XV of 1877), Sch. II, Art. 47.

The Subordinate Judge found that the land belonged to the plaintiffs, but the building belonged to the defendant, and that the defendant had agreed to part with the building for Rs. 100. He held that the plaintiffs were entitled to possession on payment of Rs. 100 to the defendant and passed a decree accordingly.

The defendant appealed. The Judge reversed the decree finding that the plaintiffs had not paid the Rs. 100, and holding that the contract of sale was, therefore, at an end. He also held that the suit was barred by limitation. In his judgment he said :—

“ It is not seriously denied that the land in dispute originally belonged to the plaintiffs, and that it was occupied by the defendant with plaintiffs' licence, and that defendant, with plaintiffs' permission, built the house on the land. Plaintiffs have, therefore, proved that the ground in dispute with the site on which the house stands, but not the house, belonged to them. On 28th February, 1893, defendant obtained an order in a possessory suit before the Mámlatdár (Suit No. 2 of 1893) for possession of the house and the open space in front of it from the plaintiffs. On September 1st, 1893, plaintiff's claim for the rest of the land in dispute was dismissed by the Mámlatdár, plaintiff withdrawing his claim (Suit No. 50 of 1893). The present suit was instituted on November 25th, 1896, and defendant's pleader contends that the claim is time-barred, as plaintiffs did

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not sue to set aside the Mámílatdár's order within three years. Plaintiff's pleader urges that the limitation is saved, as defendant passed a rent-note to plaintiffs for the house and property in dispute on August 30th, 1893, thus acknowledging plaintiffs' title to the whole of the property and rendering it unnecessary for plaintiffs to sue to set aside the orders of the Mámílatdár. Witnesses Nos. 36, 38 and 52 prove that this rent-note was executed by defendant in consequence of an agreement between him and plaintiffs that defendant should give up all his rights in the property, including the house, and should pass the rent-note in consideration of a sum of Rs. 99 or Rs. 100 to be paid by plaintiffs. I agree, however, with the Subordinate Judge that the evidence of plaintiffs' witnesses as to the fact of the payment of this sum by plaintiffs is too contradictory to be believed. It is not, therefore, proved that plaintiffs paid the sum of Rs. 99 or Rs. 100 to defendant according to the agreement between the parties when the rent-note was passed. Plaintiff has, therefore, refused to perform his part of the contract. The defendant was justified in putting an end to the contract, and the rent-note is void. The limitation is not, therefore, saved, as plaintiffs' pleader contends. Plaintiffs' claim is time-barred, and plaintiffs are not entitled to any relief in this suit."

Plaintiffs preferred a second appeal.

*Narayan G. Chandavarkar* for the appellants (plaintiffs).

Ráo Sáheb *Ghanasham N. Nádkarni* for the respondent (defendant).

PARSONS, J.:—The District Judge has not fully comprehended the effect of non-payment of purchase-money upon a contract of sale. In the present case, it is proved that the defendant sold the land to the plaintiffs for the sum of Rs. 100 and delivered possession thereof by passing a lease for it to the plaintiffs. The sale, therefore, was a completed transaction even though the 100 rupees were not paid, and the only remedy of the defendant was to sue for the amount. This contract between the parties dissolved the order of the Mámílatdár in the possessory suit and rendered it unnecessary for the plaintiffs to sue to set it aside. We cannot, therefore, hold that the present suit (based on the contract of sale and the lease) is time-barred by reason of not being brought within three years of the date of the said order of the Mámílatdár.

We, therefore, reverse the decree of the lower appellate Court and restore that of the Court of first instance.

*Decree reversed.*