

1908.

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the promissory note must be treated, on the principle enunciated by the Privy Council, either as the result of a settled account or as a settlement by compromise. In either case it cannot be re-opened. For these reasons we confirm the decree with costs.

*Decree confirmed.*

R. R.

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.J.B., Chief Justice, and Mr. Justice Batchelor.*

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*August 10.*LAKSHMANDAS NARAYANDAS (ORIGINAL PLAINTIFF), APPELLANT, v.  
ANNA R. LANE (ORIGINAL DEFENDANT 1), RESPONDENT.\*

*Civil Procedure Code (Act XIV of 1882), section 586—Small Cause Suit—Character of the Suit—Second appeal—Framing issues—Exact words of the Legislature relating to issues—Contract Act (IX of 1872), section 231—Agent—Undisclosed principal—“Discloses himself”—Strict construction.*

In determining whether no second appeal lies under the provisions of section 586 of the Civil Procedure Code (Act XIV of 1882) the original character of the suit is to be regarded rather than the character it may subsequently assume by operation of the findings of the Court.

*Ramchandra Gopal v. Sadashiv Narayan*<sup>(1)</sup> followed.

Where the rights in a case have to be determined by reference to the words of the Legislature then those words should be used for the purposes of the issues so far as circumstances permit.

Section 231 of the Contract Act (IX of 1872) deals with the rights (a) of the principal and (b) of the third party in cases where the contract is entered into by the agent without disclosing the principal. The first clause refers to the general case and the rule is that the third party shall have as against the undisclosed principal the same rights which he would have against the agent if the agent had been the principal. The second clause deals with the particular case where the principal discloses himself before the contract is completed. The second clause should be read as governed by the first clause.

The words “discloses himself” in section 231 of the Contract Act (IX of 1872) should be construed strictly.

*Per BACHELOR, J.*—It has been warmly urged that the third party's right to repudiate, which is allowed if the principal himself makes the disclosure, should not be refused merely because the disclosure is made by

\* Second appeal No. 115 of 1904.

(1) (1885) P. J. p. 219.

some other person or the information reaches him from some other source. But the argument to my mind is not convincing. For whatever may be the subjective belief or conviction of the third party, it is conceivable that he should have no right to avoid the contract unless the principal, hitherto undisclosed, comes out into the open and claims the benefit of the contract for himself, and there would be no hardship in requiring the third party to challenge the alleged principal as to whether he makes this claim or not.

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SECOND appeal from the decision of L. Crump, District Judge of Sátára, reversing the decree of Vaman M. Bodas, First Class Subordinate Judge.

Suit for specific performance of contract or in the alternative to recover damages.

The plaintiff alleged that on the 24th October 1901, defendant 1, Anna R. Lane, contracted to sell to him her bungalow in the Sátára Camp for Rs. 1,800 and on the same day received from him rupees fifty as earnest money for which she passed a receipt; that the agreement was that she should receive the balance of the purchase money and execute in his favour a regular deed of sale before the 24th November following and put him in possession of the bungalow on or before the 8th November. The plaintiff further alleged that after the agreement he repeatedly asked defendant 1 to receive the purchase money and perform her part of the contract but in vain; that her failure to do so put the plaintiff to a loss of rent to the extent of Rs. 300 and that defendant 2, Ravji Ramchandra Kale, was joined because he was in possession of the bungalow and had knowledge of the agreement in suit.

The plaintiff, therefore, prayed for (1) specific performance of the contract of sale, (2) for possession of the bungalow and (3) Rs. 400 as damages in case specific performance could not be decreed for any reason.

Defendant 1 contended that one Ganpatdas Hirachand Devi tried for many days to purchase the bungalow but she could not be induced to sell it to him; that the plaintiff offered to purchase, apparently for himself through a house agent named DeSouza, but she learnt afterwards that he was really purchasing for Ganpatdas. that on the 30th October 1901. he sent her a letter

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embodying terms different from those originally settled; that she at once informed him that the original agreement was void and he was not entitled to fall back upon it and sue to enforce it; that after the agreement with the plaintiff was thus cancelled, she conveyed all her interest to defendant 2 under a registered deed of sale and put him in possession of the bungalow; that having regard to the provisions of the Specific Relief Act and particularly to section 28, the plaintiff's conduct was not such as entitled him to the relief claimed; that the plaintiff was not entitled to claim damages; that there was no valid contract with the plaintiff and the receipt produced by him was not admissible in evidence and that as the plaintiff had not deposited the purchase money in Court the suit should be dismissed.

Defendant 2 answered, *inter alia*, that the plaintiff was not entitled to any relief as against him with respect to damages or possession, that his purchase being *bona fide* for valuable consideration under a registered document and accompanied with possession the plaintiff had no superior right to possession, that the receipt produced by the plaintiff was inadmissible in evidence for want of registration and any right claimed thereunder was inferior to that which was created by his sale-deed, that the agreement alleged by the plaintiff was not such as could be specifically enforced against him and that Ganpatdas Hirachand Devi, who was the person really interested in the litigation, was a necessary party.

The Subordinate Judge found that the agreement in dispute was proved to have been made between plaintiff and defendant 1, that defendant 1 did subsequently rescind the agreement but she had no right to do so, that the plaintiff was not entitled to the specific performance of the agreement, that having regard to the circumstances of the case the discretion to grant specific relief could not be exercised in plaintiff's favour, that defendant 1 did not intend or desire to sell the property to Ganpatdas Hirachand Devi, that the defendants had not proved that the plaintiff wanted to purchase the property not for himself but for Ganpatdas Hirachand Devi and that the plaintiff was entitled to recover Rs. 400 as damages from defendant 1. The Subordinate Judge, therefore, passed a decree to that effect.

Defendant having appealed the Judge reversed the decree and dismissed the suit holding that it was proved that the plaintiff was acting for Ganpatdas Hirachand Devi and that the defendant was, therefore, justified in refusing to complete the sale.

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The plaintiff preferred a second appeal.

*Young* (with *D. A. Khare*) appeared for the appellant (plaintiff):—The broker DeSouza was, no doubt, our agent but our contract with defendant 1 became complete as soon as she received the earnest money. She cannot now repudiate the contract under section 231 of the Contract Act on grounds which cannot legally be urged. There is no evidence in the case that DeSouza was the agent of Ganpatdas, and it is admitted that respondent acted merely on a rumour to that effect. If specific performance cannot be granted we are entitled to at least damages for breach of contract.

*Lowndes* (with *B. N. Bhajekar*) for respondent (defendant 1):—So far as we are concerned plaintiff's conduct was tainted with fraud. He kept Ganpatdas in the back ground and gave us to understand that he was buying the property himself. But the real fact was not so. He wanted to buy the bungalow for Ganpatdas to whom we did not wish to sell it. On these facts the Judge held that we were entitled to rescind the contract, *Smith v. Wheatcroft*<sup>(1)</sup>. The finding of the Judge that the plaintiff was in fact the agent of Ganpatdas is a finding of fact and binding in second appeal.

The second clause of section 231 of the Contract Act should bear a liberal construction. The expression "if the principal discloses himself" should be construed to mean, if the principal is disclosed by some means or other.

No second appeal can lie. Though originally the suit was for specific performance or in the alternative for damages, the relief that is now claimed is with respect to damages only, and the sum claimed being less than Rs. 500, section 583 of the Civil Procedure Code applies.

*Young* in reply:—Second appeal lies. In order to determine the nature of the suit, the relief originally claimed in the plaint

(1) (1878) 9 Ch. D. 223.

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must be taken into consideration and not the altered condition of the suit after certain findings arrived at by the lower Courts: *Ramchandra v. Sadashiv*<sup>(1)</sup>.

The expression "if the principal discloses himself" in section 231 of the Contract Act means, if the principal himself comes forward. The expression is not capable of any other meaning.

BATCHELOR, J:—The suit out of which this appeal has arisen was brought for specific performance of a contract of sale and for possession of the bungalow in suit, or, in case specific performance was refused, for a sum of Rs. 400 as damages for breach of the contract. The Subordinate Judge rejected the prayer for specific performance, but awarded plaintiff Rs. 400 as damages together with Rs. 50 earnest money deposited. On appeal the District Judge of Sátára dismissed plaintiff's suit entirely.

The first point which it is necessary to decide here is whether a second appeal will lie. Mr. Lowndes in contending for the negative relies upon section 583, Civil Procedure Code, and argues that, as a consequence of the history of the litigation, the suit should now be regarded as a suit cognizable by a Court of Small Causes where the value of the subject matter does not exceed Rs. 500. But it appears to me that this argument takes too narrow a view of section 586. That section, as I read it, contemplates rather the original character of the suit than the character which it may subsequently assume by operation of the findings of the Courts. This is the view which was taken by this Court in *Ramchandra Gopal v. Sadashiv Narayan*<sup>(1)</sup> and there appears to be no reason to depart from it. It follows that this appeal is competent.

This brings me to the main point which has formed the subject of argument, namely, whether the respondent was entitled on the facts found to annul the agreement with the appellant. The facts found are that the bargain was made by the broker DeSouza as agent of the appellant; that the appellant was in fact acting on behalf of another person, one Gaupatdas, who was the owner of a neighbouring property and who had previously offered for this house a larger sum than respondent agreed to

(1) (1885) P. J. p. 219.

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accept from DeSouza; and that, before the completion of the contract, DeSouza admitted to respondent that the real purchaser was Ganpatdas. Upon these facts the lower appellate Court has held that, under section 231 of the Contract Act, the respondent was entitled to avoid the agreement with the appellant. Before examining the accuracy of this opinion it seems necessary to observe that the issue raised on the point by the learned District Judge was defective and incorrect. For it was not sufficient to inquire whether "plaintiff was acting for Ganpatdas"; the fact to be ascertained was whether plaintiff was the agent of Ganpatdas so as to attract those legal consequences and incidents which attach to the special relation between agent and principal. It is very desirable that in framing issues the Courts should adhere strictly and faithfully to the exact words of the enactment with reference to which the issues are raised. Here, however, the point need not be further pursued, as it is plain that the issue, though faultily drafted, was correctly understood by all the parties.

To return to the question of the operation of section 231 of the Contract Act, I think that it must be interpreted in the light of the preceding and succeeding sections of the Act, which deal with the effects of agency on contracts made with third persons. Sections 226, 227 and 228 lay down the law as to how far the principal is bound by the contract of his agent. Section 229 continues the same subject and specifies the cases in which the principal will be held to be bound by any notice or information received by the agent. Section 230 describes how far the agent is entitled personally to enforce a contract made by him on behalf of his principal. Then comes section 231, which deals with the rights (a) of the principal and (b) of the third party in cases where the contract is entered into by the agent without disclosing his principal. It is with the rights of the third party that I am now concerned, and these rights are thus defined by the section. Under the first clause we have the general case, and there the rule is that the third party shall have as against the undisclosed principal the same rights which he would have had as against the agent if the agent had been the principal. The second clause deals with the particular case

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where the principal discloses himself before the contract is completed. I have no doubt, that, as suggested by Mr. Justice Ranpini in *Karim Chowkidar v. Sundar Bewa*<sup>(1)</sup>, this second clause should be read as governed by the preceding clause, which is restricted to cases where "an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent." In such cases, then, the third party may refuse to fulfil the contract upon proof that he would not have entered into it if he had known who was the principal or if he had known that the agent was not a principal, provided that "the principal discloses himself before the contract is completed." Here I would call attention to the grammatical form of the words "discloses himself," for in my judgment they must be construed strictly. I cannot concede the argument that they should be read to mean no more than would be expressed by some such phrase as "is disclosed," or "appears upon the scene." If that had been the intention, I conceive that there would have been no difficulty in expressing it clearly, and that the Legislature would not have adopted a form of words which on their face restrict and confine the meaning. It has, indeed, been warmly urged by Mr. Lowndes that the third party's right to repudiate, which is allowed if the principal himself makes the disclosure, should not be refused merely because the disclosure is made by some other person or the information reaches him from some other source. But the argument to my mind is not convincing. For, whatever may be the subjective belief or conviction of the third party, it is conceivable that he should have no right to avoid the contract unless the principal, hitherto undisclosed, comes out into the open and claims the benefit of the contract for himself, and there would be no hardship in requiring the third party to challenge the alleged principal as to whether he makes this claim or not. This construction appears to derive support from a comparison of the language used in the first and second clauses. In the first clause are defined the third party's rights where he "neither knows nor has reason to suspect" that he is contracting with an agent,

(1) (1886) 21 Cal. 207 at p. 210.

while in the second clause this comprehensive language is abandoned, and is replaced by the narrower and stricter phrase requiring that the principal shall "disclose himself." In my opinion, therefore, these latter words must be interpreted strictly.

But whether or not the clause should receive the restricted construction which I have suggested, it clearly cannot be stretched so as to cover the present respondent's repudiation. For it is not shown that DeSouza was the agent of Ganpatdas, and the alleged admission was made behind the back of Ganpatdas after the termination of whatever authority DeSouza had even as appellant's broker. Thus, assuming Ganpatdas to have been the real purchaser, it is impossible to hold that he disclosed himself within the meaning of the section so as to entitle respondent to refuse to fulfil the contract.

Upon this finding it is unnecessary to consider, and I therefore refrain from considering, the further question whether the respondent has shown, within the meaning of the clause, that she would not have entered into the contract if she had known who the principal was, or that the agent was not a principal.

The result is that the decree under appeal is not, in my opinion sustainable. The District Judge has not found to what damages appellant would be entitled, and the parties have the right to obtain his finding on this point.

I would therefore reverse the decree of the lower appellate Court and remand the appeal for a finding as to the amount of damages which should be awarded to appellant. Respondent to bear all costs throughout.

JENKINS, C. J.—I concur.

*Decree reversed. Case remanded.*

G. B. R.

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*Note.*—The report of this case was held over by request pending proposed proceedings which however have not resulted in any decision affecting this report. [Ed.]