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second defendant found the first defendant's husband in possession with registry in his name, and there was nothing to lead him to question the title, or to indicate to him that the plaintiff or any other person had any right in the land.

We therefore consider the decree of the Civil Judge giving the land to the plaintiff to be unsustainable in law, and we set the same aside, thus affirming the decision of the District Munsif.

The costs in appeal and special appeal are to be paid by the plaintiff.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 267 *of* 1862.

CHIDAMBARA PILLAI .....*Appellant.*

MÁNIKKA CHETTI .....*Respondent.*

A sold land to B and continued in possession as B's tenant. More than two years after the sale A and B agreed that A should have the right to repurchase within a fixed time, but that such right should be forfeited if the condition of the lease were not kept. At the date of this agreement A was in arrear with the rent: *Held* that his right to repurchase was not forfeited by his having incurred further arrears.

THIS was a special appeal from the decree of V. Sundara Náyndu, the Principal Sadr Amin of Negapatam, in Appeal Suit No. 191 of 1861. The original suit, No. 428 of 1860, was brought before John Henry Shunker, the District Munsif of Tranquebar, for the registration in the plaintiff's name of the mirási of certain lands which he had sold for rupees 600 to the first defendant on the 26th of May 1852. The plaintiff continued in possession as the purchaser's lessee at a svámibhogam rent; and on the 24th August 1854, the parties executed a deed of lease of the lands to the vendor, and also entered into an agreement by which the purchaser agreed to reconvey if the purchase money were repaid within a period therein limited, but which contained the following clause:—"If you [the vendor] fail to pay the amount of the sale within the limited time, you shall have no right to

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the land. You are further required to act rightly and in conformity with the deed of rent granted by you on this date; and in the event of your failing so to do this agreement shall be null and void." The District Munsif and, on appeal, the Principal Sadr Amin, finding that the plaintiff had not observed the stipulations of his lease, held that he had thereby forfeited his right to repurchase.

Sadagopacharlu for the special appellant, the plaintiff.

Venkattarayalu Nayudu for the first defendant.

Mayne for the third defendant.

The Court delivered the following

JUDGMENT :—The plaintiff sold the land in issue to the first defendant on the 26th May 1852. The plaintiff at the same time retained possession of the land on lease under the first defendant at a svámibhogam rent. On the 24th of August 1854, the plaintiff and the third defendant entered into an agreement that the former should have the right to re-purchase the land within a certain time, but that such right should be forfeited if the conditions of the lease were not kept. The first defendant having sold the land to the third defendant within the period in which the plaintiff had the right to repurchase, the plaintiff has brought this suit to set aside the sale and to have the land assigned to him on his making good the purchase-money, rupees 600, agreed upon between himself and the first defendant.

The District Munsif has dismissed the suit on the ground that in the agreement for repurchase it was stipulated that the right to repurchase, should be forfeited if the conditions of the lease were not kept, and that these conditions had been broken by the plaintiff falling into arrear with his rent ; and this decision has been affirmed by the Principal Sadr Amin.

We observe that there is no natural connection between the lease and the right to repurchase, and that the clause of forfeiture is so vaguely worded as to have the appearance of a mere threat, such as in equity, in the absence of specific mention of the nature of the failure which was to bring down the penalty of forfeiture, ought not to be

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enforced. The particular failure on which the forfeiture is held by the Courts below to have been incurred is the non-payment of rent. The arrears, on reverting to the allied suit, Special Appeal No. 268 of 1862, are found to amount to rupees 411, of which 325 were incurred before, and rupees 86 after, the date of the agreement (exhibit A) now under consideration. There having been thus a heavy arrear when the agreement in question was entered into, and no condition having been inserted relative to the discharge of this arrear, we are unable to satisfy ourselves that it was understood between the parties that the incurring of any further arrears of rent should entail forfeiture of the right to re-purchase.

Under these circumstances we reverse the decrees below, and declare that the sale made to the third defendant is void, and that the plaintiff has the right to re-purchase the land in issue, provided he make good the purchase-money within a period, calculated from this date, equivalent to the period for repurchase remaining to him when he instituted this suit.

The costs are to be paid by the first and third defendants.

Appeal allowed.

NOTE.—See *Davis* v. *Thomas*, 1 R. & M. 506 ; and see *Joy* v. *Birch*, 4 Cla. & Fin. 89 ; *Ogden* v. *Battams*, 1 Jur. N. S. 791, as to the necessity of pursuing literally a claim for repurchase. See, too, *S. A. No.* 172 *of* 1859; M. S. D. 1860, p. 66 : *S. A. No.* 162 *of* 1859, ibid., p. 93 : *S. A. No.* 33 *of* 1860, ibid., p. 151.