APPELLATE CIVIL.

Before Jenkins C.J. and Mullick J.

BABURAM BAG

v.

MADHAB CHANDRA POLLAY.*

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Feb. 17.

Specific Performance—Agreement to renew a lease when specifically enforceable against a subsequent lessee for value—Duty of subsequent lessee to enquire of terms of previous lease—Specific Relief Act (I of 1877), s. 27.

An agreement to renew a lease under certain conditions on the determination of the term of the lease can be specifically enforced against a subsequent lessee for value who has omitted to make an inquiry of the tenant in possession about the terms of the lease under which he was holding it.

The occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights, and if he chooses to make no inquiry of the tenant, he cannot claim to be a transferee without notice.

SECOND APPEAL by Baburam Bag and another, plaintiffs.

On the 1st May, 1901, certain zemindars of a fishery leased that fishery to one Madhab Chandra Pollay, the defendant No. 1 in the suit now in appeal, saying, "on the expiry of the term of your lease and on your prayer and agreement to pay the rent proposed by the other tenants, we will grant you for the second time a temporary *patta*." This lease would have expired, if not renewed, on the 30th April, 1908. Meanwhile, on the 11th July, 1906, the same zemindars gave a lease of this same fishery for seven years, from

* Appeal from Appellate Decree, No. 1667 of 1910, against the decree of F. R. Roe, District Judge of 24-Pergannahs, dated March 11, 1910.

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the 1st May, 1908, to Baburam Bag and another, the plaintiffs in the suit in appeal. In it they said, "if we cannot eject the former tenant easily, and if there be any litigation on that account, the money that will be expended will be paid by us. If we cannot give you possession, we will refund to you the *selami* and the deposit which you have paid." Now, the plaintiffs in this case sued for possession of the *julkar*, on the ground that Madhab Chandra was a trespasser. The Court of first instance decreed the suit, but made provision in the decree for defendant No. 1 to remain in possession for a year after the expiry of his original lease, inasmuch as he had been prejudiced by the lease to the plaintiffs. The lower Appellate Court reversed the decree of the Subordinate Judge, dismissing the suit with costs against the tenant-defendant, viz., defendant No. 1, and decreeing the appeal against the landlord-defendants, with costs for a refund of the *selami* and deposit made by the plaintiffs.

The plaintiffs, thereupon, preferred this second appeal.

Babu Ramchandra Majumdar (with him *Babu Atul Chandra Dutt*), for the appellants. The agreement of 1901 cannot be specifically enforced against the plaintiffs. The plaintiffs are transferees for value. They did not know anything of the provision for renewal of lease with defendant No. 1.

[JENKINS C.J. Does not the principle of *Walsh* v. *Lonsdale* (1) apply to the case?]

That case is distinguishable. I rely on *Manchester Brewery Co.* v. *Coombs* (2), and section 27, Specific Relief Act.

There is no finding of knowledge of the plaintiff of the covenant in favour of the defendant. At the

(1) (1882) 21 Ch. D. 9. (2) [1901] 2 Ch. 608, 617.

time of the lease with the plaintiff, possession of the defendant was under the old lease.

[JENKINS C. J. Notice will be implied of all his rights. The plaintiff ought to have enquired of the man in possession.]

[*Dr. Ghose.* See *Allen* v. *Anthony* (1), and the observations of Jessel M. R. in *Patman* v. *Harland* (2). Section 27 of the Specific Relief Act throws the onus on you.]

I want an opportunity to show that I had no knowledge. The plaintiff was taken by surprise.

Dr. Rashbehary Ghose (with him *Babu Probodh Chandra Rai* and *Babu Haricharan Ganguli*), for the respondent. Onus is on the lessee or purchaser to show he had no notice. Even if the onus were on my client, he has discharged it.

There cannot be a remand, because the Appellate Court was not invited to take further evidence. The question is one of law: *Eshan Chunder Sein* v. *Shaikh Dhonaye* (3).

The purchaser is bound by all the equities and interests under collateral agreement: Dart on Vendors and Purchasers, p. 884. *Taylor* v. *Stibbert* (4), *Daniels* v. *Davison* (5), *Barnhart* v. *Greenshields* (6), *Mancharji Sorabji Chulla* v. *Kongseoo* (7), *Allen* v. *Anthony* (1).

Finally, there is the plaintiff's own admission that he did not make any inquiry of defendant No. 1 of the terms of his lease. He should have.

JENKINS C.J. This Special Appeal arises out of a suit brought to recover possession of certain *julkar*

(1) (1816) 1 Mer. 282; 15 R. R. 113.
(2) (1881) 17 Ch. D. 353.
(3) (1869) 11 W. R. 61.
(4) (1794) 2 Ves. Jn. 437; 2 R. R. 278.
(5) (1811) 16 Ves. 249; 17 Ves. 433; 10 R. R. 171.
(6) (1853) 9 Moo. P. C. 18; 14 E. R. 204.
(7) (1869) 6 Bom. H. C. 59.

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rights. This *julkar* had been leased on the 2nd of March, 1901, to the first defendant for a period of seven years. On the 1st of May, 1901, the lessors entered into an agreement with the lessees for renewal, under certain conditions, on the determination of this term. On the 11th of July, 1906, the lessors purported to settle the *julkar* with the plaintiffs for a term of seven years from the 1st of May, 1908, and we are told that the plaintiffs in return of this paid a sum of Rs. 600. The plaintiffs now seek to recover possession of these *julkar* rights on the ground that the lease of the 2nd of March, 1901, in favour of defendant No. 1 has come to an end. In the Court of the Subordinate Judge a decree for possession was passed, but on appeal it was reversed and as against the tenant-defendant the suit was dismissed with costs. The plaintiffs appeal from this decree.

The position then is his,—the plaintiffs, never having obtained possession, seek to eject the tenant-defendant on the ground that his lease has determined.

The answer made by the tenant-defendant is that though the lease of the 2nd of March, 1901, may have come to an end, still he, the defendant, is in possession of the land, and he holds it under the agreement of the 1st of May, 1901.

The first question, therefore, we have to consider is whether the agreement of 1901 is an agreement which can be specifically enforced. It is not suggested before us that it is incapable of enforcement against the lessors; all that can be argued is that the plaintiffs are persons against whom it cannot be enforced. Section 27 of the Specific Relief Act provides that "except as otherwise provided by this chapter, specific performance of a contract may be enforced against (*a*) either party thereto, (*b*) any

other persons claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract." The plaintiffs come within the description of "any other person claiming under a party by a title arising subsequently to the contract of the 1st of May, 1901," so that *primâ facie* the contract can be specifically enforced against the plaintiffs. Do the plaintiffs bring themselves within the exception, that is to say, have they shown that they are 'transferees for value who have paid their money in good faith and without notice of the original contract'? It is shown that they are transferees for value who have paid money. But can it be said that they did it without notice of the original contract? In determining that, we must have regard to the fact that the tenant-defendant was, and has throughout remained, in possession and occupation. But the occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights, and if he chooses to make no inquiry of the tenant, he cannot claim to be a transferee without notice. The plaintiffs, therefore, are unable to predicate of themselves that they are persons who claim without notice of the contract of the 1st of May, 1901. That contract, therefore, is capable of specific performance against the plaintiffs, and it furnishes a complete answer to their claim for possession.

The only question then is, whether it can fairly be said that the plaintiffs have been taken by surprise. It is quite true that the contract of 1st May, 1901, is not specifically mentioned in the written statement; but it is equally true that the tenant-defendant did plead the relationship of landlord and tenant, and this was referable to that contract. Further than that, we

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have the fact that this particular agreement was filed prior to the trial, and I cannot read the judgment of the Munsif without feeling that the issue, though in very general terms, was settled in reference to the preceding statement in his judgment where there is an obvious allusion to this contract on which the tenant-defendant now relies. Therefore, we cannot give effect to the suggestion that the plaintiffs were taken by surprise. I accordingly think that the decree of the District Judge should be confirmed and this appeal dismissed with costs, one set payable to the tenant-defendant.

MULLICK J. concurred.

S. M. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Fletcher J.

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Feb. 17.

ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO., LD.

v.

ORIENTAL ASSURANCE CO., LD.*

Trade-name—Similarity of names of Insurance Companies—"Oriental"—Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (V of 1912), ss. 5 and 6—Indian Life Assurance Companies Act (VI of 1912)—User.

On an application by the plaintiff company, an old, large and well known Insurance Company, registered in Bombay, and having a branch office in Calcutta, for a temporary injunction to restrain the defendant company, which was incorporated in Calcutta in November 1912, with a small share capital, but with the widest powers of doing life and other insurance

* Original Civil Suit No. 115 of 1913.