

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Rance  
Bhoboshoondree Dasseah v. Issur Chundur  
Dutt, and others, from the High Court of  
Judicature at Fort William, in Bengal;  
delivered Friday, May 3rd 1872.*

---

Present :

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS suit was based upon a deed executed by Jogessur Ghose, in favour of the Plaintiff, in August 1866. The effect of that deed, as far as it is material, may be thus stated: it recites that Jogessur Ghose was entitled to certain properties from his maternal grandmother, that he had been dispossessed of the whole of those properties, and thus proceeds: — “It is now  
“ necessary to institute a suit in Court for the  
“ recovery of possession of the whole of the pro-  
“ perties consisting of the aforesaid jote jummah  
“ talook, &c., and mesne profits, and as I have  
“ not the means to institute a suit at my own  
“ expense, I have determined to sell you a moiety  
“ or 8 annas share of the 12 annas 6 gundas  
“ 2 cowrees 2 krauts of the above jote jummah,  
“ being the share left by my maternal grand-  
“ mother, to which I am entitled, an 8 annas  
“ share of the talook aforesaid, and an 8 annas  
“ share of the mesne profits during the period  
“ of dispossession, and having fixed the con-  
“ sideration for the same at Rs. 3,000, and re-  
“ ceived the purchase money in cash, I sell the  
“ same to you and execute this deed of sale.  
“ The said amount is deposited with Dwarkanath  
“ Lahory, mookhtar, the agent on your behalf,

“ and all the expenses of the suit for dis-  
“ session and my lodging expenses shall be paid  
“ out of that sum. In the event of the suit  
“ being decided in my favour we shall each of  
“ us take the costs, mesne profits, jote jummah,  
“ and the talook in the shares mentioned above.  
“ We will both of us institute the said suit in  
“ Court as Plaintiffs. Neither of us shall be  
“ able without the consent of the other to com-  
“ promise, settle, or make any adjustment  
“ whatever of the case.”

It appears that a short time after, in September 1866, Jogessur Ghose entered into a deed, which may be termed one of compromise, with Issur Chundur Dutt, who was the claimant and in actual possession of the greater part of the property referred to in the previous deed, and that by this deed of compromise a portion of the property was divided between them. Thereupon this suit was brought by the Plaintiff. It is material to observe that it is not a suit claiming specific performance of or damages for breach of the contract entered into with the Plaintiff by Jogessur Ghose, but that it is in the nature of an action of ejectment. It is a suit to recover possession of the property mentioned in the first deed brought not only against Jogessur Ghose, but against Issur Chundur Dutt, the Plaintiff seeking to recover possession of the property by virtue of the title acquired under that deed, not only against Jogessur Ghose, but also against Issur Chundur Dutt, whom he alleged to have obtained possession of the property under forged conveyances.

The Court below dismissed the suit upon a technical ground, namely, that the Plaintiff could not sue Issur Chundur without joining Jogessur Ghose as a co-Plaintiff. The High Court decided in their Lordships opinion rightly that this was not a proper ground for dismissing the suit, and, hearing it upon its merits, determined it in favour of the Defendants.

The principal question is the effect of the first deed, whether it operated as a present transfer of the property, or only as an agreement to transfer it upon certain contingencies which did not happen. In support of the latter contention the case was referred to of *Rajah Sahib Perhlad Sein v. Baboo Budhoo Singh*, (12th Moore's Indian Appeals, page 275). Without referring at length to that case, the circumstances of which are in many respects similar to those of the present, it may be enough to quote a passage from page 306, wherein their Lordships say,—“The Court below seem to have ruled “ that the effect of the execution of a bill of “ sale by a Hindoo vendor is, to use the phra- “ seology of English law, to pass an estate “ irrespective of actual delivery of possession, “ giving to the instrument the effect of a con- “ veyance operating by the statute of uses. “ Whether such a conclusion would be war- “ ranted in any case is in their Lordships “ opinion very questionable. It is certainly not “ supported by the two cases cited in the Judg- “ ment under review,” (which are there referred to,) “in both of which actual possession seems “ to have passed from the vendor to the “ purchaser. To support it, the execution of the “ bill of sale must be treated as a constructive “ transfer of possession. But how can there be “ any such transfer, actual or constructive, upon “ a contract under which the vendor sells that “ of which he has not possession, and to which “ he may never establish a title. The bill of “ sale in such a case can only be evidence of a “ contract to be performed *in futuro* and upon “ the happening of a contingency of which the “ purchaser may claim a specific performance “ if he comes into Court showing that he has “ himself done all that he was bound to do.”

Having regard to this case and to the provisions which have been referred to of the deed,

their Lordships are of opinion that it did not operate as a present transfer of the property, but as agreement to transfer so much of it as might be recovered in a suit to be instituted to which both Jogessur Ghose and the Plaintiff were to be parties.

This construction of the deed disposes of the case, for even if the Plaintiff be entitled to complain of breach of contract by Jogessur, he cannot recover under it possession of the property against Jogessur, *a fortiori* cannot she recover against Issur Chundur Dutt, who was no party to the deed. It may be observed that even if this were a suit for specific performance of the contract, or damages for the breach of it, it would have been necessary for the Plaintiff to have alleged either performance of her part of the contract, which was the payment of Rs. 3,000 to Dwarkanath Lahory, and such further sums as might have been necessary to the maintenance of the action, or at all events that she was ready and willing to perform this condition but was prevented by the wrongful act of the Defendant. There are no such allegations, and if there had been it does not appear that they would have been sustained by evidence, for the case set up on the part of the Plaintiff was not the performance of this condition but something very different, namely, the payment to the Defendant himself of this sum of money, — a statement which is disbelieved by the High Court, in which disbelief their Lordships concur.

On these grounds their Lordships are of opinion that the Judgment of the High Court is right, and they will humbly advise Her Majesty that this Appeal be dismissed, with costs.