

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rangayya Goundan and Another v. Nanjappa Rao and Others, from the High Court of Judicature at Madras; delivered 13th July 1901.

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Respondents in this Appeal, who were Defendants in the original suit, are a Hindoo family of which Nanjappa is the manager. On the 23rd March 1891 they made a written agreement with the Appellants, the Plaintiffs below, to sell to them a coffee plantation of which the Defendants were owners subject to mortgages.

The agreement is somewhat peculiar. The price is fixed at R. 77,500, of which R. 7,500 was paid down. The vendors guarantee a yield of 30 tons of coffee up to March 1892, and as security for that the purchasers are to retain R. 10,000 in their hands. The purchasers are to pay R. 25,000 to the mortgagee, leaving R. 10,000 due to him. The balance, being R. 35,000, is to be paid in cash between the 1st April and the 31st July 1891. Penalties are stipulated for non-performance of the agreement on either side. The following provision was made for the cultivation of the land.

“As the said estate will be in our possession till the 31st of July 1891, we are bound to take care (of the estate) by getting our Superintendent to do, in all obedience, the works

“ that you may prescribe to be done in the estate. We shall
 “ within the 1st April next give you a list of the things
 “ appertaining to the said estate and also at once hand over
 “ the cattle to you within the said date.”

Down to the latter part of August 1891 the terms of the agreement were observed except that the time of completion was delayed. The purchasers cultivated the estate, and paid off the mortgages, and made some other payments on behalf of the vendors, which altogether amounted to R. 44,420, and left R. 33,080 due. Then disputes arose, and each party accused the other of delay. Early in September each called on the other to complete within four or five days, threatening in case of failure to sue for the stipulated penalties. The vendors interrupted the work of the purchasers. The criminal proceedings common in such cases took place, and then the litigation in the Civil Court which led up to the present Appeal.

On the 21st September 1891 the vendors instituted Suit No. 55 of 1891 against the purchasers. They prayed for possession of the estate and for general relief. The purchasers defended themselves in that suit, and they also instituted a suit of their own, No. 73 of 1891, against the vendors. In Suit 55 the purchasers insisted on the agreement and asked damages for disturbance of their works. In Suit 73 they prayed : first for restoration of possession under the provisions of Section 9 of the Specific Relief Act ; which are provisions confined to the recovery of possession upon a dis-possession otherwise than in due course of law : Secondly for R. 1,000 damages for disturbance : Thirdly, for an injunction to protect their possession and management. In defence the vendors gave their version of the dispute, and insisted that the contract was broken by the purchasers' failing to complete, had been treated by the vendors as at an end on the 10th September, and that no relief could be had under it.

The two suits were heard on the same evidence, and on the 10th August 1893 the Subordinate Judge delivered judgment in each separately. In Suit 55 he held that by the terms of the agreement the parties intended that the vendors should have possession until the sale was completed, and that the purchasers had unlawfully dispossessed them, but he did not declare them entitled to any compensation. In Suit 73 he decided to the same effect as regards possession; and he held that the purchasers were not entitled to any compensation, but that they were entitled to a temporary injunction restraining the vendors from interfering with the management. In his judgment in Suit 55 he made the following observations:—

“In conclusion I would observe that I have
 “confined myself in this case to the simple fact
 “of possession and dispossession as I intimated
 “to Counsel at the hearing that I would do. It
 “seems to me that I have nothing but these
 “facts to deal with in the case.”

In fact there was no relief prayed and no issue framed in either suit on any point except possession or compensation. The purchasers did not ask for completion of the agreement nor the vendors for its cancellation.

The purchasers appealed to the District Judge in both suits. On the 11th October 1893 he affirmed both decrees, only modifying the form of injunction. As modified it operates to
 “restrain the vendors from working the estate
 “otherwise than as the vendees may appoint
 “unless and until the agreement Exhibit A.
 “shall be rescinded or superseded by agreement
 “of the parties or be declared or become invalid
 “by due course of law.”

On the 11th November 1893 the purchasers filed their plaint in the present suit praying for specific performance of the agreement of the 23rd March 1891.

On the 28th April 1894 the Subordinate Judge gave them a decree. At the trial before him the vendors took an objection of law not raised by their pleas nor by the issues. It was founded on Section 43 of the Procedure Code which provides that every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; and that if a Plaintiff omit to sue in respect of any portion of his claim he shall not afterwards sue in respect of the portion so omitted. The learned Judge considered that the case did not fall within that section because Suit 73 of 1891 was a cross-action to Suit 55, and neither party sought to deal with anything but possession or compensation.

The vendors appealed to the High Court repeating their grounds of defence in the First Court, and adding their defence under Section 43. On the hearing of the appeal they further contended that the point was decided against the purchasers by the judgments in the suits of 1891.

On the 21st October 1895 the High Court decided the appeal. They held that the suit was not maintainable; first, because the matter was *res judicata*, and secondly because the case fell within Section 43. As to the first of these grounds there is great difficulty, looking at the frame of the suits of 1891 and at the judgments by which they were concluded; but their Lordships need not come to any decision upon it, because they are in entire agreement with the learned Judges on the second ground. The agreement was the cause of action in Suit 73 of 1891. There was no other. The purchasers it is true sued only for possession; but independently of the agreement they had no claim to the possession which was refused to them, nor to the management which was allowed to them. The vendors asserted that the agreement was no

longer in force. The obvious course for the purchasers was to demand completion of it. For some reason or other they did not do so. They did make the agreement the basis of a claim for possession and damages. In this suit they make it a basis of a claim for transfer of the estate. But that is precisely what the Code says they shall not do.

The High Court held that the purchasers were entitled to recover what they had paid in respect of the purchase money, but were also bound to account for the profits which they had received during their management. The suit was remanded for accounts to be taken, when it was found that nothing was due to the purchasers. The High Court therefore, on the 1st September 1896, dismissed the suit with costs. Their Lordships will humbly advise His Majesty to dismiss this Appeal. The Appellants must pay the costs.
