

*Special Appeal No. 345 of 1866.*

YELLA'PPA' bin BASA'PPA' ..... *Appellant.*  
 MANTA'PPA' bin BASA'PPA' ..... *Respondent.*

*Vendor's lien for unpaid purchase money—Remand.*

In a suit claiming possession of land, purchased by the plaintiff from the defendant, the Munsif threw out the claim for want of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue him for the purchase money:—

*Held* that the equitable doctrine of the vendor's lien for unpaid purchase money applied to the case; but, as the District Judge had not decided whether the defendant had succeeded in proving that the purchase money had not been paid, that the suit should be remanded for a finding by him on that issue.

1867.  
 December 6.  
 Referred Case.

THIS was a special appeal from the decision of C. F. H. Shaw, District Judge of Dharwar, in Appeal Suit No. 527 of 1864, reversing the decree of the Munsif of Sáundatti.

Mantáppá brought the original suit to recover from Yelláppá possession of certain fields, purchased from him by a deed of sale, dated the 11th of August 1863.

Yelláppá answered that the deed was obtained from him by fraud, and that the purchase money had not been paid; and the Munsif found that, though there was no fraud in the execution of the deed, it was void for want of consideration.

The District Judge decided as follows:—"Yelláppá has no right to plead non-payment as want of consideration. In his resignation (*rázínámá*) he admits the sale; and though he may sue Mantáppá for the purchase money—when he can prove non-payment—he cannot deny the sale, nor plead want of consideration. \* \* \* Mantáppá to have the field: decree reversed with costs."

The case was heard before NEWTON and WARDEN, JJ.

*Vishnu Moreswar Kelkar* for the appellant.

*Dhirajlál Mathurádás* for the respondent.

NEWTON, J.:—This was a suit to recover property sold to the plaintiff by the defendant under a deed. The defendant pleaded fraud and want of consideration.

The Munsif held that there was no fraud, and that the usual *rázínámá* and *kabuláyat* for the transfer of the property

were given in to the revenue officers ; and he might have added that the defendant was ready at the time to carry out the rázínámá. He found, however, that the purchase money had not been paid ; and, therefore, rejected the claim.

1866.  
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On appeal, the District Judge of Dharwar reversed the Munsif's decision, on the ground that the deed of sale was duly executed by the defendant, whose acquiescence in the transaction was shown by the rázínámá.

The pleader for the respondent has endeavoured to support this judgment : arguing that a vendor has no right to withhold possession of property sold, because the purchase money is not paid. The case is, however, clearly one for the application of the doctrine of the vendor's equitable lien for unpaid purchase money.

In the leading case on this point, *Mackreth v. Symmons*, (a) Lord *Eldon* observes that ; " where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt endorsed upon the back, if it is the simple case of a conveyance, the money, or part of it, not being paid, as between the vendor and the vendee, and persons claiming as volunteers, upon the doctrine of this court, which, when it is settled, has the effect of contract, though perhaps no actual contract has taken place, a lien shall prevail, in the one case for the whole consideration, in the other for that part of the money which was not paid."

The applicability of this settled doctrine is in no way affected by the further proceedings which the Munsif found that the plaintiff adopted to give effect to the sale. The material point for determination before the lower appellate court was the question, whether the defendant succeeded in proving that the purchase money had not been paid ; and, in order that a finding may be recorded by the Judge on this issue, we reverse the decree and remand the case.

The costs of this special appeal will follow the final decision.

*Decree reversed and suit remanded.*

(a) 15 Ves. 329 ; 1 Wh. and Tu, L. C. Eq. 194.