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Feb. 18.

Special Appeal No. 630 of 1866.

PRA'NJIVAN GOVAN.....*Appellant.*
JAISHA'NKAR BHAGVA'N*Respondent.*

Bhágdári tenure—Purchase by stranger of building erected on gabhán—Bombay Act No. V. of 1862.

In a suit brought by a *bhágdár*, or shareholder in a *bhágvár* village, to recover possession of a *gabhán*, or building-site, and a *vádú*, or homestead, —appurtenant to his *bhág*,—from a stranger, who had purchased at an auction sale a building erected on the *gabhán* by a third person with the *bhágdár's* consent :

Held (reversing the decision of the District Court) that the purchaser of the building had only acquired a right to remove the building materials, and that he had no right, by reason of his having purchased the building, to continue, without the *bhágdár's* consent, in possession of the *gabhán* and *vádú*, which, by the *Bhágdári Act*, could not be alienated apart or separately from the *bhág*, or some recognised subdivision thereof.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge of the Súrat District at Broach, in Appeal Suit No. 67 of 1865, reversing the decree of the Munsif of Hansot, in Original Suit No. 174 of 1864.

Pránjivan sued Jaishankar to obtain possession of a *gabhán*, or building-site, and *vádú* or homestead, by causing him to remove a building constructed thereon which he had purchased at an auction sale.

The defence was that the site in question did not form a part of the plaintiff's *bhág* ; but that it was part of the waste land in the village, which was understood to belong to the owner of the house built upon it.

The Munsif decreed in plaintiff's favour, on the ground that the site was proved to form part of his *bhág*, and that the *gabhán* and *vádú* had not been sold with the building at the auction sale at which the defendant purchased.

Against this decree the defendant appealed ; and the Senior Assistant Judge, after holding that the site did form part of the plaintiff's *bhág*, and that the defendant had purchased the building, and nothing more, at the auction sale, reversed the Munsif's decree, on the ground that it was

inequitable to compel the defendant to remove the building, that he had purchased at a heavy price ; stating his reasons as follows :—“ The Munsif has quoted the old Roman Law in support of his decree for directing the destruction and removal of the appellant’s building. That law is, of course, valuable as a guide and instructor in general principles, but in a matter of this sort, a Civil Court must be guided by equity and good conscience ; and when I ask myself, whether on the principles of equity and good conscience, it is just that respondent should be compelled to destroy and remove a valuable house, only lately purchased by him for a high price, I cannot but decide that it is not.

“ Moreover, the Roman Law, referred to by the Munsif, does not apply to the present case ; because that law went upon the supposition that a man knowingly built a house upon another man’s land without that man’s consent. In this case respondent admits that his relative Mádhav Náná built the house with his consent, so that the cases are not parallel. In the present instance appellant, having bought the building and obtained possession of it, is suddenly reminded that he has no right to the ground on which it stands. What is he to do ? If he pulls down the house and takes it away, and sells the materials, or rebuilds it, the result of his purchase will be very different indeed from what he intended or expected, and he may be caused considerable loss.

“ It may be said that the principle of *caveat emptor* should apply ; and if I thought it satisfactorily proved that respondent’s agreement with Mádhav Náná was that he was to remove his building at any time respondent might wish him to do so, appellant, who has bought Mádhavráv’s right and title over the building subject to all conditions, would perhaps have less reason to complain at being compelled to remove the building. But I do not find that respondent’s witnesses have at all satisfactorily proved this alleged stipulation, which is, on the face of it, a very improbable one. I must, therefore, simply regard appellant in the position of a man who has bought a building, but who has been unable to come to terms with the owner of the ground on which the

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 PRA'NJIVAN } man to remove his building and clear the ground.
 GOVAN }

v.
 JAISHA'NKAR } "The justice of the case would be fully met by awarding the
 BHAGVA'N. } owner of the ground a fair rent, which is, I think, all that
 respondent could, in this case, honestly demand. If rent
 were refused, then, but not before, would be the time for an
 action of the sort now brought. As no alternative appears
 to have been offered by the respondent, I cannot now pass a
 decree for what is not asked for in the plaint, and have,
 therefore, no option but to reverse the Munsif's decree."

The case was heard before COUCH, C.J., and NEWTON, J.

Dhirajlal Mathuradas for the appellant.

Nanabhái Haridas for the respondent.

COUCH, C.J.:—By the Bhágdári Act, it was not compe-
 tent to the defendant to purchase more than the materials of
 the building ; and if he paid more than the value of those
 materials (which it is not found that he has done) he must
 suffer the consequences : as he must be taken to have known
 the law.

The Act prevents the defendant acquiring any right in
 the *gubhán* or *vádá* ; and the decree of the Senior Assistant
 Judge, that he should be a perpetual tenant at a fixed rent,
 would give him an interest in the land forbidden by the Act.
 If we were to allow him to acquire any interest in the land,
 without the consent of the *bhágdárs*, we should be giving
 validity to a transaction which was contrary to the provi-
 sions of the Act.

We, therefore, reverse the decree of the Senior Assistant
 Judge ; and affirm that of the Munsif with costs.

Appeal allowed.

NOTE—For a description of the Bhágdári tenure, and the provisions
 of the Bhágdári Act, see 2 Bom. H. C. Rep., pp. 244-249. ED.