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The plaintiff must have his costs throughout.

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SHRINIVAS
v.
SECRETARY
OF STATE
FOR INDIA.

I desire to acknowledge the assistance, which we have received from the very lucid and able arguments addressed to us in this case.

BATCHELOR, J.—I entirely agree both with the conclusion and with the reasons for it.

Decree reversed.

R. R.

FULL BENCH.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Batchelor, Mr. Justice Heaton, Mr. Justice Shah and Mr. Justice Marten.

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December 22.

BAPU APAJI POTDAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3)
APPELLANTS v. KASHINATH SADOBA GULMIRE (ORIGINAL PLAINTIFF),
RESPONDENT.*

Transfer of Property Act (IV of 1882), section 54—Agreement for sale of immoveable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale, whether a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (I of 1877), section 3, illustration (g) and sections 12 and 27—Indian Trusts Act (II of 1882), sections 41, 95.

Where the plaintiff being the owner of certain immoveable property seeks to recover possession of that property and there are no facts operating to his prejudice it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant, the agreement being at the date of suit still capable of specific enforcement, but there being no registered conveyance passing the property to the defendant, who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff.

SECOND appeal against the decision of G. K. Kanekar, First Class Subordinate Judge, A. P., at Sholapur, reversing the decree passed by H. V. Kane, Subordinate Judge at Sangola.

* Second Appeal No. 769 of 1914.

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The plaintiff sued to recover possession alleging that he got a decree for possession of the plaint house against the defendants and took possession on the 20th April 1910; that he orally let it to the defendants on the 30th April 1910 and that the defendants refused to vacate although the term was over. Hence the suit.

The defendants denied the oral lease and contended that the plaintiff agreed on the day he applied for possession to sell the house to them for Rs. 650 and under the agreement the possession remained with them. In consequence of the agreement they had become owners and therefore the plaintiff could not sue to eject them.

The Subordinate Judge disbelieved the plaintiff's case as to oral lease and found that the agreement set up by the defendants was proved and as a result of the same they were entitled to remain in possession. He decreed that the defendants should pay Rs. 650 in cash in Court and keep possession of the house. If they failed to pay the amount within the time allowed, the plaintiff to become full owner of the house.

The lower appellate Court reversed the decree observing as follows:—

“The bone of defendants' contention is that the agreement to reconvey the suit property is a bar to the present suit. Section 54 of the Transfer of Property Act of 1882 is a complete answer to that contention. It provides that a contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

The pleader for the defendant-appellant relies on the observation of the Privy Council in I. L. R. 24 Mad. 377 at page 384, but that observation is no more than an *obiter dictum*. That case has been considered by the Madras High Court in Full Bench case of I. L. R. 29 Mad. 336. The dictum of the Privy Council aforesaid is based upon the principles of equity of part and whole performance of contract as propounded by Lord Selbourne in *Maddison v. Alderson*. Those principles are considered by the Bombay High Court in I. L. R. 28 Bom. 466 at pages 471 and 472. The provisions of section 54 of

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the Transfer of Property Act aforesaid are not directory. They are imperative and Courts will not be justified in disregarding them on equitable grounds. It is not the province of a Judge to disregard or to go outside the letter of any enactment according to its true construction. To hold otherwise would nullify the policy of the Transfer of Property Act and give dishonest persons an opportunity for evading its requirements. The express law laid down in section 54 aforesaid excludes all consideration of equity based on part or whole performances and is applicable whether a vendee is suing or is sued. The remark at page 188 in commentaries on the Transfer of Property Act, 7th edition, to which my attention was drawn by the pleader for defendant-appellant is not warranted by the ruling of the Bombay High Court in I. L. R. 28 Bom. 466. The authority of I. L. R. 24 Mad. 449 is approved in I. L. R. 29 Mad. 336.

For these reasons, I hold that defendants have no interest in or charge on the suit property, because there is an agreement to reconvey the same to them."

The defendants appealed to the High Court.

The second appeal was heard by Batchelor and Shah JJ. when their Lordships made a reference to a Full Bench. The referring judgment was as follows :—

BATCHELOR, J.:—The plaintiff in the suit being entitled to certain property of which the defendants were in possession sued to recover possession from them, and was met by a contract made by the plaintiff with the defendants to sell the property to the defendants. No conveyance had been executed so as to transfer the property, but the agreement to sell was at the date of suit capable of specific performance. The question is whether this defence is a valid defence to the suit. That question appears to me to be precisely the question concerning which it was said by the Chief Justice and Mr. Justice Heaton in *Gangaram v. Laxman Ganoba*⁽¹⁾ that when a suitable occasion arises, it would be necessary to refer it to a Full Bench. For, there appears to be divergence of opinion on this point which is of some consequence and of fairly frequent occurrence. In the Full Bench case of *Kurri Veerareddi v. Kurri Bapireddi*⁽²⁾, which was

⁽¹⁾ (1916) 40 Bom. 498.

⁽²⁾ (1906) 29 Mad. 336.

followed by me, sitting alone, in *Timangowda v. Benepgowda*⁽¹⁾, it was held that the provisions of section 54 of the Transfer of Property Act are imperative, and that a mere contract of sale does not in the absence of a registered conveyance create any interest in the property agreed to be sold, and cannot be pleaded in defence to an action for ejectment by a plaintiff with a legal title to recover. But this decision was questioned by the Chief Justice and Mr. Justice Heaton in *Gangaram v. Laxman Ganoba*⁽²⁾, where the defendant, having agreed to purchase certain land, paid a portion of the purchase money and went into possession. Thereafter the owner sold the same land to the plaintiff, who had notice of the defendant's prior contract, but who obtained from the owner a registered deed of sale. The plaintiff relying on his registered conveyance sued to recover, but the Court decided against him, holding that the only profit which he could obtain from his conveyance was to stand in the shoes of the vendor, and to receive the balance of the purchase money, on payment of which he would be obliged to convey to the defendant. It is true that in our present case we are dealing only with the two persons the vendor and the vendee, and that we are not concerned, as the Court was concerned in *Gangaram v. Laxman Ganoba*⁽²⁾, with any third person. But the principle is not, I think, affected by this circumstance, and I am of opinion that it is desirable that a Full Bench of this Court should consider and decide between the views which were accepted by the Madras Court in *Kurri Veerareddi v. Kurri Bapireddi*⁽³⁾ and those which prevailed in *Gangaram v. Laxman Ganoba*⁽²⁾. The question which we refer to a Full Bench is: Whether when the plaintiff, being the owner of certain property, seeks to recover possession of that property, it is a valid defence to the suit that the plaintiff has agreed to sell the property

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to the defendants, the agreement being at the date of suit still capable of specific enforcement, but there being no registered conveyance passing the property to the defendants? It is to be taken for the purposes of the case that possession has been taken by the defendants under the agreement for sale and that they are willing to perform their part of it with the plaintiff.

SHAH, J.—I agree.

On the 29th December 1916, the reference was heard by a Full Bench consisting of Scott C. J. and Batchelor, Heaton, Shah and Marten JJ.

P. B. Shingne, for the appellants :—The question is whether the defence set up by my client will be a substantial defence.

[MARTEN J. :—Is this case any more than a legal action of ejection; Nobody contends here that the contract of sale cannot be enforced. It is more a question of procedure what remedy he should follow. Defendant relied on his agreement of sale and the question is whether he should get a relief in this suit.]

[BATCHELOR J. :—Did you ever apply for the stay of the present suit?] No, My Lord.

There are two views on the point. One expressed in the Madras Full Bench case of *Kurri Veerareddi v. Kurri Bapireddi*⁽¹⁾ and approved of by our High Court in *Timangowda v. Benepgowda*⁽²⁾ and the other view is that expressed in *Gangaram v. Laxman Ganoba*⁽³⁾. The whole question is which of the two views would be acceptable.

I would draw attention to certain statutory provisions on the question. Last clause of section 54 of the Transfer of Property Act (IV of 1882) says a contract of sale does not of itself create a charge on the property.

⁽¹⁾ (1906) 29 Mad. 336.

⁽²⁾ (1915) 39 Bom. 472.

⁽³⁾ (1916) 40 Bom. 498.

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Reading the last two clauses of the section with the second clause it would come to this, that the transfer of immoveable property should be made by means of a registered instrument. The second clause shows what function a contract for sale of immoveable property performs in the process of transfer of ownership. So far as the enforceability of such a contract is concerned we have, however, to refer to the Specific Relief Act (I of 1877); see explanation to section 12 of the Act. This explanation shows that so far as enforceability goes a contract for sale of *immoveable* property is regarded in a different light from a contract of sale of moveables. The vendor cannot be allowed to get out by paying compensation in money. If clauses (a) and (b) of section 27 of the Act are read together it follows that the contract may be enforced against any party claiming thereunder except against a *bona fide* purchaser without notice and who has not paid the price. This provision may be read along with section 23 of the same Act. Thus it follows that a contract may be enforced on either side by a suit brought for the purpose. Similar provision will be found in section 40 para. 2 (*vide* its illustration) of the Transfer of Property Act: see also section 3 of the Specific Relief Act, illustration (g). This may be again compared with section 91 of the Indian Trusts Act (II of 1882). The illustration (g) to section 3 of the Specific Relief Act or the illustration to section 40 of the Transfer of Property Act enunciates a principle which is the same as in section 91 of the Indian Trusts Act. These provisions show that the contract for sale creates an obligation and casts a duty which can be enforced against the vendor himself or against any transferee from him except a *bona fide* vendee without notice. The vendor must be regarded as a sort of trustee and as such holds the property. There are certain obligations resting on the

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vendor which he will have to satisfy. It cannot be said that Indian Legislature has given a go-bye to equity and to those obligations which bind the promisor according to notions of equity, justice and good conscience.

[MARTEN J.:—If you look up at section 55 of the Transfer of Property Act and read it along with section 54 of the Act, you will find that the buyer and the seller are subject to certain liabilities and have certain rights against each other.]

I submit that emboldens me in urging that the vendor is bound by a fiduciary obligation. Many of the clauses of section 55 of the Transfer of Property Act contemplate a case of fiduciary obligations.

[BACHELOR J. :—What is the principle of clause (b) of sub-section (6) of section 55 ?]

The principle would be that the vendee becomes entitled to a certain charge. The clause would help me in showing that the vendee would be entitled to claim specific performance. The contract itself gives me the right and the delivery of possession gives me further more right. The vendor allows me to remain in possession of the property out of confidence which confidence is in the nature of a trust, and this is shown in Chapter IX, sections 80, 91 and 95 of the Trusts Act. As a result of section 95 it follows that a person holding the property or a transferee from the person holds as a trustee.

[SCOTT C. J.:—When does he come to be a trustee ?]

As soon as the contract is made. The vendee in whose favour the covenant is made will be regarded as a beneficiary.

No doubt the illustration to section 40 of the Transfer of Property Act deals with the question of transfer to a

third person for consideration. But I submit that section 3 of the Trusts Act shows that the position should not be confined only to the case of such a transferee. It would also apply to the case of the vendor.

[MARTEN J. :—English Law shows that a vendor is regarded as a *quasi* trustee for the vendee.)

I submit that is also the view of Indian Legislature. So that the vendee can enforce the contract against the vendor or any transferee from him without notice. There is nothing inconsistent between sections 54 and 40 of the Transfer of Property Act. Reading these sections with section 95 of the Trusts Act, it will come to this that the contract creates an obligation which makes the vendor a trustee.

[BATCHELOR J. :—The intention of the Legislature is clearly shown by Sir Arnold White C. J. in the Madras Full Bench case. Do you suggest there was any other intention ?]

I submit very probably the Legislature cannot be said to have only that intention. Section 54 of the Transfer of Property Act, having regard to its location, has main function of enunciating the formal requisites of a valid transfer and the last clause to that section has been placed to emphatically bear out that function.

[SCOTT C. J. :—Your contention is that although a contract does not create an interest in immoveable property, it creates an obligation in the nature of trust.]

That is my contention.

[MARTEN J. :—Is not the trustee entitled to possession ?]

I submit not. The beneficiary will be entitled to possession. Sections 58 and 59 of the Indian Trusts Act show that there are certain rights given to the beneficiary.

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As a result of these provisions the conclusion will be that the vendor is in the position of a trustee and the possession having been delivered to me he has to see that the possession is kept up. He must not be allowed to urge a dishonest contention against the vendee who is urging a very honest plea by way of defence.

That a position of a trustee is created between the vendor and the vendee is laid down in *Karalia Nanubhai v. Mansukhram*⁽¹⁾. This is distinguished in *Kurri Veerareddi v. Kurri Bapireddi*⁽²⁾ on the ground that a registered conveyance came to be made subsequently. But the case was decided on a broad ground and the judgment shows that a position of a trustee arises and the matter is under circumstances apt to go from the domain of a simple contract into that of an enforceable obligation in the nature of trust: see also *Begam v. Muhammad Yakub*⁽³⁾ which shows that to a suit in ejectment certain defence was allowed. The following cases support the contention that to a suit in ejectment it could be said by the vendee that he is entitled to possession though there is no registered conveyance: see *Adakkalam v. Theethan*⁽⁴⁾; *Kanharankutti v. Uthotti*⁽⁵⁾; *Itlappan v. Parangodan Nayar*⁽⁶⁾; *Ram Bakhsh v. Mughlani Khanam*⁽⁷⁾; *Immudipattam Thirugnana S. O. Kondama Naik v. Periya Dorasami*⁽⁸⁾.

An analogy useful to my contention can also be drawn from *Dagdu v. Panchamsing Gangaram*⁽⁹⁾ and *Chiddo v. Piari Lal*⁽¹⁰⁾.

Turning to the cases against my contention, besides the Full Bench case, the following cases may be

(1) (1900) 24 Bom. 400.

(6) (1898) 21 Mad. 291.

(2) (1906) 29 Mad. 336.

(7) (1903) 26 All. 266.

(3) (1894) 16 All. 344.

(8) (1900) L. R. 28 I. A. 46 at p. 53.

(4) (1889) 12 Mad. 505.

(9) (1892) 17 Bom. 375.

(5) (1890) 13 Mad. 490.

(10) (1896) 19 All. 188.

referred to : *Lalchand v. Lakshman*⁽¹⁾; *Timangowda v. Benepgowda*⁽²⁾. In none of the cases, the *fiduciary* aspect of the question was either referred to in the argument at the Bar or considered in the judgment. The cases were decided on an exclusive consideration of the last para. of section 54 of the Transfer of Property Act. It was an error not to read the provision along with section 55 or with the relevant provisions of other enactments pertinent to the point. The remarks in *Lalchand's case*⁽¹⁾ may be contrasted with those in *Mahomed Musa v. Aghore Kumar Ganguli*⁽³⁾.

In *Timangowda's case*⁽²⁾ the Court relied upon the decision in *Mulraj Khatau v. Vishwanath Prabhuram Vaidya*⁽⁴⁾, but I submit in that case there was no point under section 54 of the Transfer of Property Act.

Lastly, it may be noted that equitable notions did exist in India from ancient times and were resorted to in the decisions of cases by British Indian Courts from very early times (*vide* remarks of Phear J. in *Ganendra Mohan Tagore v. Upendra Mohan Tagore*)⁽⁵⁾.

V. D. Limaye, for the respondent:—The word 'only' in Clause (2) of section 54 of the Transfer of Property Act is very significant. It shows that the Legislature intended that the conveyance of tangible immovable property over Rs. 100 can be effected only by a registered instrument and by nothing else. Before the Transfer of Property Act was passed, mere delivery of possession was sufficient, but after the Act came into force possession so obtained does not, except when the consideration is below Rs. 100, give any title to the vendee. The vendee gets only a right to specific performance under the Specific Relief Act. But he cannot put up equitable defence that the vendor holds as a

⁽¹⁾ (1904) 28 Bom. 466.

⁽³⁾ (1914) L. R. 42 I. A. 1 at p. 6.

⁽²⁾ (1915) 39 Bom. 472.

⁽⁴⁾ (1912) L. R. 40 I. A. 24.

⁽⁵⁾ (1869) 4 Beng. L. R. (O.C.J.) 103 at p. 135.

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trustee. Section 55, Clause (5) (c) of the Transfer of Property Act shows that the vendor, if he is rightly to be regarded as a trustee for the vendee, he, i.e., the vendor would be liable for the loss arising from the destruction of the property, say by fire, but the section does not make him so liable.

[MARTEN J.—Halsbury's Laws of England, Vol. 28, page 64, para. 123, shows that vendor is a trustee for the vendee.]

I submit that the vendor does not become a trustee so long as the purchase money is not paid. By the contract of sale by itself the vendee gets only the right to specific performance and when he adopts that remedy he gets a right to possession and not till then. If section 54 of the Transfer of Property Act lays down the express mode of transfer, the result arising by the adoption of the contention urged on behalf of the appellant would not be consistent with the said provision even if it be read along with section 40. A purchaser cannot in defence rely upon the implied remedy given by the Trusts Act and the Specific Relief Act. The vendor or the vendor's transferee does not become a trustee until there is a registered conveyance: *Jagadbandhu Saha v. Radha Krishna Pal*⁽¹⁾, *Immudipattam Thirugnana S. O. Kondama Naik v. Periya Dorasami*⁽²⁾, *Gokul Mandar v. Pudmanund Singh*⁽³⁾, and observation of Sir Arnold White in *Kurri Veerareddi v. Kurri Bapireddi*⁽⁴⁾.

C. A. V.

SCOTT, C. J. :—The question for our determination is whether when the plaintiff being the owner of certain immoveable property seeks to recover possession of that property, it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendants,

⁽¹⁾ (1909) 36 Cal. 920. ⁽³⁾ (1902) L. R. 29 I. A. 196 at p. 202.

⁽²⁾ (1900) L. R. 28 I. A. 46 at p. 55. ⁽⁴⁾ (1906) 29 Mad. 336.

the agreement being at the date of suit still capable of specific enforcement but there being no registered conveyance passing the property to the defendants. It is to be taken for the purposes of the case that possession has been taken by the defendants under the agreement for sale and that they are willing to perform their part of it with the plaintiff.

We must start with the propositions enunciated in section 54 of the Transfer of Property Act that sale is a transfer of ownership in exchange for a price paid or promised or part paid or part promised, that such transfer in the case of immoveable property of the value of upwards of Rs. 100 can only be made by a registered instrument and that a contract for sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties; it does not, of itself, create any interest in or charge on such property.

Section 54 does not, however, exhaust the relations which flow from a contract for sale of immoveable property according to Indian Statute Law. This section cannot be read by itself, and one finds in the same Act important provisions in sections 40 and 55 the latter of which sections imposes many obligations on the vendor and gives corresponding rights to the purchaser with reference to the property contracted to be sold. In the last of the sub-sections it is clearly recognized that relief by way of specific performance may in certain events be open to the purchaser. Then turning to the Specific Relief Act, section 27 (b) provides that specific performance may be enforced against either a party to a contract or any other person 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, and by section 12 of the same Act it is laid down that unless

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and until the contrary is proved, the Court shall presume that a breach of the contract to transfer immoveable property cannot be adequately relieved by compensation in money. Section 91 of the Indian Trusts Act in the Chapter describing certain obligations in the nature of trusts provides that where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance can be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract, and section 95 provides that a person holding property in accordance with that section must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it. According to the Specific Relief Act, section 3, 'obligation' includes every duty enforceable by law, and 'trust' includes every species of constructive fiduciary ownership, and 'trustee' includes every person holding constructively a fiduciary character. Illustration (g) to that section enunciates in the following manner the same rule as section 91 of the Indian Trusts Act "A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought." In section 40 of the Transfer of Property Act it is laid down that where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein, such obligation can be enforced against a transferee with notice thereof. The illustration is substantially the same as illustration (g) to section 3 of the Specific Relief Act above quoted.

It could not be contended that obligations arising out of contract attaching to a transferee with notice as

annexed to the ownership of the property transferred did not attach also to his transferor. The obligation, therefore, of which a person who has contracted to buy immoveable property has the benefit, and which he may enforce against the vendor or his transferee with notice, is as appears from the provisions above referred to fiduciary, and can be enforced as though the person bound was a trustee. Where, then, a vendor who has contracted to sell immoveable property and has under the contract put the prospective vendee in possession, sues the latter in ejectment, he repudiates, if the vendee is willing to complete the purchase, the fiduciary obligation arising out of the contract and annexed to the ownership of the property, and seeks to treat the vendee as a trespasser. Once it is recognised that the plaintiff is violating his fiduciary obligation, it is clear that the Court cannot grant him the relief which he seeks, for it will not aid him in committing a breach of trust and his suit must fail; the defendant is no trespasser, but is in possession under the contract which the plaintiff has bound himself to carry out. The same conclusion was arrived at, without reference to the fiduciary aspect of the vendor's position, by a Full Bench of the Allahabad High Court in *Begam v. Muhammad Yakub*⁽¹⁾. The passage from Story's Equity Jurisprudence cited by Mr. Justice Banerji in that case is very apposite upon the question which we have to determine. It is as follows:—"A more general ground, and that which ought to be the governing rule in cases of this sort, is that nothing is to be considered as a part performance which does not put the party into a situation which is a fraud upon him unless the agreement is fully performed. Thus, for instance, if upon a parol agreement a man is admitted into possession, he is made a trespasser, and is liable to answer as a trespasser, if there be no agreement valid in law or equity.

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(1) (1894) 16 All. 344.

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Now for the purpose of defending himself against a charge as a trespasser and against an action to account for the profits in such a case, the evidence of a parol agreement would seem to be admissible for his protection ; and if admissible for such a purpose, there seems no reason why it should not be admissible throughout." Mr. Justice Banerji observes : " The Courts in this country being Courts both of law and equity are as much bound as the Courts of equity in England, to give effect to the principles enunciated in the passage quoted above. Upon a legitimate application of these principles not only is the purchaser who has obtained possession entitled to enforce specific performance of the contract for sale, but if an attempt be made by the seller to evict him by an action in ejectment he would have a valid answer to the action on the ground of fraud. The same ground would be available to him to entitle him to recover possession in the event of his being ousted by the seller. To hold otherwise would be to enable a seller to perpetrate a fraud on the purchaser with impunity." A Full Bench of the Madras High Court have taken a different view. They do not appear, however, to have considered the fiduciary aspect of the vendor's position and the impropriety of permitting him to succeed against his vendee in a suit for possession. We are of opinion that a suit for specific performance is not the purchaser's only remedy, and that he may in the circumstances stated in the question, if there are no other facts operating to his prejudice, successfully plead his contract of sale and the possession acquired under it. Whether in a suit where the purchaser is a defendant it would be open to a mofussil Court to decree specific performance against the plaintiff vendor we are not called upon to decide. It is hardly likely, however, that the plaintiff, faced with the prospect of the dismissal of the suit for possession,

would refuse the offer of a decree allowing specific performance to the defendant on payment of the balance of his purchase money.

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APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

DHONDI BIN RANOJI PATIL AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS v. REVAPPA SATAPPA SHINTRE AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

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*Dekkhān Agriculturists' Relief Act (XVII of 1879), section 13—Mortgage—
Several mortgages connected together and involving the same security—One
suit for account and redemption—Mode of taking account.*

Where there are several mortgages in favour of the same mortgagee, all connected with and involving the same security, the provisions of section 13 of the Dekkhan Agriculturists' Relief Act, 1879, should not be held to isolate the account of each mortgage when there is one suit filed by the mortgagor for the redemption of all the mortgages.

SECOND appeal against the decision of L. C. Crump, District Judge of Belgaum confirming the decree passed by C. G. Kharkar, Subordinate Judge at Chikodi.

The facts of the case are clearly stated in the judgment of His Lordship the Chief Justice.

A. G. Desai, for the appellants.

Nilkant Atmaram, for respondents Nos. 1 and 2.

SCOTT, C. J.:—This was a redemption suit filed subject to the conditions of the Dekkhan Agriculturists' Relief Act for taking accounts under four mortgages and for possession of the property mortgaged. The four mortgages were as follows:—A mortgage with possession for Rs. 500 of all the lands in suit, except Revision Survey No. 58, dated the 8th July 1875; secondly, a mortgage with possession of Revision Survey No. 58, dated the 5th

* Second Appeal No. 1007 of 1915.