

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

PANDURANG BALAJI APTE (ORIGINAL PLAINTIFF), APPELLANT v.
MAHADEV GOPAL JOG, AND OTHERS (ORIGINAL DEFENDANTS), RESPOND-
ENTS^o.

1921.

June 13.

Contract of sale—Vendee let into possession—Suit to recover balance of purchase money—Interest on unpaid balance, whether claimable—Transfer of Property Act (IV of 1882), section 55, (4) (a) and (5) (b).

* When in pursuance of a contract for sale of property, a purchaser is let into possession, the vendor seeking to recover the balance of purchase money is entitled, independently of the provisions of the Transfer of Property Act, to claim interest on such unpaid balance as from the date possession was handed over.

Ratanlal Chunilal v. Municipal Commissioner for City of Bombay⁽¹⁾, relied on.

PER MACLEOD, C. J.:—"The general principle which applies when one party to a contract of sale enters into possession of property before the whole of the price has been paid, is that, unless there be something in the contract of the parties which necessarily imports the opposite, the date when one party enters into possession of property of another is the proper date from which interest on the unpaid price should run".

FIRST Appeal against the decision of V. P. Raverkar, First Class Subordinate Judge, at Satara.

Suit to recover money.

The property in suit belonged to plaintiff Pandurang. On the 8th November 1915, he contracted to sell it to Gopal, father of defendants, for Rs. 6,000. In pursuance of the contract, Pandurang gave possession of property to Gopal on the 7th December 1915. Thereafter Gopal fell ill and hence the sale deed could not be executed. Subsequently Gopal died and his sons, the present defendants, paid Pandurang Rs. 1,750 on account of purchase money. Pandurang sued to recover the balance of purchase money with interest.

^o First Appeal No. 293 of 1920.

⁽¹⁾ (1918) 43 Bom. 181.

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The defendants contended *inter alia* that the plaintiff's suit could not lie until he had fulfilled the conditions of contract to remove certain incumbrances and further that he was not entitled to claim interest on the unpaid balance of purchase money.

The Subordinate Judge found that the property was incumbered at the time of sale and the plaintiff was to free those incumbrances; that the plaintiff did not clear off the incumbrances and being at fault he was not entitled to claim interest. He observed:—

“The case falls under the principle laid down by Spencer J. in 42 Indian Cases 509 namely ‘If the delay in payment of the purchase money is due to vendor's own fault in showing good title, the vendor will not be entitled to take advantage of his own wrong and the Court will deny him interest’ and under the saving clause ‘Unless there be something in the contract of parties which necessarily imports the opposite’ of the principle laid down by the Privy Council on page 200 of 43 Bom.”

He decreed that on the defendant paying Rs. 4,301-14-9 into Court and producing a general stamp of Rs. 60, the plaintiff should pass a regular sale deed of the suit land to the defendants.

Plaintiff appealed to the High Court.

K. N. Koyajee, for the appellant.

P. B. Shingne, for the respondents.

MACLEOD, C. J.:—The plaintiff filed this suit to recover the balance of the purchase money due on a contract of sale, dated the 8th November 1915, whereby he contracted to sell certain property for Rs. 6,000 to the father of the defendants. In pursuance of the contract the possession of the suit land was given to the defendants' father on the 7th December 1915, but no sale deed was passed owing to his illness. Thereafter disputes arose with regard to the payment, with the result that the defendants, according to the plaintiff's case, only paid Rs. 1,750. The plaintiff,

therefore, claimed Rs. 5,362-7-6 according to the account in the plaint together with further interest at $7\frac{1}{2}$ per cent. on Rs. 4,250.

The defendants raised various defences, but the principal question in the suit was whether the plaintiff was entitled to interest on the unpaid balance of the purchase money. The lower Court has decided this question against the plaintiff, and directed the defendants to pay Rs. 4,301-14-9 into Court, and to produce a general stamp of Rs. 60; on that being done the plaintiff was to pass a regular sale deed to the defendants.

In appeal it has been argued that the decision of the lower Court on the question of interest was wrong. The decision of the Privy Council in *Ratanlal Chuni-lal v. Municipal Commissioner for City of Bombay*⁽¹⁾ lays down at p. 200 the general principle, which applies when one party to a contract of sale enters into possession of the property before the whole of the price has been paid, that "unless there be something in the contract of parties which necessarily imports the opposite, the date when one party enters into possession of the property of another is the proper date from which interest on the unpaid price should run. On the one hand, the new owner has possession, use, and fruits; on the other, the former owner, parting with these, has interest on the price." That is a principle of equity, and it is quite independent of the provisions of the Transfer of Property Act. If the ordinary course is followed, the vendor executes the sale-deed, the purchaser pays the sale price and gets possession. But if, as happened in this case, the purchaser gets possession without paying the whole of the purchase price, then it follows in equity that he cannot retain the money and also enjoy the profits of the property.

⁽¹⁾ (1918) 43 Bom. 181.

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The learned Judge in the lower Court has recognised this principle, but considered on the facts of the case that the plaintiff had deprived himself of the advantages which should accrue from this equitable principle owing to his conduct.

Now it may very well be that facts can be proved which would disentitle the vendor to receive more than the balance of the purchase money. But it seems to me that in considering the facts of the case the learned Judge has erred in coming to the conclusion that the plaintiff has acted in such a way that he should not be allowed the benefit of the equity to which he would otherwise be entitled. After reading carefully the reasons which have been given by the learned Judge, it seems to me that that is not the view which should be taken. Various circumstances occurred to cause the delay in the parties settling the payment of the balance of the purchase money. I cannot think that the conduct of the plaintiff was so blameable as to justify the language of the learned Judge who says "to allow the plaintiff interest would be to allow him to take advantage of his own wrong."

The basis of the principle laid down by the Privy Council is that the purchaser in possession and enjoying the fruits of the property, should not at the same time be enjoying the use of the unpaid price, unless it can be shown that the parties have contracted to that effect; and admittedly in this case there was no contract that the purchaser should enjoy the interest on his moneys as well as the profits of the property. This is one of the cases in which there has been delay from one cause or another in the completion of the purchase. Though the vendor may have been responsible for some of the delay, yet it cannot be said that his conduct has been wrongful, so as to deprive him of the

benefit of the equitable principle to which I have referred. I think, therefore, that the appeal must be allowed, and the plaintiff must be entitled, in addition to the amount directed by the order of the lower Court, to interest at 5 per cent. on Rs. 4,250 from the 7th December 1915. Interest to be calculated up to the date of payment by the defendant. The appellant will be entitled to his costs of the appeal to the extent of the amount he has succeeded in getting.

SHAH, J.:—I agree. I desire to add a word with reference to the argument urged by Mr. Shingne that under section 55, sub-section 5, clause (b) of the Transfer of Property Act, the purchaser was not bound to tender and pay the amount due until the completion of the sale. But sub-section 4, clause (a) of that section provides that the seller is entitled to the rents and profits of the property till the ownership of the property passes to the buyer. The ownership does not pass to the buyer under the Transfer of Property Act until a registered conveyance is executed by the vendor. It is clear, therefore, that the vendor would be entitled to the rents and profits of the property practically until the date of the payment of the money as no registered conveyance was executed up to the date of the decree. The interest claimed by the plaintiff in this suit is really in lieu of rents and profits to which under the Transfer of Property Act he is clearly entitled in the absence of any contract to the contrary.

Decree reversed.

J. G. B.

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