

E. Subbaraya Pillai, since deceased (now represented by  
Subramania Pillai and others), and others - - - *Appellants*

*v.*

Rajah Kumara Venkata Perumal Raju Bahadur Varu and others - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 31ST MAY, 1922.

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*Present at the Hearing :*

LORD PHILLIMORE.

LORD CARSON.

SIR JOHN EDGE.

[*Delivered by* LORD CARSON.]

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In this suit the present Rajah of Karvetnagar seeks to recover possession from the defendants of certain villages on payment of such sum, if any, as may be found due.

Both the Subordinate Judge of North Arcot and the Judges of the High Court of Judicature at Madras were in agreement that the legal relation between the plaintiff and the first defendant is settled and determined by a contract in relation to the said villages entered into on the 25th August, 1888, between Sri Maharajulangaru, the plaintiff's father, and the first defendant. Saravana Pillai, who was the first defendant, is now dead, but is represented in this appeal. The remaining defendants claimed to be *bona-fide* purchasers for value from the first defendant without notice of any claim by the plaintiff. The Subordinate Judge held that upon the construction of the said contract Saravana Pillai was the owner of the villages, and agreed to sell the same to the plaintiff for a consideration of Rs. 99,568.15.6, to be paid or secured as stated in the fifth paragraph of the said contract of

the 25th August, 1888. The High Court, on the other hand, held that upon the true construction of the contract the plaintiff was the beneficial owner of the villages and Saravana Pillai only the legal owner, and that in the matter of pecuniary obligations incurred by Saravana Pillai in connection with the purchase of the villages, and in the matter of the other money dealings between him and the plaintiff, there was found due from the plaintiff a sum of Rs. 99,568.15.6 in settlement of accounts. It is admitted in the judgments of the High Court that if the said contract were a contract for sale the suit would essentially be one for the specific performance of a contract, and in that case it would be clearly barred under Article 113 of the Limitation Act. It is well to bear in mind that the terms of this section relate to any contract.

On the view taken by the High Court of the contract, however, it was held that the suit is really one for the possession of immovable property by a beneficial owner thereof against the legal owner on payment, if necessary, of such sum, if any, as may be found due; that the execution of a conveyance by the first defendant to the plaintiff was not essential, and is unnecessary if he gets a decree for the recovery of the villages as beneficial owner.

The villages in question originally belonged to the plaintiff's late father—the then Zamindar of Karvetnagar. They were sold in 1883 in Court auction in O.S. No. 5 of 1879, and purchased by the first defendant as stated in the contract. It is alleged by the plaintiff that this purchase was made on behalf of the plaintiff's father; that a part of the purchase money was paid out of his funds and the balance obtained from one Krishnama Chari, to whom the villages appear to have been sold by the first defendant subject to a condition of reconveyance on payment of a stipulated sum. A suit to compel such reconveyance was instituted in the High Court at Madras, and on the 16th October, 1889, a decree directing reconveyance was made. In pursuance thereof a conveyance was duly executed on the 7th February, 1890, and since that date the first defendant had until he died been in possession of the villages, acting as the absolute owner thereof. The contract of the 28th August, 1888, was entered into during the pending of the original suit. It recites briefly the facts above stated and refers to the pendency of the said suit, and then proceeds as follows:—

“Under these circumstances, under the order of Sri Maharajulangu the accounts were looked into in their presence in respect of items due to the said Saravana Pillai relating to the said villages, and also relating to all money transactions between Saravana Pillai and Sri Maharajulangu. On looking into the accounts, the amount found due to the said Saravana Pillai was Rs. 99,568.15.6. Saravana Pillai consented to receive this sum of rupees, etc., and sell the aforesaid villages to Sri Maharajulangu.”

Whatever may have been the original nature of the purchase by Pillai or the arrangements entered into to raise the purchase money, this contract was a settlement of questions of account in relation to the said villages and other matters, and under the terms of it Pillai is treated as the legal and beneficial owner. The

second clause of the contract further strengthens this construction. It provides that as soon as Pillai obtains a decree in the suit already referred to (which, as pointed out, he did obtain), he should sell the villages to Maharajulangaru, and the said Maharajulangaru should purchase the same for the sum of Rs. 99,568.15.6. "He should not sell to others without the consent of the Maharajulangaru"—a provision which would be meaningless unless he was the legal and beneficial owner. The fifth clause of the agreement provides for payment of interest on the purchase money until paid, and that until the principal and interest are paid the Maharajulangaru should mortgage the villages "which Saravana Pillai has consented to sell, or other villages, etc."—properties which are acceptable to Saravana Pillai as security for the said principal and interest—and execute a document therefor. The plaintiff took no further action in the terms of the said contract. In the year 1899 his estate was taken under the management of the Court of Wards, and this suit was instituted by the Manager appointed by the Court of Wards on the 24th August, 1900. Before instituting this suit, it is to be observed that on the 23rd August, 1900, the acting Secretary to the Court of Wards, by a notice in writing, called upon the first defendant to execute a conveyance of the villages to him on behalf of the plaintiff and to tender a mortgage for execution by him on behalf of the plaintiff.

Their Lordships agree with the Subordinate Judge that no charge is created by the contract over the villages in question, and that the plaintiff had no right to recover possession of the property absolutely or conditionally on his executing a mortgage deed or making a payment to the first defendant.

The suit, therefore, becomes one for the specific performance of a contract which is barred by the section of the Limitation Act already referred to.

This Board are, for the reasons stated, of opinion that this appeal should be allowed and the judgment of the Subordinate Judge restored, and that the appellants should have their costs in the Courts below and of the appeal. It is unnecessary, having regard to this conclusion, to consider the case of the respondents, the legal representatives of defendant No. 3—for whom Mr. Parikh appeared—further than to say that it was agreed in the course of the argument by Mr. De Gruyther, counsel on behalf of the appellants—that the interests of Mr. Parikh's clients should not be affected by any question of any statutes of limitation which might be raised in answer to their claim, owing to the delay which has been occasioned by the institution and the carrying out of the proceedings in this suit, and their Lordships so determine.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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E. SUBBARAYA PILLAI, SINCE DECEASED (NOW  
REPRESENTED BY SUBRAMANIA PILLAI  
AND OTHERS), AND OTHERS

vs.

RAJAH KUMARA VENKATA PERUMAL RAJU  
BAHADUR VARU AND OTHERS.

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DELIVERED BY LORD CARSON.

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