CHARLES *v.* RAMAIYA *et al.*

D. C., Badulla, 884.

1896.
November 18 and 23.

Ordinance No. 22 of 1871, s. 3—Prescription—Interruption by payment of purchase money of land possessed.

Defendant entered into possession of a parcel of land on an agreement with C to purchase it. He pleaded that he paid the purchase money by instalments, and that the last instalment was paid six years after he had commenced to possess the land, but that C failed to grant him a conveyance ; *held*, that such payment, if true, was an acknowledgment of a right existing in C, and interrupted prescription under section 3 of Ordinance No. 22 of 1871.

THE facts of the case sufficiently appear in the judgment.

Aserappa, for appellant.

Bawa, for respondent.

23rd November, 1896. LAWRIE, J.—

The first and second issues framed were : (1) Was Ramen Chetty the owner of the land claimed ? (2) Did plaintiff derive title from Ramen Chetty under deed A, the execution of which was admitted ?

The learned District Judge found for the plaintiff on these issues. He said, " the title to the land undoubtedly was conveyed by " deeds and testament from party to party until it reached the " plaintiff, but such conveyance was [in the Judge's opinion] " never after 1881 coupled with possession," and what the plaintiff purchased in 1894 was in the Judge's opinion a paper title devoid of value.

But that depends on whether the defendant by independent possession for ten years, adverse to the real owners, acquired a prescriptive title to the land.

Now it is proved that the first and third defendants entered on the land in 1882 on an agreement with one of the plaintiff's predecessors in title to purchase the land within a year for the price of Rs. 330. The plaintiff's case is that the defendants were unable to pay this sum, and they remained on the land as the Chetty's care-takers, that the Chetty visited the land once or twice a week, supervising the defendants' work. The learned Judge said : " I do not place any reliance on the alleged visit of the " various Chetties. If, as appears, the land yielded good crops " of coffee, at one time worth Rs. 500 or Rs. 600, and was merely " cultivated for Palaniappa's firm and for Karpen, surely some " account of the income and expenditure would have been kept,

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"but beyond the alleged payment of Rs. 30, as initial expenses in "starting the garden, there is really no evidence at all adduced by "the plaintiff as to how the garden was managed."

I agree with this estimate of the plaintiff's evidence, and if defendants had not led evidence to prove payment of the price of Rs. 330 I would not have had much difficulty in affirming this judgment for the defendants.

But the defendants say that having entered into possession in 1882 on an agreement to purchase for Rs. 330, they got an extension of the time to pay, and that it was not until six years had elapsed that the last instalment was paid to the Chetty. Now, if that be true, can it be said that the defendants were in possession by a title adverse to or independent of the former owners, the Chetties? Each payment which the defendants made was an acknowledgment of a right existing in the Chetties, and I find it difficult to hold that for ten years prior to action the defendants held possession by a title adverse to the owners. Confessedly for at least two or three years of these ten years the defendants acknowledged that the Chetties were still the owners; they were during these years paying the price; until it was paid the Chetties remained the owners; and it was not until the price was fully paid that defendants had right to demand a conveyance.

I take the defendants' admission as a whole. I accept her statement that finally the full price was paid, but admittedly no conveyance was executed: the agreement of 1882 was not notarial. It has not been produced, and the title never passed from the successive Chetties until the sale to the plaintiff in 1894.

On the other hand, the plaintiff's case is that the payments were never made, and the most equitable way of treating the parties is to hold that the defendants have not proved that they made the payments. No receipts are produced; the oral evidence is meagre, and if they did not pay then the only difficulty in sustaining their title by prescription disappears.

I have felt this to be a difficult case, but for the reasons I have given I am content to affirm with costs.

The appeal has been dealt with by a single Judge of the Supreme Court, because it involves less than Rs. 300 and falls under the Ordinance No. 5 of 1896.