Present : Fisher C.J. and Drieberg J.

1928.

DANIEL APPUHAMY *v.* ARNOLIS APPU.

174—D. C. Colombo, 19,968.

Trust—Action to reconvey property—Money paid by plaintiff for purchase—Prescription—Cause of action.

Where plaintiff sought to establish a claim to have certain property purchased in the name of the defendant conveyed to plaintiff on the ground that he had provided the purchase money,—

Held, that the cause of action in such a case arose either when the defendant definitely declines to do what is requested of him or when it comes to the knowledge of the plaintiff that the defendant has taken a definite step, indicating that he regards himself as the absolute owner of the property.

APPEAL from a judgment of the District Judge of Colombo.

Zoysa, K.C. (with *Wijewardene*), for defendant, appellant.

H. V. Perera (with *Weerasooria*), for plaintiff, respondent.

November 12, 1928. FISHER C.J.—

This was an action in which the plaintiff claimed that he was entitled to have certain property which was transferred to the defendant by four deeds dated, respectively, December 25, 1904, August 27, 1905, September 13, 1905, and February 27, 1907, transferred to him on the ground that he had paid the purchase money and that the property had been purchased with his money in the name of the defendant in trust. The case went to trial on three issues, which are as follows :—

(1) Did the plaintiff with his money purchase in the name of the defendant half share of the land called Dalugahawatta by the deeds mentioned in paragraph 3 of the plaint to be held by the defendant in trust for the plaintiff ?

(2) Was the house now standing on the land put up at the sole expense of the plaintiff ?

(3) Is the plaintiff's claim prescribed ?

It lay on the plaintiff to establish that there was a resulting trust in his favour by reason of the fact that he had paid the purchase money. Such trusts are dealt with by section 84 of the trusts Ordinance, No. 9 of 1917, which enacts that " Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person

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paying or providing the consideration," and the first substantial question which arises for decision is whether or not the plaintiff paid the purchase money for the transfers set out above.

In the course of the argument it seemed that the question of whether the plaintiff had shown that he " did not intend to pay or provide such consideration for the benefit of the transferee " might become important in view of the fact that the defendant was the plaintiff's brother-in-law, that he had lived with him for some time in his youth, and that the plaintiff had said in his evidence " I practically brought him up." I think, however, that this question does not arise because the attitude taken up by the defendant is that the properties were all purchased with his own money and that he was more than amply provided with money from outside sources with which to purchase the properties. That being so, there was no reason from a financial point of view why the plaintiff should have adopted the position of benefactor to the defendant, and I do not think that it is necessary to consider any question based on the idea that the properties were given to the defendant by way of advancement.

That leaves, therefore, the sole question, whether on the evidence we can hold that the learned Judge was wrong in finding as a fact that the purchase money was paid by the plaintiff. There are obvious comments which suggest themselves, one of which is whether the plaintiff proved circumstances existing at the time of these transfers which constitute an explanation why they were taken in the name of the defendant. There is also the fact that the defendant has undoubtedly remained in possession of the deeds. There is also the fact that the plaintiff delayed taking any action to get the matter put straight even when, according to his evidence, he must have known that the defendant was not a man whom he could trust. Nevertheless the plaintiff's evidence that the purchase money came out of his pocket is undoubtedly supported by evidence which it is difficult to attack on the ground of unreliability, and the learned Judge who tried the case has deliberately, and after due consideration, decided that this evidence—and he paid special attention to the evidence of Mr. Wijesinghe, the Notary—is reliable and trustworthy. And as regards Mr. Wijesinghe himself, as Mr. Perera pointed out in his argument, that if the defendant's case is a true one, Mr. Wijesinghe was on the occasions in question acting as the defendant's Notary and it is difficult to explain why he should now come forward and deliberately perjure himself.

As regards the evidence by the defendant that his rights had been recognized by the plaintiff by the allotment to him of a portion of the produce, there seems to have been no cross examination of the plaintiff on this point, and the learned Judge apparently placed no reliance on this evidence.

On the second issue the Judge disbelieved the evidence of the defendant. He alone gave evidence in support of his case.

On the first two issues, therefore, I think we should not be justified in finding that the learned Judge's decision was wrong.

As regards the question of prescription, I think that a cause of action in a case like the present does not arise until the person in the position of the defendant definitely declines to do what is requested of him, when so requested, or, until it comes to the knowledge of the plaintiff that the defendant has taken a definite step which can only indicate that he regards himself as the absolute owner.

The appeal is dismissed with costs.

DRIEBERG J.—I agree.

Appeal dismissed.