

1913.

Present: Pereira J.

PUNCHIRALA v. APPUHAMY.

478—C. R. Kuruncgala, 21,126.

*Appeal—Court of Requests—Action for refund of purchase money of land—
Failure to put purchaser in possession—No appeal without leave.*

A purchaser of land brought an action against the vendor for the refund of purchase money and for damages on the ground that the vendor had not put him in possession of the land.

The Commissioner of Requests entered judgment for the plaintiff, and directed him to execute a re-conveyance of the land to defendant.

Held, that no appeal lay without leave, as the action was essentially an action for damage, or demand consequent upon the breach of contract.

THIS was an action by the plaintiff (purchaser) against the defendant (vendor) for the refund of the value of a land sold to him, and for damages on the ground that defendant had failed to put him in possession of the land. The prayer of the plaint was as follows :—

Wherefore the plaintiff prays that the Court do decree the defendant to pay to the plaintiff the said sum of Rs. 295 with legal interest thereon from the date hereof till payment in full, for costs of suit, and for such further or other relief as to the Court shall seem meet.

The prayer in defendant's answer was as follows :—

Wherefore defendant prays—

- (1) That plaintiff's action may be dismissed with costs ; or, in the alternative,
- (2) That the deed of sale pleaded in the 1st paragraph of the plaint may be cancelled and defendant be put in possession of the lands which form the subject of suit, and plaintiff be condemned to pay defendant the sum of Rs. 120 in reconvention, &c.

The following were the issues framed :—

- (1) Did the plaintiff pay to the defendant the entire consideration of Rs. 220?
- (2) Has the defendant failed to give the plaintiff effective possession of the premises sold?
- (3) If so, what damages is plaintiff entitled to?

The Commissioner of Requests entered judgment for the plaintiff.

The defendant appealed.

G. Koch, for the defendant, appellant.—This is an action by a purchaser for a refund of value paid by him to the vendor for a land, and for damages consequent on the failure on the part of the vendor to put the purchaser in possession. [*Pereira J.*—Have you a right to appeal without leave?] This is a land case. The contract is one affecting an interest in land, and the plaintiff's prayer is in effect one for a rescission of a contract of sale of land.

The plaintiff is not entitled to the money claimed unless the deed is cancelled. The answer of the defendant should also be considered in deciding whether this is merely an action for debt, damage, or demand. The defendant prays in the alternative for a cancellation of the deed of sale. Counsel cited *Meedin v. Meedin*,¹ *Sittakenaya v. Punchirala et al.*²

Drieberg, for the respondent.—The plaintiff claims merely a sum of money. Counsel cited *Babunhami v. Subehami*.³

Koch, in reply.—In the case cited the only question for decision was one as to damages. But here the Court has to decide whether the deed should be cancelled.

Cur. adv. vult.

February 3, 1913. PEREIRA J.—

In this case objection has been taken by the respondent's counsel that no appeal lies from the judgment entered up by the Commissioner. The plaintiff's case is that the defendant sold to him certain shares of land, and executed a conveyance for those shares in his favour, but he failed to put the plaintiff in possession of the property sold, and he claims from the defendant Rs. 295, that is to say, Rs. 220 being the amount paid by him to the defendant for the land, and Rs. 75 being further loss sustained by him by reason of the defendant's failure to put him in possession of the property sold. The main issue framed was whether the defendant failed to give the plaintiff effective possession of the premises sold. Clearly, this issue involved no question of right or title to any immovable property. It is an issue based upon an alleged breach of contract. The Commissioner held that the defendant had failed to put the plaintiff in possession of the land sold, and, in effect, condemned him to pay the plaintiff Rs. 220, and, as a necessary sequel to this order, he directed that the plaintiff should execute a re-conveyance of the land in favour of the defendant, if the latter brought the money into Court and at the same time produced a proper document to be signed by the plaintiff re-conveying the land to the defendant. Section 12 of Ordinance No. 12 of 1895 provides that there shall be no appeal from any final judgment pronounced by a Court of

¹ (1909) 5 A. C. R. 42.

² (1911) 1 Appeal Cases of Ceylon 93.

³ (1900) 3 Bal. 244.

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Requests in any action for "debt, damage, or demand," except in certain circumstances which need not be noticed here. The present action is essentially an action for damage or demand consequent upon the breach of a contract. As observed already, no question of any right or title to any immovable property is involved, and I uphold the respondent's counsel's objection.

I may mention that I have read the evidence, and it is clear that the plaintiff has satisfactorily established his cause of action.

I dismiss the appeal with costs.

Appeal dismissed.

