Present: Shaw J. and Schneider A.J. 1920.

SILVA *et al.* *v.* SILVA *et al.*

111—D. C. Tangalla, 1,577.

Vendor and purchaser—Sale of disputed title—Eviction—Is purchaser entitled to claim anything more than the price actually paid?

A purchaser, who knew that the vendor had a disputed title and bought the land on speculation, is not entitled on eviction to recover any more than the price actually paid to the vendors; he is not entitled to recover damages.

THE facts are set out in the judgment of Shaw J.

Bartholomeusz and *M. W. H de Silva*, for appellant.

A. St. V. Jayawardene, for respondent.

Cur. adv. vult.

November 23, 1920. SHAW J.—

The first plaintiff is the purchaser from the defendants, under a conveyance dated May 18, 1911, of a defined 300 acres, being part of a one-third block of Ridiyagama village consisting of about 1,044 acres. The first plaintiff and the second plaintiff, her husband, alleging that the first plaintiff had been ejected from the land by the Crown after proceedings under the Waste Lands Ordinance, claimed from the defendants the sum of Rs. 3,000, which they alleged had been paid as consideration for the conveyance, and Rs. 1,000 as damages for the eviction.

The District Judge has given the plaintiffs judgment for Rs. 850, which he finds is the amount actually paid in respect of the purchase, and has given no further sum for damages. The defendants appeal.

The facts are somewhat unusual. It appears that the second plaintiff was for some time District Engineer and Superintendent of Minor Roads of the district where this land is situated. Having come to know that the villagers of Ridiyagama had some claim under old *sannas* in respect of the village land, he proceeded to buy in his wife's name certain rights of the villagers, including the defendants' claim to the 300 acres, the subject of the deed in respect of which this action is brought, and to organize the villagers to contest the claim of the Crown to the village land.

Proceedings were taken on behalf of the Crown under the Waste Lands Ordinance, and claims were put in both by the plaintiffs and the defendants.

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SHAW J.

Silva v. Silva

When it became clear that the Settlement Officer would refer the matter to Court, the second plaintiff suddenly left the villagers in the lurch and effected a settlement of all his claims with the Settlement Officer, probably for the reason suggested in cross-examination, namely, that he was afraid that his association with this matter would not be regarded favourably by his departmental superiors.

The land in which he obtains an interest under the settlement is shown by the evidence to be outside the 300 acres, the subject of the conveyance from the defendant, and to be in the other two-thirds of the village, in respect of which the plaintiffs had also acquired rights. By the terms of the settlement the plaintiffs reserved the right, should the other claimants, who were not parties to the settlement, succeed in their contention for a larger area to themselves, claim a share of such area. They thus stood out of the contest in the District Court, and left their vendors to continue to oppose the claim of the Crown unaided.

The result was that the defendants' opposition collapsed, and the Crown obtained a decree for the whole of the land in dispute, with the exception of such portions as were reserved by this settlement, and consequently the plaintiffs were by that decree dispossessed of the 300 acres, the subject of the conveyance from the defendants. I do not see any good ground for differing from the findings of fact of the District Judge. He has disbelieved the second plaintiff's evidence that he paid the whole consideration on the conveyance, but the evidence justifies the finding that the Rs. 510 was paid in cash, and credit was given for Rs. 250 due to him on a promissory note returned to him. He has, however, allowed the plaintiffs Rs. 90 in respect of notaries' fees, &c., for preparing the deed. In view of his finding that the transaction was a speculative one on the plaintiffs' part, and that he is entitled to no damages, I think this sum of Rs. 90 should not be allowed. I would accordingly reduce the amount of the judgment to Rs. 760. I agree with the Judge that the decree of the District Court constitutes an eviction, and that the action is not prescribed. The main point argued on the appeal was that the plaintiffs have not proved that they gave any notice to the defendants of the Crown's claim, and called upon them to warrant and defend the title. I am satisfied that no such point was taken in the Court below, nor was it raised or intended to be raised by the issues.

Had it been raised, there might have been some further evidence to meet the objection, the point cannot therefore be taken now. Even as the case stands, however, it appears that there can be no substance in the point, as the defendants were themselves parties to the proceedings before the Settlement Officer, and were themselves contesting the Crown's claim in the reference to the District Court.

In view of the fact the plaintiffs claimed the sum of Rs. 4,000 in the District Court, and that their evidence to the effect that they had

paid the whole of the consideration was disbelieved by the Judge, I would direct that each party should bear their own costs in the Court below. Subject to this, and to the alteration of the amount of the judgment to Rs. 760, the appeal should, in my opinion, be dismissed, with costs.

SCHNEIDER A.J.—

Several issues involving questions of fact and of law were framed and tried in this action. The defendants have appealed. Their appeal was argued at some length, both on the facts and on the law. Since that argument I have read the pleadings and re-read the evidence and the judgment of the learned District Judge. I am very much impressed with his judgment, in which he has reviewed all the evidence and the decisions cited before him. It is a well-reasoned and well-considered judgment, and appears to me to be quite sound as regards the facts and also upon the law, except upon one point.

He has awarded to plaintiffs a sum of Rs. 850, holding that they had paid Rs. 510 to the defendants, Rs. 90 to the notary as fees, &c., for the deed of transfer of the land, and had returned to the defendants a promissory note for Rs. 250. He finds that the plaintiffs, at the date of the purchase, were aware of the claim of the Crown to the land, and therefore that they spent what they did in speculation. Upon these findings of fact the plaintiffs are not entitled to recover any more than the price they actually paid to their vendors, viz., the sums of Rs. 510 and Rs. 250, or Rs. 760.

Voet (21, 2, 32) sets out at length the reasons for this proposition of law, pointing out that it is based upon the principle that "it would be inequitable that the vendor should be enriched by the loss of the purchaser." He supports his statement of the law by reference to the Roman law, to Groenwegen, and to other writers. He says: "For when one knowingly and deliberately buys what does not belong to the seller, he is not to be presumed to have meant to make a gift of the price, but rather to have entertained the hope of acquiring the ownership when the vendor should acquire it." (*Berwick's translation 540.*)

I would, therefore, set aside the decree, and give judgment in favour of the plaintiffs for the sum of Rs. 760. Each party is to bear his own costs in the District Court, inasmuch as the plaintiffs claimed a sum far beyond that which they were entitled to recover. The plaintiffs will have their costs of this appeal, inasmuch as the defendants contested their liability to make restitution of any sum of money whatever to the plaintiffs.

Varied.