

1900.
October 16.

MOHIDIN v. PERERA.

D. C., Kandy, 12,925.

Compensation due under planting agreement — Sale of land to third party — Liability of vendee to pay the planter such compensation, though no party to such agreement.

S., having entered into a planting agreement with V. that, until the compensation agreed upon for the planting was paid, S., V. should be entitled to keep possession of the land, sold it to P. on 14th September, 1895, while V. was in possession of the part planted.

On 21st March, 1896, V. mortgaged her interest in the land to M., who, after obtaining judgment against him, bought at the Fiscal's sale all her interest under the planting agreement.

Held, in an action brought by M. against P. for the compensation due to V. under the planting agreement, that though the defendant was not a party to it, yet he was bound by it, in that he bought the land with notice of it.

THE facts of this case are as follows. One Sriwardane, being the owner of $12\frac{1}{2}$ acres of land, gave 6 acres thereof on the western side within certain boundaries to Veerayi (a woman) to be planted, on a rotarial agreement dated 7th February, 1891, wherein it was specially provided that she had the right to possess the 6 acres until the stipulated compensation was paid by the owner. This deed was registered on 1st December, 1893. Subsequently on the 14th September, 1895, Sriwardane sold the $12\frac{1}{2}$ acres to the defendant, while Veerayi was in possession of the part she had planted under the agreement with the defendant's vendor.

On the 21st March, 1896, Veerayi granted to the plaintiff a primary mortgage of all her right, title, and interest in the 6 acres in question. Sriwardane, being a holder of a decree for costs

against Veerayi, sued out a writ of execution in suit No. 160, C. R., Kandy, and caused her interest in the 6 acres to be sold in execution on the 29th March, 1897, when one B. S. Perera became the purchaser of the same.

Thereafter the plaintiff instituted the action No. 418 of the Court of Requests of Kandy against Veerayi and B. S. Perera, the purchaser in execution, for the recovery of the mortgage debt due by her, and obtained a decree in his favour for Rs. 244, making her planter's interest in the 6 acres bound and executable; and at the sale held by the Fiscal, the plaintiff became the purchaser thereof on the 8th November, 1897, and obtained a Fiscal's conveyance for the same on the 13th October, 1898, thus becoming entitled to all the right, title and interest of Veerayi in the 6 acres, to keep and retain possession of the said 6 acres until the value of the said plantations as agreed between Veerayi and Sriwardane was paid to the plaintiff.

The plaintiff now brought the present action against the defendant, who had entered into possession of the 6 acres in question under Sriwardane without paying any compensation for the plantation raised by Veerayi, for the recovery of Rs. 397.50, being the amount of the compensation due, and for a declaration that plaintiff is entitled to have possession of the said 6 acres until payment of the said sum.

At the trial the following issues were agreed to between the parties:—

(1) Whether the plaint disclosed any liability on the part of the defendant to pay the amount claimed.

(2) Whether the defendant was affected by the mortgage decree in C. R., Kandy, No. 418, and whether he held a title free from the mortgage dated 21st March, 1896.

(3) Whether the plaintiff was the purchaser of Veerayi's right to recover the amount claimed.

(4) Whether Veerayi planted the land in terms of the agreement.

(5) If she did, what did the plantation consist of?

The District Judge dismissed the plaintiff's action in the following terms:—

“ The first issue I have to determine is whether the plaint discloses any liability on the part of the defendant to pay the amount claimed. I am of opinion it does not. The defendant is not liable personally to pay the amount, because he is not a party to the contract between Sriwardane and Veerayi, nor is he the representative of Sriwardane, who undertook to pay Veerayi. The plaintiff asks for a personal judgment against the defendant, and for possession until the amount claimed is paid. He has lost

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whatever right of retention he had. His action therefore is only for the debt, for which, as I have already said, the defendant is not personally liable."

The plaintiff appealed.

Bawa, for plaintiff appellant.

Van Langenberg, for respondent.

16th October, 1900. *BONSER*, C.J.—

This case must go back to have the issues which were raised between the parties determined. The defendant purchased a certain land from the owner, which land had been the subject of a planting agreement entered into by the owner with a person who undertook to plant the land,—a planting agreement duly made and executed before a notary, as required by law, and registered. The defendant made the purchase with full knowledge of the fact. The plaintiff is a person in whom it is alleged the interest of the planter is now vested, and he sues the defendant to assert his right under that planting agreement. The District Judge held that the defendant was not liable, because he was not a party to the planting agreement, nor was he the representative of the owner who entered into the agreement, and he dismissed the action. In this, I think, he was wrong, because the effect of that would be that defendant, who took the purchase with notice of the planting agreement, would be able to repudiate it. It seems to me, therefore, that the case must go back for further inquiry on the issues of fact raised.
