

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Middleton.

1909.
August 31.

PONNIAH v. DINGIRI AMMA.

D. C., Kandy, 18,632.

Sale of immovable property—Express warranty of title, words sufficient to create—Failure to give possession and warrant and defend title.

Where in a deed of transfer the vendor agreed as follows:—
“I hereby agree on behalf of myself, my heirs, &c., to settle any dispute which may hereafter arise in respect of the title hereby conveyed; and I further hereby declare that I have done nothing before these presents to invalidate the title hereby conveyed,”—

Held, that these words amounted to an express and absolute covenant to defend the vendee's title against any disputes whatsoever.

A PPEAL by the plaintiff from a judgment of the Additional District Judge (A. C. G. Wijeyekoon, Esq.) dismissing his action. The facts sufficiently appear in the judgment of the Chief Justice.

H. A. Jayewardene, for the plaintiff, appellant.

Sansoni, for the defendant, respondent.

Cur. adv. vult.

August 31, 1909. HUTCHINSON C.J.—

The plaintiff says that Tikiri Banda, purporting to be the owner of a certain field, sold it to him for Rs. 300, and conveyed it to him by deed of May 9, 1905; that Tikiri Banda died intestate in 1906, and the defendant is his administratrix; that the plaintiff brought an action in the Court of Requests of Matale to recover the land from persons who were in possession, and that he in that action called on this defendant as such administratrix to defend his title, that the defendant failed to do so, and the action in the Court of Requests was dismissed; and that by reason of the premises he suffered damage, which he claims now to recover. The damages he puts at Rs. 300, the price which he paid to Tikiri Banda; Rs. 60 interest thereon; costs which he incurred in the Court of Requests action; making a total of Rs. 493·75.

The District Judge dismissed the action on the ground that the covenant in the deed of transfer does not state that the vendor has a good title, and that he will warrant and defend it. The deed is in Sinhalese; and the covenant, according to the translation filed in the District Court, runs thus: “I undertake that if any dispute were to arise in respect of the said property, I or my heirs and assigns shall

1909. have the same settled, and declare that I have before this committed
 August 31. no act so as to affect this sale." The translation made for us by our
 HUTCHINSON Mudaliyar is : " I hereby agree on behalf of myself, my heirs, &c.,
 C.J. to settle any dispute which may hereafter arise in respect of the
 title hereby conveyed ; and I further hereby declare that I have
 done nothing before these presents to invalidate the title hereby
 conveyed." The District Judge held that this covenant was limited
 to the vendor's own acts and to disputes arising therefrom.

Decisions as to the meaning of other covenant more or less similar
 are not of much use, unless they establish some principle or rule of
 construction. The respondent relied on *Silva v. Ossen Saibo* ;¹ the
 appellant on *Silva v. Loku Banda*.² In my opinion the covenant
 with which we are concerned is an express covenant, absolute, and
 not in any way limited, to settle all disputes which may arise in
 respect of the title to the property ; and that can only mean, using
 our English terminology, that the seller will defend the buyer's title.

There were issues as to whether there was any consideration for
 the conveyance to the plaintiff, and whether the alleged sale was
 not a sham one to enable the plaintiff to litigate for the lands against
 the persons in possession. The District Judge has not recorded any
 finding on them, but I think there is no evidence to support an
 affirmative finding on them.

The plaintiff has proved the amount of his costs in the Court of
 Requests action ; and in my opinion the decree of the District
 Court should be set aside and judgment entered for the plaintiff for
 Rs. 493·75, with costs in both Courts.

MIDDLETON J.—

I agree with my Lord that the words of the clause relied on by
 the appellant's counsel constitute an express covenant to warrant
 and defend title by the defendant, and that the appeal should be
 allowed, and judgment entered for the plaintiff as prayed for.

Appeal allowed.

¹ (1892) 2 C. L. R. 79.

² (1901) 5 N. L. R. 184.