

1924.

Present: Jayewardene A.J.

LAMATENA v. RAHAMAN DOOLE.

232—C. R. Hambantota, 4,290..

Prescription—Claim to recover balance purchase money—Deed of sale—Ordinance No. 22 of 1871, s. 6.

A claim to recover the balance consideration on a deed of sale is prescribed in six years.

*Dawburn v. Ryall*¹ followed.

*Thomassie v. Kanavathipillai*² distinguished.

A PPEAL from a judgment of the Commissioner of Requests, Hambantota. Plaintiff sued the defendant to recover a sum of Rs. 100, being the balance purchase money due on a deed of sale of land dated July 18, 1914. The consideration stated in the deed was Rs. 200; but the defendant pleaded that the real consideration was not Rs. 200, but Rs. 100, and that the consideration was stated in the deed at the higher sum to enable him to give the deed as security. He also pleaded that the claim was barred by prescription. The learned Commissioner held that the action was not prescribed.

Peri Sunderam, for defendant, appellant.

Mervyn Fonseka, for plaintiff, respondent.

September 24, 1924. JAYEWARDENE A.J.—

This case raises a question of prescription. The plaintiff sold a land to the defendant on July 18, 1914, by deed No. 470. The consideration was stated in the deed to be Rs. 200. Out of this, Rs. 100 was paid before the notary. On July 16, 1924, the plaintiff brought this action to recover the balance purchase money. The defendant pleads that the real consideration was not Rs. 200, but Rs. 100, and that the consideration was stated in the deed at the higher rate to enable him to give the deed as security. He also pleads that the claim is barred by prescription.

The defendant led some evidence of a contradictory and unsatisfactory character to prove that the consideration was only Rs. 100. The learned Commissioner refused to consider this evidence in view of section 91 of the Evidence Ordinance. There he was clearly wrong. See *Nadaraja v. Ramalingam*.³

¹ (1914) 17 N. L. R. 372.

² (1833) 5 S. G. C. 174.

³ (1918) 21 N. L. R. 33.

He also held that the action was not prescribed, and decreed the plaintiff's claim. The defendant appeals and bases his appeal mainly on the ground of prescription.

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He contends that the plaintiff's claim was prescribed within three years of the date of the deed under section 8 of the Prescription Ordinance. The plaintiff says it is not prescribed for ten years under section 6 of the Prescription Ordinance.

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It seems to me that the action falls within section 7 of the Prescription Ordinance, and is prescribed after six years. The defendant argues that it is a simple money debt. I am unable to agree with him. It does not fall within the principle of the case of *Thomassie v. Kanavathipillai (supra)*, for, although that was an action to recover the consideration for a land sold to the defendant, the claim did not arise on the deed of sale, as the deed stated that the full purchase money had been received by the vendor. In fact, the deed of sale negatived the claim, and it could not be said to be based on or to have arisen from the deed. This was pointed out in *Dawburn v. Ryall (supra)* and *Mohideen v. Bandara*.¹

The present claim is for the balance consideration due on the deed of sale.

By a deed of sale the vendor transfers the land, and the vendee agrees to pay the price. The action to recover the unpaid balance of the price grows directly out of the deed of sale, it is dependent on it, and derives its vital force from it. It is, therefore, a claim arising from an agreement in writing: see *Dawburn v. Ryall (supra)*. In the latter case the vendee sued the vendor to recover compensation for a deficiency in the extent of the land sold to him by a notarial conveyance, and it was held by a Bench of three Judges that the claim was based on a written agreement, and that the action would be prescribed after the expiration of six years under section 7 of the Prescription Ordinance.

I therefore hold that the plaintiff's claim is based on an agreement or contract in writing, and would be prescribed within six years. I am unable to understand the argument of the counsel for the respondent who, citing the above decisions, contended that the claim would be prescribed in ten years under section 6 of the Ordinance. The claim must be based on a mortgage bond or a debt bond to attract the provisions of section 6.

As this action has not been brought within six years of the date of the deed of sale, I would hold that it is prescribed, and dismiss the plaintiff's action.

The appeal is allowed with costs in both Courts.

Appeal allowed.