

Tan Ah Boon - - - - - *Appellant*

v.

The State of Johore - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF JOHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 21st MAY, 1936.

Present at the Hearing :

LORD BLANESBURGH.

LORD RUSSELL OF KILLOWEN.

LORD ROCHE.

[*Delivered by* LORD ROCHE.]

This is an appeal from the judgment of the Court of Appeal of the State of Johore which set aside a judgment of Savage Bailey J. in favour of the appellant and ordered that judgment should be entered for the respondent State.

The action of the appellant was for damages for breach of contract and was begun by plaint dated 6th June, 1933. The circumstances out of which the action arose may be stated shortly as follows :

For some years prior to 1917 the appellant had settled upon certain state land at Jeram Batu in Johore and began to clear and plant it. In 1917 and 1918 he made application that the land in question might be granted to him by the State and pending approval of his application continued to occupy the land. On 25th July, 1922, the Collector of Land Revenue by letter of that date dealt with the application and signified approval of the alienation to the appellant of 110 acres of State land on the terms and conditions set out in the Land Enactment 1910 and Rules thereunder and subject to a premium of 5 dollars per acre and an annual rent of 3 dollars per acre. The letter required the premium and first year's rent and certain survey fees to be deposited if the appellant desired to avail himself of the terms offered. The appellant made the deposit and so availed himself of the terms.

The Land Enactment 1910 provides that a grant of land of such an area as is in question must be in a certain form and be sealed with the seal of the State and also required

registration of such instrument in order that it should be effectual. Part VII of the Enactment provided for recovery of land revenue in arrear thus : Written notice of demand is first required : then on default in meeting the demand attachment of personal property of the defaulter and of any effects on the land to whomsoever belonging is allowed : then if the foregoing procedure proves ineffective for the recovery in full of the arrears the land may be sold after notice.

For reasons of which no evidence or explanation is to be found in the record the land was not surveyed nor was any grant executed or registered. But as no complaint was made with regard to this by either side in the action their Lordships must assume that this delay was consented to by both parties. The appellant paid his rent for 6 years, that is to say, down to the end of 1928. He did not pay the rent due on 1st January, 1929, or that due on 1st January, 1930. The Collector then in July, 1930, proceeded under the above-mentioned machinery for attachment of personal property and then for sale of the land. Some pigs were seized but on the auction there were no bidders and when the land was first put up for sale there were no bidders for it. It was, however, sold a year after the first seizure of goods, that is to say, in October, 1931, for 925 dollars. The appellant was still occupying the land and apparently did so until, at the suit of the purchaser, an order for possession was made against him in March, 1933, and was affirmed on appeal in June, 1933. No rent in respect of this continued occupation was paid by the appellant. On the contrary, the respondents paid over to him after sale of the land the balance of 268 dollars remaining out of the sale price of 925 dollars after satisfying their claim for rent due in 1929 and 1930. This action was, as appears from certain official minutes, based on a decision to treat the appellant in this matter as he would have been treated had he had a regular and registered title.

The land so disposed of was apparently resold at a considerably enhanced price and on 6th June, 1933, this action was brought claiming damages for breach of contract. The basis of the claim was that the letter of 25th July, 1922, accepted by payment of a deposit was a contract entitling the appellant to a grant of the land and to possession of it : that the sale of the land was wrongful and a breach of contract in that there was an insufficient exercise of the power of seizure and sale of moveables before resort was had to the land. There were, in fact, more moveables on the land than were seized, which probably would have realised more than enough to pay the arrears of rent. On these facts, the trial Judge held there was a trespass and a breach of contract as alleged and awarded 17,500 dollars as damages. Upon appeal this judgment was reversed and it was held that there was no action wrongly committed or breach of contract

and that accordingly no damages were recoverable. The question of the amount of damage, if any, was not investigated upon appeal.

Before their Lordships a considerable number of questions were debated, some of them questions of difficulty and importance. Such questions were: Was there a contract between the parties and in the absence of a grant had the appellant any rights which could be enforced by action? Did the procedure laid down in Part VII of the Land Act apply as a matter of obligation to land which was not the subject of a grant? What was the true construction of the provisions of Part VII as to the conditions preliminary to sale of the land and in particular must resort be had to all and every piece of moveable property before resort to the land or was it sufficient if a bona fide exercise of discretion in this matter was exercised by the Collector? Their Lordships think it both unnecessary and undesirable to express any opinion on any of these points—all the more because with regard to some of them the information and evidence available is far from complete. This case in the opinion of their Lordships can and should be decided on a much simpler ground. This is simply a common law action seeking damages for breach of an alleged contract, and nothing else. No plaintiff can maintain such an action unless he can aver and prove that he has performed or has at all times been ready to perform his part of the contract. This the appellant, owing to his serious default in payment of rent, was incapable of doing.

In these circumstances their Lordships are of opinion that the appellant was not entitled to succeed in his action and that the Court of Appeal was correct in ordering that the claim should be dismissed.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant, by leave of His Majesty in Council, entered and prosecuted this appeal *in forma pauperis* and there will accordingly be no order as to the costs of the appeal.

In the Privy Council.

TAN AH BOON

v.

THE STATE OF JOHORE

DELIVERED BY LORD ROCHE.

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