A

SHIV SINGH

v.

RAJ PATI

B [COURT OF APPEAL, 1970 (Gould V.P., Marsack J.A., Bodilly J.A.), 11th, 13th March]

Civil Jurisdiction

Sale of land—agreement for sale and purchase—growing crops—benefit of crops passing to purchaser with possession of land—Court of Appeal Ordinance (Cap. 8) s. 15.

C *Interpretation—agreement for sale of land—construction—provision for payment of price by purchaser working on the land—provision for application of cane proceeds in reduction of purchase price limited to proceeds of cane cut after possession given.*

Crops—agreement for sale of land—application of cane proceeds in reduction of purchase price—effect of deferment of giving of possession of land.

D An agreement dated the 8th May, 1958, for the sale and purchase of approximately 15 acres of land, contained the following provision as to the payment of the balance of purchase money:—

> " 2(*b*) The sum of £5,000 (five thousand pounds) will be paid by the Purchaser by working on the said land from the date hereof and all cane proceeds from the said land (except as hereinafter provided) shall be applied in payment of the said balance purchase price of £5,000 (five thousand pounds) and interest thereon as hereinafter provided."

E

By subsequent provisions (*a*) all cane proceeds in respect of the 1967 crushing season were to be the sole property of the vendor and not applied in payment of the purchase price (*b*) if the vendor could not give possession of an area of 7 acres which was subject to a partnership agreement, the purchaser would not be liable to pay interest on £2,800 being part of the purchase price and (*c*) that otherwise possession was to be given on the execution of the agreement. Possession of

F eight acres was in fact given on the 8th May, 1958, of two acres on the 10th October, 1959 and of five acres on the 8th September, 1961. On a question of law reserved for the Court of Appeal on a Case Stated—

Held: 1. Subject to the exception relating to the cane proceeds from the 1957 crushing season the maxim, *quicquid solo plantatum est solo cedit* applied, and the purchaser was entitled to the benefit of the crops on the various areas as from

G the date he was given possession of such areas respectively.

2. The provision in paragraph 2 (*b*) of the agreement that all cane proceeds shall be applied in payment of the balance of purchase price, was qualified by the words " paid by the purchaser by working on the land," and he was not therefore entitled to credit for the proceeds of crops of cane cut before he was in possession and able to work on the land.

H Case referred to:

Burrows v. Oakley (1819) 3 Swans. 159; 36 E.R. 815.

Case stated by the Supreme Court for the opinion of the Court of Appeal under section 15 of the Court of Appeal Ordinance.

K. C. Ramrakha for the plaintiff.
D. Pathik for the defendant.
The facts are sufficiently stated in the judgment of Marsack J.A.
The following judgments were read:—
MARSACK J. A.: [13th March, 1970]—

The matter in issue in these proceedings is the interpretation of an agreement for sale and purchase dated 8th May, 1958 by the terms of which defendant (the vendor) agreed to sell to plaintiff (the purchaser) 15 acres 1 rood 16 perches of freehold land at Yalalevu, Ba, for the sum of £6,000. £1,000 was paid by way of deposit, and the balance was to be paid by the application of the entire cane proceeds derived from the land. The land was in fact covered by two cane contracts, one No. 525 covering approximately 8 acres and the other No. 524 covering approximately 7 acres. Possession of the 8 acres was given on the execution of the agreement; of the 7 acres not until 10th October, 1959, as to 2 acres and 8th September, 1961, as to the balance of 5 acres. No question arises as to the cane payments made under contract No. 525. Defendant has received the cane proceeds from the land covered by contract No. 524 from the 8th May, 1958 to the 14th August, 1964 and it is those sums, set out in detail in Part II of the Case Stated, which are in dispute.

It will be helpful to set out the relevant provisions of the agreement, which are clauses 2 (*b*), (*d*), (*k*), (*l*) and (*m*):

" (*b*) The sum of £5000.0.0 (five thousand pounds) will be paid by the Purchaser by working on the said land from the date hereof and all cane proceeds from the said land (except as hereinafter provided) shall be applied in payment of the said balance purchase price of £5000.0.0 (five thousand pounds) and interest thereon as hereinafter provided.

(*d*) All proceeds of sugar cane to be hereinafter received in respect of 1957 crushing season shall be the sole property of the Vendor and will not be applied in payment of the purchase price.

(*k*) The Vendor hereby declares that 7 acres of land out of the said land is the subject-matter of a certain partnership agreement dated the 12th day of January, 1957 *BETWEEN* the Vendor of the one part and one *BAKSHISH SINGH* father's name Indar Singh and *KARAM SINGH* father's name Dalip Singh both of Yalalevu in the Province of Ba Cultivators but the Vendor further says that the said agreement is no longer binding on the Vendor by reason of the said Bakshish Singh and Karam Singh having already committed several breaches of the said agreement.

(*l*) In case however the Vendor is for some reason unable to give possession to the Purchaser of the said 7 acres of the said land (referred to in paragraph (*k*) hereinbefore). The Purchaser shall not be liable to pay interest on £2800.0.0 (two thousand and eight hundred pounds) part of the balance purchaser of the said 7 acres of land.

(*m*) Subject to the provision (*l*) hereinabove the Vendor shall give possession of the said land to the Purchaser on the execution hereof."

The question referred to this Court under section 15 of the Court of Appeal Ordinance is in these terms:

" On a proper construction of the terms of the Sale and Purchase Agreement dated 8th May, 1958, is the Vendor (the Defendant) or the Purchaser (the Plaintiff) entitled to the benefit of the proceeds of sale of the sugar cane produced on Farm No. 524 which was received after 8th May, 1958."

The first point that requires determination, before the relevant individual clauses of the agreement are examined, concerns the definition of the property
A whch was intended to pass, and did actually pass, under the agreement. It was conitended before this Court that the property in the growing cane did not pass with the property in the land itself. In my view, this proposition is untenable. In the absence of specific provision in the agreement exempting growing crops, or any part of them, from the effect of the agreement I am firmly of opinion that the principle *quicquid solo plantatum est solo cedit* applies and that, when the plaintiff took possession of the whole or any part of the lands he became the owner
B not only of the lands so taken but also of what was growing on them. The application of this rule to the area covered by contract No. 525 has not been questioned. Its application to the area covered by contract No. 524 has become somewhat obscured by the facts surrounding the giving of possession of that area, and also by the operation of clause 2 (*l*) of the agreement providing for a rebate of interest during the period elapsing before possession was given.

C According to the Case Stated there are two points for dispute between plaintiff and defendant. These are:—

(*a*) whether plaintiff or defendant is entitled to the proceeds of the sale of sugar produced under contract No. 524 up till the date possession was given; and

(*b*) whether plaintiff or defendant is entitled to the proceeds of the sale of sugar cane planted in such area before possession was given to the plaintiff but harvested after the date of possession.

D

As to (*a*), the agreement itself undoubtedly contemplates the possibility that possession of the area covered by contract No. 524 might not be immediately available to plaintiff. Clause 2 (*l*) of the agreement clearly fixes the compensation that is to be paid or allowed to plaintiff in respect of defendant's failure to give possession; plaintiff was to be relieved from the obligation of paying interest at 8 per cent on £2,800 of the purchase price. From the wording of clause 2 (*l*) it
E would appear that this reduction in interest would be effective until full possession of the area of contract No. 524 was given to plaintiff. But until plaintiff took possession of that area he would not in my view be entitled to the produce of the crops which had been previously severed from the land in the normal course of husbandry. The right to gather crops or cut underwood in a proper course of husbandry is cited as an example of " acts ordinarily incident to an estate in possession ": 34 *Halsbury's Laws of England* (3rd Ed.) p. 298 para 497. As
F was said by the Master of the Rolls in *Burroughs v. Oakley* 36 E.R. 815 at p. 817 " What could be the purpose or advantage of taking possession except to act as owner ? ".

It is true that in the sale and purchase agreement it is provided that all cane proceeds from the land (" except as hereinafter provided ") shall be applied in payment of the balance of the purchase money; but that provision is qualified by the phrase " by the purchaser working on the said land from the date hereof ".
G As I read clause 2 (*b*) the purchaser is not entitled to credit for the proceeds of cane cut before he was in possession and able to work on the land himself. The exception, in my view, is that set out in clause 2 (*d*), and concerns only the 1957 proceeds which are not in issue. I am satisfied that, in the proper construction of the agreement, as a whole, what I have said expresses the true intention of the parties as set out in the document itself.

H In the result I would hold that plaintiff is entitled to be credited with the proceeds of the cane harvested from the area of approximately 2 acres from and after the 10th October, 1959 and that harvested from the whole area from the 8th September, 1961.

As to (*b*), the answer to this follows inevitably from the determination of the preliminary point. From the time plaintiff took possession of lands he took possession of everything growing on the lands. The claim by defendant to the crops which he—or others than plaintiff—had planted could be sustained only if there were a definite provision in the agreement to that effect. There is no such provision. A

For these reasons I would answer the question put in the Case Stated as follows:—

(1) The defendant (the vendor) is entitled to the benefit of (i) the proceeds of the sale of sugar cane harvested from the area covered by contract No. 524 until the 10th October, 1959; and (ii) the proceeds of cane harvested up to the 8th September, 1961 from that portion of the area, comprising approximately 5 acres, of which possession was not given to plaintiff until 8th September, 1961. B

(2) The benefit of the proceeds of cane harvested under contract No. 524 after those respective dates shall go to plaintiff (the purchaser). C

With regard to costs, I would order that the costs before this Court be costs in the cause.

GOULD V.P.: I have had the advantage of reading the judgment of the Honourable Mr. Justice Marsack and am in agreement with it.

All members of the Court being of the same opinion, the question of law referred by the learned Chief Justice for decision, is answered in the terms set out in the judgment of the learned Judge of Appeal, and there will be the order for costs of the appeal proposed by him. D

BODILLY J.A.: I concur with the judgment delivered by my learned brother Marsack J.A. and have nothing to add. I also agree that the costs in this Court should be costs in the cause.