

(1929) 05 PRI CK 0002

In the Privy Council

Case No : Privy Council Appeal No. 27 of 1928

Bhai Panna Singh and others

APPELLANT

Vs

Bhai Arjun Singh and others

RESPONDENT

Date of Decision : 14-05-1929

Acts Referred:

Citation : (1929) AIR(PC) 179

Hon'ble Judges : Sancelot Sanderson, Atkin, Shaw, JJ.

Advocate : Langlois Harding and Tate, Hy. S. L. Polak, J. Nissim, L.De Gruyther, B. Dube, A.M. Dunne, for the Appearing Parties.

Judgement

Lord Atkin

This is an appeal from the Court of the Judicial Commissioner, North-West Frontier Province at Peshawar. The dispute arises out of an agreement for the sale of a serai in Peshawar. There were cross suits, vendors and purchasers, each alleging that the others had broken the contract and claiming damages. The vendors succeeded before the Subordinate Judge, the purchasers before the Judicial Commissioner. The vendors appeal. In 1924 the vendors were the owners of the serai in question upon which there were mortgages amounting to Rs. 80,000 in favour of one of the former owners. They were being pressed by their creditors and found it desirable to sell the property. The sale was negotiated by brokers and the agreement was dated 19th February 1924. The agreement provided for the sale to the purchasers for Rs. 1,05,000. Cost of stamp paper and registration was to be borne equally. The purchasers were to pay Rs. 500 earnest money.

"The party retracting from the contract shall pay Rs. 10,000 as pashemana (damages)."

Vendors-purchasers were each to pay one per cent brokerage. No time was fixed for completion but on the same day the purchasers paid the earnest money and were given a receipt which provided that the balance should be received before

the Sub-Registrar and the deed registered within a month. Each party found its half share of the stamp paper, the purchasers on 18th March. According to the plaintiffs the purchasers delayed the preparation of the conveyance as they wished to see the will of a deceased brother of one of the vendors in order to exclude the possibility of an outstanding claim by his widow. The plaintiffs alleged that on 8th April the parties met to complete the conveyance. A writer, Ganga Bishan, was present and began the conveyance but his work was broken off as the purchasers raised further points. They wanted on the conveyance the name of Ishar Singh, who was apparently their partner but who had not signed the agreement. They raised a question about boundaries, and they desired to see the outstanding mortgage. The plaintiffs alleged that they consented to all three points. The boundaries were forthwith investigated with Ishar Singh and the purchasers were provided with a copy of the mortgage. According to the plaintiffs they thereafter requested the defendants to complete but were put off. On 26th April, the conveyance was completed by Ganga Bishan in the presence of the purchasers and the brokers. The vendors were not present but it is significant that the boundaries inserted were in accordance with the alteration. On the same day there was a fight between a Sikh and a Mahomadan on the premises (which contained a mosque), which the plaintiffs suggest may have deterred the defendants from completion. On 9th May the purchasers sent a written notice saying that the vendors had not got the sale-deed registered within a month, and claiming payment of Rs. 10,000 within a week. On 10th May the vendors sent a telegram in reply stating that they had always been ready and willing to complete, that the delay was on the part of the purchasers, and specifically calling attention to the fact that at the request of the purchasers the name of Ishar Singh had been inserted in the sale-deed. The telegram concluded by saying that the vendors gave the purchasers four days to complete, and that in default they would sue for specific performance or damages. The purchasers made no reply, saying that it was ambiguously worded and they could not make out what it meant. On 9th June the vendors agreed to sell to another purchaser at Rs. 1,01,000 and on 1st October 1924, they issued their plaint claiming Rs. 10,000 and further damages. On 11th October the purchasers filed their cross suit, claiming Rs. 10,000 and the sum paid for earnest money and stamp paper.

The Subordinate Judge, before whom both suits were heard together, rightly concluded that the real issue was which party had broken the contract. He heard the witnesses on both sides, including the brokers and the writer, Ganga Bishan. In his judgment he finds in favour of the allegations of the vendors, and gave them judgment. The question in this respect is one of fact : and their Lordships see no reason for not accepting the Subordinate Judge's findings. The plaintiffs were obviously willing sellers ; there is some reason to suspect the defendants' financial ability at all times to complete the contract. The plaintiffs' evidence of the purchasers' grounds for requesting delay is corroborated in more than one particular : and the writer, Ganga Bishan, when called by the purchasers, was not asked a single question to contradict the story already given by the vendors as to

the transactions on 8th April. Their Lordships cannot agree with the criticism made by the learned Judicial Commissioner on this point. Contradiction, if it could be made, was obviously to be given by the witness in examination-in chief. In its absence the advocate for the vendors could not be expected to raise the question by cross-examination. Their Lordships have carefully considered the judgment of the learned Judicial Commissioner, but do not find the doubts suggested by him sufficient to justify a reversal of the findings of the Court below. No further question seems to arise as to liability. It is plain from the findings that the purchasers postponed completion from time to time for their convenience ; and eventually broke the contract. The only question that remains is as to the amount of the damages.

The effect of S. 74, Contract Act of 1872, is to disentitle the plaintiffs to recover simpliciter the sum of Rs. 10,000 whether penalty or liquidated damages. The plaintiffs must prove the damages they have suffered. The only evidence of loss is that of the loss on resale by Rs. 1,000. There seems to be no ground for displacing the trial Judge's finding that this was a genuine contract. The vendors remained in possession of the rents and profits of the property until resale, amounting, according to the evidence, to Rs. 450 to 500 per mensem. There is no ground for awarding them interest. On the other hand, they have received earnest money Rs. 500 : so that their actual damage is Rs. 500. The vendors have also received for the value of the stamp paper realized after deducting commission charged in respect of the purchasers' contribution, Rs. 689-1-0. This sum, when the contract went off they held to the use of the purchasers, and from the documents it is plain they have always admitted their liability for it, and been prepared to account for it against damages.

The decree of the Judicial Commissioner should be set aside with costs, and the decree of the District Judge in the vendors' suit should be varied by substituting Rs. 500 for the sum awarded by him. In the purchasers' cross-suit the decree should be made in their favour for Rs. 689, but inasmuch as they failed in the main issue as to the breach of contract, without costs, there should be a set-off of Rs. 500 and taxed costs against Rs. 689. The appellants should have their costs of these appeals. Their Lordships will humbly advise His Majesty accordingly.