

Privy Council Appeal No. 27 of 1928.

Bhai Panna Singh and others - - - - - *Appellants*

v.

Firm Bhai Arjan Singh—Bhajan Singh—Surjan Singh and another *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE NORTH-WEST
FRONTIER PROVINCE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 14TH MAY, 1929.

Present at the Hearing :—

LORD SHAW.

LORD ATKIN.

SIR LANCELOT SANDERSON.

[*Delivered by* 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 80,000 Rs. 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 February 19, 1924. The agreement provided for the sale to the purchasers for 1,05,000 Rs. Cost of stamp paper and registration was to be borne equally. The purchasers were to pay 500 Rs. earnest money. "The party retracting from the contract shall pay 10,000 Rs. as pashemana (damages)." Vendors-purchasers were each to pay 1 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 the 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 the 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 the 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 Mohammedan on the premises (which contained a mosque), which the plaintiffs suggest may have deterred the defendants from completion. On the 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 10,000 Rs. within a week. On the 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 the 9th June the vendors agreed to sell to another purchaser at 1,04,000 Rs., and on the 1st October, 1924, they issued their plaint claiming the 10,000 Rs. and further damages. On the 11th October the purchasers filed their cross suit, claiming 10,000 Rs. 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 the 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 the Indian Contract Act of 1872, s. 74, is to disentitle the plaintiffs to recover simpliciter the sum of 10,000 Rs., 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 1,000 Rs. 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 450 to 500 Rs. per mensem. There is no ground for awarding them interest. On the other hand, they have received earnest money 500 Rs. : so that their actual damage is 500 Rs. The vendors have also received for the value of the stamp paper realised after deducting commission charged in respect of the purchasers' contribution, 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 decrees 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 the Rs. 500 and taxed costs against the Rs. 689. The appellants should have their costs of these appeals. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

BHAI PANNA SINGH AND OTHERS

v.

FIRM BHAI ARJAN SINGH—BHAJAN SINGH—
SURJAN SINGH AND ANOTHER.

DELIVERED BY LORD ATKIN.

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