

*Privy Council Appeal No. 72 of 1929.*  
*Patna Appeal No. 44 of 1927.*

Raghunandan Ram Sahu and others - - - - - *Appellants*

*v.*

Mahanth Ramsunder Das, since deceased, and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 16TH MARCH, 1931.

---

*Present at the Hearing :*

LORD MACMILLAN.

LORD SALVESEN.

SIR GEORGE LOWNDES.

[*Delivered by* LORD SALVESEN.]

---

This is an appeal from a judgment and decree dated 11th August, 1927, of the High Court of Judicature at Patna, which reversed a judgment and decree dated the 25th May, 1923, of the Subordinate Judge of Darbhanga.

The litigation relates to certain shares in four *mouzas* specified in the plaint which originally belonged to a number of Mohammedan ladies either in their own right or as guardians to their minor children. These properties were on 9th December, 1921, formally conveyed by two absolute deeds of sale to the appellants, Raghunandan Ram Sahu and other members of his family, who were the defendants (second party) in a suit raised by the respondent, Mahanth Ramsunder Das, against them and the original proprietors of the subjects of sale (first party defendants). Mahanth Ramsunder Das has died since the suit was initiated and is represented by the guardian of his minor son. In his plaint he alleged that the same vendors, who were parties to the conveyances above referred to, had agreed to sell their properties to him in June, 1921, and that on 8th December, the day before the conveyances

in favour of the appellants were executed, he had notified the appellants of the sale to him. He accordingly claimed a decree for specific performance of the contract of sale in his favour, on the ground that the conveyances in favour of the appellants dated 9th December, 1921, having been made in derogation of his prior rights, ought to be set aside. A written statement was filed on behalf of the appellants on the 25th July, 1922, in which it was pleaded that in May, 1921, the owners of the properties in question had contracted to sell the properties to them, and that in pursuance of this contract the properties had been duly conveyed on 9th December, 1921, and the purchase price paid in terms thereof.

It is thus apparent that the real contest in the present case is between two alleged purchasers of the same properties, who will throughout be here spoken of as the appellants and the respondent.

The respondent denied that any contract had been entered into between the owners of the properties and the appellants in May, 1921. An issue was accordingly framed to try the question whether the defendants (first party) agreed to sell the property in question to the appellants. On this question of fact there are concurrent findings in favour of the appellants. The Subordinate Judge followed up his finding by dismissing the suit, but the High Court reversed his decision on the ground which is thus set forth by Mr. Justice Das :—

“ There was undoubtedly a contract between Defendants (first party) and the Defendants (second party) in May, 1921 ; but that contract was rescinded by mutual consent on the refusal of the District Judge to sanction the sale of the interests of the minor. . . . My conclusion on this point is that, although there was an agreement between the parties in May, that agreement must have been rescinded by mutual consent, leaving it open to the defendants (first party) to enter into a binding contract with the Plaintiff.”

Whatever plausibility there may be in the reasons which induced the High Court to reach the conclusion that the contract of May 1921 between the appellants and the vendors had been rescinded by mutual consent, their Lordships are clearly of opinion that it was not open to them to do so. It is admitted by the respondent that neither in the plaint nor in the whole course of the proceedings was there any statement by the respondent of such a plea. No question was asked of the appellants' witnesses as to whether the contract in May, 1921, had been rescinded by mutual consent. Even in the memorandum of appeal to the High Court amongst the 39 grounds on which the respondent sought to have the judgment of the Subordinate Judge reversed, there is no indication of any such contention. Their Lordships find themselves, therefore, unable to support the High Court's judgment. Their Lordships may add that were the question open, they would be unable to agree with that judgment on the merits of the case.

In view of the concurrent judgments as to the contract having been entered into between the vendors and the appellants, which must now be held to be a subsisting contract, the appellants as the prior purchasers are entitled to succeed in the contest for the properties and it becomes unnecessary for their Lordships to consider the other issues which went to trial, namely, whether in fact a completed contract was entered into between the owners of the properties and the respondent and whether notice of this contract was proved to have been given to the appellants prior to the execution of the conveyance.

Their Lordships will therefore humbly advise His Majesty that the decree of the High Court should be reversed and that of the Subordinate Judge restored. The appellants will have the costs of this appeal and their costs in the Courts below.

In the Privy Council.

---

RAGHUNANDAN RAM SAHU AND OTHERS

vs.

MAHANTH RAMSUNDER DAS, SINCE DECEASED,  
AND OTHERS.

---

---

DELIVERED BY LORD SALVESEN.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2  
1931.