

Lala Nathu Mal, Rangwala - - - - - *Appellant*

v.

Gokal Chand and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 27TH MAY, 1941

Present at the Hearing :

LORD ATKIN
LORD RUSSELL OF KILLOWEN
LORD ROMER
SIR GEORGE RANKIN
LORD JUSTICE CLAUSON

[*Delivered by* LORD RUSSELL OF KILLOWEN]

This is an appeal from a decree (dated the 17th June 1938) of the High Court of Judicature at Lahore which set aside preliminary and final decrees of the Subordinate Judge, Amritsar, and ordered that a decree be passed against Gokal Chand and Kishen Chand (hereafter called the respondents) for the amount already realised by the plaintiff (hereafter called the appellant) by the sale of certain mortgaged properties.

On the face of it, and without further explanation, this would appear to be a strange decree. It would seem to provide for the payment to the appellant of moneys already received by him. But in fact its effect is, to reject a claim by him to recover further moneys from the respondents as damages alleged to have been sustained by him by reason of their alleged negligence as trustees under a deed of trust dated the 27th January 1923.

The relevant facts may be stated thus:—

The members of a joint Hindu family owned three houses and two shops in Amritsar, and also carried on business as merchants under the style or firm of Jawala Nath-Kanshi Ram. In order to pay trading debts of the firm, the appellant advanced a sum of Rs.50,000 upon the security of a mortgage with possession of the three houses and two shops, dated the 24th October 1918. After a few years the firm found itself in financial difficulties, and on the 27th January 1922 the family executed a deed of trust for the benefit of their creditors, by which the respondents were appointed trustees for the realisation and distribution of the family property. The appellant did not execute the deed as an assenting creditor.

On the 6th October 1926 the appellant commenced the present suit by a plaint filed on that day, against (1) the mortgagors, (2) the trustees, and (3) certain persons who had contracted to buy the shops from the trustees, but who were subsequently held entitled to rescind, and who did rescind the contract of sale. By his plaint the appellant alleged that the trustees

had "purposely neglected their duty which they did not perform," and that "hence" they were responsible for payment of the principal and interest under the mortgage. The appellant claimed that a decree for Rs.99,989.11.6 (which he alleged to be the amount then due for principal and interest on the security of the mortgaged property) might be passed in his favour against all the defendants "on the security of and by auction-sale of the mortgaged immovable property . . . as well against the persons of the defendants and their other property of every description." He also claimed interest until realisation of the decree money "according to the conditions entered in the mortgage deed." This suit has been treated in the Courts in India as including a claim against the respondents for damages for negligence in the discharge of their duties as trustees.

It was tried by the Subordinate Judge who delivered judgment on the 23rd April 1928. He held that the question of negligence by the trustees could not be decided in a suit on the mortgage; and made the usual preliminary decree in a mortgage suit.

In the same year the appellant proceeded to execute this decree by sale of the mortgaged property.

On an appeal to the High Court at Lahore, that Court set aside the decree of the Subordinate Judge and remanded the case for re-decision after framing additional issues if necessary. Particulars of the alleged negligence were given, and an issue was framed as to negligence by the respondents.

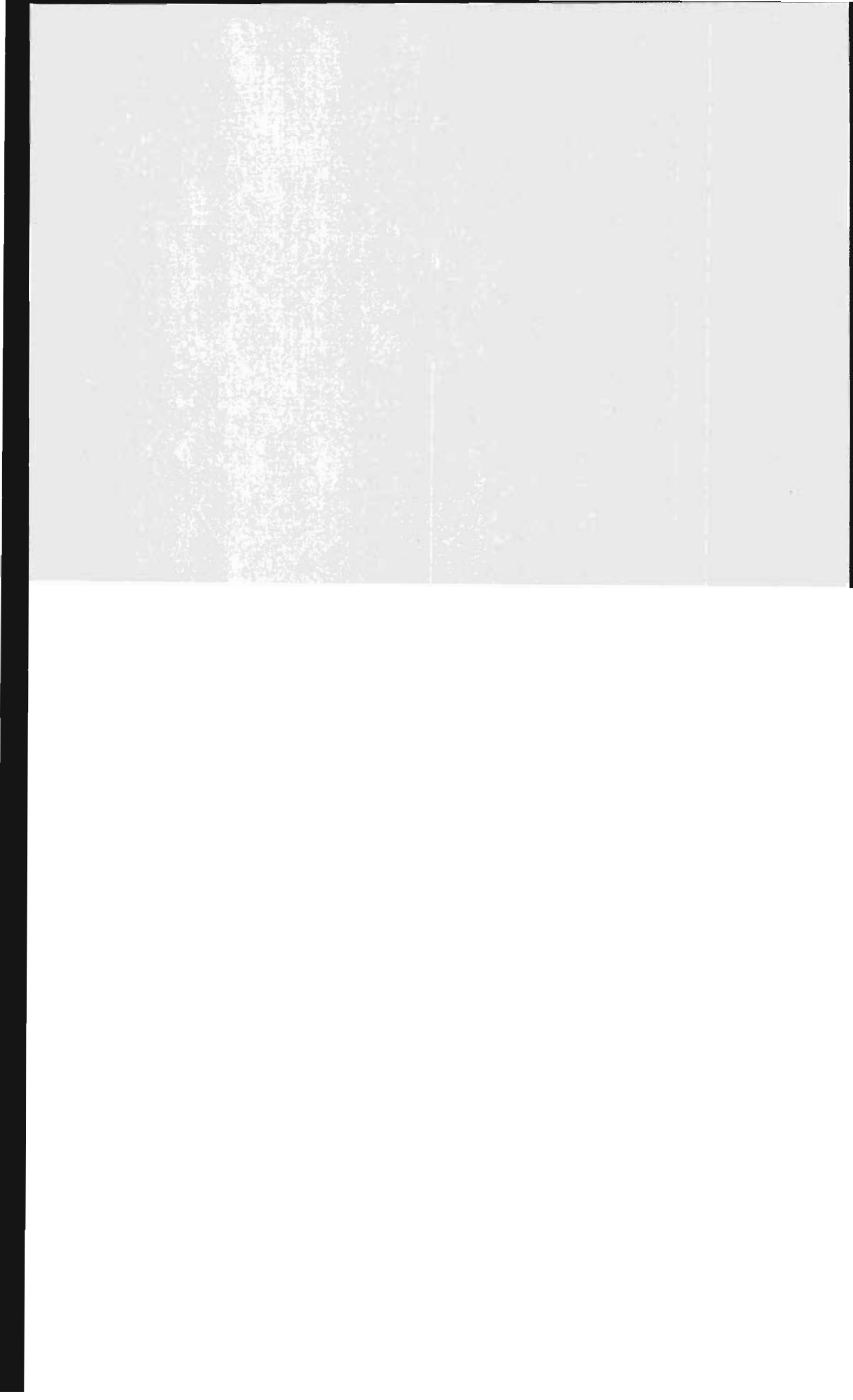
The suit, with this additional issue, came on for hearing before the Subordinate Judge, who delivered judgment on the 26th June 1936 dismissing the suit against the respondents with costs. He passed, however, a preliminary mortgage decree against the mortgagor-defendants, notwithstanding that the mortgaged properties had already been sold. He subsequently (on the 2nd July 1937) passed a final decree in the suit.

The appellant appealed to the High Court at Lahore from both these decrees. The appeals were heard by Bide and Beckett JJ., who were of opinion, agreeing with the trial judge, that the allegations of negligence had not been established. In view, however, of the difficulty of reconciling the forms of the decrees under appeal with the fact that the properties had long ago been sold, and in view of the fact that in the opinion of the High Court the appellant, by insisting that he was entitled to relief on the footing of the trust deed had released the mortgagors from all personal liability, the decrees were set aside and in lieu thereof a decree was passed in the form mentioned earlier in this judgment.

These are the facts relevant to this appeal to His Majesty in Council. Their Lordships have thought it advisable, indeed necessary, to state them, in order to make clear the true meaning of the decree which is the subject-matter of this appeal.

The fate of this appeal then becomes abundantly plain. It is a case in which both the Courts in India have reached the same conclusion upon questions of fact, and a case in which no reason has been, or could be, suggested for a departure by their Lordships from the course which they normally pursue in such circumstances.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.



In the Privy Council

LALA NATHU MAL, RANGWALA

2.

GOKAL CHAND and others

DELIVERED BY

LORD RUSSELL OF KILLOWEN

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1941