

Privy Council Appeal No. 118 of 1926.

Allahabad Appeal No. 37 of 1924.

Musammatt Fatma Bibi and others - - - - - *Appellants*

v.

Saadat Ali and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER, 1929.

Present at the Hearing :

LORD BUCKMASTER.
VISCOUNT DUNEDIN.
LORD TOMLIN.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* LORD BUCKMASTER.]

The question on this appeal is whether the appellants are entitled to specific performance of a contract dated 25th October, 1920, for the sale to them by respondents 2 and 3 of certain property in Mauza Sanwalpur Newada Pargana Saharanpur. Respondent No. 1 is a purchaser from the other respondents under an alleged contract of 22nd October, 1920. He undoubtedly obtained a conveyance of the property on 28th October, 1920, and was entered on the Register, but the appellants say this contract was not made on 22nd October, and that he obtained registration with full knowledge of the appellants' rights. This claim was supported by the Subordinate Judge, but rejected by the High Court.

An examination of the facts has satisfied their Lordships that the judgment of the High Court is correct. At the material

dates the vendors were subject to a decree for the sale of the property, and a compromise decree had been passed directing them to lodge in Court Rs. 17,182-10-0 on or before 26th October in order to escape interest and costs amounting to Rs. 600. It is stated in evidence, which their Lordships agree with the High Court in thinking trustworthy, that, in order to obtain this money, the vendors on 22nd October, 1920, entered into a contract for the sale of the property to respondent No. 1, and a receipt given on that date appears on the face of it to be perfectly in order. The purchaser had not got the money with him, and it was necessary that he should go away some short distance to his wife, who seems to have had charge of the funds. He went away, but did not immediately come back. Meanwhile the vendors were becoming extremely anxious about their ability to obtain the money necessary to pay the decree, and proceeded to enter into another contract on the 25th October with the present appellants. After that, on the 26th October, the original purchaser returned. The money was paid into Court on 28th October, the property was released, and on that date conveyed to the original purchaser, respondent No. 1, and his purchase was registered. Their Lordships do not think there is any doubt that the original purchaser had knowledge by telegram and otherwise of the transactions that had taken place, which culminated in this contract of the 25th October. That appears to be wholly immaterial, because he was entitled to rely on the earlier contract, and by virtue of that contract he obtained the purchase and had it duly registered. The reasons given by the High Court appear to their Lordships to be irrefutable and they need not be repeated. The whole appeal depends upon the existence and validity of the contract of 22nd October.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed.

The appellants will pay to the first respondent such costs as he has properly incurred.

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MUSAMMAT FATMA BIBI AND OTHERS

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DELIVERED BY LORD BUCKMASTER.

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