

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sardar Karam Singh v. Thakurain Bhagwant Kunwar and another, from the Court of the Judicial Commissioner of Oudh ; delivered the 7th February 1906.*

---

Present at the Hearing :

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from a Judgment and Decree of the Court of the Judicial Commissioner of Oudh affirming in part a Decree pronounced by the Subordinate Judge of Bahraich, against which the principal Defendant (the present Appellant) appealed, and allowing cross-objections against that Decree filed on behalf of the present Respondents who were Plaintiffs in the suit. The result so far is, that while both Courts have concurred in holding that a sum of Rs. 30,000, with interest, is payable by the Appellant to the Respondents, the Respondents have obtained credit for a further sum of Rs. 12,672, the balance of a sum of Rs. 17,000, in respect of which the Subordinate Judge allowed them Rs. 4,328 only.

It appears that on the 23rd of July 1895, the Respondents—two sisters—Purdah-nashin young ladies of high rank, were induced to sell the village of Harkhapur to the Appellant for the sum of Rs. 100,000.

It is stated in the sale deed that the Appellant had paid to the Respondents as part of the purchase money the sum of Rs. 30,000 on the 28th of June 1895. It is also stated that the sum of Rs. 17,000, further part of the purchase money, was to be left in the hands of the Appellant to provide for certain contingencies.

The sale itself is not impeached. The Appeal is concerned with the two sums of Rs. 30,000 and Rs. 17,000 and nothing else.

As regards the sum of Rs. 30,000 the case of the Plaintiffs was that the money was never paid over to them, and that although a receipt was given they were persuaded to leave the Rs. 30,000 in the hands of the purchaser to be held for a year in order to meet the expenses of litigation in the event of a pre-emption suit being brought in due time.

Under ordinary circumstances it would be enough to say that there are concurrent findings of fact on this point in favour of the Respondents. Inasmuch, however, as the circumstances of the case have been very fully discussed, and the evidence has been minutely and ably criticised by the learned Counsel for the Appellant, their Lordships think it right to add that they entirely agree with the Judgment of the Judicial Commissioner. The story told by the Appellant is incredible. The money, it is said, was paid as earnest money to make the sale contract "pucca." No explanation is given to account for so large a sum having been paid for such a purpose so long before the sale deed was executed. There seems to be no reason why any sum should have been paid as earnest money. There is no explanation why a registered receipt should not have been taken immediately on payment. Only a few months before, when a comparatively small sum of

Rs. 500 was paid to the Respondents on behalf of the Appellant, those who paid the money were careful to take a registered receipt. Then it is said that the money was brought in a cart in 30 bags, and handed over to Shitab Rae, the agent of the vendors, in the presence of several persons whose names are mentioned. No one of those persons was called as a witness. Shitab Rae, who was called by the Appellant, denies that he received the money. Although his denial goes for very little, it is incredible that if the money was really paid no accounts should be forthcoming, considering that the money is said to have been paid out of the Appellant's estate by his guardian or agents when the Appellant himself was a minor.

As regards the sum of Rs. 17,000 the Subordinate Judge gave the Appellant credit for Rs. 12,672, part of that sum, on the ground that receipts for two sums making up that amount and signed by Shitab Rae were produced, together with a copy of a power of attorney purporting to authorise Shitab Rae to receive the money. The Judicial Commissioner thought there was not sufficient proof of the execution of the alleged power of attorney and that the copy ought not to have been received in evidence. However that may be, the Judicial Commissioner points out that according to the sale deed any payments out of the sum of Rs. 17,000 ought to have been made "in the presence of and conjointly with the general agent of the purchaser, and by the purchaser with the help of and conjointly with the general agent of the sellers." He observes that the production of receipts signed by Shitab Rae, does not absolve the purchaser from his liability to account. Considering that Shitab Rae, while acting as the general agent of the vendors was also in the secret pay of the purchaser, it appears

to their Lordships that no reliance can be placed on his receipt without some corroboration. There is no corroboration whatever; no evidence is forthcoming from the persons among whom Shitab Rae is said to have disbursed the money.

On the whole their Lordships see no reason to differ from the Judicial Commissioner on this part of the case.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.

---