

This letter is not consistent with the Appellant having been induced to buy either the 100, or the 47, shares by the half-yearly balance-sheet of June 1890 or the publication of the *ad interim* dividend. Their Lordships think that if he had been so induced there would have been some allusion in it to them.

It has been seen that his evidence about the verbal representation was not believed by the Courts below, and their Lordships cannot consider his evidence where he says that in purchasing the 47 shares he was influenced by the half-yearly report dated 31st October 1890 as sufficient proof of it, or infer it from his knowledge of the reports. In their opinion he has failed to prove that, in buying the shares, he acted upon or was induced by any false representation for which the respondent is liable, and they will humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The costs of it will be paid by the appellant.

Appeal dismissed.

Solicitors for the Appellant :—*Messrs. Pyke and Parrott.*

Solicitors for the Respondent :—*Messrs. Rooke and Sons.*

MUHAMMAD SIDDIQ KHAN AND OTHERS AND MUHAMMAD NASIR
ULLAH KHAN AND OTHERS.

On appeal from the High Court for the North-Western Provinces.

Contract construed as to interest claimed on part of purchase money left unpaid by arrangement Tender.

By an agreement between vendor and vendee part of the purchase money was retained by the latter, but not as a mere deposit by the vendor. The money was to be retained as security, that the property sold should be cleared of incumbrances and a good title made.

The vendee was not liable for interest unless he should refuse, or omit, to pay the money so retained when the vendor should have shown readiness to clear off the incumbrances. Till then the vendee was not bound to pay or to tender to the vendor the money retained.

APPEAL from a decree (11th June 1895,) of the High Court modifying a decree (30th June, 1893) of the Subordinate Judge of Meerut.

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

P. C.
1898

November
18th.
December
10th.

Present :—Lords HOBHOUSE, MACNAGHTEN, and MORRIS, and SIR R. COUGH.

1898

MUHAMMAD
SIDDIQ
KHAN
v.
NASIR
ULLAH
KHAN.

This suit (16th June, 1892) was brought by Haji Begam, the original plaintiff, now represented by the appellants, against the first respondent, and others, for Rs. 29,935.

In this, with some additions, three sums mainly formed the claim:—one sum of Rs. 17,000, balance of the purchase-money due to the plaintiff as representing her deceased husband, who in his life had sold a share in a mauza, on the 16th September 1887, to the first defendant and his wife for Rs. 20,000, this purchase-money remaining with the vendees. Another of the sums claimed amounted to Rs. 9,718 for interest on the unpaid purchase-money from the above date to 15th June 1892. A third sum was claimed as damages. The vendees, by the contract, were allowed to retain Rs. 17,000 for payment over to an incumbrancer, to whom it was due, Lala Srikishen Das; and also to retain Rs. 3,000 for payment to another. The latter of these sums was paid accordingly; but Srikishen was obliged to sue for the money due to him. The damages mentioned above were in respect of his costs of suit.

The defendants paid into Court, on the 25th January 1893, Rs. 14,400, as being all that was due from them. The question on this appeal related to the interest which was claimed on the money so left in the hands of the vendees.

The Subordinate Judge decreed in favour of the plaintiffs Rs. 14,120. This was for the sum of Rs. 17,000 left as above stated, with interest thereon, but allowing for the money paid into Court, and not awarding anything in respect of costs incurred in Srikishen's suit.

Against this decree both parties appealed.

The High Court (EDGE C. J., and BANERJI, J.) modified the decree awarding, against the purchasers, Rs. 3,000 only, with interest from the date of the decree below till payment. Their reasons were thus expressed:—

“Under that sale deed it was the duty of the vendor to give a clear title to the vendees, they on their part paying Rs. 17,000 and Rs. 3,000, which together made up the purchase money.

“The evidence given on behalf of the defendants is entirely consistent with what we would understand from the sale deed itself to have been the terms when once we were informed that there were outstanding liabilities on the property. We find that it was agreed that the vendors should pay Srikishen Das and Indarman. We find that the vendees offered to pay to Srikishen Das before suit by him the Rs. 17,000 and that Srikishen Das would not receive it. Under these circumstances, what is the decree to which these plaintiffs are entitled? They are clearly entitled to a decree for the balance of Rs. 17,000, *viz.*, Rs. 3,000, Rs. 14,000 having been received by them. When the vendees offered to pay the Rs. 17,000 to the vendor, he did not decline the offer on the ground that the money was not produced at the moment the offer was made, but he declined the offer, except on the condition that interest should be paid. Consequently the offer in this case amounted to a valid tender, and that would disentitle the plaintiffs to any interest prior to decree.”

On this appeal—

Mr. *J. D. Mayne* appeared for the appellants.

Mr. *Herbert Cowell*, for the respondents, was not heard.

Afterwards on the 10th December their Lordships' judgment was delivered by SIR R. COUCH:—

By a deed dated the 10th September 1887, Muhammad Ghulam Kadir Khan sold a share of mauza Alipur Gajauri to Nasir-ul-lah Khan and Mussammat Ulfat, his wife, in consideration of Rs. 20,000, which sum was in the deed stated to be for paying the debts due to Lala Srikishen Das and Indarman, Bhora, and the money was said in the deed to be “left with the vendees” for paying to the former Rs. 17,000 and to the latter Rs. 3,000. The latter sum was paid to Indarman and the question in this appeal relates to the Rs. 17,000. The suit was brought by Haji Begam, the widow of Ghulam Kadir Khan, against Nasir-ul-lah Khan and his wife, and in the course of it the appellants and respondents were on their decease substituted

1898

MUHAMMAD
SIDDIQ
KHAN
v.
NASIR
ULLAH
KHAN.

1898

MUHAMMAD
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NASIR
ULLAH
KHAN.

for them as plaintiffs and defendants. The plaint alleged, as was the fact, that the Rs. 17,000 were not paid to Srikishen Das, and prayed for a decree for that sum and Rs. 9,718-6-9 interest from 10th September 1887 to 15th June 1892, the day of filing the plaint, and also for the costs of a suit by Srikishen Das against Ghulam Kadir Khan. The facts were that at the time of the sale Rs. 22,000 were due to Srikishen Das and there was also a mortgage to Harjit Singh and others upon which Rs. 15,000 were due. The evidence showed that the balance due to Srikishen Das and the money due on the mortgage to Indarman were agreed to be paid by Ghulam Kadir Khan and the property sold released from mortgages. Ghulam Kadir Khan failed to provide the money for this purpose, and Srikishen Das brought a suit against him and obtained a decree for what was due to him with interest and costs and the amount decreed was realised by Srikishen Das on the 18th March 1892. The second and third of the issues in the suit were whether the Defendants should be charged with interest on the Rs. 17,000, and the costs of that suit. The Subordinate Judge who tried the suit allowed the interest but not the costs, and gave a decree for the balance of the claim after deducting Rs. 14,000, which he said had been paid on the 25th January 1893. It did not appear how this was paid. Both parties appealed to the High Court, which decided that the plaintiffs were not entitled to either the interest or costs, and modified the decree of the lower Court by giving to the plaintiffs Rs. 3,000, the balance of the Rs. 17,000 with interest from the 30th June 1893, the date of that decree. The plaintiffs have appealed against this decree.

Their Lordships are of opinion that there is no ground for the appeal. The Rs. 17,000 were not left with the vendees simply as a deposit of the money of the vendor. They were to retain it as a security that the property sold should be freed from the incumbrances upon it and that they should have a good title. They were entitled to retain it until the vendor provided the rest of the money necessary for this purpose. Unless this

was done, a payment of the Rs. 17,000 would leave the property still incumbered, as Srikishen would only receive it, if he did so, in part payment of what was due. From the nature of the transaction it was not a deposit upon which the vendees would be liable to pay interest unless they refused or omitted to pay the money when they were informed by the vendor that he was prepared to pay the balance necessary to satisfy what was due to Srikishen. Without that balance they were not bound to pay or tender to him the Rs. 17,000. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The appellants will pay the costs.

Appeal dismissed.

Solicitors for the Appellants: *Messrs. Barrow and Rogers.*

Solicitors for the Respondents: *Messrs. Ranken Ford, Ford, and Chester.*

APPELLATE CIVIL.

1898
 MUHAMMAD
 SIDDIQ
 KHAN
 v.
 MUHAMMAD
 NASIR
 ULLAH
 KHAN.

1899
 February 7.

Before Mr. Justice Knox and Mr. Justice Banerji.

SHEORAJ SINGH (JUDGMENT-DEBTOR) v. GAURI SAHAI AND OTHERS
 (DECREE-HOLDERS).*

Civil Procedure Code, sections 344 et seqq—Insolvency—Holder of decree on mortgage not entered amongst the scheduled creditors—Decree-holder not debarred from executing his decree.

Held that a judgment-creditor holding a decree for sale upon a mortgage against an insolvent judgment-debtor will not, by reason of his debt not having been scheduled in the insolvency proceedings, lose his right to execute his decree. *Haro Pria Dabia v. Shama Charan Sen* (1) and *Shridhar Narayan v. Atmaram Govind* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Pandit *Baldeo Ram*, for the appellant.

* First Appeal No. 278 of 1897, from a decree of Pandit Raj Nath Sahab, Subordinate Judge of Moradabad, dated the 20th September 1897.

(1) (1889) I. L. R., 16 Calc., 592.

(2) (1883) I. L. R., 7 Bom., 455.