

The latter case has been expressly dissented from in Letters Patent, Appeal No. 81 of 1893, decided on the 10th of June 1894 in which the learned Judges held that the true rule of construction in cases of decrees for payment by instalments is to be found in the decision of this Court in *Shankar Prasad v. Jalpa Prasad* (1). These rulings are distinctly against the appellants here. We may also refer to what was said in *Maharaja of Benares v. Nand Ram* (2). We agree with the remarks of the learned Judges who held in the last-mentioned case that it would be very unfortunate if the view contended for by the appellant is sustained, as it would be to punish the creditor for forbearance shown to his debtor and compel him to press his demands at the earliest opportunity. It is conceivable that a bond might be so worded as to compel a creditor to sue for the whole amount immediately if any default occurred. The bond with which we have to deal is not so worded. It merely gives the creditor an option. We follow the law as laid down by this Court, and, with all deference to the learned Judges of the Calcutta High Court who have taken the opposite view, we are unable to agree with them. This disposes of the first ground of appeal. The only other ground was not argued. We dismiss the appeal with costs.

*Appeal dismissed.*

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.  
 BALJNATH SINGH (PLAINTIFF) v. PALTU AND OTHERS (DEFENDANTS). \*  
 Act No. IV of 1882 (*Transfer of Property Act*), section 54—Sale—Non-payment of consideration—Sale nevertheless complete.

In a sale of immovable property non-payment of the purchase-money does not prevent the passing of the ownership of the purchased property from the vendor to the purchaser, and the purchaser can, notwithstanding such non-payment, maintain a suit for possession of the property. *Shib Lal v. Bhagwan Das* (3), *Umedmal Motiram v. Davu bin Dhondiba* (4) and *Sagaji v. Namdeo* (5) followed.

IN this case the defendants sold to the plaintiff by a registered sale-deed dated the 6th of May 1898 a 4-pie share in certain

\* Second Appeal No. 1007 of 1906, from a decree of L. Marshall, District Judge of Banda, dated the 21st of August 1906, confirming a decree of Hamid Hasan, Munsif of Hamirpur, dated the 16th of May 1906.

(1) (1894) I. L. R., 16 All., 371. (3) (1888) I. L. R., 11 All., 244.  
 (2) (1907) I. L. R., 29 All., 431. (4) (1878) I. L. R., 2 Bom., 547.  
 (5) (1899) I. L. R., 23 Bom., 526.

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zamindari property. According to the sale-deed the consideration was agreed to be paid as follows, namely, Rs. 100 to be credited in part payment of past debts, Rs. 20 to be paid in cash, and the balance, Rs. 80, to be paid to a mortgagee of the property. Possession of the property sold not having been obtained, the purchaser sued for recovery of possession, alleging that the consideration for the sale had been paid in full. The Court of first instance (Munsif of Hamirpur) found that no portion of the consideration had in fact been paid and upon that ground dismissed the suit, and this decision was upheld on appeal by the District Judge. The plaintiff appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Babu *Jogindro Nath Mukerji*, for the respondents.

STANLEY, C.J, and BANERJI, J.—This is a second appeal against a decree of the lower appellate Court dismissing the plaintiff's suit for recovery of possession of a 4-pie share in a village. This share was conveyed to the plaintiff by a sale deed of the 6th of May 1898, which was duly registered. Possession was not obtained, and the present suit was therefore brought. In his plaint the plaintiff alleged that the full consideration for the sale, namely, Rs. 200 had been satisfied. In their defence the defendants alleged that the consideration had not been paid, and it is found by both the lower Courts that this was so. In consequence of the finding that no portion of the consideration had been paid, the learned District Judge held that there was in fact no sale of the property. He observes in the course of his judgment:—"Thus not any portion of the consideration has been paid. Non-payment of the 'promised' portion would not invalidate the 'sale,' and the lower Court has recognised this principle. But when the consideration is supposed to be 'part paid and part promised' and not even the 'part paid' amount has actually been paid, the provisions of section 54 (of the Transfer of Property Act) have not been fulfilled and the transaction cannot be called a sale at all." We are unable to agree with the learned District Judge as to this. According to the sale deed the consideration was agreed to be paid as follows:—Rs. 100 to be credited in part payment of past debts, Rs. 20 to be paid in cash, and Rs. 80 the balance to be paid to a mortgagee of

the property. Now we must take it on the findings that no portion of the purchase money has been paid or satisfied. The vendee did not fulfil his obligation to pay it. It has been held, and we think rightly, that the non-payment of the purchase money does not prevent the passing of the ownership of purchased property from the vendor to the purchaser, and that the purchaser, notwithstanding such non-payment, can maintain a suit for possession of the property—see *Shib Lal v. Bhagwan Das* (1). It was so held in the case of *Umedmal Motiram v. Davu bin Dhondiba* (2) and again in the case of *Sagaji v. Namdev* (3), in which the evidence showed that there was a *bona fide* sale of property by the defendant to the plaintiffs, and it was held that this sale was a completed transaction, notwithstanding the fact that no portion of the consideration had been paid, and that the only remedy of the vendor for the consideration was a suit for recovery of the amount of it. We think therefore that the Courts below were wrong in dismissing the plaintiff's claim. In the case of *Shib Lal v. Bhagwan Das*, to which we have referred, it was laid down by Mahmood, J., rightly, we think, that equities may exist in favour of a defendant to a suit like the present one so as to subject the decree to restrictions and conditions appropriate to the circumstances of the case. Here there is such an equity arising out of the non-payment of the purchase money by the plaintiff, and regard ought to be paid to it in any decision which the Court may pass.

Accordingly we allow the appeal. We set aside the decrees of both the lower Courts, and we order and direct that if within six months from this date, the plaintiff pay to the defendants the sum of Rs. 200, the amount of the purchase money, the property mentioned in the plaint be delivered to him, but in default of such payment the plaintiff shall forfeit his right to recover the property. If the plaintiff do not pay the purchase money within the time aforesaid, his suit will stand dismissed with costs in all Courts. If he, however, do pay the purchase money within such period, then in view of the fact that the plaintiff alleged in his plaint that he had paid the entire of the purchase money, contrary

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(1) (1888) I. L. R., 11 All., 244. (2) (1878) I. L. B., 2 Bom., 547.

(3) (1899) I. L. R., 23 Bom., 525.

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to the fact, we think that both parties should abide their own costs in the Courts below and we order accordingly. As to the costs of this appeal, the plaintiff, we think, if he pay the purchase money, is entitled to them, and we so order.

*Appeal decreed.*

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*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burditt.*

BHURA (PLAINTIFF) v. SHAHAB-UD-DIN (DEFENDANT).<sup>\*</sup>

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession.*

Under the Agra Tenancy Act of 1901 the personal law of the parties concerned is no longer applicable to the case of succession to an occupancy holding, but the holding descends to all the male lineal descendants in the male line of descent of the last owner, without exclusion by the nearer of the more remote.

THE facts of this case are as follows. One Kallu had an occupancy holding. He also had three sons, Bhura, Nathu and Khuda Bakhsh. The two latter died in Kallu's life-time. In August 1904, after the death of Kallu, Bhura obtained from the Revenue Court a decree ejecting the sons of Nathu from a portion of the occupancy holding. The Court in that suit found that under section 22 of the Agra Tenancy Act, 1901, the nearer descendant excluded the more remote. The present suit was brought to eject Shahab-ud-din, the son of Khuda Bakhsh. This suit was brought in the Court of the Subordinate Judge of Dehra Dun, and was dismissed on the preliminary question of want of title in the plaintiff. The plaintiff appealed to the District Judge of Saharanpur, who agreed with the Court below. The plaintiff thereupon appealed to the High Court.

Pandit *Mohan Lal Nehru*, for the appellant.

Maunvi *Muhammad Ishaq*, for the respondent.

STANLEY, C.J., and BURKITT, J.—In our opinion the decision of the learned District Judge affirming the decision of the Subordinate Judge is correct. The question is as to the interpretation to be put on the first clause of section 22 of the Agra Tenancy Act, II of 1901. That clause in the matter of the succession

<sup>\*</sup> Second Appeal No. 408 of 1906 from a decree of L. G. Evans, District Judge of Saharanpur, dated the 15th of March 1906, confirming a decree of S. P. O'Donnell, Subordinate Judge of Dehra Dun, dated the 9th of November 1905.