

the plaintiff from bringing a properly framed suit for redemption. We accordingly allow this appeal, and, setting aside the decree of the Court below, dismiss the plaintiff's suit. Having regard to the circumstances of the case and the conduct of the parties we direct that they abide their own cost in all Courts.

Appeal decreed.

1907

ISMADAR
KHAN
v.
AHMAD
HUSAIN.

APPELLATE CIVIL.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

AJUDHIA AND OTHERS (DEFENDANTS) v. KUNJAL (PLAINTIFF) AND
GAURI SHANKAR AND ANOTHER (DEFENDANTS).*

1908
January 2.

*Bond—Instalments—Power to sue for whole amount on default of payment—
Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II,
article 75.*

A bond payable by instalments contained a provision that in default of the payment of any one instalment it would be in the power of the creditor to sue for the whole amount due under the bond without waiting for the period provided for the payment of other instalments. *Held* that this provision did not mean that the creditor should be compelled to sue for the whole on default of payment of one instalment, nor did limitation in respect of the whole debt commence to run from the date of the first default. *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty* (1) and *Hurri Pershad Chowdhry v. Nasib Singh* (2) dissented from. *Shankar Prasad v. Jalpa Prasad* (3) and *Maharaja of Benares v. Nand Ram* (4) referred to.

THE facts of this case are as follows :—

On the 3rd of August 1891 one Debia, the father of some of the defendants, executed a bond payable by instalments of Rs. 50 annually in the month of Jeth in favour of Kashi Prasad. In May 1905 Kashi Prasad's representatives sold this bond to the plaintiff Kunjal. On the 21st of June 1905 Kunjal sued, making the representatives of the original obligor and obligees parties, to recover three instalments under the bond. The bond contained a provision that, in default of payment of any one instalment, it would be within the power of the creditor (*mahajan mazkurko ikhtyar hoga*) to sue for the whole amount due under the bond

* Second Appeal No. 489 of 1906, from a decree of Bepin Behari Mukerji, Judge of the Court of Small Causes exercising powers of a Subordinate Judge of Cawnpore, dated the 30th of April 1906, modifying a decree of Muhammad Azimuddin, Munsif of Fatehpur, dated the 18th of September 1905.

(1) (1904) I. L. R., 31 Cal., 297. (3) (1894) I. L. R., 16 All., 371.
(2) (1894) I. L. R., 21 Cal., 542. (4) (1907) I. L. R., 29 All., 431.

1908

AJUDHIA
v.
KUNJAL.

without waiting for the period provided for the payment of other instalments. The Court of first instance (Munsif of Fatehpur) held that the effect of this provision was to compel the creditor to sue on default for recovery of the whole debt, and that the suit was barred by limitation, and accordingly dismissed it. On appeal, however, this decision was reversed and a decree given to the plaintiff against the sons of the obligor. The judgment-debtors appealed to the High Court.

Mr. *Muhammad Ishaq Khan*, for the appellants.

Maulvi *Muhammad Ishaq*, for the respondents.

KNOX and AIKMAN, JJ.—On the 3rd of August 1891 the father of the first four defendants executed a bond payable by instalments in favour of one Kashi Prasad, father of the remaining defendants. The bond contained a provision that in default of the payment of any one instalment it would be within the power of the creditor (*mahajan mazkurko ihtiyar hoga*) to sue for the whole amount due under the bond without waiting for the period provided for the payment of other instalments. The present suit is for the recovery of three instalments due under the bond. The Munsif held that the suit was barred by the provisions of article 75 of schedule II to the Indian Limitation Act, and dismissed the suit. The suit, we may here observe, was not for the enforcement of the option given by the bond, whereby the creditor could claim the whole amount unpaid. The plaintiff appealed. The learned Subordinate Judge in a very able judgment held that the claim was not barred. The defendants come here in second appeal and again contend that the plaintiff's cause of action arose upon the default made in the payment of the first instalment, and that the suit is therefore barred by limitation. There might have been some force in this contention if the suit had been to enforce the penalty and to recover the whole amount left unpaid by the bond. But the suit was only for the instalments unpaid at the time of the suit. In support of his argument the learned counsel referred us to decisions of the Calcutta High Court, namely, *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty* (1) and to the case upon which that decision is based, *viz., Hurri Pershad Chowdhry v. Nasib Singh* (2).

(1) (1904) I. L. R., 31 Calc., 297. (2) (1894) I. L. R., 21 Calc., 542.

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.

1908

AJUDHIA
v.
KUNJAL.

1908

January 4.