

The second point raised in the application is that cumulative sentences were illegal. It seems to us that there is no force in this contention. Different persons were injured, grievous hurt was caused in one case and simple hurt in others. Therefore it was competent for the court to impose separate and accumulative sentences.

The only other matter is a question of severity of sentence. The injuries in most of the cases were simple. In one case there was a broken finger and the infliction on the head of a wound which laid bare the bone. No doubt these injuries were of a serious nature. There are, however, some circumstances connected with the case into which it is unnecessary to go in detail, but we have considered these circumstances and we think that the ends of justice will be met by making the sentences passed run concurrently. We order that the sentences of imprisonment passed on Bateshar and Mathura shall run concurrently instead of consecutively. In all other respects we dismiss the application. The applicants must surrender to their bail.

*Order modified.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.*  
KAULESHAR PRASAD MISRA (DEFENDANT) v. ABADI BIBI (PLAINTIFF)  
AND GOBIND NARAIN SINGH AND OTHERS (DEFENDANTS). \*

1915  
June, 30.

*Act No. IV of 1882 (Transfer of Property Act), section 54—Sale—Condition attached to the payment of purchase money—Public policy.*

Where a deed purporting to be a sale-deed contained a stipulation that the price should be paid within one year, provided that possession was obtained within that time; but if possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all, *held* that the transaction amounted to a sale within the meaning of section 54 of the Transfer of Property Act, and the condition postponing the payment of the consideration was not contrary to public policy.

THE facts of this case were as follows:—

The plaintiff came into court alleging that the property in dispute belonged to one Ali Ahmad who died in 1910, leaving

\* Second Appeal No. 829 of 1914, from a decree of Rama Prasad, District Judge of Ghazipur, dated the 20th of April, 1914, confirming a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 12th of December, 1913.

1915

KAULESHAR  
PRASAD  
MISRA  
v.  
ABADI BIBI.

certain heirs. The heirs executed a sale-deed in favour of the plaintiff on the 4th of July, 1913. In the sale-deed of the 4th of July, 1913, there was a stipulation that the price should be paid within one year, provided that possession was obtained within that time; that if possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all. The contesting defendant's case was that Ali Ahmad had executed a sale-deed in favour of one Idan as far back as 1889. She died in 1912, leaving certain heirs surviving her, who sold the property to the defendant on the 30th of June, 1913. The suit of the plaintiff was decreed by the lower courts and the defendant appealed to the High Court.

Mr. *M. L. Agarwala*, *Munshi Gulzari Lal* and *Munshi Hari-bans Sahai*, for the appellant.

The Hon'ble Mr. *Abdul Raoof*, The Hon'ble Dr. *Tej Bahadur Sapru* and Dr. *S. M. Sulaiman*, for the respondents.

RICHARDS, C. J., and PIGGOTT, J. :—This appeal arises out of a suit brought by the plaintiff for possession of a bungalow and compound. The plaintiff's title is as follows: The property, they say, belonged to one Ali Ahmad, who died in March, 1910, leaving certain heirs who are the defendants of the fourth party. They made a deed in her (plaintiff's) favour on the 4th of July, 1913. The defendant's title on the other hand is as follows: Ali Ahmad, they alleged, executed a sale-deed in the year 1889, in favour of one Musammat Idan. Musammat Idan died in 1912, leaving as her heir the defendant of the third party Ramzan, and Ramzan by a sale-deed, dated the 30th of June, 1913, sold the property to the appellant, Pandit Kauleshar Prasad Misra. Both the courts below have decreed the plaintiff's claim. Both courts have found that the sale-deed of 1889 was a fictitious sale-deed under which no possession passed, or was intended to pass, that Musammat Idan was the mistress of Ali Ahmad, that Ali Ahmad continued to be the owner and in possession of the property notwithstanding the sale-deed. This, it seems to us, is a finding of fact which we in second appeal are bound to accept.

The appellant, however, contends that there is a flaw in the plaintiff's title. In the sale-deed of the 4th of July, 1913, there is a stipulation that the price should be paid within one year provided that possession is obtained within that time; that if possession was not obtained, then the payment of the price should be postponed, and further, that in the event of the vendee not getting the property, the price should not be paid at all. It is contended that the consideration for this contract is opposed to public policy, being a gambling transaction. It is further contended that there being a condition attached to the payment of the consideration the transaction is not a sale within the definition of that expression contained in section 54 of the Transfer of Property Act. In our opinion there is nothing contrary to public policy in providing that the payment of the consideration should be postponed in certain events and that it should not be paid at all in the event of the property being lost. It certainly was not a gambling transaction. Section 54 defines a "sale" as "a transfer of ownership in exchange for a price paid or promised, or part paid and part promised." In our judgement the stipulations in the present deed did not prevent the transaction amounting to a "sale" within the definition.

It is next contended that Ramzan, the appellant's vendor, was the ostensible owner of the property in suit with the consent, express or implied, of the real owners, and that the appellant took all reasonable care to ascertain that Ramzan had power to make the transfer in his favour. The courts below have found that Ramzan was not the ostensible owner with the consent, express or implied, of the real owners, and they have further found that under the circumstances of the present case the appellant did not take reasonable care to ascertain the title of his vendor. In our opinion these are questions of fact, upon which we must accept the findings of the lower appellate court in second appeal.

The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

1915

KAULESHWAR  
PRASAD  
MISRA  
v.  
ABADI BIBI.