

REVISIONAL CIVIL.

Before Mr. Justice Boys and Mr. Justice Young.

MAHABALEE PRASAD (PLAINTIFF) v. PALMER
 (DEFENDANT).*

1932
 April, 1.

Hire purchase agreement—Agreement for sale—Essential difference between the two—Whether option to return the goods and terminate the contract—Payment for furniture by monthly instalments called “hire”, but “hirer” having no power to terminate the contract at his pleasure by returning the furniture—Sale of goods.

The essential feature of a true hire purchase agreement, as distinguished from a sale, is that the hirer should have a right to terminate the agreement at his pleasure, and the distinguishing mark of an agreement which is a sale and not a hire purchase agreement is that the “hirer” should be bound to pay the full value of the goods by way of instalments without any option to cancel the agreement, if he so wished, before the full value of the goods is paid. The substance of the transaction or the agreement must be looked at and not the mere words; the mere fact that the words used are “the hire system” would not make it in law a hire system, if there be no right in the “hirer” to terminate the contract.

Mr. I. B. Banerji, for the applicant.

Mr. Jawahar Lal, for the opposite party.

BOYS and YOUNG, JJ. :—This is an application in revision from the judgment of the Small Cause Court Judge of Allahabad. The plaintiff brought a suit for the recovery of money due under what he alleged to be a hire agreement, whereby the defendant agreed to hire certain coir matting. He claimed Rs. 150 as hire. An agreement was entered into between the plaintiff and the defendant on the 30th of September, 1928, in the following terms :

“Received from Mahabalee and Son the undermentioned articles on hire valued at Rs. 92-8-0, and I do hereby agree to pay to Mahabalee and Son at their business premises at Allahabad the sum of Rs. 9-4-0 as

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monthly hire of the articles month by month in advance (part of a month charged for as entire month) on the following terms: (1) To have the articles in my custody, and not to remove, sell, pawn or mortgage them without the proprietor's previous consent in writing and to keep them in good order (fair wear and tear will only be accepted, and damage by fire or any other cause and breaking will be at the hirer's risk) and at any time to allow an employee of the said firm to inspect the articles. (2) That if I pay ten months' hire regularly in advance at Rs. 9-4-0 per month, I shall become the purchaser of the articles (i.e. the articles will be my own property) without further payment and the full amount will be credited on the purchase system. (3) That if I fail to pay hire in any one month in advance, the owner may cancel the transaction and terminate the hiring, and I shall immediately return the articles and if I do not do so Mahabalee and Son may take proceedings in court for the balance of hire due at the above rate of Rs. 9-4-0 per month with all attendant costs and damages. (4) Mahabalee and Son will not be bound to send monthly bill. (5) If I fail to pay hire in any one month in advance, the whole transaction will be treated purely on the hire system. (6) Unless and until such purchase be effected, the articles will be considered the property of the owner and I shall remain bailee of the same.

Received the articles: Fifty-four yards coir matting."

It is to be noted that the agreement is headed by the value of the coir matting, viz. Rs. 92-8-0, and that the defendant bound himself to pay the plaintiff the sum of Rs. 9-4-0 as monthly hire of the articles month by month in advance. It was further agreed that if he paid ten months' hire regularly on the due dates, he should become the purchaser of the coir matting without further payment. If on the other hand he failed to pay regularly, the plaintiff had the option to

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cancel the transaction and terminate the hiring. It is important to note that nowhere in the agreement was the defendant given the option to terminate the hiring. In fact it appears to us that the effect of the agreement was that the defendant was bound to pay the full amount of the consideration, i.e. Rs. 92-8-0 by monthly instalments and that the only way he could terminate the agreement was to take advantage of clause (2) and pay ten instalments regularly in advance on the due dates. Under these circumstances the question that we have to decide is whether this is a hire purchase agreement or a sale of goods. There is no difficulty in construing a simple agreement of hire or an agreement for the sale of goods by instalments; the difficulty arises over agreements whereby one party agrees to hire to the other party certain goods at a certain rate with a condition that if so many months' instalments are paid the property in the goods passes to the hirer. This latter agreement is called a hire purchase agreement.

In England, the question of hire purchase agreements has been frequently considered by the courts. The leading cases are *Lee v. Butler* (1) and *Helby v. Matthews* (2). On a consideration of these and other authorities, it appears to us that the distinguishing mark of a true hire purchase agreement, as distinguished from a sale, is that the hirer should have a right to terminate the agreement at his pleasure, and that the distinguishing mark of an agreement which is a sale and not a hire purchase agreement is that the "hirer" should be bound to pay the full value of the goods by way of instalments without any option to cancel the agreement, if he so wished, before the full value of the goods is paid. These are the two criteria upon which all the decisions in England have turned. Lord SHAND in *Helby v. Matthews* (2) said: "It is true that by that agreement Brewster undertook to pay to

(1) [1893] 2 Q.B., 318.

(2) [1895] A.C., 471.

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the appellant not only a first instalment of 10s. 6d. described as a 'rent or hire instalment', but to pay the same amount on the 23rd of each succeeding month and that it was provided that on the payment of thirty-six monthly instalments the piano should become his property. If these stipulations had been unqualified there would have been an absolute obligation or agreement by Brewster to acquire the instrument in property and by purchase, although the instalments were described as for rent or hire, and the case of *Lee v. Butler* (1) would have directly applied. But the whole obligations by Brewster were qualified by the stipulation: 'That the hirer may terminate the hiring by delivering up to the owner the said instrument'. This provision appears to me to make it clear that there was no purchase and no agreement to purchase. The hirer need not continue the hiring a day longer than he desired; and he need not allow the transaction to become one of purchase unless he desired to do so." The matter has been summed up in Volume I of Halsbury's Laws of England at page 554 in the following words: "The difference between a contract of sale at a price payable by instalments and a contract of hire purchase is that in the former the purchaser has no option to terminate the contract and return the chattel, whereas in the latter the hirer has. In the former there is an agreement to purchase, whereas in the latter there is none. In each case, the substance of the transaction or the agreement must be looked at and not mere words." See also *Bhimji Dalal v. Bombay Trust Corporation* (2).

Applying therefore the principles laid down above, we find in the agreement in this case that the defendant had no option of terminating the contract and returning the chattel. We find, too, that the whole price or value of the goods was to be paid by the defendant by instalments. We therefore think it clear in

(1) [1893] 2 Q.B., 318.

(2) (1929) I.L.R., 54 Bom., 381.

law that the agreement in question is clearly an agreement for the sale of the coir matting and not a hire purchase agreement.

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Counsel for the applicant has argued strenuously that the English cases can be distinguished, in that there is in this agreement clause (5), viz., "If I fail to pay hire in any one month in advance the whole transaction will be treated purely on the hire system". We do not think that this clause in any way distinguishes this case. The mere fact that the words used are "the hire system" does not make it in law a hire system. There still would be no right in the "hirer" to terminate the contract. The whole tenor of the agreement, according to the decided cases, is that of a "purchase" and not "hire purchase". That being so, the plaintiff is entitled only to that part of the purchase price which has not been paid. The learned Judge of the small cause court has not come to a finding upon this. We have ourselves looked at the evidence and we find that the defendant has sworn that he has paid nine instalments. The plaintiff on the other hand admits the payment of eight. The defendant says he paid one instalment on the signing of the agreement to the plaintiff's son, who is now dead. We are of opinion that an instalment certainly would have been paid upon the signing of the agreement, and therefore we believe the defendant's version. There have therefore been nine instalments paid and there is due to the plaintiff one instalment. The decree of the court below will be varied and there will be a decree for the plaintiff for Rs. 9-4-0 with interest at six per cent. The application in revision therefore is dismissed with costs in both courts.