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under section 304-A, I. P. C. though they can be made the subject of a prosecution under the Motor Vehicles Act.

We accordingly reject the reference for enhancement of the sentence and set aside the accused's conviction under section 304-A, I. P. C. The fine, if paid by him, will be refunded.

Reference rejected.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

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BISHESHWAR PRASAD (PLAINTIFF-APPELLANT) *v.* JANG BAHADUR, DEFENDANT AND ANOTHER (PLAINTIFF) (RESPONDENTS)*

Construction of document—Agreement to finance intended litigation—Proposed plaintiff executing registered deed purporting to sell half share in property in suit—Consideration money to be spent by vendee on litigation in trial Court—Deed, whether conveys a present interest.

Where, on *B's* undertaking to finance the intended litigation in respect of a certain property, the proposed plaintiff executes a registered deed, by which he purports to sell a half share of the property to *B* in lieu of certain sum of money but the entire sale consideration is left with the vendee to be spent by him on the litigation in the trial Court, then, whatever be the terms of the contract between the vendor and the vendee in respect of the expenses of litigation, the deed is a deed of sale conveying property to *B in presenti* and he is entitled to continue the suit brought by him and the vendor jointly for the recovery of the property, if the vendor subsequently withdraws from it. *Case-law discussed.*

Mr. *M. Wasim,* for the appellant.

Messrs. *Hyder Husain* and *H. H. Zaidi,* for the respondents

*Second Civil Appeal No. 141 of 1934, against the decree of Mr. G. C. Badhwar, I.C.S., District Judge of Fyzabad, dated the 6th of February, 1934, upholding the decree of M. Ziauddin Ahmad, Subordinate Judge of Fyzabad, dated the 29th of May, 1933.

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SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—The sole question in this second appeal against a decree of the learned District Judge of Fyzabad is whether a deed of transfer executed by Ajodhia Prasad, respondent No. 2, in favour of the appellant is a sale deed of immovable property or only an agreement to sell a right of suit. The facts of the case are as follows:

One Sarju Prasad Kurmi was the owner of two houses in Fyzabad. He died in 1920 leaving two widows, Musammat Chandrani and Musammat Ishwar Dei. Musammat Chandrani by a deed, dated the 30th of April, 1920, relinquished her rights in her husband's property in favour of her co-wife, Musammat Ishwar Dei. Musammat Ishwar Dei, however, pre-deceased Musammat Chandrani so that Musammat Chandrani at last came into possession of both the houses. She sold the houses to Jang Bahadur, respondent No. 1. Ajodhia Prasad, respondent No. 2, who is sister's son of Sarju Prasad, wanted to sue as a reversioner of Sarju Prasad for possession of the houses but being penniless could not afford to do so. He, therefore, executed the deed in question on the 21st of July, 1932, in respect of half of his share in the houses in favour of the appellant, who undertook to finance the intended litigation in respect of the houses. On the 12th of December, 1932, both Ajodhia Prasad and Bisheshar Prasad appellant brought the suit out of which this appeal has arisen against Jang Bahadur for possession of the houses left by Sarju Prasad. On the 5th of April, 1930, however, Ajodhia Prasad came to terms with Jang Bahadur. By this compromise he got one of the houses in dispute and Rs.2,000 in cash and relinquished his claim to the other house. After this compromise Ajodhia Prasad withdrew from the suit. Bisheshar Prasad, appellant, wanted to continue the suit as transferee of a half share from Ajodhia Prasad but the learned Subordinate Judge disallowed his application holding that he was a mere speculator and that the transfer in his favour did not convey any title to him. Against this decision Bisheshar Prasad

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appealed to the District Judge but the learned District Judge also concurred with the finding of the trial Court and dismissed the appeal; hence this second appeal by Bisheshar Prasad.

The main provisions of the deed in question are the following. The executant purports to sell a half share of the property to the appellant in lieu of a sum of Rs.1,000 but the entire sale consideration was left with the vendee to be spent by him on the litigation in the trial Court. It was provided that if the expenses exceeded the sum of Rs.1,000, the vendee will have no claim for the balance against the vendor. Similarly if they amounted to less than Rs.1,000 the vendor would not be entitled to claim the balance. In case of the suit being decreed the vendee was to realise the costs of the suit from the defendant. As regards the prosecution of an appeal in the case it was provided that the vendor and the vendee will defray the costs of the appeal half and half and that if the vendor should not be able to pay his share of the costs of appeal the vendee would defray all the costs and recover half of them from the vendor and for this purpose he was given a charge on the property.

We have considered the arguments advanced on behalf of the parties and have come to the conclusion that the finding of the courts below cannot be supported. Not only was the deed in question executed, stamped and registered as a sale deed (plus an agreement) but the context of the deed clearly shows that the intention was to sell *in presenti* a half share of the property to the vendee. It was argued on behalf of the respondent that in view of the fact that the vendee was not liable to render an account about the expenses of litigation in the trial Court it cannot be that the price mentioned in the sale deed was a fixed and ascertained price. We do not, however, think so. So far as the price was concerned it was very definitely fixed at a sum of Rs.1,000 and whatever may be the terms of the contract between the vendor and the vendee in respect to the expenses of

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litigation they should not in our opinion affect the price fixed.

Reliance was also placed on paragraph 5 of the deed which says that if a decree be granted by the trial Court the vendee "will become owner" of half of the property and the other half will remain with the vendor but this provision can only be regarded as a surplusage after the vendor, according to the first paragraph of the deed, purporting to sell the half share to the vendee out and out. The learned District Judge has relied on the case of *Basant Singh* v. *Mahabir Prasad* (1); but in that case the transactions did not even purport to be sales and were avowedly agreements pure and simple. It was on this ground that their Lordships of the Judicial Committee held that the agreements conferred on the respondent no present right in the property and that he was consequently not competent to join in bringing or to continue the litigation. In our opinion the case of *Lal Achal Ram* v. *Raja Kazim Husain Khan* (2) is more in point. In that case one Ardawan wanted to sue for recovery of property to which he was entitled by succession from Achal Ram, but not being possessed of sufficient means he sold half the estate to Raja Kazim Husain Khan for a lac and a half of rupees. Out of the sale consideration rupees one lac were said to have been received by the vendor and the balance of Rs.50,000 was to remain in deposit with the Raja to be expended in prosecuting the suit and in paying the monthly stipends of Rs.50 to the vendor and Rs.20 to a Mukhtar. No doubt in this case a sum of rupees one lac was acknowledged to have been received by the vendor but this acknowledgment was found to be untrue. Their Lordships said "Apart from the untrue recital (in respect of a payment of rupees one lac) in the sale deed, there seems to be no flaw in the transaction. Without assistance Ardawan could not have prosecuted his claim. There was nothing extortionate or unreasonable in the terms

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(1) (1913) L.R., 40 I.A., 86. (2) (1904) L.R., 32 I.A., 113.

of the bargain. There was no gambling in litigation. There was nothing contrary to public policy. Their Lordships agree with the judgment of the Court of the Judicial Commissioner that the transaction was a present transfer by Ardawan of one moiety of his interest in the estate, giving a good title to the Raja on which it was competent for him to sue."

The learned District Judge has also relied on the case of *Rani Abadi Begam and another* v. *Muhammad Khalil Khan and three others* (1), but in that case the learned Judges who decided the case took up the point of the validity of sale to Bunyad Husain *suo motu* and holding that the tansfer in favour of Bunyad Husain was a mere agreement held that Bunyad Husain was not entitled to any decree. When the case went up in appeal to their Lordships of the Judicial Committee, this decision was not supported by the Counsel for the respondents and finally Bunyad Husain was given a decree in respect of a one-fourth share by their Lordships—*Abdul Latif* v. *Abadi Begam* (2).

The learned Counsel for the respondents has also argued that even if the transaction in question be held to be a sale it should not be enforced in view of what he calls harsh and unreasonable terms of the transaction. He relies on the case *Kunwar Ram Lal* v. *Nil Kanth and others* (3) and *Raja Mokham Singh and others* v. *Rajah Rup Singh* (4), but in both the cases the question was between the vendor and the vendee. In this connection the following remark of their Lordships of the Judicial Committee in the case of *Lala Achal Ram* v. *Raja Kazim Husain Khan* (5), is apposite. Referring to the incorrect statement in the sale deed as to the payment of one lac of rupees as part of the sale consideration their Lordships say, "Of course, at the first blush, the untrue statement throws suspicion upon the whole transaction but after all, so long as the deed stands, it is

(1) (1930) I.L.R., 6 Luck., 282.
(2) (1934) I.L.R., 9 Luck., 421.
(3) (1893) L.R., 20 I.A., 112.
(4) (1893) L.R., 20 I.A., 127.
(5) (1904) L.R., 32 I.A., 113(120).

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no concern of Achal Ram's that Ardawan may have a grievance on the score of misstatement in an instrument to which Achal Ram is no party.

We are of opinion that the deed in favour of the appellant is a deed of sale conveying property to him *in presenti* and that therefore he is entitled to continue the suit against respondent No. 1.

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We decree the appeal with costs and send back the case to the trial Court to be tried according to law between Bisheshar Prasad and Jang Bahadur.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

1936
August 14

NAWAB SAIYED SAJJAD ALI KHAN (DEFENDANT-APPELLANT) *v.* MUSAMMAT BADSHAH BEGAM *alias* ABIDA BEGAM (PLAINTIFF-RESPONDENT)*

Mohamedan Law—Ante-nuptial agreement by a Mohamedan in favour of his son's wife to pay her a certain sum monthly as her pandan *expenses, whether a binding contract—Son's wife, whether entitled to enforce claim under agreement although no party to it—Contract Act (IX of* 1872*), section* 2(*d*)*—Consideration, whether should necessarily move from promisee.*

Where a Mohamedan father executes an ante-nuptial agreement in favour of his son's wife in consideration of latter's marriage with his son, that he will during his lifetime pay her Rs.15 per mensem for her *pandan* expenses, the agreement is a binding contract, and the son's wife, being beneficially entitled under it, is entitled to bring a suit to enforce her claim under the agreement, although she is no party to the

*Second Civil Appeal No. 253 of 1934, against the decree of Pandit Girja Shankar Misra, Additional Subordinate Judge of Lucknow, dated the 30th of July, 1934, modifying the decree of S. Akhtar Ahsan, Munsif, South Lucknow, dated the 22nd of February, 1934.