

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Zafar Ali.

SAIN DAS (DEFENDANT), Appellant,

versus

RAM CHAND (PLAINTIFF), Respondent.

Civil Appeal No. 1460 of 1920.

Indian Contract Act, IX of 1872, section 43—joint purchase by two vendees, one a minor—whether enforceable against the major vendee alone.

Plaintiff sold a house to S. D. and S. R. a minor, for Rs. 3,100, of which Rs. 100 were received as earnest-money, Rs. 1,000 were to be paid to the previous mortgagee and the balance Rs. 2,000 was to be paid at the time of registration. The vendee refused to have the deed registered and the vendor had this done, and then brought the present suit against the 2 vendees for recovery of the purchase money.

Held, that as the portions of the purchase money to be paid by each vendee were not specified, although the shares were specified, the transaction was a joint one and as such enforceable against the major vendee under section 43 of the Contract Act, although void as regards the minor vendee.

Kasar Singh v. Punjab Singh (1), and Jamma Bai v. Vasanta Rao (2), followed.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 10th April 1920, reversing that of Khan Faiz Muhammad Khan, Subordinate Judge, 2nd Class, Amritsar, dated the 22nd July 1919, and granting the plaintiff a decree for Rs. 2,025 against defendant Sain Das only.

SHEO NARAIN, for Appellant.

JAGAN NATH, for Respondent.

The judgment of the Court was delivered by—

HARRISON J.—The plaintiff in this case sold a house to Sain Das and Sant Ram for Rs. 3,100 of which Rs. 100 were received as earnest-money, Rs. 1,000 were to be paid to the previous mortgagee and the balance of

(1) 66 P. R. 1896.

(2) (1916) I. L. R. 39 Mad. 409 (P. C.)

Rs. 2,000 was to be paid at the time of registration. The vendee refused to have the deed registered and the vendor had this done. Excluding the Rs. 1,000 which were to be paid to the mortgagee he brings this suit for the recovery of Rs. 2,180-8-6 including interest and a small item of Rs. 25 for expenses against both vendees. It has been held by the learned District Judge that Sant Ram is a minor and is not liable that the suit is governed by section 43 of the Contract Act, and he has given a decree to the plaintiff for Rs. 2,025 against Sain Das who appeals urging that the whole contract is bad in law on account of his co-vendee having been a minor and that anyhow a sum of Rs. 1,584-8-0 was realised at the subsequent sale of the property which was brought about by the mortgagee by means of a separate suit, that this sum is lying in deposit to the credit of the plaintiff and should be deducted. He also claimed a further deduction on the ground that the mortgagee's charge was found to be Rs. 1,218 and not Rs. 1,000 as recited in the deed.

The points to be decided are whether a decree has rightly been given against Sain Das alone or whether the whole transaction is vitiated by the fact of Sant Ram's minority and, in the second place, whether the appellant can claim these deductions. As to the first point *Jamma Bai v. Vasanta Rao* (1) is a clear authority that a contract of this nature entered into by a major and a minor may be enforced against the major alone under section 43 of the Contract Act provided that there is a joint promise to pay. The joint nature of the transaction is clear from the fact that although the shares were specified the portions of the purchase money to be paid by each vendee were not so specified and under these circumstances, on the reasoning adopted in *Kasur Singh v. Punjab Singh* (2), there is no such specification as renders the contract unenforceable against either promisor.

[The remainder of this judgment is not required for the purpose of this report—Ed.]

C. H. O.

Appeal accepted in part, certain deductions being observed.

(1) (1916) I. L. R. 39 Mad. 409 (P. C.). (2) 66 P. R. 186.