

## **PRIVY COUNCIL**

Devendra Prasad Sukul

Vs.

Surendra Prasad Sukul

P.C.A.No.36 of 1932

(Lord Thankerton, J. Sir Lancelot Sanderson and Sir George Rankin JJ.)

01.11.1935

### **JUDGMENT**

#### **LORD THANKERTON J.**

1.This is an appeal against the judgment and decree of the High Court of Judicature at Patna, dated 13th April 1931, which reversed the judgment and decree of the Additional Subordinate Judge of Darbhanga dated 16th July 1928. The appellants constitute a joint Hindu family, and on 23rd June 1923 appellant No. 1 as manager executed a mortgage bond in favour of certain persons to secure the repayment of Rs. 23,000. Most of the property mortgaged was joint family property, but some of it was the exclusive property of appellant No. 1. In 1925, in order to discharge this mortgage, the appellants sold part of the mortgaged property which belonged to appellant No. 1 to the respondents by a registered kobala or sale-deed dated 15th July 1925. The relevant passages of the sale-deed, which was executed by appellant No. 1, with the other appellants as consenting parties, are as follows:

Under account up to this day, Rs. 29,072-3-0, principal with interest, and compound interest due under the mortgage bond, dated 23rd June 1923, is duly payable to Dhanulal and Bhonulal Chaudhry, the creditors. The aforesaid creditors are ready to institute a suit and if they do so a great loss is expected. Besides (interest) is also increasing day by day. Hence I, the executant No. 1, have settled to sell one-sixth share of some of the mouzas.....which exclusively belongs to me to Babu Surendra Prasad Sukul and Babu Rajendra Prasad Sukul. I have already received the adequate consideration money and hence it is necessary to execute a sale-deed. We, therefore.....absolutely sell 2 annas 13 gandas 1 kauri 1 karant pohkta share in mauza Neori.....for a sum of Rs.

31,000.....to Surendra Prasad Sukul and Babu Rajendra Prasad Sukul ... I have received the entire consideration money in manner following, viz., I have kept Rs. 29,072-3-0 in deposit with the said vendees for payment of the dues of the creditors aforesaid, and having received the remaining Rs. 1,927-13-0 in cash in one lump sum from the said vendees I have applied the same towards meeting the necessary expenses. The said vendees should go with me, the executant No. 1, to the aforesaid creditors Dhanu Lal Chowdhry and Bhonu Lal Chowdhry with the money deposited with him (them) and I, the executant No.1, shall request the aforesaid creditor (creditors) for remission of reasonable amount of interest and compound interest and the vendees aforesaid shall pay the amount which will be found due to the aforesaid creditors after deducting remission of interest and compound interest granted by them, out of the consideration money deposited with them, and after taking back the mortgage bond, dated 23rd June 1923, should keep the same with themselves as a proof of payment of the consideration money. If on deduction of the amount remitted from the dues of the aforesaid creditors, the vendees have on an adjustment of account to pay the said creditors less than the amount of consideration money deposited, then they, the vendees, shall at once pay me, the executant No. 1, the surplus amount of the consideration money deposited with them left after payment of the dues of the aforesaid creditors on taking a receipt therefor signed by me. It may be noted that the payment of interest and compound interest which may be payable to the aforesaid creditors owing (to) the non-payment of consideration money shall concern the vendees. If owing to the negligence on the part of the aforesaid vendees the dues of the aforesaid creditors be not satisfied by 30th December 1925, and the consideration money remain with them, then on expiry of the aforesaid date, this sale-deed shall stand cancelled null and void and Rs. 1,927-13-0 which I, the executant No. 1, have just now received in cash shall become forfeited. Now we, the executants, after having executed this sale-deed, put the aforesaid vendees in possession of the vended property.

2. The respondents, who were the vendees obtained possession of the property and still remain in possession. On 15th October 1925 the respondents paid Rs. 10,000 to the creditors in part discharge of principal and interest, but they made no further payment prior to the institution of the present suit by the appellants on 16th August 1926, which arose out of the respondents' application in May 1926, to have mutation of their names on the Collector's register. Despite the objections of appellant No. 1, the Deputy Collector, on 14th August, had given the respondents one month within which

to pay up the balance of the creditors' dues. On 14th September following the respondents paid Rs. 22,131, the final balance due to the creditors, and on 18th September 1926 the Deputy Collector allowed mutation. In the suit the appellants seek a declaration that the sale-deed of 15th July 1925 has become cancelled and null and void and that the respondents have ceased to have any right or title thereunder, and a decree for recovery of possession of the property. They also ask for a decree for Rs. 1,600 for interest and compound interest and for mesne profits. The main question turns on the failure of the respondents to pay the whole dues of the creditors by 30th December 1925. In view of the concurrent finding of the Courts below, it must be taken that the appellants were not responsible for this failure. The appellants maintain, in the first place, that the clause in the sale-deed as to cancellation on failure to satisfy the dues of the creditors by 30th December 1925, constituted a superadded condition within the meaning of Section 31 Transfer of Property Act, and that on its breach, the rights of the respondents automatically ceased; that it was a question of title and not of contract, and therefore no question arose as to whether time was of the essence of the contract, or of relief from the failure to comply with the condition. Alternatively, the appellants maintained that time was of the essence of the contract, and that no relief should be given by the Court. The respondents dispute both these contentions.

3. The Subordinate Judge did not refer to the first contention of the appellants, but he held that time was of the essence of the contract and he gave the appellants the declaration that the sale-deed was null and void, and awarded them possession on refunding to the respondents within two months the sum of Rs. 29,072, and he held as forfeited the sum of Rs. 1,927-13-0 originally paid to the appellants. He rejected the appellants' claim to mesne profits and interest. It appears that between the delivery of the judgment on 16th July 1928, and the issue of the formal decree on the 30th July the appellants deposited the sum of Rs. 29,072 in Court. This judgment was reversed by the High Court, on appeal, on the view that the sale was not a conditional one, and that time was not of the essence of the contract. By the decree the present appellants' suit for cancellation was dismissed, but they were held entitled to recover a sum of Rs. 1,621-2-0 with interest at 6 per cent. from the date of the decree as reasonable compensation for failure to complete the bargain by the date fixed, which the respondents' advocate had expressed willingness to pay. Section 31, Transfer of Property Act, provides that, subject to the provisions of Section 12 which is not material to the present question, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

4. Illustration (b) is as follows:

A transfers a farm to B, provided that, if B shall not go to England within three years after the date of transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

5. This is an example of a completed transfer subsequently resolved. The interest has already been created, but it is thereafter defeated. In the present case the contract of sale and the act of transfer are embodied in the same deed. In their Lordships' opinion, the clause in dispute is to be regarded as an integral condition of the contract of sale providing the date for completion of the contract by satisfaction of the balance of the contract price. The statement in the deed that the vendor has already received the entire consideration money cannot be taken literally so as to contradict the clear fact that the balance of the price had not been paid to the vendor himself, but was to be paid thereafter to his creditors by the date prescribed. In the opinion of their Lordships there is nothing in Section 31, which merely declares that a limitation upon a condition subsequent is a lawful method of grant, to exclude the right of the Court to give relief to the purchaser who fails to make payment of the price, or part thereof by the date agreed upon in the contract of sale. Their Lordships are therefore unable to accept the first contention of the appellants. As regards the alternative contention of the appellants, their Lordships are not prepared to differ from the view of the learned Judges of the High Court that time was not of the essence of the contract. Any interest or compound interest accruing after 15th July 1925 fell to be borne by the respondents and there is no sufficient evidence of the loss of any remission by the creditors substantial enough, not only to cover such interest and compound interest up to 30th December 1925, but to provide a further balance available to the appellants. In the event of the rejection of both their contentions, the appellants offered no argument against the relief given by the High Court to the respondents, subject to payment of the compensation already referred to. Their Lordships are therefore of opinion that the decree of the High Court should be affirmed, and that the appeal should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.