

*Privy Council Appeal No. 124 of 1926.*

*Patna Appeal No. 7 of 1926.*

Bajnath Ram and another - - - - - *Appellants*

*v.*

Gopal Ram Khemka and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 9TH FEBRUARY, 1928.

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*Present at the Hearing :*

VISCOUNT SUMNER.

LORD ATKINSON.

LORD SINHA.

SIR JOHN WALLIS.

[*Delivered by* LORD ATKINSON.]

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This is an appeal from a judgment and decree dated the 15th December, 1925, of the High Court of Judicature at Patna which reversed a judgment and decree dated the 2nd March, 1922, of the Additional Subordinate Judge of Bhagalpur. The plaintiffs (respondents) on the 15th February, 1921, instituted the suit out of which this appeal has arisen against one Janki Das (since deceased), the father of the defendant, alleging that the said Janki Das had in the last week of the month of June, 1920, entered into an agreement to buy from Gopal Ram, one of the plaintiffs, a certain dwelling house for the price of Rs. 17,500 and had failed to complete the purchase thereof. The plaintiffs claimed a decree for specific performance of the said contract of purchase with damages and costs.

The house, the subject matter of the aforesaid suit, was a municipal holding, No. 16 in Ward No. 11 of the Bhagalpur Municipality on the Khalifabagh road. Gopal Ram was at the hearing of the case before the Additional Subordinate Judge examined

as a witness on behalf of the plaintiffs. He alleged that he was the managing member of their joint family and that the family had acquired the above-mentioned house by two sale deeds dated respectively the 5th October, 1909, and 29th June, 1912; that he entered into an agreement with Janki Das (since deceased) to sell to the latter, for Rs. 17,500, through Jagarnath Ram and two of the defendant's witnesses; that he gave 1,016 pages of documents of title to one Rameshwar to be handed over to the purchaser, notwithstanding which the latter, without any reason, failed to complete the purchase. The oral evidence given at the trial is rather confused, not precise, definite or distinctly pointed to the vital issues in controversy, so that it is with a feeling of relief one turns to the consideration of the written or printed documents put in evidence. Janki Das, the purchaser, having delayed to complete the purchase, Gopal Ram, on behalf of the vendors, caused the following notice, dated the 25th August 1920, to be served upon the former. This notice is rather lengthy, but it purports to set out and describe so many relevant facts and incidents that it is desirable to quote it at length. It runs as follows:—

“ FROM

“ Charu Chandra Ghosh, Pleader.

“ Adampore, Bhagalpur.

“ To

“ Babu Janki Dass, son of Babu Tularam, deceased, of Shujagunj,

“ Thana Kotwali, District Bhagalpur.

“ SIR,

“ Under instruction from my clients Babu Gopalram and Sagar Mal, sons of Babu Hukumi Chand, deceased, of Bazar Shujagunj, Bhagalpur, I beg to inform you that the contract of sale of a house belonging to my client, being Municipal holding No. 16, Ward No. II, with boundaries specification given below, situate in Mahalla Khalifabagh within the town of Bhagalpur, was complete between my clients and yourself, and that through the intervention of Babu Kheali Ram, son of Babu Dalooram, deceased, and Babu Rameshwar Lall, son of Babu Ram Chandra, deceased, the price of the said house was settled at Rs. 17,500 about two months ago, and in virtue of that completed contract of sale you sent over a draft of kebala for my clients' approval, and the said draft regarding the sale of the said property was examined and substantially approved by Maulvi Allauddin Ahmad, B.L., Vakil on behalf of my clients, and that it was settled that you would at once get the kebala duly executed and registered at your own costs on payment of Rs. 17,500 to my clients. That it is about a month and a half ago that my clients duly approved of the draft kebala, but in spite of their repeated demands you have not as yet got the kebala duly executed and registered, nor have you paid the consideration money to my client. That on account of delay in payment of the consideration money my clients have suffered pecuniary loss in the shape of interest and damages, etc., which I beg to note here he is entitled to get from you, and I am requested to inform you that you will kindly get the kebala duly executed and registered from my client at your own expenses within 2 days from receipt of this notice and pay the entire consideration money with interest at 12 p.c. p.a., and in default of this my client would be obliged to seek his remedy in any other way desirable.”

*Then follows Specification of the property.*

To this notice Janki Das sent the following preliminary reply :

“ To Babu Charu Chandra Ghose,

“ Pleader, Bhagalpur.

“ Sir,

“ I am in receipt of your notice dated 25th August, 1920, which actually reached me on 7th September, 1920, at 4 p.m., purported to have been sent under the instructions of Babus Gopal Ram and Sagar Mal. The notice in question does not purport to have been sent on behalf of the said Gopal Ram and Sagar Mal, nor is it stated if you are duly authorised pleader of them. Will you please let me know if you have sent the notice in question after obtaining the requisite powers in writing from them, and if you have received verbal instructions then whether from Gopal Ram or Sagar Mal, or both. I want this information before I send you a reply to the said notice, so that I may be sure of your statements and the steps taken by you being binding upon your alleged clients.

“ Please therefore enlighten me on the subject so that I may reply to the notice in question.

“ I remain,

“ Yours faithfully,

“ (Sd.) Janki Dass. (By my own pen.)

“ In Hindi characters.”

On the 24th September, 1920, the pleader of Janki Das sent to the pleader of the plaintiff Gopal Ram a reply to the letter of the latter's pleader, dated the 24th of August. The more important portion of it ran thus :—

“ I have come to know from Babu Jagarnath Ram, Samdhi, of Babu Janki Das, Marwari, that you sent a notice, dated 25th August, 1920, and thereafter another notice dated the 12th September, 1920, on behalf of Babu Gopal Ram and Sagar Mal, to my client Babu Janki Das, Marwari. Reply to the same on behalf of Babu Janki Das is as follows :—

“ It is true that my client had negotiation with your clients through Babu Jagarnath Ram, Babu Kheali Ram and Rameshwar Lal, mentioned in your notice, for purchase of a house. At the time of the negotiation for sale and purchase of the house, your clients expressed that with respect to the said house, there were several sale-deeds and certificates, as well as many papers relating to cases and receipts of payment of rent to Zamindars, from which it would appear that your clients had full right to the said house, that it was free from all defects, and that there was no defect at all. They also said that they would give receipts granted by the Zamindars during that time and previous to them, from which it would appear that the rent of that land had always been one and the same. But when they were asked to give papers for inspection, they always evaded to give the same. At last, on the 27th August, 1920 (they) sent Babu Kheali Ram to my client. He came to my client and said that the title of your clients was good and asked my client to give them the cost of the stamp paper, and he (also) said that afterwards the sale-deed would be executed when they would show all the papers and would satisfy my client. When Babu Kheali Ram gave assurance, my client gave him Rs. 175 for purchasing a stamp paper. But when the stamp paper was purchased, Gopal Ram sent the same to my client, and he sent a few papers to Babu Jagarnath Ram. But Babu Jagarnath Ram was not fully satisfied with those papers. He sent for Babu Gopal Ram and told him, ‘ These papers do not fully show title and other facts, and you said that you had got with you receipts granted

by the 16 annas proprietors during the purchase (made by you) and during the time of your predecessors, and that you would give all those also to me. You (also) said to give the papers relating to cases, as also sale-deeds and certificates with respect to the said property purchased by you. Those papers are not seen. Besides this, you have recently allowed a Brahmani to live in the house. Please remove her from the house and get the house vacated.' But the said Gopal Ram became enraged and said, 'I have not further more papers. I shall not also remove the Brahmani. Please purchase (the house) if you like; please don't (purchase) if you do not like; I too do not like to sell (the house).' Saying this, he took the papers he had sent to Babu Jagarnath Ram and went away. (Thus) the negotiation of purchase broke through."

The plaintiff, in his evidence (p. 12), states :—

"The first talk between me and the defendant took place on the road when he was going to my brother's house and the defendant was going to the Bazar. The defendant, he says, opened the talk. The terms were not finished there. No one else was present there. He inquired what offer did I get for the house from Ram Kumar Doknia. I replied, he offers Rs. 17,000 and I demand Rs. 17,500. Defendant said he wanted to purchase the house for some charitable purpose and I should sell to him at a lesser price. I (plaintiff) told him 'pay what you think proper.' He said that could not be. Let two men be appointed. He said Rameshwar and Kheali Ram may settle the price, and he (plaintiff) would agree to it. I agreed to this proposal."

The defendant, in his evidence (p. 20), said :—

"I know Jagarnath Ram Rameshwar and Kheali Ram. Kheali Ram and Jagarnath Ram told me that Gopal Ram wants to sell a house and you had better purchase it. I told them if the house was suitable and the price be fair you can purchase the house. I had no personal talk or interview with Gopal Ram for the purchase of this house. I did not go to his house, or had any talk with him in settling matters of sale or draft of sale deed. I made no inquiries regarding the title to the suit. Jagarnath Ram did it. He is my samdhi. He did it, as the object was charitable, for aid of our community. I was only to look to the supply of fund and they were to settle everything with respect to the purchase."

Jagarnath Ram was examined (p. 23). After stating that his granddaughter was married to Janki Das's son, he said :—

"Janki Das expressed a desire to purchase a house to provide accommodation for bridal parties at Bhagalpur. He expressed this desire two or three years ago. He told me that Gopal Ram was willing to sell a house."

Jagarnath Ram proceeds :—

"Gopal Ram said he had sent Kheali Ram to Janki Das, and after that Kheali Ram and Rameshwar came to him and the price of the house was settled. I told him when the price was settled to show to me your title deeds of the house. Gopal Ram said that some papers were in his custody. Some were to be taken out from Court and some to be searched here and there, and after collecting all the papers he would send them all to me. Two or four days again I reminded him that the papers were not sent to me. He replied that up to that time he had not got all the papers, but in the meantime I could have the draft prepared and sent to him. He said leave space so that the reference to documents can be inserted later on. I agreed to prepare a draft. I caused a draft to be prepared by Maulvi Sahamat Hussain. Myself and a Gomastha of mine, Ghansyam Das, accompanied me to the Maulvi. Janki Das did not accompany me to have the draft prepared.

"Gopal Ram said get the draft prepared with blanks, and if after inspection of the title deeds it is agreeable to us the blanks would be filled up; if not there would be no compulsion to purchase the house.

"Maulvi Sahamat prepared a draft in Hindu with his own hand. I went to him at 8 p.m. His Moharrir was not present there. I was present when he prepared the draft. (*Exhibit 9 shown.*) This is not the draft Maulvi Sahamat prepared. That draft was on a white paper and there were several cuttings.

"I brought that draft and on the next morning made over the draft to Kheali Ram, as he was also concerned in the matter.

"After this I asked Gopal Ram to send me his title deeds. I told him that I found a Brahmani living in that house and enquired why she was there. Gopal Ram said that when you will get the deed written I will remove the Brahmani. This he said after I gave him the draft. Regarding papers he said he had not collected them all, but he would send them to me when found.

"After this Rameshwar Ram sent me some papers. Those were not 1016 pages, but a file of 25 or 30 papers. Rameshwar sent the draft mentioned above to me with those papers he sent. I examined the papers myself. I got the papers in English examined by my servant Darsan Lal. The papers consisted of a kebala of papers 12 as. Hissa, one rent receipt of a Zamindar for 1327, and certain certified copies, 3 municipal receipts. I did not get the papers of the 16 as. house.

"I was not satisfied with these documents, so I sent for Gopal Ram to my Gaddi. He came. I told him that the papers were small in quantity and were not full. He had not sent me the 2 kebalas, the Zamindar receipts and papers regarding litigation with Debi Babu. I told him he had not removed the Brahmani from the house.

"I asked him to supply me with more papers and to remove the Brahmani. He said he had no more papers. He was not prepared to remove the Brahmani just then. If on such circumstances I wish I can purchase the property, if not I was at liberty not to purchase this. He said these and was very angry. I said how can I do it as these do not satisfy me. Janki Das gave me a notice sent to him by Gopal Ram. He asked me to send the necessary reply. I came to Court with the notice and made that over to my pleader, Chandra Babu, and he wrote a reply and gave to me. I made it over to Janki Das. After this Gopal Ram did not request me to inspect title deeds."

The negotiator next in importance to Jagarnath Ram was Kheali Ram. In the course of his evidence (p. 27) he said:—

Janki Das expressed a desire to purchase a house for the accommodation of bridal party. I know Gopal Ram; he expressed his intention of selling a house. I told Janki Das that Gopal Ram wanted to sell a house, and you purchase it for the bridal party. He replied, 'Yourself Rameshwar and Jagarnath settle price and purchase that house.' I and Rameshwar with Naram Das Brahmani took the key and went to the house. We saw the house. We fixed the price at Rs. 17,500. We informed of the price to Janki Das. We did not see any title deed of the property before or at the time of settling the price. Gopal Ram did not tell us anything about showing title deeds at the time we fixed the price. Three or four days after Jagarnath Ram gave me a bainanama on an 8 as. stamp paper which he had got written out. I again went to Gopal Ram's house and gave the bainanama to him with Rs. 500 in cash as earnest money. I asked him to sign it. Gopal Ram said he would show it to some one and then sign it. Four or five days after I again went to Gopal Ram's house. He, Gopal Ram, said that the document was not properly drawn up and he would not sign that (presumably a misprint for that day). About a month after this I went to Janki Das on

the request of Gopal Mal and asked him for Rs. 175 for stamps. Gopal Ram found me on the road and made the above request. I asked Rs. 175 from Janki Das, on which Janki Das expressed certain objections. I assured him that the kebala would be surely executed. On this Janki Das paid me the amount. Gopal Mal sent the documents to Rameshwar and he made over the paper to Jagarnath."

On cross-examination, the witness said :—

"As far as I know nobody ever raised any objection to Gopal Ram's title to the house. When I and Rameshwar went to see the house he did not tell me that Gopal Ram's title was defective. I had no suspicion as to Gopal Ram's title to the house when I saw it. Two or four days after we inspected the house we settled the price. We took Rs. 175 for stamps from Janki Das, but not before something intervened before it. I sent the amount to Bhagwar Das's shop for Gopal Ram. I ascertained that the money reached Gopal Ram. Gopal Ram purchased the stamp and sent that to me. I sent it to Jagarnath Ram. The latter did not make any objection. Jagarnath was entrusted with the duty of getting the sale deed written out. The draft was already prepared. It had come to me and I sent to Gopal Ram. After making the draft Jagarnath gave me the draft and I gave it to Gopal Ram for approving of it. He approved the draft, taking several days to do it. He took that to some pleader and sent the draft to Jagarnath Ram. I did not inquire if the document was written out in stamp or not. I do not know what happened after this. Between the settlement of price and purchase of the stamp, the things that intervened are Gopal Ram refused to sign the baimanama, and said let a draft be prepared, and if I find the draft to be agreeable to me I will execute the sale deed, otherwise the property will remain with me and I will not sell it."

This witness, Kheali Ram, was apparently treated by the High Court as trustworthy. He described himself as a dealer in grain at Bhagalpur and other places, and as assistant secretary to the Bhagalpur Goshala, and the defendant himself described him as a good man who had never played him, the defendant, false. The defendant in his evidence admits that this witness *asked for money for a stamp*, saying that he would see to the title to the property, and when assured that the draft was all right, would get the deed engrossed. The defendant, in his evidence, then added, "So what objection could I have to advance the money for stamps, and I therefore paid the money on the confidence aroused by Kheali Ram." Janki Das further says that his entire written statement was based upon his trust in Jagarnath Ram; that he, Janki Das, had no personal knowledge of the facts and all the inquiries he made from Jagarnath Ram; that he paid, and was ready to pay, what Kheali Ram asked for; that he saw the stamp paper in Jagarnath Ram's shop—it is at present in his, Janki Das's, custody; that he got the price of the stamps refunded to him; that the stamp was purchased in the name of Gopal Ram, for the purpose of engrossing the kebala. Jagarnath Ram gave a strange account of this incident—the purchase of the stamp. He said, at p. 26, "Janki Das did not inquire from me if he could pay the *price of the stamp*. I did not know this at the time Janki Das paid for the stamp; Kheali Ram brought the money for the stamp." "I (*i.e.*, the witness) on the day I saw Janki Das I did not tell Janki Das why he

had paid for the stamp before inspection of the title deeds. About one month before the date of paying the price of the stamp, I had got the draft prepared by Maulvi Sahamat."

Upon all the evidence given in the case the Subordinate Judge came to the conclusion stated at p. 38. He said:—

"As to the main features of the transaction, the agreement to sell and the purchase price, some sort of draft was settled, and the defendant even advanced money for the purchase of stamp paper, and the stamp paper itself was purchased and delivered to the defendant. Now the question is whether these can be taken to be a concluded contract between the parties. In my opinion, these were not enough, when the most important matter of inspection of title deeds was not finished, and the evidence comes to a head that the plaintiffs did not afford the defendant or his agents Rameshwar or Jagarnath such an opportunity."

He states his finding on four of the issues: that, after a consideration of all the circumstances of the case, he was fully convinced that there was no completed contract between the parties for the sale and purchase of the house in question, and he accordingly dismissed the suit.

The High Court came to the opposite conclusion. They examined the evidence exhaustively. They accept and rely upon the evidence of Kheali Ram. They think it is accurate and trustworthy, and must be treated with the greatest respect; that from his action they conclude that he evidently thought that the stage of negotiation had come to an end. They thought that the whole burden of Jagarnath Ram's evidence was that the contract included a stipulation on the defendant's part to the effect that the parties should not be considered to have come to an agreement unless and until the plaintiff furnished full documentary proof of his title to the satisfaction of Jagarnath Ram himself: and that the draft produced on the plaintiff's side (*exhibited*) was not the draft prepared in the negotiations he describes, but the draft then prepared was full of blank spaces in view of the intended examination of documents. He deposes that the plaintiff not only failed to produce the necessary documents, but broke off the negotiation in a fit of temper and carried away all the papers including the draft. They point out that, except for this last incident, for which there is a witness who came from another town to buy clothes at Jagarnath's shop, the whole burden of proving all the matters deposed to rests upon Jagarnath Ram's shoulders, as Rameshwar was not examined. They point out that Kheali Ram was apparently satisfied with the title. On his assurance the stamp paper was bought, and he does not mention at all the alleged stipulation that the sale should not go forward till every document had been shown and the title proved to the satisfaction of Jagarnath Ram himself. The learned Judges disbelieve the evidence of Jagarnath on the point as to the money given to buy the stamp, not only because it stands alone, but also because it does not fit in with a reasonable interpretation of the evidence—the fixing of the price and the purchase of the stamp paper of the value of R. 175, and the preparation. These things, Mr. Justice Foster says, indicate to him

that the plaintiff's assertion of the existence of a completed agreement to sell and to buy is more credible. The same learned Judge then analyses the evidence touching the draft deed (*Exhibit No. 9*), and comes clearly to the conclusion that it is the original deed. He further points out that there is *no* evidence to show what *specific* questions were put to the *seller* by the buyer bearing on title, and ultimately holds that there was a contract of sale in which the price and terms were fixed. "It seems to me," he said, "that when the contract was complete between the parties, Jagarnath Ram cut into the affair at an angle and did his best to wreck it." He points out that admittedly the parties in the case belong to hostile factions in the Marwaris of Bhagalpur Town. And on this result he holds that the plaintiff is entitled to a decree for specific performance, that the appeal should be allowed, the judgment and decree passed by the Court below should be set aside, and the plaintiff given a decree for specific performance. He said :

"I would allow the appeal, set aside the judgment and decree passed by the Court below, and give the plaintiff a decree for specific performance. The result is that it must be declared that the agreement upon which the plaintiff is suing ought to be specifically performed and carried into execution, and we order and adjudge the same accordingly. The plaintiff will execute and register the sale deed and will be entitled to recover from the defendant the sum of Rs. 17,500, with interest thereon at 12 per cent. per annum from the 9th September, 1920 ; to the 2nd March, 1922, the date of judgment in the lower Court. Interest at 6 per cent. will be allowed on the entire sum from 2nd March, 1922, until realisation.

"The plaintiff is entitled to the costs throughout."

Their Lordships concur with the High Court in the conclusions at which they arrived. The appeal must therefore be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellants must pay the costs of the appeal.



TO THE SECRETARY OF THE

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C. 20240

FOR THE BUREAU OF LAND MANAGEMENT

DATE

BY

FOR

REASON

In the Privy Council.

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BAIJNATH RAM AND ANOTHER

vs.

GOPAL RAM KHEMKA AND OTHERS.

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DELIVERED BY LORD ATKINSON.

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