

Privy Council Appeal No. 29 of 1918.
Allahabad Appeal No. 6 of 1916.

Kali Charan - - - - - *Appellant*

v.

Abdul Rahman and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1918.

Present at the Hearing :

LORD DUNEDIN.
LORD ATKINSON.
SIR JOHN EDGE.
MR. AMEER ALLI.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 24th February, 1916, of the High Court at Allahabad which set aside a decree, dated the 22nd September, 1913, of the Court of the Subordinate Judge of Shahjahaupur so far as it affected Abdul Rahman Khan, Asad Ali Khan, Raushan Ali Khan and Rajab Ali Khan, certain defendants to the suit who had appealed from the decree of the Subordinate Judge. The defendants above named were sued as sureties. The other defendants to the suit did not appeal from the decree of the Subordinate Judge, and his decree as against them has become final.

The plaintiff in this suit, who is a Zamindar, in May, 1902, contracted by lease to sell to Muhammad Amanatullah Khan,

who will be referred to as defendant No. 1, trees growing in Mauza Gulavhai to be cut and removed by the defendant No. 1. A dispute having arisen between the plaintiff and the defendant No. 1 the latter brought against this plaintiff a suit for specific performance of the contract, which on the 9th January, 1909, resulted in a compromise in accordance with which the suit for specific performance was decreed. In pursuance of the compromise the defendant No. 1 on the 14th January, 1909, executed a deed of agreement by which he covenanted with the plaintiff that he would abide by all the conditions as entered in the lease and would furnish in zamindari property sufficient security for the performance by him of the conditions entered in the deed of agreement. By one of those conditions the defendant No. 1 bound himself to deposit in Court within one month for payment to the plaintiff Rs. 6,000, less certain earnest money previously paid, and to pay to the plaintiff the balance of Rs. 18,000 of the purchase money by six half-yearly instalments of Rs. 3,000 each, beginning on the 10th February, 1910, and agreed that

“ in the event of default in the payment of any instalment or of my giving up the forest the Zamindar (the plaintiff in this suit) aforesaid shall be at liberty to rescind the stipulation to pay by instalments and realise all the instalments remaining due in a lump sum with interest at the rate of rupees six (Rs. 6) per thousand per mensem from the date of the instalments falling into arrears from the person and property of me and the surety through the Court. . . .”

That deed of agreement was registered on the 22nd January, 1909.

On the 27th February, 1909, the defendants Abdul Rahman Khan, Asad Ali Khan, Raushan Ali Khan, and Rajab Ali Khan, executed a surety bond in favour of the plaintiff by which, after reciting that the defendant No. 1 had taken the lease for cutting trees in Mauza Gulavhai from the plaintiff

“ for a sum of Rs. 24,000 (twenty-four thousand) as entered in the registered agreement, dated the 14th January, 1909, in which all the conditions of the lease are entered and which we have read and thoroughly understand,”

they agreed that

“ we do hereby stand surety for the said Muhammad Amanat-ullah Khan (the defendant No. 1) in the sum of Rs. 18,000 (eighteen thousand) and covenant that the lessee aforesaid shall act up to all the conditions contained in the said lease-agreement, and that if there be any breach of contract on his part and the Zamindar (the plaintiff) is put to any loss, or if the lessee does not pay the lease money or any part thereof, then we shall pay the same ourselves from our own pocket, and we, the sureties, shall be responsible for the losses and damages that may be sustained by him (the Zamindar). And as security for payment of the 'theke' money as well as of losses and damages, etc., we do hereby hypothecate our zamindari property specified below which is heretofore free and immune from all liens, and if it be found subject to any lien, then we, the sureties, will be responsible therefor. And the lessor (the plaintiff) shall have power to realise the balance of his lease money in any manner he likes from us and the property under mortgage; we shall have no objection whatever.”

That surety bond was registered on the 3rd March, 1909.

After the Rs. 6,000 had been deposited and the first two instalments had been partly paid the rights and interests of the defendant No. 1 under the lease were sold in execution of a decree for money which had been obtained by Lal Mangal Sen and others, and were purchased by Habib-ur Rahman Khan, and default was made by the defendant No. 1 in paying any part of the balance due of the Rs. 18,000, and that balance has remained unpaid.

The suit in which this appeal has arisen was brought in the Court of the Subordinate Judge of Shahjahanpur on the 23rd September, 1912, and the relief sought against the defendant No. 1 and the sureties was a decree for Rs. 11,514 as principal moneys remaining unpaid of the instalments, Rs. 1,986 as interest on the unpaid instalments, and Rs. 500 as damages for breaches of certain conditions of the lease-agreement, making in all Rs. 14,000, with interest for the period of the pending of the suit, and future interest to the date of payment to be recovered by sale of some timber and by sale of the property charged under the security bond. The sureties by their written statement alleged that the surety bond was without consideration; that they were not sureties for the purchaser at the execution sale; and that the plaintiff did not enforce the condition of the agreement on non-payment of the first instalment. This was an idle defence. There was ample consideration for the bond, anything done, or any promise made for the benefit of the principal, may be a sufficient consideration to a surety for giving a guarantee; the liability of the sureties was for the performance by the defendant No. 1 of the conditions of the lease which were set out in the deed of agreement of the 14th January, 1909, and the plaintiff was not bound on the failure of the defendant No. 1 to pay an instalment when it became due to insist on the payment by the defendant No. 1 of all the other instalments.

After a very full and careful consideration of all the facts of the case the Subordinate Judge by his decree of the 22nd September, 1913, found and declared that the amount due to the plaintiff on account of principal, interest and costs, calculated up to the 22nd March, 1914, was Rs. 13,853 : 6 : 10, and decreed that such amount should carry interest at the rate of Rs. 6 per centum per annum until realization, and under Rule 4 of Order 34 of the Code of Civil Procedure, 1908, made the usual decree for sale of the hypothecated property of the sureties if the payment should not be made on or before the 22nd March, 1914. From that decree the sureties appealed to the High Court at Allahabad.

The High Court was apparently in some way misled as to the plaintiff's cause of action against the sureties. In the judgment of the High Court it is stated :

"It is alleged and we may assume for the purposes of this appeal that breaches of the agreement were committed by the purchaser of the rights of Amanat-ullah (defendant No. 1) when cutting the trees. The Court below has held that defendants 2-5 (the sureties) were also liable under the surety bond. In our opinion this view is *not correct*.

It is quite clear on the terms of the bond that the liability of these defendants was for the acts of Muhammad Amanat-ullah Khan. These defendants never expressly or impliedly agreed to be liable for the acts of the auction purchaser, who had not even then purchased the rights under the lease. It would be going outside of the bond to make these persons liable for the acts of the person who had purchased Amanatullah's rights at auction sale."

And the High Court allowed the appeal of the sureties, set aside the decree of the Subordinate Judge against them, and dismissed the suit as against them. From that decree of the High Court the plaintiff has brought this appeal. The respondents have not appeared to this appeal to His Majesty in Council, and their Lordships are unable to understand how the High Court was misled. There is nothing in the grounds of the appeal of the sureties to the High Court to suggest that the plaintiff was suing the sureties for any acts committed by the man who had purchased at the sale under the decree for money the rights of the defendant No. 1. That sale had not the effect of releasing the defendant No. 1 or his sureties from liability to perform the covenants and conditions of the lease and the deed of agreement of the 14th January, 1909. The plaintiff had not made any variance in the terms of the contract between him and the defendant No. 1 which would discharge the securities; he had not released the defendant No. 1; nor had he by any act or omission discharged the defendant No. 1 from the performance of the contract; nor had he done any act which was inconsistent with the rights of the sureties; nor had he omitted to do any act which his duty to the sureties required him to do. Mere forbearance on the part of a creditor to sue the principal debtor or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety. The sureties were not in this case discharged from their liability under the surety bond.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, and the decree of the High Court should be set aside with costs, and that the decree of the Subordinate Judge should be restored. Those of the respondents who are the sureties must pay the costs of this appeal.



In the Privy Council.

KALI CHARAN

v.

ABDUL RAHMAN AND OTHERS

DELIVERED BY SIR JOHN EDGE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.
1918.