

Privy Council Appeal No. 80 of 1923.

Allahabad Appeal No. 44 of 1921.

Kunwar Chiranjit Singh - - - - - *Appellant*

v.

Rai Bahadur Har Swarup, since deceased - - - - - *Respondent*

AND

Rai Bahadur Har Swarup, since deceased (now represented by
Gayan Swarup and others) - - - - - *Appellant*

v.

Kunwar Chiranjit Singh - - - - - *Respondent*
(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 1ST DECEMBER, 1925.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by* LORD SHAW.]

The main appeal has reference to a contract of sale of the Markham Grant Estate belonging to the defendant Jyotish Sarup. The contract was entered into with the plaintiff-appellant. The High Court, reversing the judgment of the Subordinate Judge, held that there was a complete contract of sale. In the opinion of the Board the High Court, in this particular, as in the others aftermentioned, was right.

One of the terms of this contract of sale was as follows :—

28th July, 1914, from defendant to the plaintiff :—

“Willing on old terms namely earnest twenty thousand balance in two moieties, first payable on executing conveyance, last within six months net cash we receive 4 lacs 76,000.”

On the 2nd August a reply was sent accepting the proposal.

From that point forward, however, the appellant appears to have encountered financial difficulties in carrying out the contract. He set about endeavouring to secure the property on modified and easier terms. He did not pay the earnest money *eo nomine*, but on the 28th August, 1914, he sent two cheques, amounting *in cumulo* to Rs. 1,65,000, the receipt being granted for these sums “towards the sale price of the Markham Grant Estate out of the consideration of Rs. 4,76,000.”

It is contended that this formed a supersession of the former contract. The Board agrees with the opinion of the High Court that this is not so. It was merely a financial modification in the interests of the purchaser, who appeared to be unable or unwilling fully to meet the terms of the contract.

Then came, on 6th September, 1914, a letter from the purchaser's representative in these terms :—

In continuation of my telegram, dated the 3rd instant from Simla, I have to inform you that, owing to certain unavoidable circumstances Kunwar Chiranjit Singh of Kapurthala, is quite unable to purchase the Markham Grant in the Dehra Dun district. You are hence quite at liberty to settle your terms and make up the bargain with any other purchaser.

It is accordingly plain that the purchaser was unable or unwilling to complete the contract, even in its modified terms.

According to the judgment of the High Court, which again, in their Lordships' view, is correct, the purchaser must, having broken the contract, lose his earnest money of Rs. 20,000, but must be repaid Rs. 1,45,000, the balance of his payment to account. The appeal is brought with the object of his also obtaining repayment of the earnest money.

In the opinion of the Board, as mentioned, the original contract of sale was not superseded. It was carried forward with the modifications alluded to and in particular there is nothing to suggest that the owner of the Estate agreed to sacrifice the stipulated earnest.

Earnest money is part of the purchase price when the transaction goes forward: it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee.

The application of this principle to the contract in question settles the case.

A cross - appeal was presented truly for the purpose of endeavouring to meet circumstances which have not arisen,

namely, the Board's possibly coming to an opinion that the original contract of sale had been wiped out.

Their Lordships will humbly advise His Majesty that the main appeal fails with costs. As to the cross-appeal there will be no order except that there be no costs to either side.

In the Privy Council.

KUNWAR CHIRANJIT SINGH

vs.

RAI BAHADUR HAR SWARUP, SINCE DECEASED

AND

RAI BAHADUR HAR SWARUP, SINCE DECEASED
(NOW REPRESENTED BY GAYAN SWARUP
AND OTHERS)

vs.

KUNWAR CHIRANJIT SINGH.
(Consolidated Appeals.)

DELIVERED BY LORD SHAW.