

(1898) 12 AHC CK 0003**Allahabad High Court****Case No:** None

Muhammad Siddiq Khan and
Others

APPELLANT**Vs**

Muhammad Nasir Ullah Khan
and Others

RESPONDENT**Date of Decision:** Dec. 10, 1898**Citation:** (1899) ILR (All) 223**Hon'ble Judges:** R. Couch, J; Morris, J; Macnaghten, J; Habhouse, J**Bench:** Full Bench**Final Decision:** Dismissed

Judgement

R. Couch, J.

By a deed dated the 10th September 1887, Muhammad Ghulam Kadir Khan sold a share of mauza Alipur Gajauri to Nasir-ul-lah Khan and Mussammat Ulfat, his wife, in consideration of Rs. 20,000, which sum was in the deed stated to be for paying the debts due to Lala Srikishen Das and Indarman, Bhora, and the money was said in the deed to be "left with the vendees" for paying to the former Rs. 17,000 and to the latter Rs. 3,000. The latter sum was paid to Indarman and the question in this appeal relates to the Rs. 17,000. The suit was brought by Haji Begam, the widow of Ghulam Kadir Khan, against Nasir-ul-lah Khan and his wife, and in the course of it the appellants and respondents were on their decease substituted for them as plaintiffs and defendants. The plaintiff alleged, as was the fact, that the Rs. 17,000 were not paid to Srikishen Das, and prayed for a decree for that sum and Rs. 9,718-6-9 interest from 10th September 1887 to 15th June 1892, the day of filing the plaint, and also for the costs of a suit by Srikishen Das against Ghulam Kadir Khan. The facts were that at the time of the sale Rs. 22,000 were due to Srikishen Das and there was also a mortgage to Harjit Singh and others upon which Rs. 15,000 were due. The evidence showed that the balance due to Srikishen Das and the money due on the mortgage to Indarman were agreed to be paid by Ghulam Kadir Khan and

the property sold released from mortgages. Ghulam Kadir Khan failed to provide the money for this purpose, and Srikishen Das brought a suit against him and obtained a decree for what was due to him with interest and costs and the amount decreed was realised by Srikishen Das on the 18th March 1892. The second and third of the issues in the suit were whether the Defendants should be charged with interest on the Rs. 17,000, and the costs of that suit. The Subordinate Judge who tried the suit allowed the interest but not the costs, and gave a decree for the balance of the claim after deducting Rs. 14,000, which he said had been paid on the 25th January 1893. It did not appear how this was paid. Both parties appealed to the High Court, which decided that the plaintiffs were not entitled to either the interest or costs; and modified the decree of the lower Court by giving to the plaintiffs Rs. 3,000, the balance of the Rs. 17,000 with interest from the 30th June 1893, the date of that decree. The plaintiffs have appealed against this decree.

2. Their Lordships are of opinion that there is no ground for the appeal. The Rs. 17,000 were not left with the vendees simply as a deposit of the money of the vendor. They were to retain it as a security that the property sold should be freed from the incumbrances upon it and that they should have a good title. They were entitled to retain it until the vendor provided the rest of the money necessary for this purpose. Unless this was done, a payment of the Rs. 17,000 would leave the property still incumbered, as Srikishen would only receive it, if he did so, in part payment of what was due. From the nature of the transaction it was not a deposit upon which the vendees would be liable to pay interest unless they refused or omitted to pay the money when they were informed by the vendor that he was prepared to pay the balance necessary to satisfy what was due to Srikishen. Without that balance they were not bound to pay or tender to him the Rs. 17,000. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The appellants will pay the costs.