Sheo Kumar And Ors. vs Gyan Nath Raina And Ors. on 16 November, 1954

Equivalent citations: AIR1955ALL408, AIR 1955 ALLAHABAD 408

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal J.

1. This appeal arises out of a suit for the specific -performance of a contract. The plaintiffs' suit for the specific performance of the contract was dismissed and their claim for damages for Rs. 32,000 on account of breach of contract was decreed for Rs. 7,000 only. The plaintiffs have appealed against the dismissal of their claim.

2. Defendant-respondent 1 has filed a cross-objection against the decree for damages in favour of the plaintiffs.

3. It may also be mentioned that the decree in favour of the plaintiffs is also for the undisputed claim for Rs. 5,000 on account of the refund of the earnest money which had been paid by the plaintiffs to the defendant-respondent.

4. The plaintiffs' case is that on 3-1-1943, an agreement was arrived at between them and defendant 1 with respect to the sale of bungalow. No. 13/5 in Civil Lines, Kanpur, with the proprietary and lessee rights in the appurtenant lands for a sum of Rs. 58,000 excluding all costs of stamp and registration which were to be borne by the plaintiffs. It was agreed that a proper sale would be completed within a month. On the conclusion of the contract a sum of Rs. 5,000 was paid by the plaintiffs to defendant 1, who is the father of the other defendants who were minors. Defendant 1 executed a receipt incorporating the terms on which the agreement to sell was made.

5. It is further alleged that defendant 1 raised certain objections to the draft of the sale-deed and that the plaintiffs agreed to those suggestions but defendant 1 wanted to impose further conditions contrary to those already settled and Ultimately sent a cheque for Rs. 5,000 to the plaintiffs saying that the negotiations for sale were brought to a close.

6. It was further alleged that the bungalow could fetch Rs. 90,000 and that, therefore, the plaintiffs were entitled to damages to the extent of Rs. 32,000.

7. Defendant 1 contested the suit mainly on the ground that there had been no concluded contract for sale and that when the negotiations did not terminate in an agreement he returned the amount

he had received from the plaintiffs by means of a cheque. He denied the correctness of the various allegations suggested by the plaintiffs for making out the sale to be for the benefit of the family.

8. Defendant 1 justified his insisting on the latest condition absolving him of any responsibility in case the sale transaction fell through on account of any action of the minors challenging the validity of the sale in view of the fact that a notice had been given by the guardian of the minors challenging the necessity for the contemplated sale by their father. He contended that as the sale transaction fell through on account of the repudiation by the minor-defendants the claim for damages was misconceived.

9. The suit was contested by the minor defendants on the ground that the sale was not for the benefit of the family or for any legal necessity and that therefore the transaction was void, and the plaintiffs could not enforce it.

10. The learned Civil Judge found that the transaction was not for legal necessity or for the benefit of the estate and that therefore the suit could not be decreed for the specific performance of the contract. He assessed the amount of damages relying on the statement of defendant 1 that the offers did not exceed Rs. 64,000 or Rs. 65,000 and consequently decreed the suit for damages for Rs. 7,000.

11. The main question for determination to connection with the appeal and the cross-objection is whether "there had been a concluded contract between the plaintiffs and defendant 1. On this point we are in agreement with the finding of the Court below and are of opinion that the contract for sale had been completed between them on 3-1-1043.

12. Defendant 1 had been trying to sell this house from some time before 11-9-1941. It appears from the letter Ex. 24, dated 17-9-1942, from defendant 1 to a broker that defendant 1 would consider an offer in the neighbourhood of Rs. 50,000 for his bungalow and from the letter Ex. 30, dated 2-1-1943, that some offer had been made to him and he insisted on getting the cheque by the 5th of January and to be informed very clearly what the offer, was. Defendant 1 has not disclosed in his deposition and it is not possible either that the offer made to him by this broker was more favourable than what had been made by the plaintiffs on 3-1-1943. In fact this previous correspondence is just to indicate that defendant 1 had been anxious to sell the house for more than a year and had not been successful in obtaining a clear offer of Rs. 50,000 or so by that time. There should, therefore, be nothing surprising if defendant 1 should readily accept the offer of the plaintiffs for purchasing the house for Rs. 58,000.

The receipt executed by defendant 1 makes it clear that Rs. 5,000 were received by him as earnest money for the sale of his bungalow for the sum of Rs. 58,000 and that it was agreed that the registration would be ejected within one month. The necessary terms of the sale for the purposes of the vendor were to be found mentioned in this receipt. A vendor is solely concerned with the price for the property which he intends to sell. The vendee is not only concerned with the property that he is purchasing but also with the guarantee about a clear title and other safeguards for the same purpose. Earnest money is paid usually after the conclusion of a contract. The question of the

registration of the sale deed can arise also after a concluded contract. There is no question of fixing a time limit for the registration of a sale deed if no contract has been arrived at and terms were still to be settled. Nobody could have visualised that the terms must get settled within a specified period of time. The receipt itself therefore lends very good support to the statement of Debi Charan Gupta, one of the plaintiffs, that the terms of the contract had been settled. The correspondence which followed makes this particularly clear.

13. A draft sale-deed, Ex. 20 was sent to defendant 1 sometime prior to 18-2-1943, as on that date defendant 1 wrote to Mr. Jagdish Behari Lal, Advocate of Kanpur and who had accompanied Debi Charan Gupta to Agra where the conversation about the sale transaction had taken place with defendant 1 that he was returning the draft sale-deed. Paragraph 2 of this letter, Ex. J. said that the portion placed within brackets was to be omitted and the marginal notes were to be added, that the purchaser must take the property with his eyes open with respect to the measurements of the land and that he did not want to bind himself to any bank, nor would place the money in a way that there might be some difficulty in withdrawing it for purchasing fresh property. He wanted the necessary amendments on these two points to be made. The draft sale-deed, Ex. 20, provided:

> "In consultation with the legal adviser it has been decided that the amount of sale consideration should at present be deposited in more than one bank as fixed deposit bearing interest, with this condition that when the minor sons of me, the executant, would become major they shall get the amount deposited from the banks. If before the minor sons attain majority, I the executant enter into contract for purchasing one or more property in the name of the minors and for their benefit, I shall have right to withdraw the fixed amount from the said banks and to invest the same in the purchase of the property." Later on the sale deed provided: "The remaining amount of Rs. (sic) has been deposited by the vendees aforesaid under the instructions of me, the executant, in the Bank in the account of Krishna Murthi Raina, Ram Murthi Raina and Bishun Murti Raina minor sons of me, the executant, with the condition that the said amount deposited be treated as the fixed deposit bearing interest and that the minors aforesaid on attaining, majority shall be entitled to withdraw the said amount deposited together with the interest on the same, or if during the period of minority of the aforesaid sons I, the executant, make purchase of any property in the name of the said, minors, the entire amount deposited aforesaid or part thereof as the case may be, shall be spent in connection with the purchase of the property."

14. It would appear, therefore, that the draft sale deed provided for the withdrawal of the money for purchasing fresh property and that the expressions in this draft sale deed could not have led to any difficulty in the withdrawal of the amount. The other suggestion about transferring the amount from one bank to another could not have been open to any objection and could have been very easily incorporated in the sale deed. In fact it does not appear that the plaintiffs raised any objection to accommodate defendant 1 in this small matter.

15. This letter of the 18th of February was followed by the letter Ex. K, dated 9-3-1943, to Mr. Jagdish Behari Lal. Defendant 1 complained about not receiving back the revised draft of the sale

deed, and indicated therein that he had since received higher offers which he had refused because he had accepted the offer of Lala Debi Charan. He requested Mr. Jagdish Behari Lal to have the revised draft sent to him at once so that it could be executed within that month, that is March 1943. He made it clear in this letter that the two points he had raised in the previous letter might be put in the draft sale deed in any language so Long as the sense of his conditions was found incorporated. Another significant statement in this letter is:

> "Kindly remind L. Debi Charan that during the course of our conversation I had told him these very points and I understood him to say that he had no objection to my placing the money in any bank I liked and to its being taken out for purchasing other property whenever I liked, and that he had already had the measurements of the land taken. ' In the circumstances there should not now be any controversy and I will expect you to send me draft deed in a form which will be acceptable to both parties, and at once."

This makes it amply clear that the matter about the deposit of the sale consideration in a bank and about its withdrawal had been settled between the parties on the 3rd of January and that there was nothing else which was contemplated by defendant 1 with respect to this sale which had to be further settled. Of course, the terms settled have to be expressed in a formal deed and a possibility of some alterations and suggestions according to one's notions does exist, but such suggestions cannot be raised to the status of terms of the sale transaction. Any undue insistence on such terms must be with a view to back out of the contract and not with a view to get things expressed in a manner that no party should suffer from any loss or inaccurate expression. As already mentioned, this letter confirms our view that the contract of sale had been settled between the parties on the 3rd of January and that the objections' which defendant 1 was raising were just with respect to the way in which what had been agreed upon should be expressed in the sale deed.

16. It may also be mentioned that defendant 1's reference to his refusing higher offers because he had already accepted the offer of Debi Charan also indicates that upto 9-3-1943, defendant 1 did consider that he had entered into an irrevocable contract of sale with Debi Charan. If he was only negotiating with Debi Charan and no final contract had taken place, there was no reason for him to refuse higher offers.

17. It may be mentioned here that the letter Ex. 31, dated 24-1-1943, addressed by defendant 1 to his broker indicates that he had been offered Rs. 56,000, which he naturally considered too low having had already an offer of Rs. 58,000 from Debi Charan and that defendant 1 communicated to his broker that he could consider an offer of Rs. 70,000 if he had any for his bungalow. This shows that while defendant 1 was carrying on correspondence with his counsel Mr. Jagdish Behari Lal in connection with the sale deed in suit and just asking for a slight variation in the language of the sale deed, he was carrying on correspondence with a broker for getting a higher price for his bungalow and was thinking of getting something more substantial in the neighbourhood of Rs. 70,000 and that when he was actually offered Rs. 62,000 he did a little calculation and wanted to make sure what would be his net gain after he had paid up the brokerage and other charges, for we find in letter Ex. 32, dated 13-3-1943, by defendant 1 to his broker that the broker had written to him on the

11th of March intimating an offer of Rs. 62,000 and that defendant 1 wanted to know by return of post the net amount which he would get after paying commission, brokerage, etc. He wanted his broker to get the draft sale deed drawn up and sent to him at once and then he would give a final reply. This letter shows that what defendant 1 wrote in his letter, Ex. K, dated 9-3-1943 to Mr. Jagdish Behari Lal that he was not accepting higher offers because he had accepted the offer of Lala Debi Charan was not a true statement of fact but had been introduced as a thin end of the wedge for future contingencies in case he did get a substantially higher offer and wanted to back out of the contract. He could not have expected to execute two sale deeds in the same month with respect to the same property.

18. On 15-3-1943, defendant 1 again wrote to Mr. Jagdish Behari Lal saying that he had not received the draft sale deed and would like it to be sent at once and that otherwise he would assume that the vendee was unwilling to close the transaction. He further stated in this letter that it was not necessary to mention the names of the banks in the deed and that it might be mentioned that the money would be deposited in the names of himself and the minors and the property would be purchased out of that money and that it should not be mentioned that the money would not be withdrawn until the sons attained majority. It will be noticed that these things were not quite the same what had been mentioned by him in his letter, dated 18-2-1943, and which, according to him, was just giving expression to what had been agreed upon between the parties on the 3rd of January. Naturally Mr. Jagdish Behari Lal replied to this letter on 19-3-1943, saying that he had explained the matter to Debi Charan who had consulted his lawyers and had been advised that the purchaser would not be safeguarded unless it was mentioned in the draft that if the property was not purchased out of the sale consideration, it would remain in some bank, in fact till the minors attained majority.

He further mentioned that Debi Charan would have no objection that defendant 1 would have the option to transfer the money from one bank to another on the same terms and conditions, that is to say, it would remain in deposit with the other bank till he purchased another property, or the minors attained majority. He said that if defendant 1 agreed to this, he would send the amendment draft for his approval and in case he insisted for the omission to mention that the amount would remain in deposit till the minors attained majority he would return the cheque for Rs. 5,000. This letter indicates the reasonable attitude of the plaintiffs upto that time. They were prepared to agree with the suggestion of defendant 1 so far as it did not alter the main terms of the contract and were possibly not prepared to insist on the sale transaction if defendant 1 was not agreeable to it in those circumstances even though the contract had been arrived at between them previously.

19. In reply to this letter to Mr. Jagdish Behari Lal defendant 1 seems to have sent a letter on the 22nd of March. That letter is not on the record. Mr. Jagdish Behari Lal's reply to that letter is contained in Ex. N, dated 6-4-1943, he had sent that reply on the 28th of March. In this letter Mr. Jagdish Behari Lal stated:

> "The clause which you suggest to be added in the draft sale deed is already there"

He explained the necessity of the safeguarding terms in the sale deed in favour of the vendee and then stated in the last paragraph:

> "If you agree to deposit the purchase money in any bank you consider safest on the terms that it would be paid to you when you purchase another property in the name of minors or they attain majority, the purchaser can have no objection to get the sale deed executed In his favour, as it was the main term of the contract."

This supports our view as already mentioned that this term about the deposit of money and its withdrawal had been agreed upon on 3-1-1943, and that it was one of the main terms of the contract for the purposes of the vendee, and all what defendant 1 had been trying to do was to back out of that particular stipulation. The reply of defendant 1 to this stern letter of Mr. Jagdish Behari Lal is letter Ex. O, dated 12-4-1943. He realised the weakness of his position and stated that he did not object to the condition that the money must remain in some bank until the minors attained majority or the property was purchased for them, and asked Mr. Jagdish Behari Lal to send him a copy of the draft sale deed incorporating the other alterations which he had proposed. This letter does not indicate to what other alterations he was referring unless the reference was to some verbal expressions.

This letter again shows that if the suggestions of defendant i be taken to be material suggestions capable of such differences between the parties as could justify their not concluding the contract in case it had not been concluded on the 3rd of January, those suggestions had been accepted and defendant 1 was prepared to execute the sale deed as drafted and modified slightly in some of the expressions. If the contract was not concluded on the 3rd of January it must be taken to be concluded on 12-4-1943." The draft sale deed was sent to defendant 1 and then defendant 1 sent the letter, Ex. P, suggesting that the deed did not make it clear that he was free to transfer the amount from one bank to the other. Paragraph 2 of this letter said that in case the vendee insisted that the money could not be transferred to another bank, he would not agree to keep it for ever in one bank. This seems to be a curious suggestion in view of the letter already mentioned of Mr. Jagdish Behari Lal, dated 19-3-1943, wherein he had said that it could be mentioned in the sale deed that defendant 1 would have the option of transferring the money from one bank to another on the same terms and conditions, that is to say, it would remain invested in the other bank till he had purchased another property or the minors attained majority. It therefore, appears to be again a further attempt on the part of defendant 1 to postpone the execution of the sale deed.

Ultimately on 6-5-1943, defendant 1 returned the draft sale deed with the slip, Ex. 21, dealing with the question of the transfer of the amount. Still in this very letter he raised another point In para. 4 and that was in connection with the Improvement Trust not executing leases in the names of more persons than one and saying that he must have unfettered discretion to purchase property in his own name or the names of his sons on the condition that if it was in his name, he should not transfer it to anyone else, that unless this condition was accepted he would not be able to purchase Trust land and that he should explain this to the vendee. This is quite a new point and again seems to have been raised as a thin end of the wedge after ostensibly agreeing in the opening portion of this letter to the finality of the draft sale deed in case the amendment suggested in the sale deed was

incorporated. He repeated this point in his letter, dated 2-6-1943 and in his letter Ex. R. dated 6-6-1943, he wrote to Mr. Jagdish Behari Lal:

> "In this case I shall not be able to purchase such land in the names of all the sons but only in my own name or in the name of one Son. Does your client agree to this? This contingency did not occur to me when the sale deed was drafted but has now arisen and must foe provided for. Please let me have your reply with the amendment in the sale deed soon to enable further steps to be taken."

Mr. Jagdish Behari Lal then washed his hands off this affair and wrote to defendant 1 on 13-6-1943:

> "I am tired of writing to you in the matter of sale deed of your bungalow. As soon as you agree to one thing, you come out with some rider the next moment. Your approved draft sale deed is with L. Debi Charan purchaser. He is not my client. It would be better if you write to him direct."

20. It will be noticed that for the first time defendant 1 referred to Mr. Jagdish Behari Lal as the counsel for the plaintiffs, the vendees, in his letter, dated 6-6-1943, and Mr. Jagdish Behari Lal lost no time to repudiate this suggestion. There was nothing in the correspondence before to indicate that Mr. Jagdish Behari Lal was acting on behalf of Debi Charan, one of the plaintiffs. This only shows how cleverly defendant 1 was drafting his letters with an eye to the future and that Mr. Jagdish Behari Lal, who had been his counsel in other litigations and was acting for him in this transaction, felt it hopeless to conduct the transaction for him and therefore asked him to deal with the vendee direct.

21. Thereafter the plaintiffs and defendant 1 had been in correspondence with respect to this latest suggestion. Debi Charan suggested to defendant 1 in his letter, Ex. A-3, dated 25-7-1943, that the suggestion would be given careful consideration in the presence of the lawyer and adjusted on the spot and that he should come over to Kanpur for the execution of the sale deed.

This indicates that the plaintiffs were not contemplating any serious difficulty in finding a way out and accommodating defendant l even in this new matter raised by him. Defendant 1, however, refused to come over to Kanpur to execute the document till the terms were finally settled and communicated to one another in writing. He further stated in his letter, dated 27-7-1943, that if the plaintiffs did not accept the conditions referred to in spite of the special reasons necessitating them he be informed of the decision by return of post and that otherwise he would be compelled to treat the negotiations as cancelled, and on 29-7-1943, he informed the plaintiffs by letter Ex. X, dated the 29th July that, as he had not received a reply to his letter, dated the 27th he was treating the negotiations as cancelled and the contract at an end. He sent a cheque for Rs. 5,000 with this letter.

22. We need not in the present context follow the further correspondence between the parties because it is clear from the correspondence so far dealt with that Debi Charan for the plaintiffs and defendant 1 on his behalf and on behalf of the minors had completed the contract for the sale of the bungalow for Rs. 58,000 and that there did not remain any particular term of the contract to be

settled thereafter. Whatever suggestions were made by the defendant were either accepted by the plaintiffs or were not insisted to by defendant 1. Defendant 1 cancelled the transaction not on the ground that any of the previous terms which had been agreed upon were being resiled from by the plaintiffs but on the ground that the defendants were not probably prepared to agree to his fresh suggestion as a result of the Improvement Trust not executing a lease in favour of more than one person--a matter which had not been contemplated at the time of settling the transaction.

23. The finding of the learned Civil Judge that the sale transaction was not for legal necessity is not disputed for the appellant. It is contended, however, that the conduct of defendant 1 in selling the ancestral house was the prudent act of the manager of the joint family. We are of opinion that this cannot be said on the basis of the material on the record. There is no clear evidence as to what would have been the income from interest on the deposit of Rs. 58,000 in a bank and whether such income would have been substantially in excess of what the bungalow was fetching by way of rent. Even if the monetary return on the deposit was higher than the receipts from rent, it is very doubtful how far that consideration alone would justify the sale of ancestral property.

Further it is to be considered that the parties were agreeing to the withdrawal of the amount in case, defendant 1 purchased some other property. There is nothing on the record to show that such other purchase must have necessarily been a better investment of the amount. Apparently the other property would also be sold in accordance with the rise in prices at that time and there need not have been any great margin of profit. We, therefore, agree with the learned Civil Judge and hold that the sale transaction was not for legal necessity or for the benefit of the estate.

24. On the question of the quantum of damages the evidence on the record is very meagre. The bare statement of Debi Charan, one of the plaintiffs, that prices had risen by one and a half or double between January 1943 and December 1943 or January 1944 cannot be made the basis of assessing damages, especially when he himself had said that he could not say what was the difference in prices between January 1943 and December 1943 or January 1944. Defendant 1 stated in his deposition that Jivan Baboo's offer was of about Rs. 64,000 or Rs. 65.000 and that probably it was sometime before 6-5-1943. He also deposed that according to his recollection he did not receive up to December 1943 an offer of higher than Rs. 70,000 and that it was likely that he might have received before December 1943 offers of about Rs. 70.000. This statement may imply that he had received an offer of Rs. 70,000 but that is not the positive statement of this witness and therefore should not be the basis for assessing damages. In this view of the matter, again, the learned Civil Judge seems to have been in the right in assessing damages by relying on the statement of defendant 1 that he had an offer of about Rs. 64,000 or Rs. 65,000 of this bungalow before 6-5-1943.

25. It has been contended for the respondent that the plaintiff is not entitled to damages order Section 73. Contract Act (Act 9 of 1872) but is entitled only to the refund of the earnest money in view of Section 65 of the Act. We do not agree with this contention.

26. Section 73. Contract Act is in a chapter with the heading "Of the Consequences of Breach of Contract" and provides:

> "When a contract has been broken the party who suffers by such breach is entitled to receive from the party who had broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
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> "

It is not necessary to refer to cases in Which compensation has been awarded to the Vendee when the vendor broke a contract for sale, but mention may be made to the cases reported in -- 'Ranchhod Bhawan v. Manmohandas Ramji', 32 Bom 165 (A), -- 'Nabin Chandra Sana v. Krishna Barana Dasi', 38 Cal 458 (B), -- 'Mangal Singh v. Dial Chand', AIR 1940 Lah 159 (C), -- 'Adikesavan Naidu v. Gurunatha Chetti', AIR 1918 Mad 1315 (FB) (D) and -- 'Shamsudin Tajbhai v. Dahyabhai Manganlal', AIR 1924 Bom 357 (E). If the contention for the respondent be accepted, it would mean that the vendee is not to be reimbursed for any loss he suffers on account of the breach of contract. It is not necessary that earnest money be paid to the vendor in every transaction and even if paid the refund of the earnest money is not for making good the loss which the vendee had suffered on account of the breach of contract but is simply returned to him what he had parted with in the expectation of getting the contract carried out. It has not been shown why the provisions of Section 73, Contract Act dc not apply to the facts of the case and why the vendee should not get compensation for any loss he had suffered by the breach of the contract. Section 65, Contract Act is:

> "When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

No case has been referred to in which the provisions of this section have been held to apply to the case of breach of contract and in which damages for breach of contract had been claimed Reference to this section was made by one of the Judges in -- 'Lachmi Prasad v. Lachmi Narain', AIR 1928 All 41 (F). The question in this case was whether the plaintiff who was challenging the sale deed should reimburse the vendee-defendant for the money spent on improvements. Ashworth J. was discussing the applicability of Section 51, T. P. Act to such a case and in that connection -observed:

> "Section 65, Contract Act is a guide as to the principle to be invoked. When a contract becomes void, as it did in this case by the plaintiff repudiating the sale by his father, the plaintiff, as a person who has received advantage, is bound to restore that advantage or make compensation for it. The transfer only became voidable at the instance of the plaintiff. Consequently the lower Court was right to taking into consideration the plea of defendant 2 under Section 51, T. P. Act."

This does not mean that the vendee is not entitled to damages when there is a breach of the contract of sale or when the sale contract falls on account of its being successfully challenged by someone and has therefore become void. The principle of Rule 65 Contract Act was referred to for interpreting the provisions of Section 51, T. P., Act. This case, therefore, is no authority in support of the contention

of the respondent that damages cannot be claimed by a vendee from a vendor when there is a breach of the contract for sale.

27. Section 65, Contract Act contemplates something different from what Section 73 of the Act contemplates. It contemplates for the refund of any advantage which a party has received under an agreement which is discovered to be void or when a contract becomes void. The advantage received can either be restored in the form in which it was received or its equivalent can be awarded to the other party by way of compensation. It, therefore, contemplates only refund of what one has received and does not contemplate the payment of damages to make up for the loss which the party not at fault has suffered on account "of the other's committing a breach of the contract.

28. A breach of the contract takes place when any party to the contract refuses to perform his part. A contract becomes void in the various circumstances mentioned in the other provisions of the Contract Act. A contract is not void 'ab initio'. It is only voidable in certain circumstances. When it is avoided by the particular party who has the option to avoid it, the contract becomes void. An agreement which can be enforced by law is a contract and therefore it would be a mistake to say that a contract is void 'ab initio'. The contract arrived at between the plaintiffs and defendant 1 was a good contract. Defendant 1 did not perform his part of the contract. By that time it had not been avoided by his minor sons who could have avoided it on establishing in Court that the transfer was not valid for want of legal necessity or benefit to the estate. The contract had not become void when defendant 1 refused to perform his part. He is, therefore, liable to make good the loss suffered by the plaintiffs on account of his breach.

29. In view of the above we are of opinion that the decree of the Court below is correct and that both the appeal and the cross-objection should fail. We accordingly dismiss them with costs.