

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Hanuma:
Kamut v. Hanuman Mandar and Others, from
the High Court of Judicature at Fort William
in Bengal; delivered November 11th, 1891.*

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Sir Richard Couch.*]

ON the 1st August 1879 one Dowlut Mandar the father of the Respondents, sold to the Appellant $2\frac{1}{2}$ annas out of 8 annas of a certain property, and the consideration was then paid by the Appellant. On the 1st April 1881 and after the death of Dowlut Mandar, the Appellant filed a plaint, in which he stated that after the purchase he had applied to the Collector for registration of his name in respect of the $2\frac{1}{2}$ annas which had been so sold to him; that his application was opposed on the part of two of the members of the joint family, of which Dowlut Mandar was the head; and that in consequence of that opposition the Court rejected his petition for registration of his name on the 22nd December 1880; and treating that as giving him a cause of action for a suit to recover possession, he asked in the plaint that possession might be given to him. The Subordinate Judge of Bhagulpore decreed the suit; the District Judge dismissed it; and on appeal by the Appellant to the High Court that Court dismissed the appeal. On the 4th March 1885 the Appellant commenced a suit for the recovery of his purchase money and interest. The Second Subordinate Judge of Bhagulpore dismissed this suit on the ground that it was barred by

A 69266. 125.—11/91. Wt. 5036. E. & S.

section 43 of the Civil Procedure Code. The High Court, on appeal from the Subordinate Judge, held the suit to be barred by the Law of Limitation, apparently under the 62nd Article of the second schedule to the Limitation Act. There are two articles in that schedule which it has been said may be applicable to the present case. The 62nd Article provides that, in a suit for money had and received, the period of limitation runs from the time of the money being received. The 97th Article applies to a suit to recover money upon an existing consideration which afterwards fails, and it says that the period of limitation is to date from the time when the consideration failed. Their Lordships are of opinion that the case must fall either within Article 62 or Article 97. If there never was any consideration, then the price paid by the Appellant was money had and received to his account by Dowlut Mandar. But their Lordships are inclined to think that the sale was not necessarily void, but was only voidable if objection were taken to it by the other members of the joint family. If so, the consideration did not fail at once, but only from the time when the Appellant endeavoured to obtain possession of the property, and being opposed, found himself unable to obtain possession. There was then, at all events, a failure of consideration, and he would have had a right to sue at that time, to recover back his purchase money upon a failure of consideration ; and, therefore, the case appears to them to be within the enactments of Article 97.

It appears to their Lordships unnecessary to give any opinion upon the other question which was decided by the High Court and the Subordinate Court, the High Court differing from the latter, namely, whether the Appellant ought, in his suit brought in 1881, to have included a claim

to recover back the purchase money. It may be a question of some difficulty in a case of this kind as to what is the effect of section 43 of the Civil Procedure Code. Their Lordships consider it is unnecessary for them to give any opinion upon that, and they abstain from doing so. Upon the question of limitation they are of opinion that the Decree of the High Court ought to be affirmed, and the appeal dismissed; and they will humbly advise Her Majesty to that effect.

