

*Privy Council Appeal No. 2 of 1966*

**Chintamanie Ajit** - - - - - *Appellant*

v.

**Joseph Mootoo Sammy** - - - - - *Respondent*

FROM

**THE BRITISH CARIBBEAN COURT OF APPEAL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 12TH JULY, 1966

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*Present at the Hearing :*

VISCOUNT DILHORNE

LORD HODSON

LORD WILBERFORCE

[*Delivered by* LORD HODSON]

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This is an appeal from a judgment of the Federal Supreme Court of the West Indies, dated the 22nd March, 1962, dismissing an appeal from a judgment of the Supreme Court of British Guiana given on the 16th February, 1961.

The appeal arises out of a transaction relating to the sale of land. By an agreement dated the 31st July, 1958, the respondent agreed to sell land to the appellant in respect of which there was a deposit of 1,000 dollars, and 10,000 dollars remained on mortgage out of the total purchase price, which was 17,000 dollars.

In accordance with the local law, an advertisement was issued by the appellant in relation to the land, which remained in force for three months. Time was not made the essence of the contract, no time was fixed for completion, but it is understood that time would, in the absence of special circumstances, end at the expiration of the three months covered by the advertisement. The appellant, who appears here having no opponent, the Court of Appeal indeed having dismissed his appeal without calling upon the respondent, had said before the 3rd February, 1959, that he had had difficulty in finding the money to pay for the land, and he then received an indulgence of 2,000 dollars which he could add to the 10,000 dollars remaining on mortgage, leaving a balance of only 4,000 dollars to be found.

What happened at that time, namely, on the 3rd February, was that a letter was written on behalf of the respondent in these terms: "We have been consulted by Joseph Mootoo Sammy with reference to his agreement of sale with you dated 31st July, 1958, in respect of lot 113, Duke Street, Kingston. We are instructed that although the transport and mortgage were advertised on 8th November last you have failed to accept and pass same although repeated demands have been made and our client even agreed to increase the amount of the mortgage from 10,000 to 12,000 dollars. We are therefore instructed to inform you that time is of the essence of the contract and that unless you attend transport Court on Monday next the 9th instant at 2 p.m. and accept transport, pass the mortgage and pay the balance of purchase price, viz. 4,000 dollars, our client will have no alternative but to cancel the sale and forfeit the deposit and furthermore will hold you responsible for any loss or damages that he may incur in this matter." The money was not paid because, as the

learned Chief Justice found, the appellant had no money and no prospect of raising it, and the question arises whether this notice, which was after all a very short notice, only six days, was reasonable in the circumstances.

The position at law is stated in the decision of the House of Lords, reported in 1915 Appeal Cases, page 387, in *Stickney v. Keeble*. The first paragraph of the headnote, which summarises the effect of the judgment, is as follows: "Where in a contract for the sale of land the time fixed for completion is not made the essence of the contract, but the vendor has been guilty of unnecessary delay, the purchaser may serve upon the vendor a notice limiting a time at the expiration of which he will treat the contract as at an end, and in determining the reasonableness of the time so limited the court will consider not merely what remains to be done at the date of the notice, but all the circumstances of the case, including the previous delay of the vendor and the attitude of the purchaser in relation thereto." One has to reverse the words "vendor" and "purchaser" to adapt that statement to this case, and it was held, at any rate by Lord Mersey, and maybe by other members of the House, in that case that the question of whether the notice was sufficient was a pure question of fact, as appears from the speech of Lord Mersey at page 415.

Their Lordships' attention was drawn to the evidence given by the appellant in this case before the Chief Justice. He said this, in regard to the question of any variation of the contract, by parole evidence: "He"—that is the respondent—"told me that he would give me a chance to raise the money and pay him and that I could get the transport again, if not he will give me back my money as he does not mean to rob me. I told defendant that I will re-advertise and take transport", and the learned Chief Justice held that there was really no evidence that the appellant had been prejudiced, the position being that he never had the money, and, that finding of fact having been confirmed by the Appellate Court, there are concurrent findings of fact and no question of law arises upon this appeal.

Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed.



**In the Privy Council**

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**CHINTAMANIE AJIT**

**v.**

**JOSEPH MOOTOO SAMMY**

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DELIVERED BY  
**LORD HODSON**