

(1915) 06 AHC CK 0012

Allahabad High Court

Case No: None

Kauleshar Prasad Misra

APPELLANT

Vs

Abadi Bibi

RESPONDENT

Date of Decision: June 30, 1915

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Citation: AIR 1915 All 347 : 30 Ind. Cas. 512

Hon'ble Judges: Henry Richards, C.J; Piggott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit brought by the plaintiff for possession of a bungalow and compound. The plaintiff's title is as follows: The property they say belonged to one Ali Ahmad, who died in March 1910, leaving certain heirs who are the defendants of the fourth party. They made a deed in her (plaintiff's) favour on the 4th of July 1913, The defendants' title on the other hand is as follows: Ali Ahmad, they allege, executed a sale-deed in the year 1889, in favour of one Musammat Idan. Musammat Idan died in 1912, leaving as her heir the defendant of the third party, Ramzan, and Ramzan by a sale-deed, dated the 30th June 1913, sold the property to the appellant, Pandit Kauleshar Prasad Misra. Both the Courts below have decreed the plaintiff's claim. Both Courts have found that the sale-deed of 1889 was a fictitious sale-deed under which no possession passed or was intended to pass that Musammat Idan was the mistress of Ali Ahmad, that Ali Ahmad continued to be the owner and in possession of the property notwithstanding the sale-deed. This it seems to us is a finding of fact which we in second appeal are bound to accept.

2. The appellant, however, contends that there is a flaw in the plaintiff's title. In the sale-deed of the 4th of July 1913, there is a stipulation that the price should be paid within one year provided that possession is obtained within that time, that if

possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all. It is contended that the consideration for this contract is opposed to public policy, being a gambling transaction. It is further contended that there being a condition attached to the payment of the consideration, the transaction is not a sale within the definition of that expression contained in Section 54 of the Transfer of Property Act. In our opinion there is nothing contrary to public policy in providing that the payment of the consideration should be postponed in certain events and that it should not be paid at all in the event of the property being lost. It certainly was not a gambling transaction. Section 54 defines a "sale" as a transfer of ownership in exchange for a price paid or promised, or part paid and part promised." In our judgment the stipulations in the present deed did not prevent the transaction amounting to a sale" within the definition.

3. It is next contended that Ramzan, the appellant's vendor, was the ostensible owner of the property in suit with the consent, express or implied, of the real owners, and that the appellant took all reasonable care to ascertain that Ramzan had power to make the transfer in his favour. The Courts below have found that Ramzan was not the ostensible owner with the consent, express or implied, of the real owners, and they have further found that under the circumstances of the present case the appellant did not take reasonable care to ascertain the title of his vendor. In our opinion these are questions of fact upon which we must accept in second appeal the findings of the Courts below.

4. The result is that the appeal fails and is dismissed with costs.