(1928) 03 AHC CK 0010

Allahabad High Court

Case No: None

Jai Devi Kunwar		APPELLANT
	Vs	
Kalyan Singh and Others		RESPONDENT

Date of Decision: March 12, 1928

Hon'ble Judges: Sulaiman, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sulaiman, J.

This is a plaintiff''s appeal arising out of a suit for pre-emption of the properties sold under a deed dated 18th September 1923. The suit was instituted on 16th September 1924. According to the sale-deed the sale consideration was Rs. 22,000. Out of this Rs. 4,000 were admittedly paid in cash to the vendors, and two sums of money were left in the hands of the vendees for payment to two named creditors under two promissory notes, and three further sums were left in their hands for payment to certain prior mortgagees. It is an admitted fact that the defendants vendees did not discharge any of these previous debts. The plaintiff had actually alleged that the sale consideration was inflated and that the amounts said to be due on the two promissory notes were fictitious. She further claimed that, inasmuch as the defendants who were liable to discharge the previous debts forthwith had omitted to pay off those debts they must make good to the plaintiffs the amount of interest which had accrued on those debts.

2. The learned Subordinate Judge came to the conclusion that the question of the genuineness of the two promissory notes should not be gone into in this litigation, as the defendants had not paid off those debts and the plaintiff was not called upon to pay them in this suit. As regards the plaintiff''s claim to get credit for the interest, he came to the conclusion that the plaintiff was claiming remedy before any cause of action had arisen. He however remarked:

If the plaintiff was in any way damnified hereafter then there would be time enough for her to enforce her cause of action.

3. In appeal the first point urged is that the question of the genuineness of the promissory notes should have been gone into. We are of opinion that this contention cannot prevail. In the first place the defendants not having paid off those promissory notes, and the plaintiff not being called upon to pay those amounts, it is wholly unnecessary to decide whether those debts were actually due. Furthermore, it is quite clear that the plaintiff could not be sued by the creditors directly as there is no privity of contract between her and those creditors: Jamna Das v. Ram Autar [1912] 34 All. 63. But if those amounts are not fictitious, and the plaintiff does not pay off the creditors, she will of course be liable for payment of those amounts to the original vendors; in case they have to pay those amounts or to suffer loss on account of their nonpayment.

4. We are also of opinion that the plaintiff''s claim for interest cannot be allowed. It is a curious fact that the learned advocate for the appellant has not been able to cite before us any reported case in which a pre-emptor has been given credit for interest which had accrued on account of the delay in payment by the vendee of money left in his hands. The point raised is therefore an unusual one. On the other hand it can unhesitatingly be asserted that in numerous cases, where amounts left in the hands of the vendee had not been paid off by the vendee, no credit for interest was in fact allowed by Courts. We may mention the case of Chedda Lal v. Basdeo Sahai [1912] 14 I.C. 266. The point raised in the present appeal however was not expressly decided in that case.

5. So far as any interest that might have accrued on account of the non-payment of the debts due on the two promissory notes is concerned, it is clear that the breach committed by the vendee, if any, would entitle the vendor to sue him for damages. The present plaintiff would not be held liable to make good the loss which was incurred prior to the date of the deposit of the pre-emption money by her. The right of a pre-emptor to the property accrues on the date of such deposit, and it is the vendee who is entitled to all the rents and profits of the property up to that date: Deonandan Prasad Singh v. Ramdhari Chowdhri AIR 1916 P.C. 179 approving a Full Bench case of this Court, Deokinandan v. Sri Ram [1890] 12 All. 234 (F.B.). The same principle is now embodied in Section 24, Agra Pre-emption Act.

6. As regards the interest which has accrued on the mortgages, there is something to be said in favour of the appellant. No doubt the vendee only paid Rs. 4,000 in cash and obtained possession of the property and has been in receipt of the profits all along. It was his duty under the contract to pay off the previous debts within a reasonable time, and not having paid it he has allowed interest to accumulate which has increased the burden on the mortgaged property. The plaintiff is now acquiring this mortgaged property by pre-emption and she is therefore taking it along with this increased burden. The learned advocate for the appellant therefore strongly

contends that there ought to be an equitable adjustment between the parties and that the plaintiff ought to be given compensation for the loss which she has suffered on account of the delay in the payment of these mortgage debts by the vendees. We are however of opinion that this claim cannot be allowed. In the first place to allow such a claim would really be giving credit to the plaintiff for benefit which accrued to the vendees prior to the date of the deposit of the pre-emption money by her on which date alone she became entitled to the property. In the next place it is to be borne in mind that the plaintiff has had the use of her own money for all these years. She did not institute the suit promptly and waited for a year before filing it. She did not deposit the amount till after May 1925. Thus, although on the one hand the vendees have appropriated the profits of the property, on the other the plaintiff has not been called upon to pay the pre-emption money for such a long time. It would be impossible to allow an equitable adjustment without opening up the account between the parties and finding out the profits which the vendees have realized and calculating interest which they ought to have paid. We are of opinion that this should not be allowed in a pre-emption suit. The pre-emptor should stop into the shoes of the vendees and occupy the same position as they do on the date of her deposit. We might mention that in an unreported case of Kundan Gir v. Ch. Jaiwant Singh (Second Appeal No. 108 of 1927 decided on 20th April 1927) a similar claim by the plaintiff for interest was disallowed. In actual practice there is no great hardship on a pre-emptor because he knows full well that he will have to pre-empt the property with all its existing incumbrances. If he has delayed bringing his suit for some considerable time and thereby incurred further liability owing to the accumulation of interest he has only himself to thank.

7. The learned advocate for the appellant has drawn our attention to the case of Umrao Singh Vs. Mt. Mohan Kunwar and Another But in our opinion that case in no way helps him, but is in consonance with the view which we have expressed in the present case. That reported case was the converse case where the vendee was claiming the extra interest which he had paid to the previous creditors. That extra interest had accrued because of the delay made by him in such payment. It was hold that he was not entitled to get the excess amount as it was his duty to make the payments at once, and if he withheld payments he benefited by the use of the money in his hands and was himself liable for any extra interest that might accrue in the intervening period. But at the same time it was remarked that the plaintiff was not bound to pay more than the true sale consideration mentioned in the sale-deed. In the present case we are also holding that the plaintiff must pay the sale consideration that is mentioned in the sale-deed which the defendants have paid off. It is not the defendants who are claiming interest that they might have been liable to pay and might have themselves paid off, but it is the plaintiff who is claiming credit for interest not paid by the defendants. The result, therefore, is that this appeal must be dismissed with costs.