(1931) 05 AHC CK 0015

Allahabad High Court

Case No: None

Suraj and Sons		APPELLANT
	Vs	
J.O. Brin and Another		RESPONDENT

Date of Decision: May 4, 1931

Hon'ble Judges: Mukerji, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mukerji, J.
This revision is bound to succeed as in my opinion the learned Judge of the Small Cause Court, has been misled into the decision at which ha arrived by a certain Rangoon decision which was based on an older decision which was subsequently overruled by that very Court.

2. The applicants here were the plaintiffs in the Court below. They brought the suit out of which this appeal has arisen for recovery of five months'' hire of a spring bedstead which was the subject matter of an agreement dated 16th February 1930.

3. The question is what was the import of the agreement whether it was primarily a transaction of hire and ultimately a transaction of sale or whether substantially it was a transaction for sale. Reading the document independently unaided by any authority I have not the slightest doubt that it was primarily a transaction of hire.

4. The agreement which is short starts with the following words:

Roceived from . . . the undermentioned articles on hire valued at Rs. 150 only.

5. Then the defendants go on to say that they agreed to pay the hire on certain terms. The first term was that the defendants were to take care of the article. C1, 2 was that if the defendants failed to pay hire in any month in advance the plaintiffs were entitled to terminate the hiring and to obtain possession of the article. Clause 3 was that if the defendants ever wanted to terminate the agreement within the

period of ten months (which was required to make up the sum of Rs. 150 the price of the article at the rate of Rs. 15 p. m. the hire) they could do so. It was provided that in such a case the defendants should not be entitled to ask for any refund of the hire already paid. Lastly cornea Clause (4) in which it is said that if the defendants paid regularly month by month the hire agreed upon for ten months the defendants ﷿would become the owner of the property without any further payment.

6. On this agreement there can be no doubt that primarily it was a case of hire and there was no obligation on the part of the defendants to continue the hiring for the full period of ten months. They might keep -the property for a month or two months and then give it back. It was only in the case of their keeping the property for ten months and regularly paying the instalments that the defendants would become the owner of the property.

7. It is always dangerous to make an attempt to interpret one document with the aid of another and unless a question of principle is involved it is no use referring to any case as an authority. In the books there will be found numerous cases dealing with what is known as the hire purchase agreement" but if we look into those cases we shall find that they have been decided on the language employed by the parties. For example we find it clearly mentioned Kallava Parbhu Desai Vs. Vithabai Appu Desai, that there the so-called lessee or hirer had no option to cancel the hire agreement and to stop further payment.

8. The head-note says:

When it is clear from the agreement that the party taking the chattel, called the hirer or lessee, has to pay the full amount of consideration mentioned in the agreement even though the payment is by instalments and that amount is sufficient to cover the purchase price of the chattel or when it is clear from the agreement that the "hirer" or "lessee" cannot at any time during the period mentioned in the agreement return the chattel to the other party called the "owner" or "lessor" and absolve himself from the obligation to make further payment the agreement is really an agreement for sale and not for hire.

9. As I have already stated every case has to be decided on the language of the agreement and not on abstract principles. In reading a written agreement we have to see what is the import of it and what the parties really meant to do. If we find that the agreement was mainly one of hiring as in this particular case we have no right to say that it was a case of sale simply because in another case a High Court said that the particular case before it was a case of sale.

10. There is a Madras case: the The Auto Supply Co. Ltd. Vs. V. Raghunatha Chetty, which was decided on the language employed in. that particular case and it held that it was a case of hire and even the deposit of more than Rs. 1,000 which was treated as initial payment for rent was not allowed to change the character of the

agreement.

11. I allow the application in revision set aside the decree of the Court below and decree the plaintiff''s claim with costs in both the Courts against the respondents.