(1896) ILR (All) 160

Allahabad High Court

Case No: None

Amanat Bibi and Another		APPELLANT
	Vs	
Ajudhia and Others		RESPONDENT

Date of Decision: Dec. 20, 1895

Citation: (1896) ILR (All) 160

Hon'ble Judges: Banerji, J; Aikman, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Banerji and Aikman, JJ.
This was a suit brought by the appellant to recover compensation. The defendants Nos. 1 to 10 sold certain

property to the plaintiffs by a sale-deed dated the 20th of June 1888, for a consideration of Rs. 6,000. It was stipulated in the sale-deed that if at

the time of delivery of possession the profits arising from the property were found to be less than Rs. 300, the deficiency would be made up either

by a conveyance of other property or by the refund of a proportionate part of the consideration money. The sale-deed also provided that if any

dispute arose as to the possession of the vendees the vendors would make compensation. The present suit was brought on the strength of the

stipulations in the sale-deed referred to above, and the allegation of the plaintiffs was that the profits accruing from the property amounted only to

Rs. 177-1, and that there was thus a deficiency of Rs. 122-15. It was also alleged that the vendors had resisted mutation of names and had thus

caused damages estimated at Rs. 100. The plaintiffs accordingly sued to obtain a refund of a portion of the consideration money and to recover

Rs. 100 as damages. The Court below has dismissed the suit, It was of opinion that Article 65 of the second schedule of the Indian Limitation Act

1877, applied, and that the claim was barred by limitation. It also tried the case on the merits and came to the conclusion that the plaintiffs had

failed to prove that there was a deficiency in the profits. We are of opinion that this was a suit for compensation for breach of a contract in writing

registered, and therefore the period of limitation applicable to it was six years under Article 116. We think that the ruling in Kishen Lal v. Kinlock

ILR 3 All. 712 is in point, and we are of opinion that the Court below was wrong in holding the claim to be barred by limitation.

2. As all the evidence which the parties could adduce was on the record, we asked the learned Counsel for the appellants to support their case on

the merits. In our judgment the plaintiffs have utterly failed to prove that on the date on which possession was delivered to them the profits arising

from the property fell below Rs. 300. The only evidence on which the plaintiffs rely consists of the deposition of a patwari who was appointed two

years after the date of the plaintiffs" possession, and of certain jamabandis, only one of which related to the year 1296 Fasli, the year of plaintiffs"

possession. That jamabandi is insufficient to prove that the profits did not amount to Rs. 300 in that year. It shows the whole of the separate land

of the plaintiffs as in their cultivation on a nominal rental. It is silent as to any income from the joint land, and from miscellaneous sources such as

irrigation, sale of fish, sale of fruit, &c. The evidence adduced by the plaintiffs themselves proves that these latter sources of income do exist,

Consequently the plaintiffs failed to place before the Court such evidence as could justify its coming to the conclusion that the profits did not

amount to Rs. 300 in the year of the plaintiffs" possession. As for the claim for damages on account of resistance to mutation of names, that can be

shortly disposed of. It appears from the 5th paragraph of the plaint that objection was raised to mutation of names on the ground that the full

amount of consideration money had not been paid. The plaintiffs assert that that ground was unfounded. We have the fact that in the civil suit

brought by the vendors for recovery of the balance of consideration money they obtained a decree against the plaintiffs. So that their objection to

mutation of names must be taken to have been a valid one. We dismiss this appeal with costs.