

(1880) 02 AHC CK 0005**Allahabad High Court****Case No:** None

Ram Lakhan Rai

APPELLANT

Vs

Bandan Rai and Others

RESPONDENT

Date of Decision: Feb. 16, 1880**Citation:** (1880) ILR (All) 711**Hon'ble Judges:** Straight, J; Pearson, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Pearson, J.

The plaintiff sued to recover possession of an eight gandas share in mauza Chondipur under a sale-deed executed in his favour by Ram Bakhsh, defendant, on the 7th August 1874, on the averment that after his purchase he had been put in possession of the property, but had been ousted from it by the other defendants, to whom Ram Bakhsh had ostensibly conveyed the same property by a sale-deed dated 11th December 1877. The defendant Ram Bakhsh admitted the receipt of the sale-consideration, Rs. 600, from the plaintiff and the truth and justice of his claim. The other defendants contended that the sale-deed of the 7th August 1874, had been invalidated by the non-payment of the sale-consideration therein mentioned, and that consequently Ram Bakhsh was competent to sell the property, the subject thereof, to them, and that they were lawfully in possession of it under the sale-deed executed in their favour. The Court of First Instance allowing these contentions dismissed the suit with costs. The lower Appellate Court concurred with the Munsif in finding that the plaintiff had neither paid the sale-price, nor been put in possession of the property, nor been ejected from it by the second vendees, but nevertheless held that the vendor was not free or competent to avoid the first sale. The Subordinate Judge was of opinion that Ram Bakhsh had only a right to sue for the sale-consideration, or to refuse possession of the property to the plaintiff until receipt of that consideration. The Subordinate Judge further ruled that the plaintiff

was not entitled to obtain possession of the property without payment of Rs. 600, the sale-consideration, which was payable to the defendants, the second vendees, as representatives of the vendor, whatever rights and interests he had in the disputed property against the plaintiff having passed to them, and that they were accordingly entitled to receive the sale-consideration, or until its receipt to retain possession of the property in question.

2. The respondents have not taken any objections to the lower Appellate Court's decision, and we are bound therefore to accept the ruling that the first sale is not void by reason of the non-payment of the sale-consideration, and that the second sale is invalid as having been made by a person who had no rights and interests remaining in the property. This being so, we cannot assent to the view that the second vendees are representatives of the vendor and entitled to receive the sale-consideration, found to be still owing to him, and retain possession of the property in suit until the receipt of that consideration. What he sold to them was not the right to receive that consideration, but the property in suit. They were doubtless at liberty to resist the plaintiff's claim on the ground that the sale made to him had been invalidated by his failure to pay the sale-price; but they have not challenged the ruling that it was not so invalidated, and they must submit to the conclusion that the sale made to themselves is invalid, and that they are not entitled to retain possession of the property thereunder.

3. If then they are not entitled to retain possession of the property until receipt of Rs. 600 from the plaintiff, the question remains whether that sum should be paid to the vendor. To him, if it be due at all, it is due from the plaintiff, but he admitted its receipt in the Court of First Instance, and has not claimed it here. From him, and not from the plaintiff the second vendees are entitled to recover the price which they paid to him for the property, which the lower Appellate Court has ruled that he was not free and competent to sell to them.

4. For the above reasons we must decree the appeal with costs, and modify the lower Appellate Court's decree by reversing that portion of it which directs the plaintiff to pay Rs. 600 and to bear his own costs. Those costs must be paid by the defendants, second vendees.