

(1910) 04 AHC CK 0026

Allahabad High Court

Case No: None

Raghunandan Lal and Others

APPELLANT

Vs

Matru Mal

RESPONDENT

Date of Decision: April 29, 1910

Citation: 6 Ind. Cas. 404

Hon'ble Judges: Tudball, J; Richards, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiffs claimed specific performance of an alleged contract for the sale of land, and in the alternative to recover a sum of Rs. 2,600 with Rs. 195 interest. The plaintiffs stated their cause of action as follows: That there was a decree against one Girwar Dayal and Musammat Chandan Kunwar, that in execution of this decree the property, the subject-matter of the present suit, was, attached, that the defendant borrowed Rs. 2,600 from the plaintiffs and purchased the land, agreeing at the same time that he would re-sell the property to the plaintiffs. The facts of the case, as found by the Court below, are somewhat different, viz, the plaintiffs after obtaining their decree applied to the Court for leave to bid. This leave was refused. To quote the Court below, "They (i.e., the plaintiffs) then cast about for some device in order to evade the provisions of the law. Defendant was then, in their confidence. Accordingly the plaintiffs with their own money purchased the property in the name of the defendant expecting that he would execute in their favour a formal transfer. Before this could be done, the parties had a quarrel; the defendant, being the certified purchaser, set up his own title to the property." The Courts below have dismissed the suit.

2. The plaintiffs appeal. In the Court below and in this Court the relief of specific performance of the contract has been abandoned but the appellants strenuously press that they are under the circumstances entitled to a refund of the purchase-money.

3. Now it is quite clear that it cannot be recovered as money lent, because no money was paid by the plaintiff as the purchase-money of the property which they were purchasing in the name of the defendant. Section 294 of Act XIV of 1882 provides that no holder of a decree in execution of which property is sold, shall, without the express permission of the Court, bid for or purchase the property. Section 317 of the same Act provides that no suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person. These Sections create a difficulty in the way of the plaintiffs' recovering the purchase-money. It is argued on behalf of the respondent that, so far as the plaintiffs' claim is based upon the alleged contract between them and the defendant; the contract was absolutely null and void, that having regard to the provisions of Section 294- already quoted, the agreement was unlawful, because it is forbidden by law within the meaning of Section 23 of the Contract Act; and that, therefore, even if the contract is set aside the present suit,, is a suit against the certified purchaser on the ground that the purchase was made on behalf of another person, within the meaning of Section 317. The appellants reply that a purchase by a decree-holder without leave of the Court is not void, it can only be set aside by an application to the Court and that the present claim for a refund of the purchase-money is not a suit of the nature referred to in Section 317. It seems to us that the plaintiffs are not entitled to any relief. Their suit for the return of the money was based upon an allegation that there was a contract of loan between them and the defendant. This is negatived by the finding of the Court below. There was no loan at all. The facts are that the plaintiffs, in contravention of the express order of the Court and the section of the Act, purchased the property themselves. On the facts as found all that they can ask the Court to hold is that in the events which have happened the defendant must be considered to hold the purchase-money in trust for them. We think there are two reasons why the plaintiffs ought not to be allowed to recover back this money. In the first place we must alter the nature of the suit to meet the facts that have been found, and we do not[^] think that where the plaintiffs have been guilty of conduct like the present, the Court [^]as called upon to alter the nature of the suit. It seems also to us that even if we were to treat the suit as a suit for money received by the defendant for the plaintiffs, that the plaintiffs could not succeed except by showing that the defendant made the purchase on their behalf. Such a suit it seems to us is expressly prohibited by Section 317 of Act XIV of 1882. It would be a suit against the certified purchaser on the ground that the purchase was made on behalf of another person.

4. We accordingly dismiss the appeal with costs including" in this Court fees on the higher scale.