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Date : 24/08/2025

Jhandi Lal Vs Shiam Lal and Others

Court: Allahabad High Court

Date of Decision: Jan. 5, 1920

Citation: AIR 1920 All 134 : 54 Ind. Cas. 756

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This second appeal arises out of a suit for pre-emption. The property, according to the sale-deed, had been sold for the sum of Rs. 700. The

plaintiff, who is the appellant before ns, maintained that the Actual price paid was only. Rs. 300 and sought to pre-empt on the payment of that

sum. The Court of first instance held on the evidence that Rs. 700 had actually been paid by the vendee. It, therefore, gave the plaintiff a decree

conditional on his paying into Court the sum of Rs. 700 within a period of 60 days. The plaintiff, being dissatisfied with this decision as to

consideration, appealed to the lower Appellate Court. He did not pay the sum of Rs. 700 into Court within the 60 days. While the appeal was

pending, he asked the Appellate Court by a miscellaneous application to grant an extension of time. This the Court refused to do, and rightly

refused. It could not vary the decree of the first Court on a miscellaneous application. It could only vary that decree by hearing and deciding the

appeal. When the appeal came up for hearing, the lower Appellate Court directed the appeal to be struck off without going into the merits at all.

The sole basis for its order was that the plaintiff had failed to pay the sum of Rs. 700 into Court within the period of 60 days allowed by the Court

of first instance. The plaintiff, therefore, comes here on second appeal. The decision "" of the Court below is obviously incorrect. The matter is

already covered by a decision of this Court in the case of Khurshed un nissa v. Alim un nissa 17 Ind. Cas 868 : 10 A.L.J. 421. The Appellate

Court ought to have gone into the merits of the appeal, as the appeal was directed solely towards the condition laid down by the Court of first

instance. If the Appellate Court had found on hearing the appeal that a sum less than Rs. 700 had been the Actual consideration, it would naturally

have extended the time for payment. The appellant is entitled to a decision on the question of the amount of consideration. We do not think it

necessary to send the case back to the lower Appellate Court for a decision on the paint. The evidence is on the record before us and it will save

time and expense for us to take up the issue and decide it ourselves. The Court of first instance rightly laid the onus upon the defendants of proving

the Actual consideration paid in view of the evidence produced by the plaintiff in respect to the market value. The defendants produced the

document with its endorsement. One of them went into the witness-box, and an attesting witness was also called. It was clearly established that Rs.

625 at least was paid in the presence of the Sub-Registrar. The evidence of the plaintiff''s own witnesses shows that the profits of the property are

approximately Rs. 28. So that the vendee was buying his property at a profit of 4 per cent. only. This is by no means an unusual occurrence in this

country and in this Province, more especially where the land is cultivated by the owner thereof. We think that the decision of the Court of first

instance was correct and that the sum of Rs. 700 was actually paid by the vendee for the property. In this view, therefore, the appeal to the Court

below was bound to fail. We are asked to extend the time. To extend the time now would be to vary the decree of the Court below, and we can

see no Justice in doing so, for that would be equal to allowing the appeal in particle The plaintiff clearly was not ready with his money when he

sued, as he ought to have been, and litigation of this description is not to be encouraged. We, therefore, dismiss the appeal. The respondent will

have his casts in bath this and the lower Appellate Court.