

(1912) 05 AHC CK 0052

Allahabad High Court

Case No: None

Rabi Rai

APPELLANT

Vs

Dharamraj Rai

RESPONDENT

Date of Decision: May 17, 1912

Acts Referred:

- Contract Act, 1872 - Section 24

Citation: 15 Ind. Cas. 35

Hon'ble Judges: Piggott, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Piggott, J.

This was a suit to enforce a contract embodied in a deed dated October 26th, 1902. The defendant, who is the applicant now before this Court, acknowledged previous receipt of a certain sum and covenanted to re-pay the same with interest at a certain rate in four instalments, the last of which fell due on the "6th of June 1906. He also purported to hypothecate what is described as his tenant's holding in a certain village, and covenanted that, in the event of his failure to fulfil the stipulations as to re-payment, the plaintiff-mortgagee might either sue to recover his money or take possession of the holding in question. In the plaint, the land hypothecated is simply described as a tenant's holding (arazi-kashtkari) and in his prayer for relief the plaintiff says that since he finds that it is not possible for him to recover his money from the property mortgaged, he desires to sue upon the deed in question as a simple money bond. In reply, the main defence on the merits was a plea of want of consideration. There was also a question raised as to limitation with which I am not now concerned and there was also a plea to the effect that the property mortgaged is an occupancy-holding, hence the deed is "invalid". The Court of first instance, the learned Munsif of Ballia, framed three issues, the second of which was on the question of limitation, while the third was framed in general terms as to the liability

of the defendant. The first issue ran as follows--"Whether the deed was executed for consideration and is valid?". The finding upon this issue was that the deed was executed without consideration, and on his last issue the learned Munsif found that "the defendant is not liable, the deed is without consideration and consequently invalid". It seems clear to me that, whatever the learned Munsif may have meant by the frame of his first issue, the question regarding the legal effect of Section 24 of the Indian Contract Act, IX of 1872, as invalidating the whole transaction, in the event of, a finding that any one of the considerations in the deed in suit was unlawful, was not seriously considered by the learned Munsif. From the circumstance that no evidence was tendered to prove the allegation of fact as to the holding in question being an occupancy-holding, I gather that the point was not seriously pressed by the defendant, and that the parties went to trial upon an assumption that the plaintiff had a right to sever the various agreements specified in the bond in suit and to ask the Court to treat it as a simple money bond. It must be remembered that this suit comes from the Ballia District where there are tenant's holdings (such as fixed-rate tenancies), the transfer of which is not forbidden by law. When the plaintiff appealed to the District Judge, it is clear that before that Court the question now taken in revision (as to the entire contract being void because a part of the consideration was unlawful) was never raised at all. The plaintiff being the appellant in that Court naturally did not raise it, but it was incumbent on the defendant to bring that plea to the notice of the Appellate Court and to ask for a finding thereon in the event of the opinion of the Court being against him on other points. The learned District Judge discussed only the question of payment of consideration. He called attention to an important piece of evidence which had been overlooked altogether by the learned Munsif, viz., the admission by the first defendant before the Registering Officer at the time of registration that he had received the entire consideration for the deed in suit, then, remarking that "the defendant cannot now be allowed to go behind the admission and acknowledgment, he held that the deed was executed for good consideration. The plaintiff's claim having thus been decreed as against the defendant Rabi Rai, the latter comes before this Court in revision upon two grounds. He contends that the learned District Judge was wrong in treating the acknowledgment made before the Registering Officer as conclusive evidence against the defendant. As a matter of fact, there was very little other evidence on the record. The defendant had called two witnesses, who deposed that there was no payment of consideration at the time of execution, but this might have been presumed from the wording of the deed itself. The Court of first instance had found against the plaintiff because the two witnesses called by the latter contradicted one another, and one of them deposed to what was certainly not true, viz., the payments of the entire consideration at the time of execution. Now, I cannot feel at all certain whether the learned District Judge intended to lay down a proposition of law to the effect that the defendant's acknowledgment before the Registering Officer raised an un rebuttable presumption of law against him. I do not think a Judge of any experience would lay down such a

proposition and it seems to me more reasonable to suppose that the lower Appellate Court merely meant to find that the acknowledgment seemed to it decisive in view of the facts of this particular case. If, however, I am mistaken in this view, the utmost that can be said is that the learned District Judge committed an error of law, and I should not regard an error such as is alleged on this point as affording a good ground for interference in revision.

2. The question as to the effect of the provisions of Section 24 of the Indian Contract Act is much more important. I quite appreciate the force of the contention, put forward on behalf of the applicant, that a Court passing a decree for money upon a plaint which on the face of it sets up as its cause of action the breach of a contract which is void in law brings itself within the scope of the ruling of this Court in *Ross Alston v. Pitambar Bass* 25 A. 509 and should be held on the strength of that ruling to have acted illegally in the exercise of its jurisdiction. It seems to me, however, that the present suit must be distinguished by reason of the question of pleadings which I have already explained. The plaint as it stands says no more than this, that there was a covenant to re-pay by instalments together with the hypothecation of a tenant's holding, that the mortgagee feels it impossible to recover his money by enforcement of this hypothecation and he consequently asks for a decree simply on the basis of the covenant to re-pay. There is no necessary presumption in the Ballia District that a tenant's holding is untransferable, or that the mortgage of a tenant's holding is necessarily an illegal contract. The defendant, if he desired to obtain the benefit of his plea on this point, was bound to see that it was laid before the Courts with all necessary materials upon which a clear finding of fact could be arrived at and so made the basis of the decision of the Court on the question of law. In the present case, the illegal or irregular exercise of jurisdiction imputed to the lower Appellate Court is simply that it has neglected to dispose of an issue which was evidently never raised before it at all. If I were satisfied that it could be said with certainty that this neglect on the part of the learned District Judge has led to his giving the plaintiff a decree upon a plaint which was on the face of it based upon a contract void in law, I might feel some difficulty as to the proper order to pass. As the case stands, I do not think that this can be fairly said, and I will not interfere. The application is dismissed with costs.