
(1871) 09 CAL CK 0001

Calcutta High Court

Case No: None

Bholanath Khettri

APPELLANT

Vs

Kaliprasad Agurwalla

RESPONDENT

Date of Decision: Sept. 15, 1871

Judgement

Paul, J.

In this case the plaintiff Bholanath Khettri sues for the specific performance of a certain agreement dated the 20th October 1870 entered into between himself and the defendant, Kaliprasad Agurwalla. This agreement is admitted by both parties to be correct. By the plaintiff it is alleged that this was the whole agreement between him and the defendant, but by the defendant it is alleged that there was something understood at the time, to the effect that the transaction should be somewhat different to that which appears on the face of the agreement. I will consider the defendant's allegation by-and-by. For the purpose of the plaintiff's case, it is sufficient for me to say that these two letters constitute a binding contract of sale; that there was a part performance of the agreement by the defendant; and that the plaintiff has fulfilled all he contracted to do. He has paid the Rs. 8,000 he contracted to pay for and on behalf of the defendant. He has been put into full possession of the property, and has duly paid the landlord's rent from the time of his possession. The plaintiff tendered to the defendant the bill of sale, which the defendant refused to execute, and this suit has been brought to compel the defendant to execute it. Upon these facts the plaintiff is entitled to a decree. But the plaintiff's claim is resisted by the defendant, on the ground that the agreement induced by these two letters does not contain the whole agreement between the parties; that in addition to the terms contained therein, there was a further term that the plaintiff would re-convey and give up the property to this defendant, provided the money was repaid in two years. I have only here shortly stated the nature of the defendant's case; I will go into it more in detail afterwards, and show that it contains intrinsic evidence of falsehood. It is necessary to consider two matters in the defendant's case. The first is a point of law, viz., whether oral evidence is admissible to the terms of a written agreement; and if so, whether the further term said to have been orally agreed on was actually made. To prove the latter fact of his case just

alluded to, the onus of proof falls very heavily upon the defendant. With regard to the point of law, the plaintiff relies on the ruling of the Full Bench in the case of Kashinath Chatterjee v. Chandi Charan Banerjee Case No. 870 of 1865 : 5th Feb. 1866. This case does certainly enunciate the proposition that the terms of a written agreement cannot in any case be controlled by an oral agreement; and that when there is no fraud or mistake, a deed of absolute sale cannot be controlled by a contemporaneous verbal understanding that it should operate as a mortgage, and that in fact evidence of such verbal understanding is inadmissible. The decision of the Full Bench is in my humble opinion open to criticism; but inasmuch as it would be unbecoming in me to criticise it, I will refrain from making the remarks to which I think it is open. I must accept it as a decision binding upon me, unless I can find any decision of higher authority which would be more binding on me than a ruling of the Full Bench. I think that that higher authority is to be found in the case of Muttylall Seal v. Anund Chunder Sandel 5 Moore's I.A., 72, in which a conveyance of lease and release was held to be subject to a parol defeasance, and to be in the nature of a mortgage, with a power of re-purchase on the footing of redemption, and a re-conveyance was accordingly decreed. There it was established that parol evidence was admissible to prove a parol defeasance. It is to be observed that in that case the Counsel for the appellant admitted that parol evidence was admissible, and the argument was confined to the question whether the parol defeasance was or was not sufficiently established in the circumstances of the case; and the Privy Council confirmed the judgment of the Supreme Court which held that the deed in the suit was controlled by a parol defeasance, and was to be treated on the footing of a mortgage. The same doctrine was admitted to be correct in the case of Holmes v. Mathews 9 Moore's P.C.C., 413. Mr. Woodroffe referred me to the decision of the late Chief Justice in the case of Avietmull v. Madhub Chunder Mitter See Goodeve on Evidence, 2nd; Ed., p. 365, and to the case of Manahar Das v. Bhagabati Dasi 1 B.L.R., O.C., 28, in both of which cases the same doctrine was laid down. I would observe that the principle on which a Court of Equity allows a parol agreement to be admitted to defeat a written agreement is the broad principle of fraud. Where a Court of Equity is satisfied that all the terms agreed on between the parties have not been committed to writing, and that it would be unjust to allow one party to gain an undue advantage over the other in consequence thereof, it prevents the obtaining of such undue and unconscientious advantage. It is on the principle of fraud, undue advantage, and the like, that a Court of Equity acts in such cases. The rule of law stands unimpeached that a written agreement cannot be added to; because when a writing takes place, all other matters which were open before, are considered as settled by the written agreement being entered into and executed. It is otherwise when parties agree that a written document shall be executed, not embodying all the terms by which they are to be bound, and when by express arrangement the written document does not embody all the terms, but only a part, parol evidence is admissible to show what was the entire agreement between the parties. I shall for these reasons hold that the legal objection taken by the plaintiff is unavailing, and that I am at liberty to enter upon a consideration of the case made by the defence, and of the evidence adduced in support thereof.

2. On the evidence a decree was given for the plaintiff.