
(1921) 06 AHC CK 0004
In the Allahabad High Court

Badal Ram

APPELLANT

Vs

Jhulai

RESPONDENT

Date of Decision : 25-06-1921

Acts Referred:

Evidence Act, 1872 — Section 92(3)

Citation : AIR 1922 All 165 : 63 Ind. Cas. 861

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Judgement

Kanhaiya Lal, J.—The plaintiff was Parjotdar of 1 bigha 15 biswas of land, for which he need to pay Rs. 40 per year as ground rent to this defendant. On the 16th May 1917 the plaintiff relinquished 17 biswansis of land and agreed to pay Rs. 21 per year for the remaining land. A formal deed of relinquishment was executed by him, in which it was stated that the plaintiff did so because the portion of land relinquished was not fit for cultivation.

2. The allegation of the plaintiff was that at the time he executed the said deed of relinquishment, there had been a separate oral agreement between him and the defendant by virtue of which the latter agreed to pay Rs. 200 to the former, out of which Rs. 32 were to be credited towards the arrears of rent due by the former to the latter. Subsequently the defendant filed a suit for the recovery of Rs. 32 due to him on account of the said arrears of rent and obtained a decree against the plaintiff. The present suit was filed by the plaintiff for the recovery of Rs. 200 with interest on the strength of the oral agreement aforesaid. The Court below found in favour of the plaintiff and decreed the claim.

3. It is urged on behalf of the defendant that the Court below has erred in admitting oral evidence to vary the terms of the deed of relinquishment. The deed of relinquishment is a voluntary document executed by one party. It is silent as to whether any payment was to have been made to the plaintiff, as alleged. It recites that the portion of the land relinquished was not fit for cultivation and was relinquished in consequence and that the plaintiff shall pay

Rs. 21 per annum for the remaining land. According to the Court below that relinquishment was agreed to by the plaintiff on the strength of a separate oral agreement given by the defendant that he would pay B"9. 200 to the plaintiff in the manner above specified. The question of the existence or otherwise of consideration can always be enquired into irrespective of what is entered in the deed. The deed does not say that the relinquishment was to be made without any payment. It is silent and the plaintiff was entitled to prove this separate oral agreement, under proviso 2, Section 92 of the Indian Evidence Act of 1872.

4. It is argued that the deed of relinquishment was a formal document, registered in the manner required by law, and the decision *Abdul Hamid v. Abdul Majid* 21 Ind. Cas. 305 : 11 A.L.J. 770 is relied on to show that in the case of such a formal document no evidence about any extraneous matter not referred to in the deed ought to have been admitted. In that case a petition of compromise was filed, by which the disputed property was partitioned in a certain manner and a decree was passed in accordance with the compromise. The allegation of the plaintiff was that the defendant had agreed at the time of compromise to pay a certain sum to the plaintiff in order to equalize the loss. But the evidence adduced by him in support of such an agreement was held to be inadmissible, because it was treated as part and parcel of the agreement evidenced by the compromise, to variation of which could be permitted after a decree was passed in accordance with it. In the present case there were reciprocal promises, each forming a consideration for the other. The plaintiff had agreed to relinquish certain land and to hold the remainder on reduced rent. The defendant, in the other hand, had agreed to pay him a certain sum of money, out of which a portion was to be credited towards the arrears or rent then due. In *Ram Bukth v. Durjan* 9 A. 392 : A.W.N. (1887) 65 : 5 I.De. (N.S.) 695 where in defence to a suit upon a hypothecation bond payable by instalments it was pleaded that at the time of the execution of the bond it was orally agreed that the obligee should, in lieu of instalments, have possession of a part of the hypothecated property until the amount due on the bond should have been liquidated from the rents and in accordance with that agreement the plaintiff had obtained possession of the land, it was held that the oral agreement was not one which detracted from, added to, or varied the original contract, and that inasmuch as it only provided for the means by which the instalments were to be paid, it was admissible in evidence. In *Motabhoy Mulla Essabhoy v. Mulji Haridas* 29 Ind. Cas. 223 : 39 B. 399 : 17 M.L.T. 402 : 28 M.L.T. 589 : 13 A.L.J. 529 : 19 C.W.N. 713 : 21 C.L.J. 507 : 17 B. L.R. 460 : 2 L.W. 524 : (1915) M.W.N. 522 : 42 I.A. 103 (P.C.) a promissory note was executed by the defendant jointly with a certain firm and payable on demand. In a suit filed for the recovery of the money due on the promissory note, the defendant pleaded that by an oral agreement between the parties his liability on the note was to cease on a certain date subsequent to the execution of the date of the said promissory note, the simple acknowledgment by the firm being then substituted for the note. Their Lordships of the Privy Council observed that the agreement set up was not in the

nature of a bald averment of a verbal agreement contradicting the written contract but it was in the nature of a separate agreement, indicating the manner in which the liability of the defendant was to terminate and that oral evidence could be admitted to prove its terms u/s 92, proviso 2 of the Indian Evidence Act of 1872.

5. An agreement to pay as a condition precedent to the enforcement of a deed of relinquishment can also be proved u/s 92, proviso 3. The plaintiff really seeks to enforce the payment of the consideration for the agreement, the existence of which has been found to have been established. There is no reason, therefore, to interfere with the decree passed by the Court below. The application is dismissed with costs.