
(1911) 05 AHC CK 0008
In the Allahabad High Court
Case No : Second Appeal No. 431 of 1910

Bishan Lal and Mohan Lal and Another	APPELLANT
Vs	
Nitya Nand and Others	RESPONDENT

Date of Decision : 09-05-1911

Acts Referred:

Citation : (1911) 05 AHC CK 0008

Final Decision : Dismissed

Judgement

H.G. Richards, C.J. and Banerji, J.—This appeal arises out of a suit for specific performance of a contract for the sale of a house, The defendants appellants are subsequent purchasers of the house which, upon the finding of the court below, was agreed to be sold by the owners of the house to the plaintiff. A number of defences were pleaded. First, that the sale to the plaintiff was negotiated by one of two brothers who had not the authority of the other brother. Secondly, that the plaintiff represented that he was purchasing, not for himself, but for a third party. Thirdly, that the appellants were transferees for value, in good faith, without notice of the previous contract with the defendants.

2. In our opinion all these defences are concluded" by the findings of the court below. In our opinion, in coming to the conclusion which the lower appellate court came to, no mistake in law was made.

3. There was one other matter argued in the appeal, namely, that the claim being one to set aside a sale, the consideration for which was above Rs. 5,000, the appeal did not lie to the District Judge and the decree was ultra vires.

4. The plaintiff, no doubt, set forth in clause (b) of the prayer in the plaint a claim that the deed of transfer in favour of the appellants may be declared null and void as against the plaintiff. In our opinion the plaint and the prayer ought to be and can be read as a claim for specific performance against the owner of the house and subsequent purchasers who had bought with notice of the contract together with such incidental and proper relief as the court ought to give in a suit

of this nature.

5. The learned advocate for the appellants cited the case of Pirthi Singh v. Maru Singh (1911) 8 A.L.J., 206. In that case the plaintiff brought a suit for sale on foot of a mortgage. He also made parties to the suit a number of other persons who had held prior incumbrances against the property, and he claimed that it might be declared that these prior incumbrances had been paid off and discharged. In our opinion it is only necessary to state the nature of that suit to show that it was quite different from the present suit. The present suit is neither more nor less than a suit for specific performance of a contract against the original vendor and subsequent vendees with notice. The prayer which the appellants contended was an independent cause of action is merely an incidental relief to the claim for specific performance of the contract.

6. We dismiss the appeal with costs.