

(1930) 01 AHC CK 0005
In the Allahabad High Court

Firm Pearey Lal Kishen Prasad

APPELLANT

Vs

Firm Dev Karan Das Ram Saran Das and Others

RESPONDENT

Date of Decision : 13-01-1930

Acts Referred:

Citation : 125 Ind. Cas. 592

Hon'ble Judges : Sen, J; Niamatullah, J

Bench : Division Bench

Judgement

1. This case is in many respects analogous to Second Appeal No. 1493 of 1926. See 125 Ind. Cas. 453-[Ed.], Most of the points raised in the two appeals are identical and do not call for any separate treatment. Defendant No. 1 had contracted to sell 1200 maunds of wheat to the plaintiff. Four hundred maunds of wheat were either delivered or the claim relating to the same was duly settled. Defendant No. 1 held certain contracts from defendants Nos. 2 and 3 as regards 800 maunds of wheat. The defendant No. 1 assigned these contracts to the plaintiff.

2. The contract was contained in a langot in the minted form prescribed by the Meexut Veoparak Sabha. The Veoparak Sabha was registered on the 16th of June, 1925. The contract in suit was entered into on the 12th of June, 1925, According to a peculiar usage which obtains in Mandavi Qiisar Ganj in the city of Meerut the langot is a document of title and authorises the purchaser under the langot to deal with the grain purchased by transfers in favour of new purchasers. Even when the property remains in the actual and physical possession of the Bank as a mortgagee the right of the purchaser is capable of assignment by devolution from hand to hand.

3. It has been found by the Courts below that the property in the goods had passed to the plaintiff, the purchaser, that the plaintiff was not entitled to claim delivery so long as he did not pay the balance of the purchase-money, that the plaintiff had failed to carry out his part of the contract and that, therefore, it was he and not the defendant guilty of breach.

4. Upon these findings the plaintiff's claim was dismissed. We agree with the finding of the lower Appellate Court.

5. The defendants appear to have sold the grain to a third party. After deducting the amount which was due to them they held in their hands Rs. 143-7-6- to the credit of the person who was in law entitled to this amount. There is no doubt that it is the plaintiff who is entitled to this amount. Although the suit was not brought for recovery of this sum of money, we are of opinion that the claim was comprehensive enough to justify a decree in plaintiff's favour for this amount. We think that the Courts below by a pure oversight have failed to decree the plaintiff's claim as to this amount.

6. We modify the decrees of the Courts below and grant the plaintiff a decree for Rs. 143 7-6, against defendant No. 2 Daulat Ram-Nathu Mall. We dismiss the appeal with costs except as to the sum indicated above against defendant No. 2. Plaintiff will be entitled to proportionate costs from defendant No. 2, All defendants including defendant No. 2 are entitled to get one set of costs from the plaintiffs.