
(1930) 01 AHC CK 0050
In the Allahabad High Court

Kali Deen Singh

APPELLANT

Vs

Jagdat Pathak

RESPONDENT

Date of Decision : 09-01-1930

Acts Referred:

Citation : AIR 1930 All 440 : 122 Ind. Cas. 894

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is an appeal against a judgment of a learned single Judge of this Court who allowed the second appeal by holding that under the provisions of Section 92, Evidence Act, it was not open to the plaintiff to prove by oral evidence a contract which was inconsistent with a written bond of 31st May 1914.

2. The first point taken before us is that the learned Judge of this Court has upset a finding of fact.

3. It appears that the respondent Jagdat Pathak brought a suit against the appellant Kali Deen Singh for his ejectment in the revenue Court alleging that Kali Dean was his tenant. The appellant Kali Dean pleaded there that he was holding the land in lieu of interest of a bond which had been executed by Jagdat's brother on 31st May 1914. Kali Deen was referred to the civil Court and accordingly he instituted the suit out of which the present appeal has arisen.

4. The first Court dismissed the suit, but the lower appellate Court decreed it finding that the contract alleged by the plaintiff had been established.

5. On second appeal, a learned Judge of this Court came to the conclusion that the plaintiff had alleged that an oral contract took place at the same time as the bond was executed. Then applying Section 92, Evidence Act, he held that the oral evidence to prove the separate oral contract was inadmissible.

6. In our opinion, the entire matter considered by the learned single Judge was

one of law. He had to interpret the plaint and to find out from the four corners of it whether the plaintiff alleged the oral contract to be a subsequent one or to be one contemporaneous with the bond. Having arrived at the conclusion that the two contracts were simultaneous, be applied Section 92.

7. On the merits, we think that the learned Judge of this Court was right, The bond declared that the money was to be repaid with interest at a certain rate. The oral contract declared that no interest was to be paid but the plaintiff was to be in possession of a certain piece of land and was to pay himself the interest out of the usufruct. u/s 92, Proviso 2, Evidence Act, the existence of a separate oral agreement may be proved only when it is not inconsistent with the terms of the written document or when the matter involved in the oral agreement is a matter on which the document is silent. In our opinion, the two contracts are inconsistent with each other and, therefore, the learned Judge of this Court was right in holding that oral evidence should be excluded.

8. In the result, the appeal fails and it is hereby dismissed with costs.