

(1916) 11 AHC CK 0009
In the Allahabad High Court

Kuer Nehal Singh and Another	Vs	APPELLANT
Lala Sewa Ram and Others		RESPONDENT

Date of Decision : 13-11-1916

Acts Referred:

Specific Relief Act, 1877 — Section 27(b)

Citation : AIR 1917 All 112 : 40 Ind. Cas. 128

Hon'ble Judges : Walsh, J;Stuart, J

Bench : Division Bench

Judgement

Walsh, J.—This is by no means a simple matter, having regard to what has previously happened in the history of the case. The circumstances out of which the suit arises appear in every judgment on the record (I think this is the fifth judgment in the case), and need not be reiterated. When the case was last before my brother Mr. Justice Sunder Lal, as he then was, and myself, certain issues were sent down to the lower Appellate Court. The result of the findings is that the District Judge has held that the plaintiff had no contract with defendant No. 2 and that defendant No. 1 only received notice of a contract, if there was one, during the registration proceedings.

2. Either of these findings, if they are sound, would be fatal to the plaintiff's case.

3. The second is clearly untenable. The point is covered by authority, and we have no alternative but to hold that the notice was sufficient to render defendant No. 1 liable u/s 27, Sub-section (b) of the Specific Relief Act, if there was a contract. The first point raises considerable difficulty. At the first hearing in the first Court defendant No. 2, who is alleged to have made the contract, did not appear to dispute it. It would be idle to ignore that significant fact. The first Court held that there had been an executory contract for Rs. 2,900 and that Rs. 100 had been accepted by defendant No. 2 as part payment there under. Defendant No. 1, who succeeded on the question of notice, did not challenge this finding when he was respondent in appeal, but as he again succeeded in the lower Appellate Court on the question of notice, this Court in referring the issues

gave him the opportunity to do so at the second hearing.

4. At the trial of the issues the plaintiff set out to support the formation of the contract, which hitherto had not been seriously disputed, by advancing a good deal of additional evidence tending to show prior negotiations as far back as 1908. The learned District Judge, for reasons we are quite unable to follow, rejected this evidence and has drawn an inference against the plaintiff for having failed to produce it on the former occasion which we think is not justified, as on the former occasion there was no dispute. They are, however, findings of fact which we are by law prohibited from disturbing. It was crged by the appellants that the case of Mubarak Husain v. Bihari 16 A. 306 : A.W.N. (1894) 97 : 8 Ind. Dec. 199 was a decision justifying our ignoring the findings. All that that case decided was that where in second appeal issues have been referred, and after they have been decided, the case comes back to this Court and another Judge thinks that the case could have been disposed of and can still be disposed of without reference to the issues which have been referred and which need not have been referred, he is at liberty to decide the case without reference to the issues. That is a totally different thing from overruling the findings on the issues and we must take it to be the law, as decided in Bal Kishen v. Jasoda Kuar 7 A. 765 : A.W.N. (1885) 225 : 4 Ind. Dec. 908 that findings on issues referred to a lower Appellate Court in second appeal are just as much findings of fact as the findings in the original suit and cannot be disturbed by this Court in second appeal. These findings, however, do not dispose of the case. The learned Judge treated the case when referred as *res integra*. In this he was wrong. He entirely ignored, so far as anything in his judgment shows, the evidence and the findings of the first Court to which we have already referred. He has come to a conclusion that there was no contract because he has rejected the evidence of 1908, and because defendant No. 2 did not authorise the sale-deed which was prepared. This was a misdirection in law. It is quite true that we may again refer this part of the case for the facts to be found by the lower Appellate Court. We think, however, that the case has occupied too much time already and that when this Court can it ought, in the interests of the parties, to dispose finally of issues which have been left undetermined by the lower Appellate Court Exercising our jurisdiction u/s 103 we have been taken thoroughly through the evidence upon the record and we are satisfied as a fact that having regard to the evidence in the first Court and to the surrounding circumstances of the case, the plaintiff did agree, and defendant No. 2 agreed with the plaintiff, for the sale of this property for Rs. 2,900 and that Rs. 100 was paid in part payment of the purchase-money.

5. The evidence further shows and this point has also been entirely ignored by the learned District Judge, that defendant No. 1 himself, in a suit in which the title to this identical property was in question and when he himself was asserting that defendant No. 2 had been as against his wife the owner, put the present plaintiff into the box and as part of his, defendant No. 1's own case, attempted to prove the very contract which he now denies. In our opinion a person is not permitted to affirm and disaffirm a transaction when it suits his interest so to do,

and that being apparently what defendant No. 1 is seeking to do in this case, we hold on this second ground that he is estopped from asserting, as against the parties to this suit, that this contract which he himself relied upon in another suit did not exist in fact. On this ground we hold that the property had already been sold on the 19th of February to the plaintiff when the contract of June was entered into with defendant No. 1, and that the defendant No. 1 had notice of such transaction before the registration of his own contract was completed, and that he is, therefore, liable in this suit to the plaintiff u/s 27, Sub-section (6), and that the plaintiff is, therefore, entitled to a decree against defendant No. 1 as well as against defendant No. 2 for possession of the property and for an order that the sale-deed of the property in suit be executed by defendants Nos. 1 and 2 in favour of the plaintiff. The appellant must have his costs here and in the Courts below, which will include in this Court fees on the higher scale.

Stuart, J.

6. I concur in the order passed.