

(1930) 01 AHC CK 0021
In the Allahabad High Court

Pearey Lal Krishen Prasad

APPELLANT

Vs

Dev Karan Das Ram Saran Das and Others

RESPONDENT

Date of Decision : 13-01-1930

Acts Referred:

Citation : (1930) 01 AHC CK 0021

Judgement

1. This case is in many respects analagous to Peare Lal-Kishan Prasad Vs. Diwan Singh-Ganeshi Lal, Most of the points raised in the two appeals are identical and do not call for any separate treatment. Defendant 1 had contracted to sell 1,00 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 1 held certain contracts from defendants 2 and 3 as regards 800 maunds of wheat. Defendant 1 assigned these contracts to the plaintiff.

2. The contract was contained in a langot in the printed form prescribed by the Meerut Veoparak Sabha. The Veoparak Sabha was registered on 16th June 1925. The contract in suit was entered into on 12th June 1925. According to a peculiar usage which obtains in Mandavi Qaisar Ganj in the city of Meerut the langot is a document of title and authorizes 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 who was 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 2, Daulat Ram Nathu Mall. We dismiss the appeal with costs except as to the sum indicated above against defendant 2. Plaintiff will be entitled to proportionate costs from defendant 2. All defendants, including defendant 2, are entitled to get one set of costs from the plaintiffs.