

(1937) 04 AHC CK 0032
In the Allahabad High Court

Phaggumal and Others

APPELLANT

Vs

Baru Lal and Another

RESPONDENT

Date of Decision : 12-04-1937

Acts Referred:

Citation : (1937) 04 AHC CK 0032

Final Decision : Disposed Of

Judgement

1. This is a defendants' appeal arising out of a suit brought by the plain-tiff for recovery of Rs. 1,000 principal and Rs. 1,440 interest by way of damages on account of the non-payment by the defendants of Rs. 1,000 to Umrao Singh at the proper time. The plaintiff had executed a sale deed in favour of the defendants on 2nd February 1921, leaving a large sum of money in the hands of the defendants for payment to certain creditors, including a payment of Rs. 4,000 to Umrao Singh on account of two items. The second item was not paid. It was said on behalf of the defendants that Rs. 166-14-0 was paid on account of the first item. The balance on account of the second item was Rs. 833-2-0. Ex. D is a receipt bearing the signature of the plaintiff and purporting to have been executed on 5th April 1922. It is for a sum of Rs. 833-2-0. If the extra sum of Rs. 166.14-0 left by the defendants to have been paid by Umrao Singh in excess on account of the first item were to be added to it, the amount in dispute would come to Rs. 1,000. The plaintiff's claim for damages on account of the breach of contract by the defendants would prima facie be barred by time. If it were the enforcement of a statutory charge for the unpaid purchase money u/s 55, T.P. Act, then qua that amount the suit could be brought within 12 years. Plaintiff admitted his signature on the receipt but said that he had made his signature on a blank sheet of paper in the course of business. He did not admit the execution of the receipt as such, nor the receipt of payment. The trial Court found that the evidence on behalf of the defendants was very clear and showed that nothing remained due to the plaintiff, and that the plaintiff's long silence also spoke against him. In appeal the learned Judge came to the conclusion that the receipt (Ex. D) on which the defendants were relying was not admissible in evidence for

want of registration, and accordingly rejected it. He has remarked that moreover the oral evidence produced by the defendants on this point was disproved by the entries of the defendants' own account books which were filed in appeal under the orders of the Court. He therefore concluded that the defendants had not paid Rs. 1,000 the unpaid purchase money, to the plaintiff which the plaintiff was entitled to recover with interest. As regards the necessity for registration, it is contended that the case falls u/s 17(1)(c), Registration Act, under which a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest is compulsorily registrable. It must be noted that this amount was left in the hands of the vendees for payment to the vendor's nominee, that is to say a creditor named by the vendor. It was not money left in the hands of the vendees for payment to the vendors direct. It was therefore not strictly speaking a part of the unpaid purchase money payable to the vendors but was a part of the amount which had been undertaken by the vendees to be paid to a certain named creditor. When the amount was not paid to such creditor, the plaintiff's remedy was to enforce the contract either by specific performance or to sue for damages for breach of contract, as he has done in this case, or to recover the amount on the basis of a covenant in the document. Not being a part of the sale consideration payable to the plaintiff directly, it is very difficult to hold that if the defendants paid the amount to the plaintiff, they paid it on account of the assignment itself. In the document there are no words which would indicate that any charge or lien which had been created by operation of law was to be extinguished or limited in its application. The receipt is merely a receipt acknowledging payment of the amount and nothing more. It may well be that the parties did not even realise that there would have been a statutory charge created by the Transfer of Property Act in case the amount remained unpaid. In these circumstances we have found it very difficult to hold that this document (Ex. D), which was a receipt pure and simple, required registration. We must, therefore, hold that it was admissible in evidence.

2. The case in *Jwala Prasad and Others Vs. Mohan Lal and Another*, is distinguishable because in that case the receipt contained a promise to return the mortgage deed which implied that the whole of the mortgage debt had been discharged. If the receipt was admissible in evidence and it admittedly bears the signature of the plaintiff, then the burden was on the plaintiff to show that consideration had not passed and that his admission was wrong and the acknowledgment of receipt of consideration was contrary to facts. The burden lying on the plaintiff, it would not be sufficient to hold that the defendants' oral evidence had been disproved by the entries of the defendants' account books. The whole evidence had to be considered by the Judge in the light of the presumption against the plaintiff and then a finding recorded whether or not the money had in fact been paid to the plaintiff. We think that the finding of the lower appellate Court on this point is not satisfactory. We accordingly allow this appeal and setting aside the decree of the lower appellate Court, send the case back to that Court for disposal of the point

whether or not the sum of Rs. 166-14-0 which had been paid by the defendants in excess to Umrao Sing, and the sum of Rs. 833-2-0 was not received by the plaintiff from the defendants. The parties will not be at liberty to produce any additional evidence. The costs will abide the event.