

(1927) 05 AHC CK 0006
In the Allahabad High Court

Pyare Lal and Others

APPELLANT

Vs

Firm Meena Mal-Bal Kishen Das

RESPONDENT

Date of Decision : 04-05-1927

Acts Referred:

Contract Act, 1872 — Section 73, 88

Citation : AIR 1927 All 621 : (1928) ILR (All) 82

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

Bench : Full Bench

Judgement

Walsh, J.—I am of opinion that this decision is right, though I find myself unable to agree with the reasoning by which it has been arrived at. The facts, so far as they are known, are perfectly simple. In 1922 the defendants sold a large quantity of grain to the plaintiff, and the plaintiff paid a substantial sum as earnest-money. No date was specified for delivery. The goods were to be delivered at a later date, presumably on demand. The plaintiff assigned his rights under the contract. It looks very much as if the transaction was a gambling transaction, but the parties have not said so. He then foolishly and ignorantly brought a suit for non-delivery, or, in other words, for breach of the contract which he had assigned in 1925. That would have been right if he had joined the assignee as plaintiff; or, if the assignee had refused, as defendant; but having assigned the contract and, having sued without the assignee, his claim for nondelivery was defeated by a technical objection. One must assume from that the goods had not been delivered in 1925. It is fairly obvious that they have not been delivered now, and that any claim for non-delivery is barred by the Statute of Limitation.

2. One view of the case, however, may be that the parties, by their conduct, have shown a mutual rescission of the contract, though I doubt whether that is a sound view to take. But this cannot be denied that the contract is now at an end and that the vendor has in his pocket money belonging to the plaintiff, paid as part performance of a contract which has been terminated, and that it is against

conscience for him to return it. The English law on this matter is quite clear. Benjamin on Sale says:

A buyer who has paid money under a contract of sale may recover it back when the consideration on which it was paid has failed; for in that event it is unconscientious for the seller to retain it without consideration, and the money is in consequence, in the eye of the law, received by the seller to the use of the buyer.

3. This principle, which is ancient and elementary, is recognized in the English Sale of Goods Act by Section 54, which runs as follows:

Nothing in this Act shall effect the right of the buyer or the seller to recover money paid where the consideration for the payment of it has failed.

4. One would have expected to find a corresponding provision in the Indian Contract Act. At somewhat short notice I have searched for something corresponding to it and have failed to find it. I, therefore, hold that there being no express provision upon the question mooted, in India, we are bound by, the law of equity and good conscience as laid down in the Bengal Regulations. That has always been held to be capable of interpretation in accordance with the common law of England. I decline to believe that in India, if you pay a man a sum in advance for the performance of a contract at a future date which becomes impossible, so that there is a possible failure of consideration, he is entitled to keep your money in his pocket. It is against all law and conscience, and I, therefore, hold, being unable to find anything to the contrary in the express provisions of the Statute or Law, that this money was money belonging to the plaintiff, and that he is entitled to recover it in this suit. I might add that, in my view, the only defence to this suit was for the defendant to plead and prove that he had delivered the goods under the contract to the plaintiff's assignee. This he has failed to do, and there is, therefore, no defence. The appeal must be dismissed with costs.

Ashworth, J.

5. This was a case where the defendant had made a contract for sale of certain wheat to be delivered at a future date with the plaintiff. The plaintiff made a contract with a third person for delivery to that third person of a like quantity of wheat at a future date. This, in effect, was what the second contract amounted to, although it appears to have been framed in the form of a transfer by the plaintiff to the third party of the benefit of the plaintiff's contract with the defendant. The defendant apparently failed to deliver the wheat to the plaintiff. The plaintiff was, therefore, unable to fulfil his contract with the third party.

6. The plaintiff has sued the defendant for the return of what is called earnest-money, but, in effect, was a payment in advance for the wheat that was subsequently to be delivered. In bringing this suit it looks as if the plaintiff considered that the third party, with whom he made the contract for delivery of a

like quantity of wheat, would be entitled to bring a suit against the defendant for failure of the defendant to supply the wheat. If this is so, I think the plaintiff is in error. The Indian Contract Act makes no special provision for the recovery of earnest-money. The remedy is merely one for loss or damage caused to a person by another person who has broken a contract: see Section 73 Contract Act. This benefit u/s 73 is, therefore, merely a right to sue and cannot be transferred. As the lower appellate Court has pointed out, the payment of an earnest-money does not in itself create a right to recover the same. It merely gives the person paying the earnest-money a chance of recovering the same as damages. In this view of the case the lower appellate Court was right in holding that the right to sue the defendant for damages could not be and was not transferred by the plaintiff to the third party. Having regard to Sections 73, 77, 87 and 88, Contract Act, I consider that there was never any privity of contract or of property effected between the defendant and the third party. This being so, it is clear that the defendant could not plead that he was liable to pay the earnest-money to the third party and not to the plaintiff. For the above reasons I concur in the finding and would dismiss the appeal with costs.