

(1927) 01 AHC CK 0046
In the Allahabad High Court

Raghunath Prasad and Others

APPELLANT

Vs

Ram Bharose and Another

RESPONDENT

Date of Decision : 20-01-1927

Acts Referred:

Citation : AIR 1927 All 421

Final Decision : Dismissed

Judgement

1. The plaintiffs sued for the refund of purchase money under the following circumstances: They purchased a certain property from a Hindu father and the sale was subsequently cancelled on the opposite side depositing Rs. 900 in Court for payment to the plaintiffs. The sale consideration was Rs. 3,475 and the plaintiffs sued the defendants who are sons of Hanuman, vendor, for the balance of the purchase-money. The trial Court in a well-reasoned judgment held that the suit was not barred under the provisions of Section 11 of the CPC but that it was barred by limitation. On appeal these decisions were reversed, but the result was the same and the plaintiffs' suit was dismissed. This is a second appeal.

2. We agree with the trial Court that the suit is not barred by the principles of res judicata. There is a ruling of this Court in support of the view that in the former suit by the sons of the Hindu vendor then deceased the plaintiffs as defendants could not have claimed refund of the purchase-money. In the case of Madan Gopal v. Sati Prasad [1917] 39 All. 485 two learned Judges of this Court pointed out at page 488 that money paid to the father as consideration for the sale at the time of the sale cannot be regarded as a debt of the father until the sale had been set aside and the right of the vendee to get back the sale consideration from the father has accrued. When the Hindu sons, the defendants of the present case, sued the plaintiffs of the present case, for cancellation of the sale-deed the vendee's right to claim refund of sale consideration had not accrued. The matter could not, therefore, have been decided in the former suit and must be decided in a separate suit.

3. On the question of limitation, we have given due weight to the observations of

the trial Court on pages 13-15 of the printed book. There is considerable force in what the learned Subordinate Judge has observed. We are, however, of opinion that he has not properly interpreted the decree passed in the suit by the Hindu sons. It is true that the decree starts by declaring that the sale-deed is cancelled, but it makes possession of the landed property dependent on the deposit by the sons of the vendor of Rs. 900 before they could take possession. If the sale had been merely cancelled we think that the observations of the learned Subordinate Judge would have great force and the principle enunciated by their Lordships of the Privy Council in the case of *Hanuman Kamat v. Hanuman Mandur* [1892] 19 Cal. 123 would have applied. The decree was passed on the 6th June 1918, so in that case the present suit instituted on 27th September 1921, would have been barred under Article 97 of the Second Schedule of the Limitation Act. We are, however, of opinion that the decree did not become operative till Rs. 900 was deposited in Court in August 1919. The frame of the decree is unsatisfactory, but its purport is clear that the sale would not be cancelled until the sons deposited money in Court. Mere cancellation of the deed without possession would be of no avail to the Hindu sons. We are, therefore, of opinion that the decree became operative in August 1919 and the period of limitation under Article 97 would run from that date and not from the date of the passing of the decree on 6th June 1918. For this reason we hold that the suit was within time.

4. In the result we set aside the decree of the lower Courts and decree the plaintiffs-appellants' suit with costs of all Courts.

5. The cross-objections fail as we have decreed the appeal and are, therefore, dismissed with costs.