
(1929) 01 AHC CK 0036
In the Allahabad High Court

Sheo Shanker Upadhya and Others

APPELLANT

Vs

Partab Narain Singh and Others

RESPONDENT

Date of Decision : 04-01-1929

Acts Referred:

Contract Act, 1872 — Section 17
Limitation Act, 1963 — Section 18

Citation : AIR 1929 All 213

Final Decision : Dismissed

Judgement

1. This is a defendants' appeal arising out of a suit for pre-emption. The sale-deed was executed on 8th March 1926, but the suit was filed on 17th June 1927. To extend the period of limitation the plaintiff alleged that the sale had been fraudulently concealed from him by the defendants, and he came to know of it only when in May 1927 the notice of the mutation proceedings was served on the village patwari. Both the Courts below have found that there was a fraudulent concealment of the sale transaction. The lower appellate Court has recorded a distinct and specific finding that in its opinion the defendants had actively and fraudulently concealed the sale transaction from the knowledge of the plaintiff and that therefore the provisions of Section 18, Limitation Act, were operative. This finding is based on the circumstances that the sale-deed instead of being registered at the Tehsil in which the property was situate was actually registered in another district; that in order to get the registration effected a small plot of land in the other district was included; the stamp paper also was purchased in the other district several months before the execution of the document; no written notice was served on the plaintiff, and the defendants vendees did not even take possession of the property purchased for over a year after the execution of the deed and allowed the vendors to realize rents from the tenants; the Government revenue was paid by the vendors during that time and lastly no step was taken within one year to apply for the mutation of names in favour of the vendees.

2. On these circumstances and the oral evidence the Courts below have come to

the conclusion that there was an active and fraudulent concealment of the sale transaction on the part of the defendants. It has accordingly been held that the claim was not barred by time. The learned advocate for the appellants argues before us that it was no duty of the vendors or the vendees to inform the pre-emptor of the sale and that accordingly an omission to inform him did not amount to fraud. Fraud has not been defined in the Limitation Act, nor has it been defined in the General Clauses Act. But that its scope is very wide is apparent from its definition in Section 17, Contract Act, under which where there is an intention to deceive another party coupled with an active concealment of the fact by one having knowledge or belief of the fact or any other act fitted to deceive the act amounts to fraud. If a vendor or a vendee wishes that a sale should not be nullified by a pre-emption suit it is necessary for him to inform the plaintiff before the transaction and get his refusal. In that sense there is a duty on the vendor to inform his cosharers of his intention to sell. No doubt a mere omission to inform him would not amount to fraud, nor would the bare fact of concealing the sale transaction amount to such fraud, but where there is an active concealment of the transaction coupled with an intention to deceive the other party there would undoubtedly be a fraud within the meaning of Section 18, Limitation Act. The question whether the vendors in adopting the tortuous course which they did adopt had the intention of deceiving the pre-emptor was principally one of fact, and the Courts below were justified in inferring the existence of such an intention from the circumstances set forth above. It is impossible for us to say that there was no evidence before the Courts below to arrive at the finding that there had been an active and fraudulent concealment of the sale. We must accept the findings of facts in second appeal. The appeal is accordingly dismissed under Order 41, Rule 11, Civil P.C.