(1936) 05 AHC CK 0004

In the Allahabad High Court

Shikar Chand APPELLANT

Vs

Shankar Lal and Others RESPONDENT

Date of Decision : 08-05-1936

Acts Referred:

Citation : AIR 1936 All 700 : 165 Ind. Cas. 231

Hon'ble Judges : Thom, J

Bench : Division Bench

Judgement

Thom, J.—This is an appeal by a plaintiff who brought a claim for the recovery of a certain amount paid by him on account of earnest money to defendants 1 and 2. The transaction that culminated in the suit was with respect to certain grain-pits in the town of Deoband. It is common ground that Asa Ram, defendant 3, filled two grain-pits and sold the same by means of two slips called langots in the market. These slips passed through the hands of various successive purchasers and ultimately defendants 1 and 2 became the purchasers of the same. These defendants sold the two slips to the plaintiff. The plaintiff was according to the slips entitled to actual delivery of the pits on a certain date. The plaintiff however could not get delivery of the pits and, therefore, brought the suit giving rise to the present appeal for recovery of the earnest money paid by him to defendants 1 and 2. Asa Ram who filled the grain in the pits was also arrayed as defendant 3 in the suit. Defendants 1 and 2 denied their liability to answer the plaintiff''s claim and so did Asa Ram, defendant 3. The trial Court held that as there was privity of contract between the plaintiff and defendants 1 and 2 the plaintiff was entitled to a decree as against those defendants. The suit against defendant 3 was dismissed by the trial Court on the ground that there was no privity of contract between the plaintiff and defendant 3.

2. Defendants 1 and 2 appealed in the lower appellate Court. That Court held that the plaintiff was entitled to a decree not against defendants 1 and 2 but only against defendant 3 and modified the decree of the trial Court accordingly. The plaintiff has come up in appeal to this Court and it is contended on his behalf

that he was also entitled to a decree against defendants 1 and 2 or at any rate he was entitled to a decree only against defendants 1 and 2 and not against defendant 3. In our judgment there is no force in these contentions. The terms on which grain-pits are offered for sale in the market are noted in detail on the slips. The very first condition entered in the slips is as follows:

The goods entered in the parcha of this grain-pit shall be delivered by us to the party who after sale and resale from one party to another brings this parcha to us after receiving from him the remaining amount and interest ''less the amount of (Sai) margin money.

3. These slips are drawn by the filler of the pit and are sold in the market. The condition noted above places the filler of the pit under an obligation to give delivery of the grain-pit on the due date to the ultimate purchaser of the purcha provided the last purchaser is ready and willing to pay the amount due on account of the price of the grain pit at the rate stated in the slip after deducting the margin money originally paid to the filler of the pit. Anyone who purchases the slip does so with the notice of the condition noted above and the other conditions entered in the slip. The condition noted above absolves the intermediate purchasers from responsibility to each successive purchaser. In short the terms of the offer entered into the slip exclude the responsibility of each successive vendor to each successive purchaser. The contractual liability exists only between the filler of the pit and the ultimate holder of the slip. The lower appellate Court was, therefore, right in holding that there was privity of contract between the plaintiff and defendant 3 and that defendants 1 and 2 were not liable to the plaintiff for the non-delivery of the pits on the due date. We, therefore, hold that the decree of the lower appellate Court is perfectly correct and dismiss the appeal with costs.

