

(1966) 09 AHC CK 0035

In the Allahabad High Court

Case No : Second Appeal No's. 2739 and 2802 of 1960

Shiv Dayal alias Din Dayal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-09-1966

Acts Referred:

Citation : (1967) 37 AWR 295

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : K. Tripathi, for the Appellant; Gyan Prakash, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—These are two connected second appeals from two decrees of the Second Additional Civil Judge, Allahabad, modifying two decrees of the Additional Munsif, Allahabad and enhancing the amount awarded to the Plaintiff in each suit. The Respondent in each appeal is the State of Rajasthan but the Appellants are different. The State of Rajasthan filed two suits, one against Shiv Dayal, Appellant in Second Appeal No. 2739 and the other against Nurul Hasan the Appellant in Second Appeal No. 2802. It is alleged in each suit that it was the owner as muafidar and zamindar of 35 acres of land situate in Allahabad in the area known as the Katra; that the Defendant (in each suit) was the ryaya of the muafidar and owned a house constructed on a plot of land belonging to the Plaintiff; that the site of the house was not transferable but the house (amla makan) was; that the Defendant in each suit had transferred by sale the house to a third person; that according to cu-tom the muafidar zamindar was entitled to receive a part of the sale price at the rate of one anna per rupee; that the Plaintiff had asked each Defendant as well as his transferee to pay zar-e-chaharrum but the latter had refused to do so; hence the Plaintiff filed the suit to recover what was due to it as zar-e-chaharrum under the prevailing custom. The suit in Second Appeal No. 2739 of 1960 was resisted by the purchaser as well as the seller but the suit in Second Appeal No. 2802 of 1960 by the purchaser

alone. The contesting Defendants in each suit denied the existence of any custom entitling the Plaintiff as muafidar-zamindar to realise any amount from the sale price. Alternatively, they pleaded that the right to receive the zar-e-chaharrum, even if it existed, was confined to the sale price of the building material (keemat amla makan) and did not extend to the price paid for the right to occupy the land.

2. The trial court held that the Plaintiff had established a customary right to receive the zar-e-chaharrum at the rate of one anna per rupee of the sale price, but this right was limited to the price paid for the building material and not to the price paid for the right to occupy the site. Accordingly it divided the sale price in each suit into two portions--one for the sale of the building material and the other for the right to occupy the site. It held that the zar-e-chaharrum was to be paid on the first portion of the sale price but not on second. It further held that the Plaintiff was entitled to receive the amount decreed from the purchaser alone. Accordingly it passed a decree for Rs. 62/8/- against the purchaser and rejected the rest of the claim.

3. The State of Rajasthan appealed. The learned Judge held that the zar-e-chaharrum was payable to the muafidar-zamindar on the sale of "amla makan" and he interpreted these words to mean the sale of the house including the right to occupy the house. Accordingly he held that the Plaintiff was entitled in each suit to receive the zar-e-chaharrum on the entire sale price. He also held that the Plaintiff was entitled to recover the amount from the purchaser as well as the seller. Accordingly he allowed each appeal and increased the claim from Rs. 62/8/- to Rs. 250/- in the suit in Second Appeal No. 2739 and to Rs. 500/- in the suit in Second Appeal No. 2802. The award in the first suit was based on the sale price of Rs. 4,000/- and in the latter suit on the sale price of Rs. 8,000/-. He also held that the Plaintiff was entitled to recover the zar-e-chaharrum from both the purchaser and the seller. Against this decree the purchasers alone have come to this Court in second appeal, but all the parties in the courts below have been impleaded as the Respondents.

4. As the two suits were consolidated and heard together in the court below, these appeals were heard together and are being disposed of by a common judgment. It is contended by Mr. K.N. Tripathi on behalf of the Appellant that the view of the lower appellate court that the zar-e-chaharrum is paid on the entire sale price is erroneous. Learned Counsel contended that the sale price is divisible in two parts, one being the consideration for the sale of the building material and the other for the transfer of the right to occupy the site. This was the argument advanced before the trial court. But I think it is unsound. The right to receive the zar-e-chaharrum is based on the following words in the Wajibul Arz : "Bahalat farokhat amla fi rupiya ek anna rasum keemat amla makan". The vital words are "keemat amla makan." Mr. Tripathi contended that these words must be strictly interpreted as meaning the building material but not the right to occupy the site of the house which, according to him, is to be separately sold. I can not agree.

The words "keemat amla makan" contemplate the sale of the house standing on the site and naturally includes the right to use and occupy the house. The muafidar as zamindar would be entitled to a share in the sale price only because of his ownership of the land--in other words, because the purchaser of the house acquired the right to occupy and use the house while it was standing on his land. A mere sale of the building material could not entitle the zamindar to any share in the sale proceeds. For example, the owner of the house decided to demolish and sell the rubble, it is difficult to see how the muafidar-zamindar was entitled to demand a share in the price of the rubble sold. He was entitled to a share in the price only because a house was to be used and occupied while standing on his land. Moreover, the Wajibul Arz does not provide for the apportionment of the sale price between the sale of the building material and of the right to occupy the land. Learned Counsel argued that it is for the Court to apportion the price. I do not; see how and on what basis the court can artificially divide the price into two parts when parties to the sale did not contemplate such a division. All these complications are avoided if the words "keemat amla makan" are given their common sense meaning that the price of the house sold as a house standing on the land (my emphasis). This argument fails.

5. It was then argued that the view of the lower appellate court that the Plaintiff is entitled to recover the zar-e-chaharrum from both the purchaser and the seller is erroneous. This argument was opposed both by Mr. K.M.L. Hajela on behalf of the State of Rajasthan and Mr. Gyan Prakash on behalf of the seller. Both learned Counsels vehemently argued that the material words in the Wajibul Arz make both the parties to the sale jointly liable to pay the zar-e-chaharrum and alternatively, even if the Wajibul Arz does not provide for joint liability, the custom was subsequently modified in the course of a long time. Mr. Hajela in particular relied on several decrees obtained by the State of "Rajasthan against both the purchasers and sellers in previous cases.

6. The matter is concluded by authority. In *Kedar Nath v. Dutta Pd. Singh* (1922) 20 ALJR 646 it was held that if the right to claim zar-e-chaharrum is based on custom then it is the duty of the vendee to see that haq-e-chaharrum is paid to the zamindar and the vendee cannot get rid of his liability by merely proving that he has paid the whole consideration of the vendor, for he ought to see that the one-fourth of the sale price actually goes to the zamindar (in that case, the zamindar had the right to claim one-fourth of the sale price). The Court held that if the zamindar has not had his share, a joint decree should be passed against the vendor and the vendee, leaving the matter of re-imbursement between them to be decided in a separate suit. The Division Bench which decided this case followed the principle of law laid down in the Full Bench case of *Heera Ram v. The Hon'ble Sir Raja Deo Narain Singh* (1867) NWPHCR 63. Again in *Dhandai Bibi v. Abdur Rahman* ILR (1901) All. 209 it was held that where it is not established that the zamindar's right to a share of the sale price is limited to a claim against the vendor alone, it can be enforced against the vendee also. This principle has been consistently followed by this Court in latter cases. See *Radhey Shiam Vs.*

7. Mr. Tripathi argued that if the custom includes the right to demand zar-e-chaharrum from the purchaser who has already paid the entire sale price to the seller the result will be that he may be compelled to pay a part of the sale price twice over and this will make this part of the custom unreasonable. Counsel argued that the question of reasonableness of the customary right to proceed against the vendee was not considered in the earlier judgments. But I do not think that it is unreasonable to hold both the vendor and vendee liable. The vendee acquires the right to occupy and use a house belonging to the zamindar and this places him under an obligation to the latter to see that a part of the sale price is given to him. Moreover, placing the vendee under an obligation to the zamindar reduces the chances of litigation, for the seller after having received the sale price will not be too keen to part with and may consider it worth his while to take the matter to the courts, but the purchaser has nothing to gain from depriving the zamindar of his legitimate right and the prospect of a suit by the zamindar will compel him to insist that the zar-e-chaharrum should be paid out of the sale price.

8. For these reasons both the appeals fail and are dismissed with costs.