
(1937) 04 AHC CK 0045
In the Allahabad High Court

Subedar Major Thakur Hans Ram Singh and Others	APPELLANT
Vs	
L. Kishori Lal	RESPONDENT

Date of Decision : 27-04-1937

Acts Referred:

Citation : (1937) 04 AHC CK 0045

Hon'ble Judges : Iqbal Ahmad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Iqbal Ahmad, J.—This is a defendants' appeal and arises out of a suit for declaration of right to and for possession of a double storeyed shop. The facts that led to the suit are shortly as follows : On 18th September 1926 Hans Ram, defendant 1, sold six shops to L. Kishori Lal, plaintiff for Rs. 10,000. One of the shops which is the subject of dispute in the present litigation, had been, before the date of the sale deed, mortgaged by conditional sale to Prem Lal, defendant 2, After the sale, Kishori Lal did not get possession over the shop in dispute and then on 22nd December 1926, he filed a suit against Hans Ram and Prem Lal for possession of the shop. During the pendency of that suit Hans Ram in the year 1927 filed a suit for cancellation of the sale deed of September 1926. Both the suits were decided by the trial Court on one and the same date, viz. on 12th May 1927. That Court decreed Hans Ram's suit for cancellation of the sale deed and dismissed Kishori Lal's suit for possession of the shop in dispute. Kishori Lal filed an appeal in this Court against the decree in the suit filed by Hans Ram, but preferred no appeal against the decree in the suit filed by him for possession of the shop. The result was that the decree dismissing Kishori Lal's suit became final. This Court on 22nd April 1931 allowed the appeal of Kishori Lal and dismissed the suit for cancellation of the sale deed.

2. The suit giving rise to the present appeal was then filed by Kishori Lal on 7th April 1933. The claim was resisted by both the defendants. They contested the plaintiff's right to a decree for possession and also pleaded limitation in bar of

the plaintiff's claim. The trial Court dismissed the plaintiff's claim for possession presumably on the ground that Prem Lal had already obtained a foreclosure decree on the basis of the mortgage by conditional sale in his favour with respect to the shop in dispute. But while dismissing, the claim for possession, the trial Court granted to the plaintiff a decree for Rupees 1,667 against Hans Ram, vendor. There is nothing in the judgment of the trial Court to show as to how it fixed the price of the shop in dispute at Rs. 1,667. But, I take it that as six shops were sold for a sum of Rs. 10,000, the trial Court awarded to the plaintiff one-sixth of the sale price as the price of one of the six shops sold. That Court was of the opinion that the period of limitation was 12 years and that the suit was not time barred.

3. The plaintiff was satisfied with the decision of the trial Court but Hans Ram, vendor, filed an appeal in the lower Appellate Court, and the decree of the trial Court was assailed in the lower Appellate Court inter alia on the following grounds : (1) That the trial Court, in the absence of any evidence on the point, was not justified in fixing the price of the shop at a sum of Rs. 1,667, and (2) that the suit for recovery of the sale price was time barred.

4. The lower Appellate Court overruled these contentions of the defendant and affirmed the decree of the trial Court. Hans Ram has come up in appeal to trial Court and the two contentions noted above have been pressed on his behalf before me. Further, it has been argued that all that Hans Ram purported to sell by the sale deed of 1926 was such rights as he had in the shops in dispute and that he did not profess to be the absolute owner of the shops. It is, therefore, contended that as no warranty of title was given by Hans Ram, a decree for refund of the sale price could not be passed in favour of Kishori Lal. In my judgment this contention is without substance. The Bale deed is in Pahari Hindi and a transliteration of the same in Urdu has been placed before me by Dr. Agarwala, the IRamed Counsel for the appellant. The document; read as a whole clearly indicates that Hans Ram professed to be the absolute owner of the six shops sold by him. It is recited in the sale deed that possession of the shops was from the date of the sale delivered to the vendee. There was, therefore, a clear warranty of title contained in the sale deed and Kishori Lal was entitled either to the possession of the shop or to the refund of its price.

5. But I am unable to agree with the lower Appellate Court on the question of limitation. The claim for refund of the sale price was, as observed by the IRamed Judge of the lower Appellate Court, governed by Article 97, Schedule 1 to the Limitation Act. The period of limitation under that Article for a suit for money paid upon an existing consideration which afterwards fails is three years from the date of the failure of the consideration. The question therefore arises on what date was there failure of consideration so far as the shop in dispute is concerned. The IRamed District Judge held that the consideration failed on 22nd April 1931 when the High Court dismissed the suit of Hans Ram for cancellation of the sale deed. In my judgment this conclusion of the IRamed District Judge is erroneous.

6. It was the duty of Hans Ram, the vendor, to deliver possession of all the six shops to Kishori Lal on 18th September 1926-the date on which the sale deed was executed. It is clear that so far as the shop in dispute is concerned, Hans Ram failed to deliver possession to Kishori Lal. The failure of Hans Ram to deliver possession led to the institution of the suit for possession of the shop in dispute by Kishori Lal. Kishori Lal's suit was dismissed on 12th May 1927, and, as stated above, the decree in that suit became final. Therefore, so far as the consideration of the shop in dispute was concerned, it failed either in September 1926, or at any rate on 12th May 1927, when Kishori Lal's claim for possession was dismissed. The period of limitation for refund of the sale consideration, therefore, commenced to run from 12th May 1927, and as the suit giving rise to the present appeal was not filed within three years of that date, it was barred by limitation. To this effect is the decision of this Court in Kundan Lal Vs. Bisheshar Dayal and Others, . The decision in Udit Narain Misr v. Muhammad Minnat Ullah (1903) 25 All. 618, relied upon by the lower Appellate Court has, in my judgment, no application to the facts of the present case. In that case it was held that the limitation for a suit for refund of a part of the consideration that was paid to an intending vendor in anticipation of the execution of a sale deed by him begins to run from the date of the dismissal of a suit by the intended vendee for the specific performance of the contract of sale. In the present case there was a completed sale which cast an obligation on the vendor to put the vendee in immediate possession of the property, and the failure to discharge this obligation on the part of the vendor constituted failure of consideration.

7. I am unable to appreciate how it could be said that the consideration failed on the date when this Court dismissed the suit for cancellation of the sale deed filed by Hans Ram. The dismissal of that suit far from nullifying the sale affirmed its validity and therefore it could not be said that any portion of the consideration of the sale failed on the date of the decision of this Court. I therefore hold that the claim for refund of the sale consideration was time barred. The appeal is therefore allowed and the plaintiff's suit is dismissed with costs throughout.

8. N.B. - Leave to appeal under the Letters Patent is granted.