A. I. R. 1917 Lahore 420

SCOTT-SMITH AND SHADI LAL, JJ.

Rahmat and *another*—Defendants—Appellants.

v.

Zabita—Plaintiff—Respondent.

Second Appeal No. 399 of 1914, decided on 9th January, 1917, from the Decree of Divl. Judge, Gujranwala, dated 2nd January, 1914.

Burden of proof—Receipt of consideration admitted at registration time—Presumption—Denial of receipt.

Where a vendor admits receipt of consideration in respect of a transfer at the time of registration, the onus is on him to show that he did not in fact receive it, and the presumption arising from his admission is not rebutted by his mere denial of such receipt. 17 P.R. 1888, ref. to. [P. 421, C. 1.]

Muhammad Shafi—for Appellants.

Muhammad Iqbal—for Respondent.

Judgment.—This was an action brought by one Zabita for possession of a plot of land on the strength of a sale-deed executed in his favour on the 17th September, 1909 by the appellants Rahmat and Ahmad for Rs. 3,500. The Courts below have concurred in decreeing the claim, and the learned Counsel for the appellants admits that on the plea of fraud set up by his clients there is a finding of fact against them, which cannot be impugned in second appeal. He, however, contends that the learned Divisional Judge has found that the sale was really effected in favour of one Gopi, and that the suit should be dismissed because Gopi was prohibited by the Punjab Alienation of Land Act from buying the property from a member of an agricultural tribe. The pleadings of the parties make it absolutely clear that the plaintiff Zabita alleged a sale in his own favour, and this allegation was met by the assertion made by the defendants that the transaction was one of *mortgage* in favour of Gopi, and that a fraud was practised upon them by which they were induced to believe that they were attesting a mortgage instead of a sale. It will be observed that it was not the case of the defendants that they effected a sale in favour of Gopi; and indeed, Rahmat's statement on the 31st March, 1911, referred to by the lower Appellate Court, is to the effect that he had sold his land to Zabita. The observations at the end of the judgment of that Court, to which our attention has been drawn, do not warrant the conclusion that the learned Divisional Judge intended to hold that the sale was really made in favour of Gopi. If that had been his finding, there is not the slightest doubt that he would have dismissed the suit. A perusal of the judgment makes it clear that what the learned Judge meant was that Gopi financed Zabita; that there was some understanding between them with respect to this transaction; and that subsequently they fell out. Neither the plaintiff nor the defendants alleged the sale to be one in favour of Gopi, and consequently there was no issue on the subject. The sale-deed, which is a registered document, is clearly in favour of Zabita, and there is not an iota of evidence to prove that he is not the real vendee. The mere suspicion that there might have been some kind of secret understanding between him and Gopi is no reason for dismissing the suit.

The consideration for the transaction comprised three items; on two of which, *viz.* Rs. 1,950, paid before the Sub-Registrar, and Rs. 1,000, paid by transfers of the vendor's debt in Gopi's books to the vendee, there are clear findings by the lower Appellate Court which cannot be impugned in second appeal, and in fact no attempt has been made to challenge them.

As regards Rs. 550, said to have been paid to the vendors before the date fixed for the registration of the document, the Munsif gave his decision in favour of the plaintiff, but the learned Divisional Judge on appeal has not recorded a definite finding and has simply remarked that the only proof of the payment is the admission of the vendor at the time of the registration. The learned Counsel for the appellants accordingly contends that we should remand the case to the lower Appellate Court with a direction that it should record a clear finding on the passing of Rs. 550; but considering that the matter is simple enough, and that S. 43 of the Punjab Courts Act fully empowers this Court to decide a question of fact not determined by the lower Appellate Court, we do not think that any useful purpose would be served by further prolonging this litigation, which began

five years ago. After hearing the learned Counsel we are not prepared to hold that the presumption [*vide Wazir Singh* v. *Jai Gopal* (1)] arising in consequence of the admission before the Sub-Registrar has been rebutted by the mere *ipse dixit* of the vendors that they received only Rs. 50. The onus is clearly upon them, and they have failed to discharge it.

We accordingly dismiss the appeal with costs,

R.M./R.K.

Appeal dismissed.

(1) (1888) 17 P. R. 1888.

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SHAH DIN AND LESLIE JONES, JJ.

Allahabad Bank, Delhi—Defendant—Appellants.

v.

Firm of Madan Mohan-Kishen Lal Plaintiff and others—Defendants—Respondents.

First Appeal No. 6 of 1913, decided on 16th November 1916, from the decree of Divl. Judge, Delhi, dated 25th November 1912.

(a) Contract Act (9 of 1872), Ss. 17, 176 and 178—Purchaser with intention never to pay is agent of seller—He has no title to goods and cannot pledge them.

A person who orders and obtains possession of goods with the deliberate intention of not paying for them commits fraud, and as long as the price is not paid, he must be considered as the agent of the vendor and his possession as that of the latter. 6 W. R. 81, ref. to.

In such a case the vendee, although he is in possession of the documents of title to the goods, is unable to make a valid pledge of them, *vide* S. 178 of the Contract Act. [P. 423, C. 2.]

(b) Contract Act (9 of 1872), S. 176—Debt being due and notice are essential conditions for sale of pledged goods.

A pledgee is not entitled to sell the goods pledged to him before the amount of the loan becomes due, and before effecting the sale he must give reasonable notice to the pledgor, *vide* S. 176 of the Contract Act.

Dalip Singh, *Moti Sagar* and *Balwant Rai* for *Beechey*—for Appellant.

Muhammad Shafi and *Wazir Singh*—for Respondents.

Judgment.—(1). The following pedigree table will assist in the understanding of this case :—

BALDEO DAS

Asa Ram — Ganga Das

Gopi Kishen — Bal Kishen — Bulaki Das

(2). The descendants of Baldeo Das, who were traders residing in Delhi, had formed themselves into several firms, of which we are concerned with two only.

(3). One of these firms was that of Bal Kishen-Ganga Das, from whom the Allahabad Bank held three *hundis* to the value of Rs. 7,500 drawn on a Calcutta firm called Jetha Mal-Jagan Nath, which accepted the *hundis* when presented by the Calcutta Branch of the Bank. None of these *hundis*, however, fell due before June 1916.

(4). The other firm was known as Asa Ram Gopi Kishen. Its business was distinct from that of the firm of Bal Kishen-Ganga Das, and, it is important to note, Ganga Das was not a member of a joint Hindu family along with Asa Ram and his sons.

(5). On the 9th May, 1912, Gopi Kishen, as a representative of the firm of Asa Ram-Gopi Kishen, visited Ahmedabad in the Bombay Presidency and ordered goods to the value of Rs. 8,090-15-3 from the firm of Madan Mohan-Kishen Lal, with whom his firm had had previous dealings. Those dealings had, however, been discontinued some six or seven years before.

(6). The goods themselves, invoices and Railway receipt were despatched.

(7). On the 23rd of May, while the goods were still at the Delhi Station, Asa Ram paid a visit to the Allahabad Bank. As the result of that visit, the *hundis* drawn by Balkishan-Ganga Das were retired at their maturity value, no rebate of interest being allowed; and Asa Ram executed a promissory note for Rs. 7,500 in favour of the Bank and pledged to the Bank the goods covered by the Railway receipts received from Ahmedabad. The Bank then took delivery of the goods from the Railway Station.

(8) The Ahmedabad firm which had become anxious owing to the failure of the firm of Asa Ram-Gopi Kishen to make prompt payment as demanded in the invoices, sent their representative, Suraj Mal, to Delhi. He went to the