

**Mt. Kaniz Fatma Vs. Imamuddin**

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**SooperKanoon Citation :** [sooperkanoon.com/462178](http://sooperkanoon.com/462178)

**Court :** Allahabad

**Decided On :** Feb-16-1925

**Reported in :** AIR1925All704; 87Ind.Cas.756

**Appellant :** Mt. Kaniz Fatma

**Respondent :** imamuddin

**Judgement :**

**Mukerji, J.**

1. This is an application to revise a judgment of a learned Judge of the Small Cause Court.
2. It appears that the applicant who was the plaintiff in be Court below purchased a house from the respondent. The respondent assured the applicant that there was but only one encumbrance over the property. It however, turned out that one Hazari Lal also held a simple-mortgage over the property. Hazari Lal brought a suit on the mortgage and obtained a decree for sale. The applicant, as the purchaser of the property to save it, had to pay a sum of Rs. 170 and she sued the respondent to make her good this amount.
3. The learned Judge of the Court below dismissed the suit on the ground that the parties had express stipulations for compensation, and as the ease did not fall within those express stipulations, the suit could not be maintained.

4. I am afraid the learned Judge has entirely misread and misunderstood the ruling he purported to follow. The ruling is the case of Ram Chander v. Bhagwati A.I.R. 1924 All. 937. It was held that, where in the place of a particular statutory contract parties substitute a contract of their own, they must be guided by their own contract and a party to it cannot rely on the statutory one. In that case, as in this, there was a previous encumbrance which had not been disclosed. But in the case of Ram Chander v. Bhagwati A.I.R. 1924 All. 937 the parties had stipulated for the express case in which a prior encumbrance might turn out to exist. In the case before me there was no stipulation whatsoever as to what was going to happen in case a previous encumbrance not contemplated by the parties, happened to exist. The two stipulations relied upon by the respondent relate to warranty of title and warranty of possession and nothing beyond that. In the circumstances, the plaintiff ought to have succeeded.

5. I allow the application, set aside the decree of the Court below, and remand it for disposal of the remaining issue. The costs here and hitherto will abide the result.

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