

Raghunath Das Vs. Chingan

Raghunath Das Vs. Chingan

SooperKanoon Citation : sooperkanoon.com/467378

Court : Allahabad

Decided On : Nov-15-1928

Reported in : AIR1929All62; 113Ind.Cas.747

Appellant : Raghunath Das

Respondent : Chingan

Judgement :

Sulaiman, J.

1. This is a civil revision under the Small Cause Court Act. The case has not been tried satisfactorily. In para. 5 of the written statement there was a denial of the jurisdiction of the Court to hear the case. No issue has been framed on this point nor has the question been at all considered. The plaintiff's case as set forth in the plaint was that on 4th June 1926, some property had been put up for auction and there were a number of bidders including the plaintiff and the defendant. The plaintiff paid Rs. 110 to the defendant on the understanding that after the sale was finished in his favour and the sale confirmed he would 'sell' the property to the plaintiff. Later when the plaintiff demanded the property, the defendant put up a third person and got him to institute a suit against himself which was not defended and was decreed ex-parte. The defendant had suffered no loss because he realized the decretal amount. The plaintiff alleged that in spite of payment the defendant refused to repay the amount. The date of the cause of action was fixed

as the 4th June 1926, when the auction sale took place and the amount was paid. The defendant in his written statement beside denying the jurisdiction of the Court and any cause of action against himself, pleaded that he was a mere benamidar for the plaintiff and had been paid Rs. 110 in order to make a bid in his own name. He denied any collusion with the stranger to get the decree in respect of the property against him.

2. It seems to me that the plaintiff should have at the very outset been called upon to state whether it was a part of his case that at the time when Rs. 110 were paid it was agreed that if it turned out that the judgment-debtor was not the owner of the property the amount would be refunded, that is to say that there was an express agreement as to warranty of title by the present defendant. If his case is that there was such an agreement for refund then the present claim would be one for the specific performance of that contract and would not be cognizable by a Court of Small Causes. A suit for refund of money under a contract is undoubtedly one for specific performance of it: *Veerasalingam v. Sathapalli Sathiaru* [1909] 19 M.L.J. 220. If, however, the plaintiff does not allege that it was the understanding that the amount would be repayable in case the title was subsequently found to be defective then he can only succeed in a Court of Small Causes by showing that the defendant had refused to perform his part of the contract and that the plaintiff has accordingly cancelled it. On such refusal by the defendant, the plaintiff can under Section 39, Contract Act cancel the contract and then sue for the recovery of the amount which had been paid by him, *Sundara Thevan v. Ananthan Kaladi* A.I.R. 1924 Mad. 903.

3. In the plaint there is no allegation that the defendant has definitely refused to execute a sale-deed of the property in favour of the plaintiff. The refusal alleged is the refusal to pay the money and the date of the cause of action is not the date of such refusal but the date of payment. The plaintiff did, however, allege that the defendant got a collusive suit instituted against himself and decreed ex parte, and in this way put the property out of his control. If such a collusive device were proved, the defendant's conduct would, in my opinion, amount to a refusal to perform his part of the contract, in which case the plaintiff can sue in the Court of Small Causes for the refund of his money.

4. The Court below, however, has not considered these aspects of the case. Its decree without deciding the question of jurisdiction or the plaintiff's right to recover the amount, cannot be maintained. I set aside the decree of the Court below, send the case back to that Court with direction to restore it to its original number on the file and dispose of it according to law. The costs of both the Courts will abide the event.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com