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Court : Allahabad

Decided On : Nov-29-1937

Reported in : AIR1938All204

Appellant : Gulzari Lal and anr.

Respondent : Mohammad Shafi Khan and anr.

Judgement :

Mohammad Ismail, J.

1. This is a defendants appeal arising out of a suit brought by the plaintiffs to pre-empt certain property sold by defendants 3 and 4 to defendants 1 and 2 under a sale deed dated 2nd December 1932 for a consideration of Rs. 11,596. The plaintiffs' case is that the actual consideration is only Rs. 5436 and that the amount entered in the sale deed has been inflated to discourage a suit for pre-emption. The suit was contested by the vendees and they alleged that the ostensible consideration entered in the deed is the actual consideration. There is no dispute in this case with regard to the preferential right of the plaintiffs to pre-empt this property as the vendees are admittedly strangers in this village. The sale consideration is comprised of the following items:

(1) Set off against the amount due under the mortgage dated 22nd December 1923, Rs. 6160,

(2) Set off against the amount due under the mortgage deed dated 15th June 1926, Rs. 9436.

2. The vendee Gulzari Lal and one Parshadi Lal were the mortgagees in the first mortgage deed and Gulzari Lal and Ram Chander were the mortgagees in the second. Gulzari Lal has been examined in this case and he states that the sums due under the two mortgagees mentioned above were set off against the sale consideration under the sale deed in question and that the amount due to other mortgagees has been paid off by him. This statement has not been rebutted by any evidence on behalf of the plaintiffs. The learned Civil Judge came to the conclusion that the real consideration was as alleged by the plaintiffs and he therefore decreed the suit for pre-emption on payment of Rs. 5436. The defendants have now preferred this appeal. The only point for determination is whether the price entered in the Sale deed is genuine or not. From a perusal of the plaint it appears that the plaintiffs nowhere alleged that the mortgage deeds mentioned above were not genuine. The learned Civil Judge also has not found that the mortgage deeds were fictitious. Under the circumstances it is not possible to hold that the sale consideration entered in the sale deed is not genuine. Learned Counsel for the respondents has taken us through the evidence in order to show that the income from the property is very low. He relied upon the statement of the patwari who has stated that the profits from the share in dispute after remissions come to only Rs. 110 per annum, although the recorded collection is Rs. 558.4.11. The patwari is an attesting witness to the sale deed and admittedly helped the parties, that is the vendors and the vendees to execute the sale deed in question. He, on his own showing, being a party to a fraudulent transaction, cannot be considered a very satisfactory witness to prove that the price entered in the sale deed is incorrect. In his statement he has not stated anything with regard to the remission in revenue. It is well known that revenue was in every case reduced where remissions in rents were allowed. The patwari is also silent with regard to 'sair' income. Gulzari Lal, the vendee, says that he sold 'khar' for Rs. 85. The area of the land in dispute according to the jamabandi is about 520 acres and the culturable area comes to about 220 acres.

3. On the basis of the price entered in the sale deed the price of the culturable land will come to about Rs. 50 per acre. This by no means is an unusually high price. Learned Counsel for the respondents contends that the vendees were imposed upon by the vendors and were made to believe that the profits of the land were very high and that the price paid by the vendees was on the basis of an exaggerated income which had no existence in fact. In support of this theory reference has been made to the statement of Gulzari Lal wherein he says that the vendors showed him a 'parcha' from which it appeared that the income of the share in dispute was Rs. 965. But Gulzari Lal further adds that in any event he would have purchased the property for Rs. 11,596. The 'parcha' referred to by Gulzari Lal has not been produced. It is possible that Rs. 965 may have represented the entire collection of the share in dispute including the 'sair' income which in some particular year may have been high. This suggestion however is contrary to the case set up by the plaintiffs in the plaint where they have definitely stated that the vendors and the vendees had conspired together to enter a fictitious consideration in the sale deed to defeat the plaintiffs' claim of pre-emption. We do not find any force in the suggestion.

4. The trial Court has taken pains to ascertain the market value of the property in suit. In our judgment the question of market price, can arise only when it is not possible to ascertain the actual price. In the present case we find no justification for holding that the ostensible price is not the actual price. The vendees were entitled to redeem the full amount due under the two mortgage deeds. After the execution of the sale deed the liability of the mortgagors terminated and the mortgages no longer subsist. Therefore the amount secured by the two mortgages represents the actual consideration of the sale deed. It may be that the parties were anxious to prevent the preemptors from becoming cosharers in the village and therefore the vendees agreed to pay a higher amount than they would have done otherwise. This fact will by itself not constitute a fraud. It is not suggested that there is anything illegal in setting off the money actually due under the mortgages against the sale consideration payable to the vendors. In *Misri Lal v. Debi Charan* : AIR1932 All561 a Bench of this Court had to consider a similar point. Niamatullah J. at p. 325 made the following observation:

It will be a highly objectionable mode of dealing with the evidence if we seize on only the disparity between the ostensible price and the market value, ignoring other circumstances simultaneously appearing and explaining the disparity, and to resolve consideration of them for the next stop in the case, namely, to find whether the vendee has succeeded in discharging the onus laid on him by proving the market value. If it should be taken as a whole and if it does not suffice to prove prima facie that the ostensible price is not the actual price the issue is answered against the pro-emptor.

5. On the same page the learned Judge observed as follows:

In my opinion there is nothing objectionable in the vendor and the vendee including in the price the whole of the mortgage money if in fact due, though they are conscious of the prohibitive effect the price fixed would have on the right of pre-emption. Such a result is inevitable if we accept the existence and validity of the charge. There is no fraudulent device in such a transaction which should be distinguished from a class of cases in which the element of fraud is present.

6. With respect we entirely agree with the above observations. We are unable to appreciate the reasons on which the learned Civil Judge has tried to distinguish this ruling. In the present case no fraudulent device has been discovered by the Court below. There is not an iota of evidence that any of the mortgages still subsist. It is impossible for the vendee to sue upon those mortgages after setting them off against the sale consideration. In our judgment the plaintiffs have entirely failed to substantiate their allegations of fraud.

7. The only point against the transaction found by the lower Court is that the price is above the market value. As we have stated above this in no way vitiates the sale deed or justifies the Court to reduce the sale consideration. Having regard to all the circumstances we are of opinion that the learned Judge was in error in reducing the sale consideration. We hold that the consideration mentioned in the sale deed, namely Rs. 11,596, is genuine; We accordingly allow the appeal with costs, set aside the decree of the Court below and decree the plaintiffs' suit on payment of Rs. 11,596 within three months from today's date. If the money is not paid within the time allowed the suit will stand dismissed with costs.

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