

Puthi Vs. Nand Kishore

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Court : Allahabad

Decided On : Jun-26-1914

Reported in : AIR1914All127; 25Ind.Cas.27

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Puthi

Respondent : Nand Kishore

Judgement :

1. This is a second appeal preferred by the defendant in a suit brought by the plaintiff-respondent for possession of immoveable property with mesne profits On the 15th of November 1911, the defendant by a sale-deed transferred the property in suit to the plaintiff-respondent for the sum of Rs. 1,400. In the body of the deed the vendor recited that he had received payment of Rs. 1,400 by credit to a debt due from him on a mortgage-deed of the 28th of November 1900. After the execution of the deed the plaintiff applied for mutation of names, but the defendant objected. He pleaded that, as a matter of fact, he had not received payment of the consideration in full. The application for mutation was rejected, whereupon the plaintiff brought the present suit for possession. The defendant's case was that, as a matter of fact' Rs. 1,400 was not due from him to the plaintiff on the mortgage-deed, that the parties had agreed that an account should be taken because the plaintiff had, as a matter of fact paid certain sums towards that debt and it was agreed that any balance which was found between the sum actually due on the

mortgage and the Rs. 1,400 was to be paid to the defendant. The Court of first instance found that the sum of Rs. 400 was due to the defendant from the plaintiff and gave the latter a decree for possession conditional on his paying that sum.

2. The plaintiff appealed and the lower Appellate Court allowed the appeal and decreed the claim in full on the ground that Sections 91 and 92 of the Indian Evidence Act constituted a bar to the plea raised by the defendant. As a matter of fact the plea raised by the defendant was that the acknowledgment of receipt of consideration as entered in the sale-deed was false, that the sum of Rs. 1,400 had not been paid as that sum was not actually due to the knowledge of the parties on the mortgage-debt.

3. The point is really covered by decision of their Lordships of the Privy Council in *Sah Lal Chand v. Indarjit* 22 A. 370 (P.C) : 4 C.W.N. 485 : 2 Bom. L.R. 553 : 27 I.A. 93 : 7 Sar. P.C.J. 702. In our opinion it was open to the defendants to show that, as a matter of fact, the Rs. 1,400 had not been taken as stated in the sale-deed. In this view we allow the appeal, set aside the decree of the Court below, and as the appeal was dismissed by that Court on a preliminary point we remand the case to the lower Appellate Court with directions to re-admit the appeal upon its original number and proceed to hear and determine the same according to law. Costs will be costs in the cause. Costs in this Court will include fees on the higher scale.