

Suraj Bhan Vs. Hashim Begam and ors.

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Court : Allahabad

Decided On : Apr-10-1918

Reported in : AIR1918All319; 47Ind.Cas.903

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Suraj Bhan

Respondent : Hashim Begam and ors.

Judgement :

1. The point which arises in this appeal is as follows. Certain immoveable property was sold for a considerable sum of money. In the sale-deed the consideration is stated to have been received in a certain way (as par details at the foot of the deed). According to this detail the vendee was to retain a sum of Rs. 8,150 for payment to a certain creditor of the vendors who had a mort-gage upon other property belonging to the-vendors, and which was no part of the property sold to the vendee. Some delay seems to have taken place in the registration of the deed and as a consequence, the vendee alleges that he did not pay the Rs. 8,150. Eventually when he succeeded in getting the sale-deed registered, he went to the creditor and offered him the Rs. 8,150, which the creditor refused to receive because further interest had in the meantime accrued amounting to the sum of Rs. 749 or thereabouts. The present suit was instituted by the plaintiffs to recover the portion of the purchase-money which they alleged had not been paid. The defendant admitted that a portion of the purchase-money had not been paid but he

claimed credit as against .the amount that remained unpaid for the sum of Rs. 749 interest, which he alleged he had paid the creditor of the vendors. Both the Courts below held that assuming that -the defendant had paid the creditor the extra sum of Rs. 749 for the interest which had accrued, he could not plead this as a setoff against the plaintiffs' claim for the unpaid purchase-money upon the ground that there was no obligation on the vendee to pay any money to the creditor except the Rs. 8,150, which had been left with him by the vendors. In second appeal to this Court it has been urged that the view taken by the Courts below was incorrect and Section 70 of the Contract Act is relied upon. That section provides that 'where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered.' We do not think that this section applies to the circumstances of the present case. It was admitted at the Bar that if he sale-deed had been silent about payment to the creditor of the vendors and that the vendee of his own motion had paid off the creditor, he could not have (sic) such payment as a setoff again-it the purchase money. We think that exactly the same reasoning applies to the present case. According to the sale deed the only sum which the vendee was requested to retain out of the purchase-money and pay to the creditor, was the sum of Rs. 8,150. The payment of the balance was a payment gratuitously made. We have already pointed out that the .property mortgaged to secure the sum due to the creditors was no part of the property sold. It may be of course that the plaintiffs have benefited by the payment to the creditor, but this by itself is no sufficient ground to entitle the defendant to set it off against the plaintiffs' claim. We dismiss the appeal with costs.