

Lala Singh Vs. Basdeo and ors.

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Court : Allahabad

Decided On : Jan-19-1923

Reported in : AIR1923All429; 71Ind.Cas.768

Judge : Walsh, J.

Appellant : Lala Singh

Respondent : Basdeo and ors.

Judgement :

Walsh, J.

1. This is a clear case. It is difficult to improve on the judgment of the Court below. It is not a question of a mortgage. It is a question of a sale. The consideration in the sale-deed is Rs. 3,000. The appellant wants to prove a separate oral agreement of Rs. 2,500. I do not know how anybody can persuade himself that Rs. 2,500 as the price of the property is not inconsistent with Rs. 3,000. The proviso No. (2) which is the one relied on by the appellant, of Section 92, permits the proof of a separate oral agreement on a matter on which the document is silent, and which is not inconsistent with its terms. It is quite clear that the attempt to prove that a sale really took place for Rs. 2,500 when the deed says it took place for Rs. 3,000, is not within that proviso. The learned Judge in a very clear judgment has pointed out why this case comes within the principle laid down in the case of *Adityam Iyer v. Ramakrishna Iyer* 21 Ind. Cas. 458 : 38 M. 514 : (1913)

M.W.N. 847 : 14 M.L.T. 382 : 25 M.L.J. 602 and not within the well-known principle established in the case of Chuni Bibi v. Basanti Bibi 24 Ind. Cas. 661 : 36 A. 537 : 12 A.L.J. 969 which is a totally different question. Another case was cited to me, the case of Indarjit v. Lal Chand 18 A. 168 : A.W.N. (1896) 16 : 8 Ind. Dec. (N.S.) 818. On page 171 in the judgment of the Court it is said that there was no dispute as to the terms contained in the deed for Rs. 30,000 consideration. The section in question merely enacts a well-known English rule that you cannot contradict a written agreement by an oral collateral one.

2. But it seems to me in this case that there is another reason why the defence must fail and why the appeal ought to be dismissed which the lower Appellate Court has not touched upon. The lower Appellate Court says that the defence is that the property was sold not for Rs. 3,000 but for Rs. 2,500, and that Rs. 500 was fictitiously entered to save the property from the pre-emptor. By seeking to prove this, the defendant is seeking to prove his own fraud which a litigant is never allowed to do in his own favour, and on that ground alone I should have rejected the evidence and I think it is an equally good answer to the appeal which must be dismissed.

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