

ihsan Ullah Vs. Farhat Ali and ors.

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SooperKanoon Citation : sooperkanoon.com/478453

Court : Allahabad

Decided On : Nov-17-1925

Reported in : AIR1927All374

Appellant : ihsan Ullah

Respondent : Farhat Ali and ors.

Judgement :

1. This is a defendant's appeal arising out of a suit for pre-emption. The plaintiff came into Court on the allegation that although only one-sixth share each belonged to the vendors, Defendants Nos. 2 and 3, they had fraudulently, in order to inflate the price and to defeat pre-emption included the whole share in the disputed plot in the sale-deed. The plaintiff further alleged that the Defendant No. 2 had no authority to execute the sale-deed on behalf of Defendant No. 3. He, however, prayed that if the Court found that the sale-deed had been validly executed by Defendant No. 3 he was ready to pre-empt his share also. The Court of first instance dismissed the suit on the ground that the plaint as drafted was defective and the plaintiff's suit was liable to dismissal because he had tried to put the Defendant No. 1, the vendee, to the proof of Defendant No. 3's title. The lower appellate Court has come to a contrary conclusion. The finding of the lower appellate Court amounts to this that, as a matter of fact, Defendants Nos. 2 and 3 only own a one-sixth share each in this plot and that they knew full well that the total of their shares was only one-third but that in order to inflate the price and defeat pre-emption they fraudulently inserted more than one-third share in the

sale-deed. As regards the price the finding is that Rs. 550. which is shown in the sale-deed and which was not paid before the Sub-Registrar, was not in fact the genuine price. On the basis of the profits the Court came to the conclusion that the real price of the one-third share which the defendants knew that they owned and which they really transferred to the vendee was Rs. 56-10-8.

2. In view of the finding that the transfer of the whole share was not a bona fide one but was fraudulent, we think that there was no fatal defect in the suit. The Court of first instance had relied on the case of Sahodra Bibi v. Bageshari Singh [1915] 37 All. 529. In the concluding portion of the judgment the learned Chief Justice remarked that

they do not decide that a vendor is entitled fraudulently to insert property, to which he has no title in the sale-deed for the purpose of inflating the price or otherwise fraudulently to defeat pre-emption.

3. On the findings arrived at by the lower appellate Court these remarks apply to this case. We accordingly dismiss this appeal with costs including in this Court fees on the higher scale.