

Kishen Lal Vs. Ram Lal and ors.

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Court : Allahabad

Decided On : Apr-29-1927

Reported in : AIR1927All696; 103Ind.Cas.399

Judge : Sulaiman and ;Banerji, JJ.

Appellant : Kishen Lal

Respondent : Ram Lal and ors.

Judgement :

1. This is a plaintiff's appeal arising out of a suit for pre-emption. The suit was contested inter alia on the ground that the deed of sale was in reality a deed of exchange with regard to which no suit for pre-emption could lie. The Court of first instance held that it was a sale and decreed the claim. On appeal the learned Judge has come to a contrary conclusion.

2. It appears that on the 5th March, 1924' two documents were executed both purporting to be sale-deeds, one by Ram Singh and Karna of the property in dispute in this case for a sum of Rs. 100 in favour of four sets of persons, and the other by these four sets of persons of a cattle house for a sum of Rs. 100 in favour of Ram Singh and Kama. These two documents were presented for registration on the same date and were registered simultaneously. The learned Judge has ignored the parol evidence led to show that the documents were not independent deeds of sale but represented one transaction. He has, however, relied on certain

circumstantial evidence and then come to the conclusion that they formed one transaction, namely, that of an exchange. He has also found that although the price entered in the document was Rs. 100, the fair price of the properties exchanged was only Rs. 25.

3. In our opinion extrinsic evidence was admissible for the purpose of showing that these two documents, though purporting to be separate sale-deeds, were in reality part and parcel of the same transaction, which was one of an exchange. We may refer to the case of *Hanif-un-nisa v. Faiz-un-nisa* 11 Ind. Cas. 398 : 33 A. 340 : 15 C.W.N. 521 : 8 A.L.J. 373 : 13 C.L.J. 510 : 13 Bom. L.R. 391 : 10 M.L.T. 23 : (1911) 2 M.W.N. 370 : 21 M.L.J. 1126 (P.C.) decided by their Lordships of the Privy Council. Such evidence which shows that two documents executed and registered on the same date are part and parcel of one transaction and in fact represent only one transaction, does not amount to leading evidence so as to vary the terms of a document. It was, therefore, open to the learned Judge to take into account such evidence. It, therefore, follows that his finding that the transactions were not two separate sale transactions but only one transaction of exchange must be accepted. The plaintiff has, therefore, no right to pre-empt the transfer.

4. The appeal is dismissed with costs.