

KalidIn Vs. Mata Prasad and ors.

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Court : Allahabad

Decided On : Aug-26-2002

Reported in : 2002(4)AWC3055

Judge : Kamal Kishore, J.

Acts : [Specific Relief Act, 1963](#) - Sections 16 and 20

Appeal No. : Second Appeal No. 300 of 1992

Appellant : Kalidin

Respondent : Mata Prasad and ors.

Advocate for Def. : Shyam Lal Misra and ;N.N. Jaiswal, Adv.

Advocate for Pet/Ap. : H.G.S. Parihar, Adv.

Disposition : Appeal dismissed

Judgement :

Kamal Kishore, J.

1. This is the second civil appeal against the Judgment and decree dated 25.3.1992 passed by the then District Judge, Pratapgarh in First Appeal No. 186 of 1989 allowing the appeal and setting aside the judgment and decree passed by the then learned Civil Judge, Pratapgarh in Original Suit No. 19 of 1987.

2. I have heard the arguments and have gone through the record.

3. Admittedly, the defendant is recorded tenure holder of chak plot No. 97 area 2-10-4 of village Purey Nanau P/o Agai, Pargana Rampur, Tehsil Kunda, district Pratapgarh. The plaintiff claimed that the defendant had agreed to sell the said land to them, on a price of Rs. 30,000 ; that he having received a sum of Rs. 20,000 had executed the agreement to sell dated 8th October, 1985 ; that they were throughout ready and willing to perform their part of obligations and that the defendant refused to execute the sale-deed on 26th November, 1985. Consequently, they instituted their suit initially in the Court of Munsif, Kunda on 30th November, 1985 and ultimately the suit was transferred to the Court of Civil Judge on 27th March, 1987, for specific performance of the contract of sale, on the point of jurisdiction. The defendant admitted the agreement of sale. However, he denied the execution of the agreement to sell and agreement of price up to Rs. 30,000 only. He further contended that there was an agreement for the consideration of Rs. 50,000 ; that only a sum of Rs. 10,000 was passed to him before the Sub-Registrar and that the plaintiffs were never ready and willing so far from their contractual obligations.

4. I agree with the findings of the learned lower appellate court that the plaintiff had paid an amount of Rs. 10,000 to defendant in the month of October itself before the execution of agreement to sell dated 8.10.1985 (Ext. 2). Mere omission on the part of the plaintiff to issue any notice to the defendant for the performance of his part of obligation is not at all very significant. Therefore, it is hereby held that the plaintiffs were ready and willing throughout and they continued to be ready and willing to perform their part of contractual obligations arising out of the agreement to sell dated 8.10.1985.

5. It has been seen that the execution of the agreement to sell has not been disputed rather the same has been admitted by the defendant. An admission is the best evidence on which other party can rely and though not conclusive, is decisive of the matter, unless successfully withdrawn as has been held by the Hon'ble Supreme Court in Narayan Bhagwantrao Gosavi Balajwale v. Gopal Vinayak Gosavi and Ors., AIR 1960 SC 101.

6. The findings recorded by the learned. lower appellate court are based on evidence on record and the same do not call for any interference by this Court. It has been held by the Hon'ble Supreme Court in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., 1999 (2) AWC 1608 (SC) : 1999 (3) SCC 722 that if first appellate court has exercised its discretion in a judicial manner, its decision cannot be regarded as suffering from an error either of law or procedure requiring interference in second appeal.

7. The appeal is devoid of merit and is hereby dismissed. The impugned judgment and decree passed by the learned appellate court are maintained.

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