

Chiman Mal Vs. Ganesh

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Court : Rajasthan

Decided On : Jan-02-1952

Reported in : AIR1952Raj187

Judge : Bapna, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 3, 6 and 130; [Contract Act, 1872](#) - Sections 74

Appeal No. : Second Appeal No. 75 of 1951

Appellant : Chiman Mal

Respondent : Ganesh

Advocate for Pet/Ap. : Utsavlal, Adv.

Disposition : Appeal partly allowed

Judgement :

Bapna, J.

1. This is a second appeal by the plaintiff in a suit for recovery of money. The appellant sued the respondent on the allegations that the respondent entered into an agreement with two persons Jawanmal Hansraj, and Motilal Punamchand on 7th June, 1946 to deliver 1,25,000 bricks at the rate of Rs. 14/4/-per thousand by

-- March 1947, and in default to pay Rs. 6/4/- per thousand bricks not delivered by way of damages. The bricks were not delivered and one of the two promisees, namely, Jawanmal Hansraj assigned his rights under the contract to the appellant Chiman Mal on 22nd June, 1947. This Chimanmal appellant brought the present suit on 25th June, 1947 for recovery of Rs. 220/- which had been paid by way of earnest money by Jawanmal Hansraj together with Rs. 390/15/6 as damages for nondelivery of half the quantity of bricks at Rs. 6/4/- per thousand, and the cost of notice. The defendant resisted the suit on various grounds including one that the suit being based on the assignment of the right to recover damages for breach of the contract was not maintainable under the law. The trial court decreed the suit but on appeal, the learned District Judge upheld the plea of the defendant that no assignment of the right to recover damages for breach of contract could take place and dismissed the suit.

2. In this appeal, learned counsel has argued firstly, that so far as the claim for return of the earnest money is concerned, there is no bar to that claim. This is correct. It has been held in -- 'Damodhar Jhingoojee v. Allabux Shekh Yewraj', AIR 1943 Nag 332 that the right to recover money paid under a contract of sale on failure of the seller to hand over possession of the property is not a mere right to sue. It is a claim for an ascertained amount and can be transferred as an actionable claim. The defendant, in the present case, had admitted having received this amount from Jawanmal Hansraj and so far as the claim for this amount is concerned, it must be decreed in favour of the plaintiff.

3. As regards the remainder of the claim it was argued that as the rate of damages had been mentioned in the contract, the amount claimed as damages was also an ascertained amount. Reliance was placed on two authorities: -- 'Mathu v. Achu', AIR 1934 Mad 461 and -- 'Nagappa v. Badridas', AIR 1930 Bom 409, Both these cases are, however, distinguishable on facts as they related to debts and not to damages for breach of the contract. Under Section 74 of the Indian Contract Act, it is provided that where a sum is named in the contract as the amount to be paid in case of breach of the contract, the party complaining of the breach is entitled to receive reasonable compensation not exceeding the amount named in the contract. It is obvious that although the amount of damages may be mentioned in

the contract, the plaintiff has to prove actual damages and in case they are less than the amount stipulated, he cannot get the amount mentioned in the contract. Therefore, even if the amount of damages are mentioned in the contract the party complaining of the breach is only entitled to reasonable compensation. The claim for damages for breach of the contract is, therefore, not an ascertained amount and a transfer of his claim to recover damages even where they are mentioned in the contract is not permitted by law. The claim in respect of damages and the cost of notice, therefore, cannot be allowed.

4. As a result, the appeal is partially accepted, the judgment and decree of the lower court is set aside and the suit is decreed in favour of the plaintiff for recovery of Rs. 220/- with costs on this amount in all the three courts. The rest of the claim is dismissed but without costs.

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