

Haran Chandra Roy Vs. Ram Kumar Roy and ors.

Haran Chandra Roy Vs. Ram Kumar Roy and ors.

SooperKanoon Citation : sooperkanoon.com/857513

Court : Kolkata

Decided On : Mar-13-1931

Reported in : AIR1932Cal170,136Ind.Cas.538

Judge : Mitter, J.

Appellant : Haran Chandra Roy

Respondent : Ram Kumar Roy and ors.

Judgement :

Mitter, J.

1. Those are two appeals by the plaintiffs and arise out of two suits for specific performance of a contract of sale. The plaintiffs' case is that the suit land originally belonged to one Abedul and his cosharers who were jotedars in respect of the land. There were three money decrees against them in favour of the plaintiffs in the present suit. The parties were brothers and when each of these persons executed the decrees there were some questions of rateable distribution of assets amongst them. Then on 19th Kartik 1328 B. S., there was an agreement between them that the plaintiff lands would be purchased in auction in the name of Earn Kumar Roy for Rs. 120 if there were no other bidders for more value and that Earn Kumar Roy would have annas share, Haran Roy 4 annas share and Ananda Roy 4 annas share in the plaintiff lands so purchased and that subsequently the purchase money, costs of sale certificate and delivery of possession would be paid

by them in proportion to their aforesaid shares by the three brothers and in that case Earn Kumar was to be made to execute and register deeds of relinquishment in respect of their shares in favour of the plaintiff's in the present suit. It is said in the plaint that after the confirmation of the sale the plaintiff's demanded the execution of the deeds from the defendants which was not responded to with the result that the present suit had been brought. The defence of the defendants was that the suits were barred by the statute of limitation. It was further contended that the contract was vague and cannot be given effect to. The Court of first instance negatived the defence and decreed the suits of the plaintiff's. Against this decision an appeal was taken to the Court of the Subordinate Judge of Mymensingh and the Subordinate Judge has reversed these decrees of the Munsif in both the suits and has dismissed the plaintiffs' suits. He rested his decision in the two suits on two grounds: first that the suits were barred by Section 66, Civil P. C, and secondly that the suits are barred by the statute of limitation having regard to the provisions of Article 113, Schedule 1, Limitation Act.

2. In second appeal by the plaintiffs it has been contended by Mr. Das who appears for the appellants in both the cases that the Subordinate Judge has gone wrong on both the points. It is said that Section 66 was never taken as a ground of bar of the two suits in the written statement of the defendants and therefore should not have been allowed to be raised before the lower appellate Court. The answer to this contention is this: that the plea of bar under Section 66 which goes to the root of the suits does not depend upon disputed facts and may be allowed to be taken at any stage and the Court is bound to give effect to this plea. It appears that the agreements were made either before the ' sale or before the confirmation of the sale. In a case of this kind it is difficult to say that Section 66 does not apply. Mr. Das sought to spoil out of the plaint an agreement after the sale and asked me to apply the decision of the Judicial Committee in the case of Ramathai Vadivelu Mudaliar v. Verio, Manicka Mudaliar (1) which approved of the Full Bench decision in the case of Venkatappa v. Jalayya (2). An examination of the decision of the Judicial Committee will show that their Lordships held that where the contract is subsequent to the purchase such a purchase is not affected by the provisions of Section 66 is necessary to quote a portion of the 'Judgment delivered by Lord Cave in that ease to show that if the contract was, as in the present ease, before

the sale, the provisions of Section 66 can be attracted to the case. At p. 649 (of 43 Mad.) in *Ramathai v. Peria Manicka Mudaliar* A.I.R. 1920 P.C. 30 their Lordships of the Judicial Committee says:

It was argued by counsel for the appellant that the agreement relied upon by the plaintiffs! oven as found by the High Court amounted in substance to an agreement that the appellant should purchase as to certain parts of the property on behalf of the respondents or of the persons whom they represent and he was able to point to certain expressions both in the plaint and in the evidence of Homo of the plaintiffs' witnesses which supported that view of the transaction. If the agreement entered into before the auction stood alone there would be considerable force in this contention. The object of Section 60 was to put an end to purchases by one person in the name of another and the distinction between a purchase on behalf of another and the purchase, coupled with an undertaking to convoy to another at the price of the purchase is somewhat narrow. But whatever doubt might be caused by the character of the original agreement is removed by the events which happened after the sale. It was decided in *Venkatappa v. Jalayya* [1919] 42 Mad. 615 that an agreement subsequent to a purchase is not affected by the section and there can be no question as to the correctness of that decision. In the present case agreements were entered into after the sale.

3. It will appear therefore from the earlier passage in the quotation just made from their Lordships' decision that if the agreement is regarded as one which was made before the purchase, in that case Section 66 would apply. Of course these are the observations which were not necessary for the decision in the particular case. But an obiter dictum of their Lordships is entitled to very great weight. In the circumstances it appears that there being no statement in the plaint to show that there was an agreement subsequent to the sale, Section 66 bars the suits on the question of limitation, the Subordinate Judge has also come to a right conclusion. From the receipts which have been exe cuted prior to the sale or confirmation of the sale it appears that the intention of the parties was that the agreement should be given effect to after the confirmation of the sale, that is to say, that the deed of relinquishment mentioned was to be executed alter the confirmation of the sale which took place on 10th January 1922 and none of these suits are filed within

three years from that date.

4. The result is that both the points raised by Mr. Dass fail and the appeals fail and must be dismissed.

5. There will however be no order as to costs having regard to the relationship of parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com