

MANU/UP/0115/1880

Equivalent/Neutral Citation: (1881)ILR 3All221

IN THE HIGH COURT OF ALLAHABAD

Second Appeal No. 1056 of 1879

Decided On: 31.03.1880

Durga Prasad **Vs.** Baldeo and Ors.

Hon'ble Judges/Coram:

Francis Boyle Pearson and Oldfield, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Conlan, Junior Government Pleader, Dwarka Nath Banarji and Hanuman Prasad

For Respondents/Defendant: Baroda Prasad Ghose

JUDGMENT

Oldfield, J.

1. The object of the suit is to establish an agreement in writing, dated the 22nd June 1875, alleged to have been executed by the defendants, whereby they agreed to pay certain commission to the plaintiff on the price of articles brought for sale in a market called Hume Granj in Etawah. The allegation of the plaintiff is that he established the Granj at his own expense by request of the Collector at that time, built shops, which were occupied by some of the defendants, who received commission at Re. 1-8-0 per cent on articles brought for sale, and who used to pay eight annas per cent to the plaintiff, and that the agreement now sought to be established has been executed to give effect to the understanding existing between the parties on the subject. Out of the defendants, nineteen confessed judgment, twenty-eight put in no appearance, and seventy-one defended the suit. The Court of first instance decreed the claim against all but five; twenty-five persons among the defendants appealed to the Judge, and these are the respondents in appeal before us. The grounds of appeal were substantially that a suit of the nature of the present suit to establish a right to fees as chauthri of a bazar is not maintainable; that the absence of registration of the document is fatal to the maintaining of the suit; that the suit should be dismissed, since the document had been held to be a forgery by a Criminal Court; and that there was no consideration for the agreement under s. 25, Act IX of 1872, and it cannot be a binding agreement on the appellants under the circumstances under which it was drawn up. The Judge rejected all the objections in respect of the maintenance of the suit, but he found that there had been no consideration for the agreement, as the term is defined in s. 2(d), Act IX of 1872, and that it was not such an agreement as might be valid with reference to the provisions of cl. (2), S. 25 of that Act; and he further held that the document had not been executed with proper formality and the deliberation suitable when such considerable interests were concerned, nor with the fairness or openness required to allow of its being fully trusted; and he reversed the decree of the first Court and dismissed the claim against the defendants. The plaintiff has presented a second appeal in this Court, making the defendants respondents who had appealed to the Judge. The objections are to the effect that the Judge's finding in respect of the invalidity of the

agreement for want of consideration, and for want of proof of its proper execution, is wrong, and that he should not have dismissed the suit against those defendants who had not appealed to him.

2. The Judge's finding on the question of consideration is one which is not open to question in second appeal. To render the agreement valid as a contract, it must be shown that there was consideration as defined in the Contract Act, or if not, that the agreement comes within the exceptions provided for in s. 25. Now the deed is silent as to the character of the consideration for the promise, and the only ground for making the promise is the expense incurred by the plaintiff in establishing the Ganj; but it is clear that anything done in that way was not "at the desire" of the defendants, so as to constitute a consideration, and the Judge has very distinctly found that "the circumstances do not bring the matter under cl. 2, s. 25, Act IX of 1372," as has been contended. To bring it within the provisions of that clause, it must be shown that what was voluntarily done by the plaintiff was done "for the promisors" or "something which the promisor was legally compellable to do," and the Judge finds that this has not been shown. He says he does not see clearly what it is that respondents had done for appellant, and that what he did was to please the Collector. In fact, when plaintiff established the Ganj, the defendants were not in his mind, and that there was nothing done for them, for which compensation might be given. On the finding by the Judge there is no case for second appeal, and we cannot disturb the decree in respect of those defendants who have not been made parties to this appeal by the appellant. The appeal is dismissed with costs.

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