1922

ALI JAWAD v. KULANJAN SINGH.

fact that there were several mortgages between these parties on the record, and we find the same words occurring in other mortgages where they cannot have the meaning which the plaintiffs now seek to put on this mortgage. It seems to be a set phrase used carelessly by the scribe of these documents. In the written statement it is stated that as a matter of fact there were two mortgages executed in the month of August, 1905, by the plaintiffs in favour of Mahabir. Both the deeds are on the record. The allegation is that when the deed of 1908 was executed the sum of Rs. 600 which was left to be paid to Mahabir represented not the whole amount due to Mahabir but the interest then due on the two mortgages. This may be so or it may not, but it shows that the words relied upon as proving the complete satisfaction of the particular mortgage of the 10th of August, 1905, do not of necessity mean what the appellants contend. It is, however, a remarkable circumstance which is on the record that the mortgage-deed of the 10th of August, 1905, was in the possession of Mahabir and was produced by him. If it had been paid off and nothing remained due whatever under that mortgage, one would have expected it to have been given back to the plaintiffs or at least to the defendant Kulanjan Singh, who satisfied it, with an endorsement to that effect.

In our opinion, therefore, the view taken by the courts below is right and we dismiss this appeal with costs.

Appeal dismissed.

1922

March, 2.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

GULAB CHAND (PLAINTIFF) *v.* KAMAL SINGH AND ANOTHER (DEFENDANTS).*

Act No. IX of 1872 *(Indian Contract Act), section* 25—*Contract—Consideration—Forbearance to sue for enforcement of a claim.*

If a person believes that he has a *bond fide* claim to enforce, his forbearance from trying to put that claim in court and to have it decided will be a good consideration for a contract, however the claim, if brought, may be decided.

Miles v. *New Zealand Alford Estate Company* (1) referred to.

THE facts of this case sufficiently appear from the judgment GOKUL PRASAD, J.

*Second Appeal No. 529 of 1920, from a decree of T. K. Johnston, District Judge of Agra, dated the 3rd of February, 1920, reversing a decree of Kaulesh ar Nath Rai, Subordinate Judge of Agra, dated the 6th of March, 1918.

(1) (1886) L. R., 32 Ch. D., 266.

Pandit *Shiam Krishna Dar*, for the appellant.

Munshi *Narain Prasad Ashthana*, for the respondents.

GOKUL PRASAD, J.:—This was a suit to recover a certain amount on the basis of a *hundi* executed by defendants Nos. 1 and 2, Debi Singh and Dan Sahai, on the 18th of June, 1914. The defendants pleaded that they executed the *hundi* but that it was without consideration and was obtained through undue pressure.

The trial court came to the conclusion that the defendants had failed to prove that the *hundi* was executed under undue influence or without consideration. It accordingly decreed the suit against defendants Nos. 1 and 2, the executants of the *hundi*.

The defendants went up in appeal. They abandoned the plea of undue influence but contended that the consideration alleged by the plaintiff was no consideration in law. The learned Judge gave effect to this contention of the defendants appellants and dismissed the suit.

The plaintiff comes here in second appeal and challenges the correctness of the finding of the lower appellate court.

The facts are shortly as follows. On the 5th of August, 1903, the defendants, Debi Singh and Dan Sahai, with their two brothers, borrowed a sum of Rs. 21,000 carrying interest at six per cent. per annum from the plaintiff and made a usufructuary mortgage of certain property in his favour for 18 years. On the same date two of the mortgagors took a lease of the mortgaged property for 18 years, that is to say, for the period of the mortgage, at Rs. 1,900 per annum. The mortgage was to end after 18 years without any further payment being made by the mortgagors, the principal and interest being satisfied by the plaintiff's possession for 18 years as aforesaid. The lease is specifically mentioned in the mortgage and certain conditions about the increase and decrease in revenue were to take effect only in case the lessees were ejected for non-payment of rent. As I have stated above, the mortgage was to be satisfied simply by possession for 18 years, there was no account to be made and nothing to be paid by one party to the other under ordinary circumstances, or, to put it in other

1922

GULAB CHAND v. KAMAL SINGH. *Gokul Prasad, J.*

words, the lease and the mortgage were agreed upon simultaneously and the plaintiff was to receive Rs. 1,900 per annum for 18 years in full satisfaction of the principal money and the interest due thereon. It, however, so happened that the defendants respondents failed to pay the lease money and the result was that the plaintiff had them ejected on the 30th of March, 1911. According to the plaintiff, notwithstanding the assessment of rent on the ex-proprietary holding of the mortgagors the total income from the village became less by Rs. 568 from the amount of Rs. 1,900 per annum which he was to receive. In lieu of the aforesaid deficiency for two years, that is for 1318 and 1320 Fasli, which the plaintiff claimed, the defendants executed the *hundi* in question.

The argument on behalf of the plaintiff, strenuously urged by his learned vakil, is that the court below has erred in holding that this amount of deficiency did not form a legal consideration for the *hundi*. The learned Judge has in my opinion erred in doing so. The principle applicable to cases in which forbearance to sue or to enforce a claim in court does not amount to a valid consideration, has been very clearly laid down by BOWEN, L. J., in *Miles* v. *New Zealand Alford Estate Company* (1). "It seems to me that if an intending litigant *bonâ fide* forbears a right to litigate a question of law or fact which it is not vexatious or frivolous to litigate, he does give up something of value. It is a mistake to suppose it is not an advantage, which a suitor is capable of appreciating, to be able to litigate his claim, even if he turns out to be wrong. It seems to me it is equally a mistake to suppose that it is not sometimes a disadvantage to a man to have to defend an action even if in the end he succeeds in his defence; and I think, therefore, that the reality of the claim which is given up must be measured, not by the state of the law as it is ultimately discovered to be, but by the state of the knowledge of the person who at the time has to judge and make the concession. Otherwise you would have to try the whole case to know if the man had a right to compromise it, and, with regard to questions of law, it is obvious you could never safely compromise a question of law at all . . . Now, that being the law which I think has to be applied to the present case,

(1) (1886) L. R., 32 Ch. D., 266.

I come next to the facts. Was there here forbearance of a *bonâ fide* claim ?" Then he went on to deal with the facts of that particular case.

There is no doubt that if the plaintiff's allegations in this case are correct, he was likely to lose Rs. 568 per annum for a large number of years and was at the same time bound to give up possession of the property after the lapse of the period of the mortgage, there being no express provision in the mortgage for the recovery of such deficiency.

Under these circumstances, in my opinion, the plaintiff believed that he had a *bonâ fide* claim to enforce and his forbearance from trying to put that claim in court and to have it decided was good consideration for the *hundi* in dispute. In my opinion the decision of the trial court was correct. I would, therefore, allow the appeal and set aside the decree of the lower appellate court. As Dan Sahai, one of the defendants respondents, has died and his heirs have not been brought on the record, the appeal as against him abates. I would, therefore, decree the claim against the defendant respondent Kamal Singh with costs in all courts. In other respects the decree of the first court is confirmed.

STUART, J. :—I have little to add to the judgment of my learned brother. The first question that we had to decide was whether the *hundi* in question had been executed in consideration of Gulab Chand forbearing his right to sue the executants of the *hundi* for damages in respect of their acts, whereby he had been confined to the recovery from them of rent as ex-proprietary tenants, instead of being able to enforce against them the rent fixed by the lease. The point was not brought out very clearly in the courts below, but there can be no doubt as to the fact that the *hundi* was executed in consideration of Gulab Chand forbearing to sue. I am clear in my mind that the question which he had a right to litigate was neither vexatious nor frivolous. Whether he would or would not have succeeded had he instituted a suit on this cause of action, it is unnecessary for me to attempt to decide. I am not as confident as the learned District Judge was that he would have had no chance of success. Applying the test laid down by BOWEN,

1922

GULAB CHAND v. KAMAL SINGH.

L. J., I have to look at the state of knowledge of Gulab Chand who at that time had to judge and make the concession. I am satisfied that the cause of action was neither vexatious nor frivolous and that Gulab Chand believed at the time that he had a good cause of action. On these findings the appeal must succeed, for there was clearly forbearance of a *bonâ fide* claim, and such forbearance is a good consideration in law.

I concur in the order proposed.

BY THE COURT:—The order of the Court is that the appeal is allowed, the decree of the court below is set aside and the plaintiff's claim is decreed against the defendant respondent Kamal Singh. Kamal Singh shall pay his own costs and those of Gulab Chand in all courts.

Appeal allowed.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

1922
February, 28.

NARAIN SINGH AND ANOTHER (DEFENDANTS) *v.* RAJ KUMAR SINGH AND OTHERS (PLAINTIFFS) AND JAGTA KUNWAR AND OTHERS (DEFENDANTS).*

Hindu law—Female in possession for life—Compromise of claim against the estate to the detriment of the reversionary interest.

After the death of the second of two brothers, who had been joint in estate, his daughter obtained possession of the entire property which had been of the two brothers. The daughter had an infant son, who was the next reversioner. The representatives of the first brother (two daughters) brought a suit against the daughter of the second, claiming half the estate. The defendant, without even filing a written statement or getting a guardian *ad litem* appointed for her son the reversioner, who was then a baby, compromised the suit and gave the plaintiffs half the property.

Held that the compromise so entered into was *ultra vires* and could not affect in any way the rights of the minor reversioner. *Amrit Narayan Singh* v. *Gaya Singh* (1) followed.

THE facts of this case are fully stated in the judgment of the Court.

Maulvi *Iqbal Ahmad*, for the appellant.

Babu *Piari Lal Banerji*, for the respondent.

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* Second Appeal No. 457 of 1920, from a decree of Jagat Narain, District Judge of Azamgarh, dated the 27th of January, 1920, confirming a decree of Raj Bihari Lal, Subordinate Judge of Azamgarh, dated the 16th of November, 1918.

(1) (1917) I. L. R., 45 Calc., 590.