

APPELLATE CIVIL.

Before Addison and Ram Lall JJ.

KISHORI LAL (PLAINTIFF) Appellant,

versus

PIARE LAL AND ANOTHER (DEFENDANTS)

Respondents.

Regular Second Appeal No. 923 of 1938.

Civil Procedure Code (Act V of 1908) S. 100 — Second Appeal — Finding of lower Appellate Court — Suit collusive or not — Whether finding of fact — for the purpose of Second Appeal.

Held, that a finding of the lower Appellate Court that a certain suit was not collusive was a finding of fact which the High Court was not entitled to go behind in Second Appeal.

Midnapur Zamindari Company, Ltd. v. Uma Charan Mandal (1), Sarju v. Budha (2), Satgur Prasad v. Har Narain Das (3), and Wali Muhammad v. Muhammad Bakhsh (4), relied upon.

Abdul Samad v. Municipal Committee of Delhi (5), Jaishi Ram v. Suju (6), and Ghasi v. Manga (7), referred to.

Second appeal from the decree of Mr. S. S. Dulat, District Judge, Karnal, dated 19th March, 1938, reversing that of Lala Pritam Singh Jain, Subordinate Judge, 3rd Class, Kaithal, dated 30th April, 1937, and dismissing the plaintiff's suit for possession by pre-emption of the properties in dispute.

JAGAN NATH AGGARWAL, for Appellant.

MEHR CHAND MAHAJAN and ASA RAM AGGARWAL,
for Piare Lal, Respondent.

(1) (1919) 52 I. C. 497 (P. C.).

(4) I. L. R. (1930) 11 Lah. 199 (P. C.).

(2) (1921) 59 I. C. 885.

(5) 75 P. R. 1916.

(3) I. L. R. (1932) 7 Luck. 64 (P. C.).

(6) (1928) 109 I. C. 776.

(7) 1932 A. I. R. (Lah.) 322.

The judgment of the Court was delivered by—

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ADDISON J.—The learned Judge, who referred this second appeal to a Division Bench, was of opinion that the decision of the lower appellate Court that a certain suit was not collusive was a wrong decision, but as he was doubtful whether this was a question of fact or not he considered that the question should be decided by a larger Bench.

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There is a decision of their Lordships of the Privy Council—*Midnapur Zamindari Company, Ltd. v. Uma Charan Mandal* (1)—in which it was definitely said that a finding that there had been no fraud or collusion was a finding of fact which the High Court was not entitled to go behind as the decision did not result from a misconstruction of a document or the misapplication of law or procedure. A learned Judge of this Court in *Sarju v. Budha* (2) held that where the question is whether a suit is collusive, the High Court is bound by the finding arrived at by the first appellate Court on that point. Their Lordships of the Privy Council held in *Satgur Prasad v. Hur Narain Das* (3) that a finding that the deed was procured by undue influence and fraud was undoubtedly a finding of pure fact. Again, their Lordships held as follows in *Wali Muhammad v. Muhammad Bakhsh* (4):—

(1) There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross the error may seem to be.

(2) The proper legal effect of a proved fact is essentially a question of law, but the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact.

(1) (1919) 52 I. C. 407 (P. C.).

(3) I. L. R. (1932) 7 Luck. 64 (P. C.).

(2) (1921) 59 I. C. 885.

(4) I. L. R. (1930) 11 Lah. 159 (P. C.).

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(3) Where the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or otherwise the direct foundations of rights, but were really historical materials, have to be construed for the purpose of deciding the question.

(4) A second appeal would not lie because some portion of the evidence might be contained in a document or documents and the First Appellate Court had made a mistake as to its meaning.

In view of these authorities it is scarcely necessary to go into the other cases quoted, especially as there is direct authority of their Lordships of the Privy Council on this question. On a previous occasion in this Court the learned Judge who sent this case back stated as follows :—

“ If the decree setting aside the sale at the instance of the sons of the vendor be held to be a collusive decree then it follows that the sale has been set aside by the vendor and the vendee collusively in order to defeat the pre-emptor, and, therefore, the right of the pre-emptor is not affected by the decree. If, on the other hand, it is found that the sale has been set aside in pursuance of a genuine compromise of a *bonâ fide* claim then it is obvious that there is nothing to pre-empt and the plaintiff pre-emptor cannot succeed in the suit. *This position is accepted to be correct by learned counsel on both sides.* The order of remand, therefore, made by the learned District Judge shall stand but the question to be decided by the learned trial Judge would be whether the decree is or is not collusive. If it is collusive then it does not bind the plaintiff-pre-emptor. If it is not a collusive decree, that is to say, if the compromise was a genuine and *bonâ fide* one then the sale has been rightly set aside

and the plaintiff-pre-emptor cannot proceed with his suit for pre-emption.”

We have quoted these words to show that the position was accepted by counsel on both sides. The trial Court held that the decree was collusive, the lower appellate Court held that it was not collusive, that is to say, that it was genuine and *bonâ fide*. There are numerous rulings on the point that a question of good faith, which is the opposite of collusion, is a question of fact, and it will be sufficient to mention in this connection three decisions of this Court, namely, *Abdul Samad v. Municipal Committee of Delhi* (1), *Jaishi Ram v. Suju* (2) and *Ghasi v. Munga* (3).

For the reasons given above we dismiss this second appeal but makes no order as to costs of this Court.

A. N. K.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Addison and Ram Lall JJ.

SUKHRAM PHOLLEY (DECREE-
HOLDERS) Appellants,

versus

KANWAL SINGH AND OTHERS (OBJECTORS)
Respondents.

Letters Patent Appeal No. 50 of 1939.

Custom — Just debts — Simple money decree — Ancestral land — attached but not sold during the life time of the judgment-debtor — Whether liable to be sold in the hands of the next holders — Punjab Debtor's Protection Act (II of 1936), S. 9.

(1) 75 P. R. 1916.

(2) (1928) 109 I. C. 776.

(3) 1932 A. I. R. (Lah.) 322.

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May 5.