

Supreme Court of India

Raj Kishore Giri And Ors. vs Purendra Giri And Ors. on 26 September, 1996

Equivalent citations: 1997 I OLR 1

Author: Faizanuddin

Bench: N Singh, F Uddin

ORDER

1. This appeal has been failed against the judgment passed by the High Court decreeing the suit for declaration of title and recovery of possession filed on behalf of the plaintiffs- respondents (hereinafter to be referred to as the 'respondents') The said suit had been dismissed by the trial Court.

2. It is an admitted position that on March 23, 1936 the respondents entered into agreement with the defendants-appellants (hereinafter to be referred to as the 'appellants') for transfer of a piece of land for a consideration of Rs. 400/- only Rs. 200/- was paid with the execution of the agreement and the balance of the consideration money was paid by the appellants on December 9, 1936. However, the sale deed in favour of the appellant was not executed by the respondents. The appellants remained in possession of the suit land throughout and we are informed that they are in possession of the same till today.

3. The suit for declaration of title and recovery of possession was filed on behalf of the respondents on December 21, 1967 which was dismissed by the trial Court as already mentioned above. The High Court, however, decreed the said suit rejecting the plea raised on behalf of the appellants in respect of Section 53-A of the Transfer of Property Act (hereinafter to be referred to as the 'Act'). From the records, it appears that admittedly the appellants have performed their part of the contract in connection with the transfer which was to be made by the respondents so far the suit property is concerned. They have paid full consideration money and the respondents had put them in possession thereof which they continued to be since 1936 for about 60 years. In this background, according to us, the High Court was not justified in decreeing the suit of the respondents. Appellants can take a good defence under Section 53-A of the Act that they have performed their part of the agreement. In the result, the appeal is allowed and the impugned order of the High Court is set aside. No costs.

Faizanuddin, J.

4. I agree.