

Tholasiram and anr. Vs. Duraji and ors.

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Court : Chennai

Decided On : Nov-03-1903

Reported in : (1905)15MLJ375

Appellant : Tholasiram and anr.

Respondent : Duraji and ors.

Judgement :

1. Upon the face of the plaint itself it is clear that the plaintiffs had no cause of action against any of the defendants. Assuming, as found by the Court below, that the articles were sold to the first defendant under false pretences amounting to the offence of cheating, the contract of sale was but voidable at the instance of the plaintiffs. They, however, as stated in the plaint, brought a suit against the first defendant for the price of the jewels sold and delivered to him and obtained a decree for the same and the decree was subsisting at the date of the suit. After the plaintiffs had thus obtained the decree which is subsisting, they could no longer elect to avoid the contract. That being so at the date of the suit, the plaintiffs had not only no title to the property, but they were not in a position to avoid the contract so as to divest the property from the first defendant with the result of re-vesting it in the plaintiffs. The second and third defendants had therefore acquired a valid and indefeasible title to the goods respectively purchased by them from the first defendant. Exception 3 to Section 108 of the Indian Contract Act would not enable the original owner of the property to defeat the title of a purchaser from one who became transferee of the property from the original owner under a contract entered into in circumstances which involved the commission of an offence if the title of the original owner had since absolutely ceased. We may also add that in this case the plaintiffs after they brought suit for the recovery of the price of the jewels from the first defendant, preferred, a criminal complaint of cheating against the first defendant, which necessarily implies a knowledge on their part of the offence committed by the first defendant, and not with standing such knowledge, even if they had no such knowledge prior to that suit, they prosecuted the suit and obtained the decree.

2. We therefore reverse the decree of the Lower Court and dismiss the suit. The plaintiffs will pay the costs of the second and the third defendants throughout and the first defendant will pay his own costs throughout.