

(1973) 04 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 181 of 1969

Amarendra Nath Mondal

APPELLANT

Vs

Noor Jahan Bibi and Others

RESPONDENT

Date of Decision : 27-04-1973

Acts Referred:

Specific Relief Act, 1963 — Section 14(1)(b)

Citation : 77 CWN 781

Hon'ble Judges : Debiprosad Pal, J

Bench : Single Bench

Advocate : Ranjit Kumar Banerjee and Shib Lal Bose, for the Appellant; No one appeared, for the Respondent

Final Decision : Allowed

Judgement

Debiprosad Pal, J.—This appeal arises out of a suit for specific performance of a contract for sale instituted by the plaintiff against the defendant-appellant. The plaintiff's case is that 7? cottahs of land in the bustee holding No. 54, Russa Road, South is the suit property. This land comprises undivided 1/32 share of the land belonging to the defendant. The defendant No. 1 being in need of money agreed to sell this land to the plaintiff at a price of Rs. 500/- per cottah and an agreement for sale in favour of the plaintiff was executed to that effect on 9.10.1953 after accepting Rs. 2001/- as earnest money. Under the agreement the defendant was to execute a kobala in favour of the plaintiff accepting the balance of the consideration money and after obtaining permission of the court for sale of the said land as a partition suit was pending in respect of the said land and other lands among the defendant No. 1 and his co-sharers. On several instalments the defendant No. 1 altogether is alleged to have taken Rs. 2951/- from the plaintiff after making endorsements on the back of the agreement for sale. But ultimately on 25.9.61 the defendant refused to execute a kobala in favour of the plaintiff. Hence the present suit for specific performance.

2. The defendant Nos. 2 and 3 are the Receivers appointed in the partition suit.

Before the learned Munsif, 1st Court, Alipore, the main contention raised was that the agreement in question embodied a loan transaction and not an agreement for sale in respect of the said property. This contention was negated by both the Courts below. On a Second appeal before this Court Mr. Ranjit Kumar Banerji, Learned Counsel appearing for the defendant-appellant did not make any attempt to support his client's case on any of the pleas taken before the courts below. He however sought permission of this Court to urge an additional ground, viz. that the agreement for sale being a contingent contract, no decree for specific performance of the contract could be allowed in respect of such a contract.

3. As the instant point does not involve any investigation of fresh facts which are not on the record and it is a pure question of law which goes to the very root or subject-matter of the suit, I have given permission to Mr. Banerjee to urge this additional ground. In the present agreement for sale which is Ext. (1) it has been specifically provided that the sale could be made subject to the permission of the court for sale of such property as the said property was the subject-matter of a partition suit. In such a case the contract is not one which can be specifically enforced. The contract for sale as it stood was never a completed contract at any time, as it was contingent upon the permission of the court to be obtained. In case of (1) *Narain Patter v. Aukhoy Narain and ors.* ILR (12) Cal. 152, a certificated guardian of certain minors entered into an agreement with the plaintiff to sell certain land belonging to them for a fixed price contingent upon the leave of the Court, which was necessary, being obtained to the transaction, and a portion of the purchase-money was paid by the plaintiff. The court sanctioned the sale, but at a higher price than that agreed on between the plaintiff and the guardian, and the latter sold to a third party. The plaintiff thereupon sued the minors by their guardian as next friend and the third party for specific performance of the agreement to sell to him at the price mentioned in the agreement. The Division Bench held that the contract as it stood was not a complete contract at any time and was contingent upon the permission of the court. Hence specific performance of the contract was refused. The same view has been taken in the case of (2) *Kalidasi Dasse and ors. v. Nobo Kumari Dasse and ors.* 20 C.W.N. 929. Reliance was also placed on the decision in the case of (3) *Dalsukh v. Guarantee Life and Employment Insurance Co.* (52. C.W.N. 472). In that case the property was under attachment by two courts in execution of two money decrees and had been ordered to be sold by a third court in execution of a mortgage decree. To avert this sale, the owners contracted to sell one property to the appellant at a certain price "subject to court's approval". In a suit for specific performance, the Privy Council held that the contract was contingent upon the court's approval and as the application to the proper court by the proper person as contemplated by contract for approval had been rejected the contract failed to the ground and the suit for specific performance was dismissed. In view of these several decisions, if my opinion, no decree for specific performance can be made in respect of the present agreement for sale of

the disputed property. As already pointed out the present agreement for sale specifically provides for the permission of the court to be obtained before the Deed of Sale is to be executed. This therefore, in my opinion is a contingent contract which becomes a concluded contract only on the happening of the contingency in question. Contingent contract, which depend for their validity and enforceability on the happening of a contingency cannot be specifically enforced. Such types of contracts fall under the exception provided in section 14(1) (b) of the specific Relief Act. Under the aforesaid section a contract cannot be specifically enforced if it, from its nature is such, that the court cannot enforce specific performance on its material terms. If the Deed of sale can be executed only upon the fulfilment of some conditions, viz., the permission of the court, the promises of the contract is not entitled to sue for specific performance so long as such condition has not been fulfilled and the permission of the court has not been obtained.

For the reasons stated above this appeal succeeds. The judgment and decree of the lower court as also those of the learned Munsif are set aside. The suit instituted by the plaintiff is dismissed. In the circumstances of the case, there will be however no order as to costs.