

(1924) 01 AHC CK 0031
In the Allahabad High Court

Brij Ballab Das and Others

APPELLANT

Vs

Mahabir Prasad

RESPONDENT

Date of Decision : 15-01-1924

Acts Referred:

Citation : AIR 1924 All 209 : 78 Ind. Cas. 167

Hon'ble Judges : Walsh, J;Kanhaiya Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The learned Judge has gone wrong over this case. The language may be, to persons to whom it is not familiar, somewhat difficult to apply, and it is useful to have a complete knowledge of the whole Act before selecting one passage from a particular section, and construing that by itself. The learned Judge seems to think that the fact that the plaintiffs were able to put into the terms of a money sum, the compensation for the loss which they would probably suffer if they could not get the lease that they wanted, was in itself equivalent to saying that such sum was adequate compensation. It is quite dear that the plaintiffs did not say that. In fact, the plaintiffs really said just the reverse. They asked Co (specific performance, and it was only in the final alternative that they claimed a sum to recoup their loss as estimated by them as damages if their claim for specific performance was not allowed. But the plaintiffs were claiming what they were prima facie entitled to, namely, a lease of a particular shop, and there may be many reasons why they desire and are willing to pay for a particular shop, and why they are unable to do more than give a rough statement of the loss which they will suffer if they do not get it, preferring the shop to any form of pecuniary compensation. If the matter, or rather the meaning of the word "adequate." is to be judged from their point of view, then it is clear that they do not consider it adequate, otherwise they would ask for the money and not for specific performance. The foregoing reasoning seems to show that the word "adequate" in Section 21 must be adequate in the mind of the Court, for some

reason found as a fact and stated by the Court for holding it to be adequate, in spite of the opinion of the plaintiffs that it is inadequate. The illustration in Section 12 is a useful guide to what is meant. If one looks first at the illustration to Section 21, Sub-section (a), which the learned Judge was construing, one will see that it deals with moveable property and with contracts of a commercial nature. But turning back to the explanation to Section 12, it is clear that the Legislature did not intend that persons, who entered into contracts to transfer or lease Immovable property, should be allowed to escape from them to suit their own convenience by alleging that the person in whose favour the contract was made, could be compensated in money, because that explanation requires the Court to presume that such compensation cannot be adequate unless and until the contrary is proved. There is really no suggestion in the judgment of the learned Judge that he approached this point of view. If he had done so, he would probably have hesitated to make the order which he has done. He only refers to the fact that similar shops are available for which the plaintiffs would have to pay higher rent. The plaintiffs' answer to this is, that they do not want them unless they are compelled to take them, or one of them. We should have preferred to hear the case argued by the respondent representing the view which the learned Judge has taken, but we have no doubt that the appeal must be allowed and the judgment of the first Court restored with costs here and below, with costs in this Court on the higher scale.