
(1953) 11 KL CK 0010
In the High Court Of Kerala
Case No : Second Appeal No. 297 of 1950

Chacko Thomas

APPELLANT

Vs

Mathai Abraham

RESPONDENT

Date of Decision : 18-11-1953

Acts Referred:

Contract Act, 1872 — Section 23
Specific Relief Act, 1877 — Section 11, 12, 21
Transfer of Property Act, 1882 — Section 6

Citation : AIR 1954 Ker 357

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.K. Kurien, for the Appellant; K.T. Ninan, for the Respondent

Final Decision : Dismissed

Judgement

Menon, J.—O.S. No. 512 of 1121 was a suit for specific performance of Ext. A, an udampady dated 29-4-1115, which was dismissed by the trial court and decreed in appeal by the learned District Judge of Mavelikkara. The questions argued before me in this second appeal by the 2nd Defendant and his wife, the 3rd Defendant, are:

(1) that Exhibit A is unenforceable as it is an agreement to convey property to be acquired in the future (vide Section 6, T.P. Act, 1882);

(2) That it violates Section 23, Contract Act; and

(3) that it cannot be specifically enforced u/s 21, Specific Relief Act, 1877, as it is a contract for the non-performance of which compensation in money is an adequate relief".

2. Exhibit A cannot possibly be hit by Section 23, Contract Act as neither the consideration nor the object of the agreement

is forbidden by law; or is of such a nature that, if permitted, it would defeat the

provisions of any law; or is fraudulent; or involves or implies injury to the person or property of Anr. ;" or is in any way "immoral, or opposed to public policy.

3. Section 12, Specific Relief Act, 1877 (Section 11, Travancore Specific Relief Act, 13 of 1115), will not also avail the Appellants in view of the Explanation to that section which enacts that "unless and until the contrary is proved" compensation for the breach of contracts relating to immovable property cannot be an adequate remedy, and the absence of any evidence on record to rebut that statutory presumption.

4. There is no doubt that Ex. A dealt with property over which the executant had no title on the date of the document but over which he proposed to acquire rights in the future, and, in fact did so acquire, subsequently. The T.P. Act, 1882, was not in force in Travancore and so the question of the validity or otherwise of a covenant in respect of future property must depend not on the provisions of Section 6 of that enactment but on the general principles of equity, which can be summed up in the oft-quoted passage of Buckley, J. - "In *Re Ellenborough* (1903) 1 Ch. 697 (A):

If value be given it is immaterial... whether the subject of the disposition is capable of being disposed of or not... Future property, possibilities and expectancies are all assignable in equity for value.

5. In - "*Naranjan Singh v. Dharam Singh*" AIR 1930 Lah 928 (B), it was held that a sale of a reversionary right of succession gives rise to a right which the court will enforce when the inheritance falls into possession. The judgment surveyed the authorities based on the T.P. Act, 1882, and stated as follows:

Now with these authorities I find myself in complete agreement, but the position in the Punjab appears to me to be different from that in Madras and Calcutta where the T.P. Act is in force. In the "*Calcutta*" case their Lordships of the Judicial Committee referred to the fact that the law in England was that an agreement to sell a *spes successionis* could be enforced when the estate fell in. They also pointed out that this was the state of the law in India prior to the enactment of the Transfer of Property Act and that where that Act was in force Section 6 of the Act rendered an agreement to sell or a sale of a *spes successionis* void.

As the T.P. Act is not in force in the Punjab it follows that these authorities do not support Mr. Khosla's contention that here such an agreement cannot be enforced. It has been held in - "*Allah Bakhsh v. Ghulam*" 13 Pun Re 1899 (C), that a sale of a reversionary right of succession, though at the time of sale it does not effect a transfer of property, gives rise to a right which the Court will enforce when the inheritance falls into possession. In coming to this conclusion Clarke, C.J. and Gordon-Walker J. referred to - "*Tola v. Abdullah Khan*" 66 Pun Re 1897 (D), and differentiated that authority. Again in - "*Achar v. Padmun*", LP A No. 87 of 1924 (Lah) (E), it was held by Shadi Lal C.J. and Le Rossignol, J., approving - "*Allah Bakhsh v. Ghulam*", (C), that such a contract was enforceable

in a province where the Transfer of Property Act was not in force.

6. No other point arises for consideration and the second appeal is hereby dismissed with costs.