
(1961) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 8D of 1960

Dr C.L. Katial and Others

APPELLANT

Vs

Mrs. C.W.V. Madden

RESPONDENT

Date of Decision : 21-03-1961

Acts Referred:

Specific Relief Act, 1877 — Section 21

Citation : AIR 1963 P&H 136 : (1961) 2 ILR (P&H) 752

Hon'ble Judges : R.P. Khosla, J;D. Falshaw, J

Bench : Division Bench

Advocate : Gurbachan Singh and Keshav Dayal, for the Appellant; R.K. Makhija, for the Respondent

Judgement

Falshaw, J.—Both parties have filed appeals against a decree of the Commercial Subordinate Judge, Delhi, granting the plaintiffs a decree for Rs. 11,550/-with proportionate costs against the defendant, the amount being made a charge on the property in dispute until it is paid.

(a) The suit was instituted by four plaintiffs, Dr. C. L. Katial, Mr. H. L. Jerath, Mr. Shanti Lal Katial, and Shrimati Raksha Chandiok, against Mrs. C. W. V. Madden for specific performance of an agreement to sell the house No. 21-A, Tugh-lak Road, New Delhi, entered into by the defendant on the 4th of September, 1956, in favour of the first two plaintiffs or their nominees, for Rs. 1,10,000/- or in the alternative for a sum of Rs. 51,100/- as damages. The terms of the agreement were in writing and among the terms it was stipulated that before the sale was completed the defendant would clear off the debt due on the mortgage decree in favour of the company, Bharat Nidhi Ltd. so that the sale would be free from encumbrances, and she would also pay all municipal dues such as electric and water charges up to the date of the sale deed, and that the defendant would pay the unearned increase in value and compensation fee claimed by the authorities as well as the ground rent. She also undertook to obtain the permission of the Chief Commissioner of Delhi for the sale. A period of two months was fixed for

obtaining this sanction but it was provided that if the sanction had not been obtained within that period it would be the option of the purchasers either to extend the date or treat the agreement as cancelled.

(3) According to the plaintiffs they continued making efforts in the months following the agreement to get the defendant to carry out her part of the agreement without success, and finally on the 18th of April and the 1st of May, 1957, notices were sent to the defendant calling on her to complete the sale within a fortnight failing which steps to procure specific performance would be taken. It seems, however, that the defendant wrote a letter dated the 12th of April, 1957, to the Chief Commissioner withdrawing the application made by her in a letter dated the 4th of September, 1956, for sanction for the sale of the premises to the first two plaintiffs and the suit was instituted in the beginning of July, 1957. The suit was contested by the defendant, whose principal plea was that she was a simple old widow and, practically illiterate, and that she had been tricked into entering the agreement by the first two plaintiffs with the assistance of a broker named R. Tuli. She alleged that in fact all that she had agreed to was that she would sell the house to the plaintiffs for Rs. 1,10,000/- and that all she had to pay was the sum due to the Bharat Nidhi Ltd. under the mortgage, all other sums mentioned in the agreement being payable by the vendees. She also raised a number of other pleas the nature of which can be seen from the issues framed by the lower Court as follows :

(1) Whether the agreement in suit was obtained by fraud and misrepresentation? If so, what is its effect?

(2) Whether the plaintiffs were ready and willing to perform their part of the contract?

(3) Whether the defendant committed breach of the agreement?

(4) Whether the agreement is without consideration ?

(5) Whether the defendant cancelled the agreement and could she do so?

(6) Was it agreed that the defendant will pay no amounts other than the mortgage amount? If so, what is its effect?

(7) Can the defendant take the plea mentioned in issue No. (6)?

(8) Is the contract contingent or impossible of performance and is uncertain and vague and is therefore void?

(9) Was the defendant ready and willing to perform her part of the contract?

(10) Whether the plaintiffs Nos. 1 and 2 made nomination in favour of the plaintiffs Nos. 3 and 4 and they have locus standi to sue?

(11) Are the plaintiffs entitled to interest? If so, at what rate?

(12) Are the plaintiffs entitled to the injunction claimed?

(13) Did the agreement automatically come to an end and was cancelled because the time was not extended after 31-1-1957?

(14) Was the time essence, of the contract?

(15) To what damages, if any, are the plaintiffs entitled?

(16) Relief.

4. The findings of the lower Court are generally in favour of the plaintiffs. It was found that the agreement had been entered into by the defendant without any fraud or misrepresentation of any kind and that although the plaintiffs at all times were ready and willing to carry out their part of the agreement, the defendant cancelled it without any justification. It was, however, held that the plaintiffs were not entitled to specific performance of the contract on the findings of issues Nos. (8) and (12) on the ground that since, under the terms of the defendant's lease of the site of the premises from the Government, the previous sanction of the Chief Commissioner was necessary for any transfer the agreement remained inchoate unless and until such sanction was obtained and therefore could not be made the subject of a decree for specific performance.

5. It was also held that in the alternative the damages claimed by the plaintiffs for breach of the agreement were excessive and they were held to be entitled to Rs. 11,550/- as against the sum of Rs. 51,100/- claimed.

6. In the appeal the plaintiffs have both challenged the dismissal of the suit for specific performance and in the alternative the reduction of the amount claimed as damages while in the defendant's appeal it is claimed that the suit should have been dismissed in toto.

7. There is no doubt that on the facts the case of the plaintiffs is overwhelmingly strong and that of the defendant hopelessly weak. In the first place the allegation of the defendant that she was approached by the broker, R. Tuli, and tricked into an agreement is not true in view of the evidence that this broker was never employed on behalf of the plaintiffs, but on the other hand he had been appointed by the defendant herself in July, 1956, to negotiate for the sale of the property. Moreover although the defendant may not herself be very intelligent or well educated, it is clear from the evidence that she was assisted in the negotiations by her children, and particularly her son in whose favour she had executed a power of attorney, and the evidence regarding the drafting of the sale agreement shows that in fact certain suggestions and amendments made by the defendant's son were actually incorporated in the agreement. Care was also taken by the plaintiffs to avoid any suspicion of anything underhand in the signing of the agreement by the fact that it was actually signed by the defendant at Dehra Dan in the presence of a magistrate. In the circumstances the finding is amply justified that no fraud or trick was practised on the defendant in getting her to sign the sale agreement, and if she did not fully apprehend the terms thereof, it was certainly not due to any conduct of the plaintiffs or the broker.

Indeed the finding of the Lower Court in this respect has not been challenged before us on behalf of the defendant, nor has the finding to the effect that the plaintiffs were throughout ready and willing, and indeed anxious, to carry out their part of the bargain.

8. It seems possible that the defendant was subsequently rather disappointed when she realised that after the mortgage debt of the Bharat Nidhi Ltd. had been met, as well as the arrears of various taxes and charges and the levy to be taken by the Government under the terms of the ground lease out of the increase in the sale price compared with the original price, there would be little or nothing left in the pocket of the vendor, but although at first sight this might appear to be somewhat unfair a further examination of the circumstances reveals that it is nothing of the kind. In fact it is clear that the mortgage debt due to the Bharat Nidhi Ltd., was on the whole of the original property, 21-Tughlak Road, which has now been sub-divided into two portions by the construction of the house in dispute, No. 21-A and so it is clear that as a result of this sale if it is carried out the vendor would be left in possession, free of encumbrance, of the premises No. 21-Tughlak Road. It is thus quite impossible to say that she was to get nothing out of the transaction.

9. There is also nothing in the plea of the defendant that time was the essence of the contract since although the original agreement contained a clause to the effect that the sanction of the Chief Commissioner to the sale was to be obtained within two months of the date of the agreement the same clause provided that if the sanction had not been obtained within that period it would be the option of the purchasers either to extend the date or treat the agreement as cancelled and there is no doubt that they exercised their option to extend the time. There is also no doubt that a breach of the contract was committed by the defendant when on the 12th of April, 1957, she wrote to the Chief Commissioner withdrawing the application made by her in her letter of the 4th of September, 1956, for sanction for the sale of the premises.

10. The main question in the plaintiffs' appeal is whether the lower Court correctly held that in view of the condition in the ground lease that the sanction of the Chief Commissioner was necessary for the sale the agreement remained inchoate unless and until such sanction was obtained and on this account a decree for specific performance could not be passed. It was contended on behalf of the plaintiffs that there was nothing whatever to suggest that the sanction of the Chief Commissioner would not be granted as a matter of course, and that even if it could not be assumed that the sanction would be granted, this need not stop the Court from granting a decree for specific performance leaving it to the parties to arrange for the sanction. On this point reliance was placed on the decision in AIR 1930 287 (Privy Council) . In that case the sanction of certain revenue authorities was necessary for the sale of cultivating rights in the land in suit, and in a suit for specific performance of an agreement to sell such rights it was held by their Lordships that the vendor having agreed to transfer the

cultivating rights in the land there was an implied covenant on his part to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer according to the C. P. Tenancy Act. In other words the fact that such an application had not been made and the sanction of the appropriate authorities obtained was not a bar to the grant of a decree for specific performance of the agreement to sell. A similar view was taken in *Kumar Gohul Chandra Law Vs. Haji Mohammad Din*, , when the question arose of an agreement to sublet certain lands where the consent of the landlord was required to a sublease. In *Hakim Enayat Ullah Vs. Khalil Ullah Khan and Another*, the question again arose in connection with an, agreement to sell of the sanction of the Collector, u/s 7(3) of the U. P. Encumbered Estates Act. The question only arose in connection with the execution of a decree for specific performance but it was held that it was for the party and not the Court to move the Collector to grant sanction to execute a deed.

11. On the other hand reliance was placed on AIR 1927 233 (Nagpur) , in which it was held by a Single Judge that in a suit for specific performance of a contract of sale and alternatively for refund of consideration, if the performance depends upon volition of a person not party to the suit, a decree for specific performance should not be granted, the person referred to being a landlord. This appears to be contrary to the view of the Division Bench in the Calcutta case cited above. Reliance was also placed on the decision in *Ambika Prasad Vs. Mt. Naziran Bibi and Others*, . All that was held, in this case by Iqbal Ahmad, J., was that a decree for specific performance could not be passed in the absence of a complete agreement for sale, but the question whether the agreement itself in that case was complete or not had no reference to the need for any sanction by any authority. The decision of the Federal Court in AIR 1949 211 (Federal Court) , on which reliance was placed by the lower Court appears to have no bearing on the point whatever since it was a case of two persons executing a sale agreement on the faith that a third party would also do so. Clearly in that case there was no complete agreement to sell until the third party had also executed an agreement.

12. As I have said there is nothing whatever in the present case to suggest that an application by the defendant to the Chief Commissioner for sanction to sell the property is likely to be rejected. Indeed, the profit made by the Government makes refusal unlikely. Thus as far as the parties are concerned the sale agreement is a complete agreement. In my opinion the mere fact that the sanction of the Chief Commissioner is to be obtained before the sale can be concluded does not make the agreement incomplete and is not a bar to the grant of a decree for specific performance. If the Chief Commissioner does ultimately refuse to sanction the sale then the plaintiffs will not be able to enforce their decree but as far as the Court is concerned I cannot see any reason for refusing the decree.

13. On this finding the question of the alternative claim for damages does not arise but I propose to deal with it briefly. The plaintiffs claim that the value of the

property had increased by Rs. 50,000/- by the date on which the defendants committed the breach is evidently grossly exaggerated, and it is not easy to assess the proper Quantum of damages in a case of this kind. There is, however, some evidence of the plaintiffs in the form of statements by property brokers that the value of the property in New Delhi has been constantly rising and there can be no doubt that this allegation is true. I doubt, however, whether the rise within a period of 8 months which elapsed between the date of the sale agreement and the date on which the defendant committed the breach by withdrawing her application for sanction would be as much as 10 per cent which the lower Court has accepted. Precision in such matters is obviously impossible but I should certainly not have put the rise at more than 5 per cent and if damages were to be awarded I would reduce them to half the sum fixed by the lower court, namely, Rs. 5,775/-. The result is that I would accept the appeal of the plaintiffs with costs and grant them a decree for specific performance of the sale agreement in suit. In these circumstances the question of the appeal of the defendant would only become material if the decree for specific performance cannot be enforced because of a refusal to sanction the sale by the Chief Commissioner. In that event the damages claimed as an alternative by the plaintiff's would only be Rs. 5,775/- and the defendant's appeal is accepted to that extent. In these circumstances there need be no order as to costs in the defendant's appeal.

14. I agree.

Khosla, J.