
(1954) 02 AHC CK 0033
In the Allahabad High Court
Case No : Second Appeal No. 1521

Dr. Ramjas Rai

APPELLANT

Vs

Munshi and others

RESPONDENT

Date of Decision : 26-02-1954

Acts Referred:

Citation : (1954) 02 AHC CK 0033

Hon'ble Judges : R.N. Gurtu, J

Bench : Single Bench

Advocate : B.L. Dikshit, for the Appellant; B.C. Saxena for Respondent., for the Respondent

Final Decision : Allowed

Judgement

R.N. Gurtu, J.—The facts which give rise to this second appeal are as follows:

2. Defendant No. 1 in the suit entered into an agreement with the Plaintiffs and Defendants 2 to 4 to the suit in respect of a certain house. Inter alia, the agreement recited as follows:-

Andar miyed tin sal tarikh ekkum December, 1944 se jo fariq doem apna makan bat karna chahte hain aur fariq awwal usko kharid karne ko taiyar hai-fariq awwal fariq doem ko mubligh char sau rupye naqid ada karenge to fariq awwal apne haq men fariq doem sa bazabta bainama tahrir wa takmil karalenge.....aur bad inquizai miyad iqrarnama ham fariq awwal ko koi haq babat bai karae jane makan mazkoor ka hasil nahin hoga aur na fariq doem is amar ke paband honge ki woh hamare hath hi bai karen.

3. The Plaintiffs and Defendants 2 to 4 did nothing with respect to this contract upto 20th September 1947. Then they sent a notice to Defendant No. 1 asking him to accept Rs. 400/- and convey the property to them within fifteen days of the notice. The fact that a notice was sent has been admitted by Defendant No. 1 no reply was sent to this notice by Defendant No. 1. On 1st December 1947 the Plaintiffs filed a suit for specific performance of the contract against Defendant

No. 1; the other persons entitled to the deed being impleaded as Defendants 2 to 4. On 10th January 1948, the money was deposited in Court. The Plaintiffs' application stating that they had filed a suit for specific performance of the contract and wished to deposit the money was itself made on 15th December 1947.

4. The trial court dismissed the Plaintiffs' suit.

5. The suit was, however, decreed by the lower appellate court on appeal.

6. Two points have been urged before me in this appeal. Firstly, it is contended that upon the language of the agreement, time was of the essence of the contract and the contract could only be enforced, if the terms were complied with, within the time stated.

7. In my view, in this case, time was of the essence of the contract. The contract expressly states that Defendant No. 1 would be entitled to dispose of the property on the expiry of the period fixed. Not only that, but it also expressly states that the Plaintiffs and Defendants 2 to 4 would have no right left thereafter to get a transfer. In my view, the presumption that contracts of sale in respect of real property are intended to be Carried out within a reasonable time is imply displaced by the clear language of the agreement in this case. In coming to this conclusion, I have not overlooked the Privy Council case of Jamshed Khodaram v. Burjorji Dhunji Bhai ILR 40 Bom., page 289. So far as I can see, it is not possible to ignore the clear language of this agreement which not only restores the right to Defendant No. 1 to sell, as he liked, after three years but which also expressly puts an end to the rights of the Plaintiffs and Defendants 2 to 4 to obtain any conveyance after three years.

8. The next contention raised is that the terms of the agreement required the making of a cash payment before the Plaintiffs and Defendants Nos. 2 to 4 could ask for a deed of transfer. It is admitted that no cash was tendered. The question is whether the notice, by itself, can be taken to establish that the Plaintiffs and Defendants 2 to 4 were ready and willing to perform their part of the contract within the time fixed under the agreement? Even if the clear language of the agreement could be ignored and the requirement that money should be paid in advance could be waived, in my view, it would yet have to be established that the Plaintiffs and Defendants 2 to 4 were ready and willing to perform their part of the contract within the time fixed in the agreement. It is true that it might not have been necessary for the Plaintiffs and Defendants 2 to 4 to prove that they had the specific amount of money ready within the period to enable them to pay it, or that they had arranged for the specific amount in order to be able to pay the same within the stated period, provided there was some evidence as to their general financial status. No oral documentary evidence was however tendered on behalf of the Plaintiffs and from the mere fact that it was admitted that a notice was served by them on Defendant No. 1 asking for a transfer, it cannot be inferred that the Plaintiffs and Defendants 2 to 4 were, at the date of the notice

or subsequently, in a position to make Rs. 400/ - available, in case the Defendant No. 1 chose to carry out the terms of the contract at their request. The one fact which has come out in the course of the case is that even on the date of the suit, they had not deposited the amount of Rs. 400/ -.

9. In my view before the Plaintiffs' claim for specific performance can be decreed, it must be established that Defendant No. 1 had committed a breach of the terms of the contract. The Defendant could only be taken to have committed such a breach, if it was established that the Plaintiffs and Defendants 2 to 4 were ready and willing to carry out their part of the contract within the period fixed. In my view, there is no sufficient legal evidence to come to this conclusion in this case.

10. Under the circumstances, this appeal must be allowed, the judgment and decree of the lower appellate court must be set aside and those of the trial court must be restored. Parties will bear their own costs of this appeal.