

(1915) 07 CAL CK 0038
In the Calcutta High Court

Janardan Mahato

APPELLANT

Vs

Bhairab Chandra Mondal and Others

RESPONDENT

Date of Decision : 13-07-1915

Acts Referred:

Citation : 30 Ind. Cas. 365

Hon'ble Judges : Richardson, J; Chitty, J

Bench : Division Bench

Judgement

Chitty, J.—In this case, the plaintiff is the appellant. He filed a suit on 14th May 1909 against Srimati Thaka Sundari Dasi, wife of Naba Gopal Roy, for specific performance of an agreement to sell to him certain land. The suit has been dismissed in both the lower Courts and the plaintiff has consequently appealed.

2. It appears that, by a bainamah, dated 12th Sravan 1315 (27th July 1908), the first defendant, Thaka Sundari Dasi, agreed to sell to the plaintiff this land for a sum of Rs. 3,100. Of that Rs. 200 was paid as earnest money. The bainamah provided that the sale should be completed in three months, when the sale-deed was to be registered and the balance of the purchase-money paid. The plaintiff subsequently paid and the defendant accepted a sum of Rs. 85 on 7th Asvin 1315. That was before the three months named in the bainamah had expired. The parties thereafter did not come to terms with regard to the completion of the document. The plaintiff says that he asked Naba Gopal that his wife should go to Jamtara, and register the deed, but that Naba Gopal refused and required the plaintiff to come to Nagori where they lived and have the deed executed there. Nothing, therefore, was done with regard to the completion of the agreement. On 14th May 1909, some 10 months after the agreement, the plaintiff filed the present suit. After he had filed the suit, namely, on 16th July 1909, the defendant Thaka Sundari Dasi purported to sell the same property to Bhairab Chandra Mandal and Gopal Sundari Dasi, who are said to be mortgagees of the property from Thaka Sundari Dasi. That deed was registered on 17th July 1909. In consequence of that sale, those two persons were made parties defendant in

this suit, and it is the who have contested the suit throughout. Thaka Sundari Dasi has stood aside; and, after filing her written statement, has taken no further part in the proceedings.

3. The learned District Judge has dismissed the plaintiff's suit in toto. In doing so, we think that he was clearly in error. In any case the plaintiff might have been given a chance of recovering the deposit which he had made, unless it was shown that he was guilty of laches which would prevent him from so doing. But the error of the learned District Judge consists in this that he has regarded the three months named in the contract as being the extreme limit, within which the contract was to be performed, and that there could be no extension of that time. In other words, that the three months fixed was of the essence of the contract. Now the Specific Relief Act does not apply to the Sonthal Paraganas; nor did the provisions of the CPC of 1859 in which there was a section dealing with specific relief. The case will, therefore, have to be governed by the ordinary rules of justice, equity and good conscience. It has been a long standing rule in all matters of specific performance of contract for sale of land that time is not of the essence; of the contract, until the parties expressly make it so. Some time is generally named in the agreement to sell, but that is rarely adhered to; and it is not until one side or the other gives the opposite party reasonable notice to complete the agreement within a definite time that the opposite party can be tied down to the time so prescribed. In this case, nothing of that kind was done; and within 10 months, the plaintiff filed the suit in which he offered to pay the amount and asked the Court to insist upon the defendant Thaka Sundari Dasi executing a conveyance in his favour. It appears to us that he was right in so doing.

4. It is argued that the matter would be in some way governed by the provisions of the Contract Act. There are really no provisions in the Contract Act, which are in conflict with the ordinary rules with regard to the specific performance of contracts of sale of land. On the contrary Section 55 says: "if it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure." That would not prevent the plaintiff from coming in and requiring the defendant to perform her contract in his favour. The limitation Act, gives three years for a suit for specific performance. This does not mean that the plaintiff is entitled to stand out for three years, but, in this case, there seems to have been no laches on the part of the plaintiff nor is any such laches found by the Courts below. The fact that he brought his suit within 10 months of the date of the bainamah shows that he was anxious to carry out the, contract on his part.

5. Then, it is said that the defendants Nos. 2 and 3 were purchasers for value without notice. The Transfer of Property Act applies to the Sonthal Parganas and Section 52 provides that in a case of sale of the property in question by any

party to a suit or proceeding, such sale cannot affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. Defendants Nos. 2 and 3, who have contested this suit, have no equities whatever in their favour. They were mortgagees of the property and they will, no doubt, be able to recover their mortgage-money from the purchase-money if and when it is paid by the plaintiff.

6. We think that the decisions of the Courts below cannot be upheld. We accordingly set them aside, and pass a decree in favour of the plaintiff for specific performance of the contract on the plaintiffs' depositing in Court, within two months of the receipt of the record in the Court below, the balance of the purchase-money. There will also be a decree for possession to be given to the plaintiff on payment of the purchase-money and the execution of the conveyance, but subject to any rights of the defendants Nos. 2 and 3 as mortgagees of the property. Plaintiff must have his costs of suit from defendants Nos. 2, 8 in all the Courts. If the balance of the purchase-money is not paid into Court within the two months as aforesaid, the suit will stand dismissed with costs. Let the record be sent down without delay.

Richarson, J.

7. I agree.