
(1923) 01 AHC CK 0039
In the Allahabad High Court

Jeot Ram

APPELLANT

Vs

Gopi Ram and Another and Sheo Nath Prasad and Another

RESPONDENT

Date of Decision : 26-01-1923

Acts Referred:

Citation : (1923) 01 AHC CK 0039

Final Decision : Dismissed

Judgement

Rafiq and Piggott, JJ.—It appears that one Narain Ram was the owner of a house in the town of Ghazipur, which is the subject-matter of dispute in this appeal. He sold it to one Madhuri Das under a registered deed of sale on the 7th of March, 1894, in lieu of Rs. 275. One of the covenants of: the sale was as follows:

If the vendee, his heirs or representatives, desired to sell the house purchased, they should, in such a case, first ask the executant, his heirs or representatives for the time being, to purchase it. But if the executant, or his heirs or representatives, refused to purchase, the vendee, his heirs or representatives had a right to transfer it to some one else. That, in case they make breach of this covenant, the executant, his heirs and representatives will be entitled to the specific performance of the contract.

2. Both the vendor and the vendee are dead. On the 31st of July, 1919, the heirs of Madhuri Das, the vendee, who are represented by the defendants second party, sold the house in question to the defendants first party in lieu of Rs. 700.

3. On the 28th of June, 1920, the suit out of which this appeal has arisen was brought by Jeot Ram, the son of Narain Ram, for the possession of the house on the payment of Rs. 700. He based his claim on the covenant in the sale-deed of the 7th of March, 1894, recited above, and described his suit as one for specific performance. The claim was resisted on the ground, among others, that the covenant on which the plaintiff relied was bad for remoteness and was not enforceable. The court of first instance dismissed the claim on the ground that the contract sought to be enforced was bad for remoteness, and that the suit

being one for specific performance and it being discretionary with the court to grant or refuse specific performance of a contract, the present case was one in which discretion should not be exercised in favour of the plaintiff. On appeal by the latter the learned Judge disagreed with the first court and allowed the claim of the plaintiff.

4. The defendants first party, the vendees of the 31st of July, 1919, have filed the present appeal before us and contend that the covenant giving an option of pre-emption without any limit of time to the vendor, under the deed of the 7th of March, 1894, is Void at law and cannot be given effect to. They argue that if the contract relied upon by the plaintiff was merely a personal contract, it could not be enforced against or bind the heirs and representatives of the parties to the original contract. On the other hand, if the said contract created a perpetual covenant as to the disposition of the house, such a covenant would be void as contravening the rule against perpetuities. In support of his contention the learned Counsel for the defendants has relied upon the following cases:-- Sreemutty Tripoora Soonduree v. Juggur Nath Butt (1875) 24 W.R. 321 Nobin Chandra Soot v. Nabab Ali Sarkar 5 C.W.N. 343 Nabin Chandra Sarma v. Rajani Chandra 25 C.W.N. 901 Gurunath Balaji Mutalik Deshpande v. Yamanava Kom Nalarav Divan ILR (1911) Bom. 258 and Kolathu Ayyar v. Ranga Vadhyar ILR (1912) Mad. 114. "For the plaintiff respondent the argument is that, under the sale-deed of 1894, the contract to re-sell the house to the vendor, his heirs and representatives, was made by the vendee on his behalf and on that of his heirs and representatives at any time whenever the latter wanted to part with the house. A contract of sale of immovable property under the Indian law creates no interest in the immovable property, as is clearly laid down u/s 54, Act IV of 1882, and if no interest is created in an immovable property under a contract of sale, the latter cannot be vitiated "by the rule against perpetuities. The cases cited for the appellants, it is argued, do not apply, as they follow the English law and proceed on the assumption that an option of repurchase reserved to the vendor of an immovable property under a sale made by him creates an interest in that property in his favour. There is nothing in the Indian law to confine the enforcement of a contract of sale to the life-time of a contracting party. On the contrary, Section 37 of the Contract Act binds the representatives of the promisors also. In justification of his position the plaintiff respondent relies upon the case of Charamudi v. Raghavulu ILR (1916) Mad. 462.

5. After due consideration of the arguments for the parties and the cases cited by them, we think that the contention of the appellants should prevail. The balance of authority seems to be in favour of the case of the appellant. The solitary case against him is the Madras case just mentioned above. The facts of the case before us are distinguishable from those of the case of Charamudi. In the latter case the plaintiff executed a deed of sale in respect of some land in favour of the managing member of a joint Hindu family. The manager gave a separate agreement on the same day, agreeing to re-convey the land, whenever demanded to do so, on the payment of a certain sum. The plaintiff sued to

enforce the agreement. He was met with the objection that as there was no limit of time in which the re-sale was to be made, the agreement for re-sale was void as contravening the rule against perpetuities. For the plaintiff the contention was that the agreement was a personal contract and created no interest in land and hence did not offend the rule against perpetuities. It is obvious that in the case of Charamudi the dispute was between the contracting parties and not between their representatives. The question whether an agreement, such as that entered into between the parties to the Madras litigation, could bind their heirs and representatives also, was not before the court, nor was it raised at the bar, according to the report of the arguments. The dictum that a contract, under which an option of re-sale is given without any limit of time, can be enforced against the representatives of the contracting parties also, u/s 37, Act IX of 1872, was not necessary for the decision of the case of Charamudi. The plaintiff respondent, however, adopts and presses upon us the observations made in the case of Charamudi in connection with Section 54, Act IV of 1882, and Section 37 of Act IX of 1872. As to the last-mentioned section, i.e., Section 37, Act IX of 1872, with due deference to the learned Judges who decided the case of Charamudi, we think it doubtful whether its provisions enable an owner of an immovable property to enter into an agreement with another, imposing a restrictive covenant for an indefinite period on the disposition of the said property, so as to bind his heirs and representatives. The case-law under that section would not bear out such an interpretation. A somewhat similar case came before the Madras High Court, subsequent to the case of Charamudi. The latter case was mentioned and in a way explained. The case is that of Eagala Nagappa Naidu (dead) and Others Vs. P. Munuswamy Iyer and Others, In discussing the case of Charamudi, their Lordships said that the case arose between the parties and the offer was not revoked by the death of the promisor or otherwise." It appears from this remark that the observations made in the former case in connection with Section 37 of the Contract Act were neither urged for the appellant nor accepted by the court. As regards Section 54 of Act No. IV of 1882, we would refer to the case of Dinkarrao Ganpatrao Kothare v. Narayan Vishwanath Mandlik ILR (1922) Bom. 191. The true nature of contracts like the one of 1894 between Narain Ram and Madhuri Das is described by the learned Chief Justice in the Bombay case. The learned Chief Justice remarked:

Although contracts for the sale of land which can be specifically enforced immediately, or contracts creating a right of pre-emption which cannot be specifically enforced until the proper occasion arises in the future, do not, according to the law in India, create an interest in land, either equitable or executory, they do create rights which are capable of being enforced with regard to the land in certain circumstances against third parties, and to that extent they are not ordinary personal contracts and stand in a category by themselves. The question thus arises whether the principle which underlies the rule of perpetuities, made applicable to this country by Section 14 of the Transfer of Property Act, should be applied to this class of contracts." (p. 206).... "The law in

England and in India is substantially the same with regard to the enforcement of contracts in respect of lands. The only difference is that in England the owner of the equitable interest is considered as the owner of the property contracted to be conveyed. But no such result can follow from a contract creating an executory interest. If such a contract purports to do by indirect means what the law forbids to be done directly, it is void, and the principle is the same in India as in England " (p. 210)

6. We are in accord with these observations of the learned Chief Justice and we think that the rule of perpetuities applies to the contract of 1894 also. We, therefore, allow the appeal, set aside the decree of the lower appellate court and restore that of the first court by dismissing the claim of the plaintiff respondent. Costs are allowed to the defendants appellants throughout.