

(1929) 06 AHC CK 0059
In the Allahabad High Court

J.W. Thomas

APPELLANT

Vs

Hanuman Prasad

RESPONDENT

Date of Decision : 07-06-1929

Acts Referred:

Cantonments Code, 1912 — Section 271

Citation : AIR 1929 All 837 : 122 Ind. Cas. 675

Final Decision : Disposed Of

Judgement

1. This is a second appeal by the plaintiff, whose suit has failed in the two lower Courts. The matter was extremely simple, but around it there have grown a number of erroneous ideas both of law and fact. The plaintiff sued on the allegation that, on 28th March 1924, the defendant executed and got registered a sale-deed in favour of the plaintiff, conveying to the plaintiff plot 21 in the Cantonment of Allahabad in consideration of the payment of rupees 4,000 Para. 3 of the plaint runs as follows:

After the receipt of the money and the execution of this document, the defendant did not deliver possession over it to the plaintiff nor could he do so, inasmuch as he defendant, had no right to transfer the said property. The plaintiff accordingly sued for the return of Rs. 4,000 consideration and also for interest.

2. The defence was that possession had been given to the plaintiff, and para. 15 of the written statement sets forth:

This defendant purchased the said property in November 1914, under a registered sale-deed from Mrs. Eates, the former owner and remained the owner in possession thereof up to 27th March 1924, the date of the execution of the sale-deed in question, without the interference of any one. Similarly Mrs. Eates had prior to the purchase by this defendant, been the owner in possession thereof.

3. The issues framed were:

(1) Has the plaintiff got any cause of action and right of suit?

(2) Is he entitled to the refund of the sale price and damages? If so, how much?

(3) To what relief, if any, is the plaintiff entitled.

3. We consider that the two lower Courts have failed to apply their minds to the real question at issue, i.e., whether the defendant was the owner in possession of plot 21, as he claimed in para. 15 of the written statement, and whether the defendant had power to transfer his interest. We have summoned from the Cantonment authority the registers of the Cantonment, and they show clearly, beyond any doubt whatever, that plot 21 is owned by Government and that the defendant had merely the interests in that plot of a lessee from Government. These registers are maintained under statutory provisions, and are as follows:

(1) Register of Government lands held by lessees outside bazaar, maintained u/s 271, Cantonment Code 1912, No. 21 is entered in this register as leasehold.

(2) Register of transfers of immovable properties, maintained u/s 274, Cantonment Code 1912. Thus shown the transfer of plot 21, which is entered in this register as a leasehold.

(3) Register of private lands situated in the Allahabad Cantonment. There are only two entries in this register of land owned by mahants, and there is no entry of plot 21 in this register.

4. The history of this plot is as follows:

5. It was leased first of all to an individual called Abhey Charan Bose, head clerk of the Cantonment Magistrate's office, and on 28th July 1902, this individual executed a deed of a dwelling house in No. 37 and of this No. 21 to Mrs. Eates, who happens to be the mother-in-law of the plaintiff, for rupees 3,500. The vendor purports to:

sell, assign and transfer all those pieces or parcels of land numbered and known as sites Nos. 21 and 3. in the New Cantonment Allahabad in the United Provinces of Agra and Oudh together with the two dwelling houses kacha and pucca built.

6. The vendor, Abhey Charan Bose, did not explain in his sale-deed what his title consisted of He merely says:

I the said vendor at the time of executing these presents have in myself good rightful power and absolute authority to grant and assure the aforesaid hereditament and premises hereinbefore expressed to be granted or otherwise assigned according to the true intent and meaning of these presents.

7. The next transaction in regard to No. 21 is contained in a sale deed of 19th November 1914, registered on the same date, by which Mrs. Eates transferred her interest to Kallu Mal Gauri Dat, of whom Gauri Dat is the father of the present defendant, Hanuman Prasad. This document states:

Whereas the said Hanuman Prasad being now the sole and absolute owner (by a registered sale-deed dated 28th July 1902) of all that piece or parcel of land

numbered and known as site No. 21 New Cantonment Allahabad together with a dwelling house and an out-house.

8. In regard to this transaction we have had produced from the office of the Cantonment authority an application by the vendor showing that, on 20th October 1914 the Cantonment authority granted sanction for the transfer of the interests of the vendor. It was therefore after sanction had been obtained from the Cantonment authority that Mrs. Eates executed this sale-deed transferring her interests in No 21. That application was later signed by the vendees, the signature being dated 18th February 1915. The terms of that application clearly admit that the property is held as the leasehold from the Cantonment authority.

9. In the present case, the vendor (the defendant) did not take the precaution to obtain sanction from the Cantonment authority before he executed the sale-deed in suit in favour of the plaintiff. What happened was that, after the execution of this sale-deed, an application was made to the Cantonment authority for sanction to transfer the interests of the vendor, and the order passed was:

It is impossible to sanction this application for transfer, as land is the property of the Government. The original vendor had no title, and has sold what was not his property.

10. As we have shown above, a reference to the Cantonment registers establishes beyond all doubts that this attitude of the Cantonment authority is perfectly correct. The defendant had only the interests of a leaseholder, and he was, in no way whatever, entitled to transfer the rights of a proprietor in plot 21. A considerable amount of argument has been made for the respondent on the ground that the appellant was placed by him in physical possession of plot 21 and the appellant collected some small sums from people to whom the produce of the fruit trees was sold. There is apparently no bungalow on this number, although there are some out-houses.

11. The chief question which now arises on this appeal is to what remedy, if any, is the plaintiff-appellant entitled. It was argued by the learned Counsel for the respondent that there was no finding of the lower appellate Court that there was fraud or misrepresentation. We consider, however that there clearly was misrepresentation, because in the sale-deed in suit the defendant-respondent purports to be the owner in possession and to convey the title of an owner. As we have already shown, the defendant is a mere leaseholder, and he has no right to transfer even the rights of a leaseholder without the sanction of the Cantonment authority.

12. The next point advanced by the learned Counsel for the respondent was that no suit would lie for damages, unless the plaintiff proved that he had sustained actual loss. We consider, however, that the case comes primarily u/s 55(2), T.P. Act, which states:

The seller shall be deemed to contract with the buyer that the interests which the

seller professes to transfer to the buyer subsist and that he has power to transfer the same.

13. We would also refer to Section 35, Specific Relief Act, which provides that a person interested in a contract in writing may sue to have it rescinded:

(a) Where the contract is voidable or terminable by the plaintiff;

(b) Where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

14. On this point the somewhat remarkable argument was addressed to us by the Seamed counsel for the respondent to the effect that an agreement to sell no doubt constituted a contract, but that when the parties carried out that agreement in a written sale-deed, that the written sale-deed did not constitute a contract at all and that therefore Section 35, Specific Relief Act, would not apply to that sale-deed. We consider that there is nothing whatever in law to support such an argument and that every sale-deed does constitute a contract. We may also refer to illustration (a) to Section 35, which states that a sale of a field will come under that section. We also consider that the legal rights of the plaintiff may be regarded from the different angle of vision, viz, that the sale of the rights of the defendant was conditional on the sanction of the Cantonment authority and that, subsequent to the execution of the sale-deed, the sanction of the Cantonment authority has been refused. It is therefore impossible for the defendant to transfer his rights as a leaseholder, because the Cantonment authority has refused to allow him to transfer those rights. Accordingly, the case comes u/s 56, Contract Act, which provides:

A contract to do an act which after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

15. We would also refer to illustration (d) of this section, which states that a contract to take in cargo to a foreign port becomes void when war is declared. We consider that the sale-deed in suit is void; but if it be not void, it can be rescinded u/s 35, Specific Relief Act.

16. The case was also argued by the learned Counsel for the appellant on the basis of a certain indemnity clause in the sale-deed in suit, under which he would also be entitled to interest in addition to the return of the principal; but we consider that, on the finding of the lower appellate Court that the plaintiff is in possession, that clause which relates to dispossession does not apply.

17. Under these circumstances, the sale-deed being void or rescinded, we award to the plaintiff Rs. 4,000, the full amount of consideration, subject to the plaintiff abandoning any possession he may have of plot 21 in favour of the defendant. In view of the fact that the plaintiff based his case solely on possession and our decree has been guided by other legal considerations, we consider that justice will be done in this case by awarding to the plaintiff-appellant half costs in all the

three Courts.