

(1917) 07 CAL CK 0012
In the Calcutta High Court

Mohunta Bhagwan Das

APPELLANT

Vs

Surendra Narain Singh

RESPONDENT

Date of Decision : 18-07-1917

Acts Referred:

Specific Relief Act, 1877 — Section 19, 21(6)

Citation : 42 Ind. Cas. 521

Hon'ble Judges : Newbould, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from a decision of the learned Subordinate Judge of Murshidabad, dated the 30th May 1916, reversing the decision of the Munsif of Lalbagh. The case is an interesting one. The question is, whether specific performance can be had against the defendant of a covenant contained in the lease under which he holds?". The covenant is in these terms:---"I shall file with you a set of jama wasil baki and jama mofussil papers at the close of every year." Neither the plaintiff nor the defendant are the original lessor or the lessee. The lease is dated 1857 and the liability is sought to be enforced against the defendant purely by reason of the privity of estate. The first question, therefore, that has been argued is an important and, in many cases, a difficult question, I think, in this case it is a difficult question, namely, as to whether this particular covenant runs with, the land. The rule in Spencer's case 8m. L. C. Vol. I. (12th Edn.) page 62: 5 Co. Rep. 16 a: 77 E. R. 72. is well-known. How far the second rule in Spencer's case 8m. L. C. Vol. I. (12th Edn.) page 62: 5 Co. Rep. 16 a: 77 E. R. 72, applies in India where the assignee is not named I do not know. I think, in this case, for the present purpose we may assume that this covenant does run with the land and that it is not meant to be purely a personal contract nor is it meant to be collateral. On that assumption, I intend to decide this case. If that is so, the next point that arises is " can the Court grant specific performance of a contract of this nature?" The contract that has been ordered to be specifically performed is a contract for the preparation of a set of jama wasil baki and jama mofussil papers. That, of course, seems to me to be a case clearly coming u/s 21

(6) of the Specific Relief Act. It is a contract which from its very nature is such that the Court cannot enforce specific performance. Also, I think it comes within the other words in the same subsection. I think no case has ever been shown to us of a Court either in this country or in England ordering specific performance of a contract of this nature. The Court cannot say whether the document to be prepared is a jama wasil baki and jama mofussil papers or whether it is a set of jama wasil baki and jama mofussil papers. No authority has been shown to us in which the Court has ever undertaken specific performance of a contract of this nature.

2. The alternative ease for damages that is made in this case seems to be one that cannot be decided in this suit. Whether damages can be obtained on a contract of this nature u/s 19 of the Specific Relief Act, is not a matter to be considered, because it is clear on the evidence that the plaintiff at the time he instituted the present suit had not suffered any damage. The plaintiff in this case must give evidence on which the Court can assess damages. The plaintiff, if he has that right, will be able to enforce it in any other proceeding which he may be advised to take. In the present suit, it is admitted that there is no evidence of actual damage suffered by the plaintiff. In that view, we must set aside the decision of the learned Subordinate Judge and restore the decree of the Munsif. The respondent must pay to the appellant his costs in this Court as well as in the Courts below.

Newbould, J.

3. I agree.