
(1946) 03 AHC CK 0024
In the Allahabad High Court
Case No : First Appeal No. 407 of 1943

Mr. E.C. Eyre Walker

APPELLANT

Vs

Mr. Henry Earnest Meaney and Another

RESPONDENT

Date of Decision : 14-03-1946

Acts Referred:

Contract Act, 1872 — Section 20

Citation : (1946) 03 AHC CK 0024

Hon'ble Judges : Wahulla, J;Malik, J

Bench : Division Bench

Advocate : M.N. Raina and D.D. Seth, for the Appellant; L.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Malik, J.—This appeal has been filed on behalf of the Defendants against a decree passed by the learned Civil Judge of Dehra Dun. The Plaintiff filed a suit for specific performance of a contract and prayed that the Court be pleased to order the Defendants to specifically perform the agreement and to execute and register a sale deed in favour of the Plaintiff and to put him in full possession of five bighas of land. The Defendants denied that there was ever any completed contract between the parties. They further pleaded that there was a talk of sale of a plot of land but as it was later found that the plot was less than five bighas in area and under the municipal bye-laws no building could be constructed in Dalenwala on land measuring less than five bighas, the negotiations fell through, The Defendants Appellants, who are husband and wife, jointly own a house known as Evelynedale in Dehra Dun on a compound of about ten bighas. The original intention was to divide the plot half and half and to build two houses, one on each portion The plot in question was a rectangular plot and was bounded on the north by Inder Road, on the south by Pretam Road and on the east and west there were houses of others, The original intention must have been to build one house facing Inder Road and the other house facing Pretam Road. The defen-

dands, however, built the house Evelynedale facing Inder Road and never built a second house on the southern portion of the land. The Defendants were in Dehra Dun till about the year 1938 when they went away to Ajmere. At the time when they left Dehra Dun they had an idea of selling the land to the south of Evelynedale which they thought was about 5 bighas in area and they put up a notice board on the Pretam Road that the land was for sale. It was sometime after the year 1938 that the Plaintiff, Walker, became a tenant of the house Evelynedale and as intending purchaser used to come and make enquiries from him, his wife removed the notice board and put it in the garrage. In the year 1941 the Plaintiff came to know that there were other persons who were anxious to buy the land at the back of the house, Evelynedale and on the 12th of August, 1941, the Plaintiff's wife wrote a letter to Meaney, Defendant No. 1, enquiring whether he was willing to sell "the land at the back" of the house. It is not necessary to refer to certain other correspondence that followed, but from those letters it is clear that both parties were thinking of the vacant land facing Pretam Road on which the Defendants had originally the intention of building a second house. On the 29th of August, 1941, Mr. Meaney wrote to Mr. Walker that he was willing to sell the land for Rs. 6,000 and enquiring from him whether he was prepared to make an offer of Rs. 6,000 for the same. The Plaintiff in the plaint treated this as an offer by Mr. Meaney to sell the land to the Plaintiff for Rs. 6,000 and his reply by a telegram dated the 31st August, 1944, that he was "willing to pay rupees six thousand for land. Reply" as an acceptance of the offer. Learned Counsel for the Plaintiff has, however, admitted that the letter dated the 29th of August, 1941, cannot be treated as a definite offer by the Defendant of which the Plaintiff made the acceptance by his telegram dated the 31st of August, 1941. He has, to our minds, rightly urged that the letter dated the 29th of August, 1941, was merely an invitation to offer and the telegram dated the 31st of August, 1941, must be treated as an offer by the Plaintiff to purchase the land for Rs. 6,000. Learned Counsel has, however, urged that this offer was accepted by the Defendants on the 1st of September, 1941. As we read the letter by Mr. Meaney to Mr. Walker dated the 1st of September, 1941, we cannot say that it was an unconditional acceptance by Mr. Meaney. Mr. Meaney mentioned in this letter that he had received another offer for the land from Sardarni Narinjan Kuar of Nabha, of the same sum of Rs. 6,000 and before disposing of that offer he would like to know whether the Sardarni had a right of pre-emption. He further wanted to know whether there were other pre emptors. He no doubt added that If none of the others wanted the land for Rs. 6,000, Mr. Walker was welcome to have it but that he would like Mr. Walker to make enquiries and let him know. This cannot be treated as anything but a conditional acceptance at its best. It must be remembered that the parties were, one at Dehra Dun and the other at Ajmere, and if there was a competent contract between the parties it must be pelt out of the correspondence. If we take the letter dated the 1st of September, 1941, as a conditional acceptance or, in other words, as a sort of offer that if no one else had a right to buy and was willing to do so, the Defendants would be glad to sell the land to the Plaintiff, the Plaintiff would have

to prove that he accepted that fresh offer subject to the conditions given by the Defendants. There is, however, no letter subsequent to the 1st of September, 1941, on which the Plaintiff can rely as an acceptance by him. The Plaintiff wrote back to the Defendant on the 15 of September, 1941, that it would look awkward if he made enquiries in the absence of the Defendants and that he would rather wait till the Defendant came to Dehra Dun when the matter could be settled. Mr. Meaney went to Dehra Dun on or about the 2nd of October, 1941. There is some controversy between the parties as regards a particular cheque which it is alleged was given by the Plaintiff to one Dr. Mehta, but we do(sic) not propose to consider that matter as that, to our minds, is hardly of any importance. We know from the correspondence previous to the 1st of September, 1941, that the Defendant intended to sell the land facing Pretam Road which he had left for a second house and which he was under the impression measured about five bighas. The Plaintiff was also under the impression that this land measured about five bighas. Attached to letter dated the 1st of September, 1941, the Defendant sent to the Plaintiff a rough sketch of the land to be sold which make it quite clear what he intended to sell. It divides the land from the rest of the land on which stood Evelyndale by a straight line, so that the whole plot was divided into two rectangular plots, on one rectangle being the bouse Evelyndale with its outhouses, and the other being the vacant land to be sold which was to the south of Evelyndale. The parties along with Dr. Mehta who was a mutual friend went to the spot and what happened there on the 4th of October is perfectly clear from the evidence of Dr. Mehta, Mr. Walker the Plaintiff, and Mr. Meanay. All three of them practically agree on the point. We shall first mention what Dr. Mehta has to say about it. He states:

The land in question was measured in my presence and was found to be less than 5 bighas and the deficiency could be make up if Mr. Meaney parted with a piece of and on the north-east side of the land in question. Plaintiff objected to this shortage of land and wanted full 5 bighas.... Mr. Meaney was telling the Plaintiff at the time of measurements that the land was more or less 6 bighas.... The talk was not finally finished on that day. The Plaintiff wanted full 5 bighas of land, while Mr. Meaney did not agree to it and was prepared to give only that much land and was measured out and found less than 5 bighas. The sale deed was to be executed after the question as to measurements of land and the area of the land had been decided.

2. Dr. Mehta went on to say in answer to the Court that the land in question was measured and found less than five bighas, and in re-examination he said that at the time of measurements the Plaintiff was insisting that he should have the remaining land on the northeastern side, near the out-houses of Evelyndale, which was name of the bungalow owned by Mr. Meaney on 12 Inder Road.

3. We can well understand the reason why the Plaintiff was insisting on his being given full five bighas and was not willing to take only the rectangular portion which the Defendants wanted to sell and which the Plaintiff had originally

intended to purchase, as the land would have been of no use to him. According to the municipal bye-laws a plot which was less than five bighas could not be built on. The Plaintiff towards the end of his cross-examination has said:

I was not prepared to take the land without measurements, and the measurements have not been made as yet. The rectangular portion is less than 5 bighas. If it had been 5 bighas. I would take it and would not insist on taking the little land in continuity of the out-houses.

4. The defendant's evidence is practically to the same effect. He says:

Until 3rd October 1941, I was under the impression that I was selling out 5 bighas of land to Plaintiff for a price of Rs. 6,000 which had been arranged with the Plaintiff. The fact is that the execution and registration of sale deed did not come about, as the land on measurement was found to be less than 5 bighas and the Plaintiff insisted to get full 5 bighas. If the little vacant land adjoining the out houses to wards the east had been sold to Plaintiff, it would have completed 5 bighas, but I had not agreed to sell it as it is a part of the compound of Evelyndale.

5. The position that emerges from a consideration of the evidence of these three witnesses is that the Plaintiff and the Defendant were both under the impression that the land towards the south facing Pretam Road was about five bighas in area. If the land had turned out to be five bighas in area, there would have been probably no difficulty and the Defendants would have sold the land to the Plaintiff for Rs. 6,000. As it turned out, however, the land was less than five bighas and the Plaintiff wanted that the Defendants should make good the deficiency by giving the Plaintiff some land to the east of the out-houses of Evelyndale. This the Defendants were not willing to do and the negotiations fell through. The view of the learned Judge was that, when the rectangular plot of land turned out to be less than five bighas, the Defendants were bound to make good the deficiency by giving extra land from the vacant land adjacent to the out-houses so as to complete the area of five bighas. It would, however, be impossible for the Court to make a transfer of any such land without the agreement of the parties, as the Court would not be in a position to say what the length and the breadth of land that is to be transferred should be. After it was found that the land was less than five bighas, it appears that the Plaintiff felt reconciled to the position that there was going to be no sale in his favour, which is quite clear from his letter dated the 28th of October, 1941. He was, however, ill-advised to give a notice on the 8th of May, 1942, and to file a suit for specific performance of contract claiming that five bighas of land should be sold to him which meant that the deficiency in the rectangular plot to the south should be made up by taking out some land from the compound of Evelyndale house. This is a case where the parties were contemplating sale of a plot of land under the impression that it was five bighas, while, as a matter of fact, the area was less. This would be a case of a mutual mistake as to a matter of fact essential to the agreement inasmuch as if the area was less than five bighas, the Plaintiff would not be entitled to build on the land.

The agreement, if any, would therefore, be void u/s 20 of the Indian Contract Act and not enforceable in law.

6. Apart from this, we are of the opinion that there was no completed contract between the parties. We have already said that in the plaint the Plaintiff alleged that the letter of Mr. Meaney dated the 29th of August, 1941, was an offer and the telegram dated the 31st of August, 1941, was the acceptance by which the contract was completed. In his arguments before us learned Counsel for the Plaintiff Respondent admitted that the letter of the 29th of August, 1941, was nothing more than an invitation to offer and the Plaintiff's telegram dated the 31st of August, 1941, must be taken as a definite offer of purchase made on his behalf. We have already said that the letter of the 1st of September 1941 was not an absolute and unqualified acceptance of the offer as required by Section 7 of the Indian Contract Act. In the letter there was no doubt an expression of the willingness to sell the land to the Plaintiff, but then it was qualified by the statement that the Defendant, would sell the land to the Plaintiff if it was not wanted by others who might have a right of pre-emption. The Plaintiff was not able to rely on any correspondence after the 1st of September, 1941, for his argument that there was a complete contract between the parties. It was not till about the 2nd of October, 1941, that the parties met when Mr. Meaney came to Dehra Dun. It is nobody's case that there was an oral contract entered into between the 2nd and the 4th of October. On the 4th of October we know that the plot of land which the Defendants intended to sell and the Plaintiff intended to purchase was measured and was found to be less than five bighas in area and the whole talk fell through. The lower Court has relied on the written statement and the Defendant's statement for the finding that there was a completed contract between the parties. The Defendant has no doubt stated and has not denied it that he was perfectly willing to sell the plot to the Plaintiff, but the question whether there was a completed contract would depend upon the question whether there was a definite offer and a definite acceptance of the same as required by law. It was not pleaded in the plaint that there was an oral contract between the parties entered into between 2nd and the 4th of October when Mr. Meaney was in Dehra Dun, nor has learned Counsel for the Plaintiff relied on any such oral contract. It is, therefore, not necessary for us to discuss the evidence of the Plaintiff's witnesses in detail. Both in the plaint as well as in arguments stress was laid on the correspondence between the parties and we have, therefore, to interpret for ourselves from a study of that correspondence whether we can uphold the finding of the learned Judge that there was a completed contract between the parties. Having carefully considered the letters and telegrams that passed between the parties, we have come to the conclusion that there was no completed contract for sale which could be specifically enforced. We, therefore, allow this appeal with costs. The decree of the lower Court is set aside.