

(1912) 01 CAL CK 0026
In the Calcutta High Court

Narain Chandra Mukerjee

APPELLANT

Vs

Mohendra Nath Mukerjee and Others

RESPONDENT

Date of Decision : 17-01-1912

Acts Referred:

Citation : 14 Ind. Cas. 820

Hon'ble Judges : Lawrence Jenkins, C.J.;N. Chatterjea, J

Bench : Division Bench

Judgement

Lawrence Jenkins, C.J.—This is a suit for specific performance brought by the purchaser against the heirs of his vendor. The suit was successful in the Court of first instance, but on appeal, the learned District Judge has reversed the decision of the Subordinate Judge, and hence this case now comes before us by way of second appeal.

2. The contest depends upon the true construction, of an ekrarnamah dated the 12th of Agrahayan 1303 B.S. On this date, the property to which this ekrarnamah relates had been sold by the mother of the plaintiff to the father of the defendants for a sum of Rs. 400. The sale was necessitated by the needs of the family, and the purchaser was the lady's brother-in-law. On the same date, the 26th of November 1896, the purchaser entered into an agreement to re-sell the property to the plaintiff for Rs. 400 on the terms set forth in that ekrarnamah. The relevant terms are thus expressed: I do, therefore, hereby execute this ekrar and agree that if you erect a family dwellinghouse on the said land within 10 years from this day, then I would execute a deed of absolute sale in your favour in respect of the said land, etc., on receiving from you the said consideration of Rs. 400, and the interest that would accrue thereon at the rate of 3 percent. per annum and also the costs that may have been incurred for the improvement of the said land, etc., and I, my heirs or representatives in succession shall never be competent to raise any objection to the same; and if we do so, then you shall be competent, by depositing in the proper Court the said consideration money, to get a kobala executed through the Court and take

possession of the said land." Within the ten years, the plaintiff endeavoured to secure the benefit of this contract; but his endeavours were resisted by the defendants. The result has necessarily been that the house has not been built, and on that ground the learned District Judge has held that the plaintiff has no right now to compel the sale to him of this house. In my opinion, this places far too narrow a construction upon the contract, and does not accord with the rule that the contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses." Huncoman Persaud Panday v. Babooee Munraj 6 M.I.A. 393 : 18 W.R. 81 note. Now, the condition of building a dwelling-house is one which obviously required the concurrence of the vendor or his successors, because without that concurrence, possession of the land by the would-be purchasers was impossible, and I think, on a fair reading of the transaction as a whole, it must be taken to have been the common agreement of parties that the original vendor and his successors would concur in doing what was necessary to enable the plaintiff to build the house, and so perform the condition as it was expressed in the contract. The defendants, the vendor's successors, have failed to act up to this common agreement, and so the condition of building was made impossible of performance by them. The case, in these circumstances, appears to fall within the latter part of the contract which describes the relations of the parties in case an objection is made to the performance of the contract by the vendor, where it is said that "then you" (that is to say, the purchaser) shall be competent by depositing in the proper Court the said consideration-money, to get a kobala executed through the Court and take possession of the said land." I place considerable stress upon this provision, and it seems to me that the stipulation as to taking possession throws a flood of light on what was the real meaning of the transaction. I think that circumstances have arisen and are now in existence which entitle the plaintiff to rely on this concluding stipulation. It is represented to us that the consideration-money has been deposited in Court in this suit, and on this assumption, I think the plaintiff is entitled to a decree for specific performance of this contract of sale. That consideration-money will include not only Rs. 400 and 3 percent, as interest, but also the sum which has been awarded as representing the improvements. If the amount has not been paid, it will be paid within three months from the return of the record in the lower Court.

2. The result is, that we set aside the decree of the lower Appellate Court and restore the decree of the Court of first instance, except that "the date of the decree" will be the date of the decree of this Court, and in case there has not been a deposit, there will be a provision for its being made within three months from the return of the record to the lower Court.

3. The plaintiff is entitled to his costs of this appeal and of the suit throughout.

N. Chatterjea, J.

4. I agree.