

(1959) 12 KAR CK 0005

In the Karnataka High Court

Case No : Civil Revision Petition No. B-3 of 1958

Narayan Gangadhar Deshpande and Others

APPELLANT

Vs

Rango Krishna Dixit

RESPONDENT

Date of Decision : 04-12-1959

Acts Referred:

Court Fees Act, 1870 — Section 17 (3)
Specific Relief Act, 1963 — Section 35 (C)

Citation : AIR 1960 Kar 175 : AIR 1959 Kar 175 : (1960) ILR (Kar) 280

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Judgement

(1) This revision petition raises an interesting question of law. The petitioners obtained a decree for specific performance in R. O. S. No. 61/47, in the Court of the Civil Judge, Junior Division, Gokak. As per the terms of the decree, the plaintiffs were required to deposit the balance of consideration within the time fixed therein. But, they failed to deposit the amount in question. After the date fixed in the decree, the respondent applied to the Court under clause (c) of S. 35 of the Specific Relief Act, praying that the decree passed may be rescinded as the plaintiffs had not made the deposit in question.

The learned trial Judge accepted that application and vacated the decree. As against that order, the plaintiffs went up in appeal to the learned District Judge, Belgaum. In that appeal, they were required to pay ad valorem Court fee on Rs. 3000/-, i.e., the valuation (for the purpose of jurisdiction) put on the plaint in R. O. S. No. 61/1947. The petitioners had affixed a stamp of ten annas to their appeal memo. It was contended on behalf of the petitioners that the relief prayed for by them fell under Art. 17(3) of Schedule II of the Court-Fees Act and that they were liable to pay only a fixed Court fee of Rs. 18-12-0. This contention was negated by the appellate Court, and finally the appeal was rejected for non-payment of Court fee, as the appellants had failed to comply with the order of the Court to pay the additional Court fees determined.

(2) Sri Shrigurkar, the learned Counsel for the petitioners, contends that the relief granted by the trial Court falls within the ambit of Art. 17(3) of Schedule II of the Court Fees Act. According to him, it was a declaratory relief. To find out the true scope of the order of the trial Court, we have to look to S. 35(C) of the Specific Relief Act. Under sub-clause (c) of the Specific Relief Act. Under sub-clause (c) of S. 35:

"Where a decree for specific performance of a contract of sale or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as possessor.

In the same case the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require."

In view of this provision, a right is conferred on the unsuccessful defendant in a suit for specific performance to apply to the Court which passed the decree and that in "the same case", to rescind the contract and the court may so rescind the contract. The true effect of this provision is that the Court which passed the decree for specific performance, is given power to rescind the contract and consequently set aside the decree which it had passed earlier if the successful plaintiff fails to comply with the terms of the decree.

The resulting position is that a suit, which was one decreed, can be dismissed again if the Court is so pleased. That is what has happened in this case. If that is the true position in law, then the plaintiffs, who appeal against the dismissal of their suit, will have to pay Court fee on the very basis on which the Court fee had been paid on the plaint. No authority bearing on the point was brought to my notice. But, I think the view taken by the first appellate Court is the correct view of the law.

(3) In the result, this petition fails and the same is dismissed. In the peculiar circumstances of this case, I make no order as to costs.

(4) Petition dismissed.