

(1926) 02 CAL CK 0012
In the Calcutta High Court

Naturam Barman alias Nutu Adhikari	APPELLANT
Vs	
Ulluk Chand Barman and Others	RESPONDENT

Date of Decision : 10-02-1926

Acts Referred:

Citation : AIR 1926 Cal 1041 : 95 Ind. Cas. 700

Hon'ble Judges : Panton, J;B. B. Ghose, J

Bench : Division Bench

Judgement

1. The decision of the learned Subordinate Judge in this case is clearly wrong. The plaintiff brought a suit for recovery of the earnest money paid to the defendants for an agreement to sell certain land. The plaintiff alleged that the defendants did not agree to perform their part of the contract and on that ground he Drought the suit for recovery of the earnest money and Rs. 320 by way of damages as stipulated in the agreement. The Munsif gave the plaintiff a decree for Rs. 400. The defendants appealed. On appeal the learned Judge by curious misreading of the case in Amma Bibi v. Udit Narain Misra 1 Ind. Cas. 890 : 9 C. L. J. 512 : 31 A. 68; 11 Bom. L. R. 525; 19 M. L. T. 89; 36 I. A. 41 (P. C.). held that as the plaintiff was entitled to sue for specific performance of the contract he is not entitled to sue for damages or for recovery of the earnest money. This is clearly erroneous. If the defendants were not willing to perform the contract the plaintiff might very well say that he did not want to have the contract specifically performed but that he would be satisfied if he gets the earnest money with proper damages. The plaintiff is, therefore, entitled to recover the earnest money and damages. But he is certainly not entitled to the damages as claimed because the amount is clearly penal.

2. We set aside the judgment and decree of the Subordinate Judge and in lieu thereof decree that the plaintiff will be entitled to recover Rs. 80 earnest, money which he paid to the defendants with interest thereon at the rate of 12 per cent, per, annum from the date of payment to the date of recovery of the amount.

3. The plaintiff is entitled to his costs in all Courts in proportion to his success.