

(1909) 04 CAL CK 0025
In the Calcutta High Court

Nawab Saltant-Ara Munni Begum

APPELLANT

Vs

Seth Dooli Chand

RESPONDENT

Date of Decision : 19-04-1909

Acts Referred:

Citation : (1909) 04 CAL CK 0025

Judgement

1. This is an appeal from an order of the Subordinate Judge of 24 Per-gunnahs, granting a temporary injunction against the defendant. By agreement dated the 27th May 1907, the defendant agreed to execute a lease in favour of the plaintiff of certain lands. That contract, according to the defendant was to be performed by the 30th September 1907, and by a letter of the 1st October 1907, the defendant's solicitors wrote to the plaintiff to the effect that plaintiff not having carried out his agreement, the contract was cancelled. On the 28th November 1907, the plaintiff brought a suit for specific performance of that agreement and it is in that suit that he has applied for and has been granted the injunction in question.

2. The facts, so far we need go into them, appear to be as follows: By the agreement, the plaintiff was to pay a sum of Rs. 5,000, but to the defendant for the purpose of having the lands cleared of certain tenants. Subsequently, some difficulties presumably having arisen on the defendant's part in ejecting the tenant, the defendant's agent by the letter of the 14th June 1907, authorised the plaintiff to take steps to remove those tenants on whom notices to quit had already been served, and also authorised him to compensate and remove other tenants from the land. It is admitted on the defendant's part that the plaintiff has paid Rs. 1,100 to two tenants and it is stated for the plaintiff that many more tenants have been removed and a large sum has been paid for that purpose. There is no doubt that the plaintiff has by that process obtained possession of a considerable portion of the land and his present object is that during the hearing of the suit, he may be allowed to retain such possession as he has acquired. It is also admitted that the defendant, immediately after the 1st October 1907, when she alleged that the contract has been cancelled, proceeded

to advertise the land for sale. The advertisement in the "Calcutta Exchange Gazette" of the 10th October 1907, is before us. To this advertisement the plaintiff issued a counter-notice warning any one from dealing with the properties in prejudice of the plaintiff's rights under the agreement. The question before us is whether the plaintiff is now entitled to have an injunction, the effect of which will be to retain the property status quo until the hearing of the suit. It was argued for the appellant with regard to that portion of the injunction which dealt with the plaintiff's possession that it did not fall within the purview of Section 492 of the CPC of 1882; but it has been frequently remarked that the CPC is not exhaustive and there can be no doubt that a Court of Equity has power in a case of specific performance to interfere by an injunction in order to maintain matters in their present state. So far as the question of alienation is concerned, it was argued that such an injunction was entirely unnecessary because the plaintiff would be sufficiently protected by Section 52 of the Transfer of Property Act. But that would imply that no injunction could ever be granted with regard to immoveable property. We think there is no reason why, because the plaintiff might possibly be protected in one way, he should not also be protected in another. It must also be remembered that, if the plaintiff is forced to rely upon the doctrine of *lis pendens*, however that may in theory protect his rights, in practice it does not prevent the disposing of the property and consequent litigation between the persons interested. It was further argued by Dr. Rash Behari Ghosh that the property, the subject of the lease, was not property in dispute in the suit," but we cannot accede to such a contention, as the suit is for specific performance, and does in fact relate to the property which is the subject-matter of this contest. Every plaint for specific performance of a contract to sell immoveable property if properly framed, should contain a prayer for possession and the plaint in this case contains such a prayer. So far as the land, which is in plaintiff's possession is concerned, the case is somewhat peculiar. by special permission of the defendant, he has been allowed to take possession of certain of these properties in anticipation of his lease, and what is more he has paid very considerable sums in order to obtain that possession. It seems to us, without in any way going into the merits of the suit itself, that it is highly advisable that the plaintiff should be allowed to retain that possession pending the hearing of the suit. This is not a case in which the defendant denies the existence of the contract to lease. What she does maintain is that she is not now bound under the circumstances, which have happened, to fulfil that contract.

3. As to alienation, we think that it would also be inexpedient that the defendant should be allowed to make other contracts for disposing of this property until it has been determined what the rights of the plaintiff, if any, are with respect to it. We think, therefore, that the order of the Subordinate Judge was perfectly correct, and we may add that we should not interfere with such an order unless we are quite certain that it was incorrect, in this case we are not of that opinion.

4. One further argument was advanced by the learned pleader for the appellant that a Civil Court has no right to issue an injunction which would have the effect

of staying proceedings in a Criminal Court. By this it was meant that the effect of the injunction in this case was to quash the proceedings u/s 145 of the Code of Criminal Procedure. We do not think that proceedings u/s 145, Code of Criminal Procedure, can be said to be criminal proceeding within the meaning of that principle, nor do we think that a Civil Court's action can possibly be fettered by any action which one of the parties to the suit may choose to take before the Magistrate under the provisions of that section. This injunction, moreover, was not granted for the express purpose of staying these proceedings, nor indeed had it that effect, except perhaps indirectly.

5. Under these circumstances, we think that the appeal fails and must be dismissed with costs, five gold mohurs.