
(1933) 12 AHC CK 0015
In the Allahabad High Court

Pancham Palodar

APPELLANT

Vs

Kandhai Palodar and Another

RESPONDENT

Date of Decision : 19-12-1933

Acts Referred:

Citation : (1933) 12 AHC CK 0015

Hon'ble Judges : Kendall, J

Bench : Single Bench

Judgement

Kendall, J.—This is a defendant's appeal from a decree and order of the Second Additional Subordinate Judge of Gorakhpur confirming the decision of the trial Court. The plaintiff-respondent filed a suit for specific performance of an agreement said to have been made by defendant 1, in his favour to lease a grove to him. As the agreement was not carried out, he filed this suit on 10th September 1928. A day after the suit had been filed, defendant 1, executed a lease of this same grove to defendant 2, who is the present appellant. Both the Courts below decreed the plaintiff's claim for specific performance of the contract, and the appellant claims that the decisions are wrong as they are based on the belief that Section 52, T.P. Act, applies to the case, and that the transfer in favour of the appellant is invalid. At this stage the only question that arises is whether Section 52, T.P. Act, will apply to the case. It has been remarked above that the lease in favour of the appellant was executed, one day after the suit for specific performance had been filed. It has been pointed out by Mr. K.D. Malaviya, for the appellant that according to the last sentence of Section 54, T.P. Act, a contract for sale does not, of itself create any interest in or charge on the property concerned, and undoubtedly the same applies a fortiori to a lease. In other words, the agreement in favour of the plaintiff to lease the property to him did not create an interest in the property, and consequently when he filed a suit for specific performance of the contract it cannot be said that "any right to Immovable property," was "directly and specifically in question." A lease that had been executed and registered would no doubt amount to a right to Immovable property because it creates an interest in such property. The question however

that is being considered in the present suit is not the plaintiff's right to Immovable property, but his right to have a lease of Immovable property executed in his favour, so that there is no right to Immovable property " directly and specifically in question" though such a right may be indirectly involved in the question of whether the execution of a lease can properly be enforced.

2. Neither of the Courts below considered the case from this point of view, but there is no doubt that it is possible to make a distinction between a right to Immovable property and a right to a lease of Immovable property, and I have had to consider carefully whether this distinction amounts to a real difference, or whether Section 52 is to be read in such a way as to include an agreement to execute a lease. I have not been referred to any authority of this Court on this particular point, but it has been pointed out by Mr. D.P. Malaviya on behalf of the respondent that the High Courts of Calcutta and Madras have both expressed the opinion that Section 52 will cover cases where only an agreement to execute a transfer has been carried out. In the case of *Matt Lal v. Preo Nath* (1909) 3 I.C. 696, an appeal under the Letters Patent, one of the learned Judges remarked:

The essential object of the doctrine of *lis pendens* being the preservation of the status quo of the res pending the determination of the suit for the due and proper administration of justice, it follows that the doctrine ought to apply as much to a suit for specific performance, as to a suit for possession of Immovable property or a suit on a mortgage for foreclosure or sale.

3. In the case of *Vedachari Vs. Narasimha Mudali and Others*, a Bench of that High Court followed the decision quoted above, and a similar view was again taken by the Calcutta High Court in the case of *Dulloo Singh and Others Vs. The Deputy Inspector General of Police, C.I.D. Bengal*, Fortified by this authority I have come to the conclusion that the doctrine of *lis pendens* must be applied in the present case, and the result is that the appeal fails and is dismissed with costs. Mr. K.D. Malaviya, has asked for leave to appeal under the Letters Patent but as the authorities are one sided only I do not think that the permission should be given. It is therefore refused.