
(1912) 06 CAL CK 0012
In the Calcutta High Court

Raghu Nath Sahay and Others

APPELLANT

Vs

Chandra Protap Singh

RESPONDENT

Date of Decision : 04-06-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Citation : 15 Ind. Cas. 268

Hon'ble Judges : Chapman, J;Carnduff, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought to enforce specific performance of a contract.

2. The defendants, who are the appellants before us, entered into an agreement on the 22nd April 1908, to sell certain landed property to the plaintiff, the father of the substituted minor respondents in this appeal, for the sum of Rs. 25,000. A sum of Rs. 6,000 towards the purchase-money was paid down by the plaintiff at the time of the agreement on the understanding that the necessary conveyance would be executed and duly registered within two months, and that the balance of Rs. 19,000 would be forthcoming on completion. It was, as evidenced by the written agreement Exhibit I, farther stipulated that, if the transaction were not completed in consequence of any default on the part of the defendants, the plaintiff would be free to enforce specific performance at law and would be entitled to be credited with interest on his deposit from the date on which it was made; whereas, if the transaction were to fall through owing to the plaintiff's default, then the plaintiff would be entitled to the refund of the bare deposit without interest, and the defendants would be at liberty to dispose of the property in any other way they might choose. The transaction did fall through, and the plaintiff brought his suit for specific performance alone.

3. The Court below refused him a decree for specific performance, but, nevertheless, gave him a decree for the refund of the deposit with interest, although he had not asked for any such alternative relief. The defendants have

now appealed to this Court.

4. According to the findings of the Court of first instance, which have not been challenged by the respondents either in their cross-appeal or in the arguments before us, the plaintiff alone was to blame for the non-execution and non-registration of the necessary conveyance in June 1908. Subsequently, however, he changed his mind, or circumstances altered; and he brought his suit for specific performance a year later. It is suggested by the learned Subordinate Judge that he did so because of the discovery of minerals on the property; but as an issue on this point was expunged and cross examination upon it was stopped, we think that this further finding ought to be ignored. The contention is that, in the circumstances, the suit ought to have been dismissed in toto. We have come to the conclusion that, in the broad view that he took of the case, the learned Subordinate Judge was, in the main, right. It does not necessarily follow from the dismissal of a suit for specific performance that an order for the refund of any part payment of the purchase-money should also be denied. If any authority, as to this, be required, we need only refer to the cases of *Ibrahim Bhai v. Fletcher* 21 B. 827; *Alokeshi Dassi v. Hara Chand Dass* 24 C. 897 : 1 C.W.N. 705; *Amma Bibi v. Udit Narain Misra* 31 A. 68 : 9 C.L.J. 512 : 11 Bom.L.R. 525 : 19 M.L.J. 295 : 6 M.L.T. 89 : 1 Ind. Cas. 890 and *Howe v. Smith* 27 Ch. Div. 89 : 53 L.J.Ch. 1055 : 50 L.T. 573 : 32 W.R. 802 : 48 J.P. 773. The plaintiff could, notwithstanding that his suit for specific performance had been dismissed, and no matter on what ground it failed, have brought a suit for the recovery of his deposit. This is, we think, clear from the terms of Section 29 of the Specific Relief Act, 1877, and the case of *Parangodan Nair v. Perumtoduka Illot Chata* 27 M. 380. " And now that the same Courts administer both law and equity, and Order VII, Rule 7 of the Civil Procedure Code, 1908, lays it down that ""it shall not be necessary for the plaintiff to ask for general or other relief, which may always be given as the Court may think just to the same extent as if it had been asked for," it seems to us the Subordinate Judge was right in refusing to relegate the parties to further litigation. There could have been but one result of another suit on the contract. As Bowen, L.J., said in *Howe v. Smith* 27 Ch. Div. 89 : 53 L.J.Ch. 1055 : 50 L.T. 573 : 32 W.R. 802 : 48 J.P. 773, already referred to, "the question as to the right of the purchase to the return of the deposit money, must, in each case, be a question of the conditions of the contract." Here the conditions of the contract were very clearly expressed. The right of the plaintiff to withdraw from the contract and obtain a refund of his deposit money without interest, was recognised and it was distinctly stipulated that the only penalty for the plaintiff's breach should be the loss of interest. It seems to us, therefore, that there is no substance whatever in the contention that, if the plaintiff had expressly claimed the refund in the alternative, the defendants would have been able to prove and set off damages caused by his failure to complete the transaction. Time has been found, as alleged by the defendants, to have been of the essence of the contract, and, therefore, it was for the defendants to make other arrangements as soon as the two months fixed had expired without the completion of the contract. Any

loss caused in this respect was their affair. We consider, therefore, that the decree of the Court below is substantially correct, but we are of opinion that it is wrong in one respect, namely, as regards the interest which it has been made to carry. On the plaintiffs' own showing, he would not have accepted the refund, because his case was that he was throughout anxious to enforce the contract as a subsisting one. That being so, he ought, in our view, to be allowed no interest whatever.

5. The decree will, therefore, be modified so as to allow the plaintiff Rs. 6,000 (rupees six thousand) without any interest up to the date of the lower Court's decree and the usual interest at the rate of six per cent. per annum from that date till the date of realisation. In other respects the decree will stand.

6. We make no order as to the costs of this appeal.

7. Rule No. 2265-12.

8. This rule stands discharged, and as to it we make no order as to costs.