
(1915) 06 AHC CK 0043
In the Allahabad High Court

Sheikh Mahmud Ali and Others

APPELLANT

Vs

Mirza Yawar Beg

RESPONDENT

Date of Decision : 01-06-1915

Acts Referred:

Specific Relief Act, 1877 — Section 15

Citation : AIR 1915 All 263 : 29 Ind. Cas. 628

Hon'ble Judges : Henry Richards, C.J.; P.C. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit for specific performance of a contract to sell a house. The house belonged to Sheikh Muhammad Ali and Sheikh Muksud Ali, the defendants Nos. 1 and 2. It is alleged that the defendant No. 1 on behalf of himself and as agent of defendant No. 2 agreed to sell the house to the plaintiff, that then in breach of the agreement the house was sold to defendant No. 3, the sale being taken fictitiously in the name of his wife, defendant No. 4.

2. The Court below has found that the contract was entered into but that defendant No. 1 had no authority to sell his brother's share of the house. The Court accordingly made a decree for specific performance in respect of the half of the house which belonged to defendant No. 1, at half the price agreed upon.

3. In second appeal it is contended on behalf of the defendants that the Court ought not to have decreed specific performance of half the house. Section. 15 of the Specific Relief Act is relied upon, and it is contended that the plaintiff was only entitled to a decree for specific performance for half the house on condition of paying the full price agreed upon for the entire house. On the other hand, the plaintiff relies on the provisions of Section 16. The Court below considered that this section applied. The section is as follows: When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or

ought not to be specifically performed, the Court may direct specific performance of the former part."

4. It must be remembered that the contract as proved was a contract to sell the whole house for one lump sum as consideration. It can hardly be said that the contract consisted of "two parts, each standing on a separate and independent footing from the other," one part being to sell the share of defendant No. 1 and the other part to sell the share of defendant No. 2. This is illustrated by supposing for a moment that the suit had been by the defendant No. 1, against the plaintiff for specific performance of a contract to buy half the house. It seems quite clear that Mirza Yawar Beg could have pleaded that his contract was a contract to buy the whole house, and not half and that no Court would have forced him to take half the house. In our judgment the decision of the Court below was wrong. As, however, in the course of the hearing the plaintiff has expressed his willingness to pay the full price, we think that he ought to have half the house on these terms.

5. We accordingly vary the decree of the Court below by giving the plaintiff a decree for specific performance for sale of half the house (the share of defendant No. 1) conditional upon his paying the entire price. The plaintiff will have his costs from the defendants other than the defendant No. 2. He will be entitled to set off his costs against the amount paid by him into Court. We allow him two months to pay the money into Court, but we direct that in the event of the money not being so paid within that time the suit will stand dismissed with costs in all Courts.