
(1928) 10 MAD CK 0022
In the Madras High Court

Sultan Kani Rowthan

APPELLANT

Vs

Mahomed Meera Rowthan and Others

RESPONDENT

Date of Decision : 26-10-1928

Acts Referred:

Specific Relief Act, 1877 — Section 15
Transfer of Property Act, 1882 — Section 55(6)

Citation : AIR 1929 Mad 189 : (1929) 29 LW 304 : (1929) 56 MLJ 99

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—This appeal raises a question of some importance regarding the purchasers' lien u/s 55(6), (b) of the Transfer of

Property Act. The plaintiff agreed to purchase certain Immovable properties from the first three defendants. At that time, the properties belonged

jointly to six persons, namely, defendants 1 to 6. The price settled was Rs. 500 and a part payment of Rs. 200 was made. The three persons who

were parties to the agreement (defendants 1 to 3) undertook to get a conveyance executed by themselves as well as the other three part owners.

A sum of Rs. 200 was provided as liquidated damages in the event of default on either side. It was further stipulated that the agreement was to be

carried out within five months from its date (Ex. A, dated 9th April, 1920). The promisors did not carry out their part and on the 6th September,

1920, the plaintiff sent a notice (Ex. I) to one of the executants in which it was stated:

If you fail at the sight of this notice to execute the sale-deed jointly with the persons mentioned in the agreement, I hereby inform you that a suit will

be filed for the recovery of Rs. 400 due to me (Rs. 200 part of price, plus Rs. 200

damages).

2. In spite of this notice, defendants 4 to 6 conveyed their interest in the property on the 10th September for Rs. 400 to the 7th defendant (Ex. IV)

and a week later, that is on the 17th September, the first three defendants similarly conveyed their share to the same persons for Rs. 200 (Ex. III).

The plaintiff then brought his present suit for specific performance impleading the 7th defendant on the ground that he was purchaser with notice.

3. Section 15 of the Specific Relief Act enacts that, in a case like the present, the vendor cannot claim specific performance, but the purchaser may

claim it, at his option under a certain named condition : the section says that if the buyer is willing to pay the full price but takes only a fraction of the

property, waiving all right to compensation or loss, in that case, he is entitled to specific performance. Now what happened at the trial is this : the

7th defendant offered to give up the interest which he purchased from defendants 1 to 3, provided the plaintiff paid the full price, namely, Rs. 500;

and, as might be expected, this offer was declined. The Lower Court thereupon passed a decree for Rs. 400 against defendants 1 to 3 personally,

and it also passed a decree against the 7th defendant making that sum, a charge over the share of the vendors in the property he purchased. The

Lower Court recorded a finding that the 7th defendant is a purchaser with notice and in second appeal that finding cannot be disturbed.

4. The question that arises in this case is, is the plaintiff entitled to a charge u/s 55 (6) (b) of the Transfer of Property Act. It runs thus:

The buyer is entitled, unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all

persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase money

properly paid by the buyer in anticipation of the deliver and for interest on such amount.

5. Can it be said, in the circumstances, that the plaintiff ""has improperly declined to accept delivery of the property."" In other words, is he guilty of

improper conduct in refusing to pay the full price for six-elevenths of the property? Section 15 of the Specific Relief Act is enacted for the benefit

of the purchaser and cannot operate to his detriment. That section gives him an option and if he declines to accept an offer which brings him loss,

he cannot be regarded as acting improperly. If his conduct is not improper, he cannot be deprived of the statutory charge.

6. Two very useful cases have been cited to us by the learned Advocate for the respondent. The first of them is *Rose v. Watson* (1864) 10 H.L.C.

672. In that case certain persons agreed to purchase a portion only of a big plot from one William Potter on a representation made by him that the

entire big plot would be laid out, and a church would be built contiguous to the part purchased. The representations were not carried into effect

and Potter mortgaged the whole of the estate to a certain company, who took the mortgages with full notice of the facts. The purchasers treating

the agreement as void claimed a lien on the estate. The question arose, were they entitled to that lien? The contention that was put forward on

behalf of the mortgagees was that the lien was extinguished as the contract was rejected by the purchaser. Lord Westbury in his judgment

observes at page 679:

It cannot be contested in this case that although the contract has failed of being performed completely, that failure of performance is attributable

entirely to the vendor.... But, my Lords, it has been contended at the Bar in words, that the contract has been rejected by the purchaser, and that,

therefore, the purchaser ought not to have the benefit of lien.... It is quite a mistake and a misapplication of the words to say that the purchaser has

rejected the contract or put an end to the contract. The purchaser would have been willing to perform the contract if the vendor had performed

those things which in good faith he was bound to do. And it is impossible to say with any truth or accuracy of expression that the purchaser had

repudiated the contract, because the vendor has failed to redeem his own promises to which he had pledged his faith, and in dependence upon

which the purchaser entered into the contract.

7. This case is an authority for the proposition that the purchaser's lien is not extinguished although he rejects or puts an end to the contract,

provided the failure of performance is attributable to the vendor. The second case to which we have been referred to is *Whitbraad & Co., Ltd. v.*

Watt (1902) 1 Ch. 835. This case goes even further. The agreement was to the effect, that the purchase was to be completed as soon as 300

houses were erected on the estate : If these houses were not erected within two

years, the purchaser was to have the right to rescind the agreement. Under this power reserved to him, the purchaser cancelled the contract. The houses were not built contrary to expectation, but there was no default or misconduct on the part of the vendor. The question is stated somewhat thus in the judgment of Vaughan Williams, L. J., at page 839:

Suppose a person contracts to sell a property and the purchaser pays a deposit and owing to some fact, not being misconduct on either side the contract goes off, has the purchaser a lien on the estate for his deposit?

8. It was held that the purchaser would equally have a lien although there was no default on the part of the vendor. As was observed in the case "it is not default, it is rather misfortune.

9. Cozens-Hardy, L. J., observes at page 841:

In other words, when the contract goes off either by reason of the default of the vendor or without any default on the part of the purchaser the lien becomes operative.

10. Applying the test laid down in these cases, the plaintiff cannot be said to have "improperly declined to accept delivery of the property" within the meaning of Section 55 of the Transfer of Property Act. The 7th defendant is a person claiming under the sellers "with notice of the payment and the charge can therefore be enforced against him.

11. The only question that remains is, what is the extent of this charge? There can be no doubt that the plaintiff has lien to the extent of the purchase money he paid and interest on that amount. We, therefore, hold that the plaintiff is entitled to a charge on the shares of defendants 1 to 3 in the property in the hands of the 7th defendant for Rs. 200 and interest on that sum at 6 per cent. from the 9th of April, 1920 to the date of payment.

12. The Lower Court has held that the plaintiff has a charge also in respect of the damages awarded. This is clearly wrong, for the purchaser's lien is in this country created by statute and we cannot go beyond the words of the section itself.

13. The decree of the Lower Court is varied to the extent we have indicated in this judgment. So far as the decree against defendants 1, to 3 is concerned, we do not propose to interfere with it in any way. The parties shall

have proportionate costs throughout.