
(1969) 02 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 691 of 1965

Suresh Chandra Dey

APPELLANT

Vs

Jnanendra Nath Bhattacharjee

RESPONDENT

Date of Decision : 24-02-1969

Acts Referred:

Specific Relief Act, 1877 — Section 13, 18, 2

Citation : (1969) 02 CAL CK 0026

Hon'ble Judges : S.K. Chakravarti, J;P.N. Mookerjee, J

Bench : Division Bench

Advocate : Amarendra Mohan Mitra and Saroj Kumar Chakravarty, for the Appellant; Apurbadhan Mukherjee and Madan Mohan Mallick, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This is a second appeal by Defendants Nos. 1, 2 and 3. It arises out of a suit for specific performance at the instance of the Plaintiff Respondent.

2. The suit was decreed by the learned trial Judge, who directed Defendant No. 1 to execute the kobala in respect of the disputed property (B schedule land), forming the western portion of the entire property described in Schedule A.

3. On appeal, the said decree was modified by affirming the decree for specific performance in favour of the Plaintiff but altering it to a decree in respect of the A schedule land minus Schedule B and directing Defendants Nos. 1 and 2 to execute the kobala in favour of the Plaintiff. Defendant No. 1 is the husband of Defendant No. 2 and father of Defendant No. 3. The concurrent finding of both the Courts below is that Defendant No. 2 who, also, along with Defendant No. 1 got the kobala in respect of the disputed A schedule land from the original owner, was merely a name-lender, the real purchaser being Defendant No. 1. The concurrent finding of both the Courts, further, is that Defendant No. 3, who appears to be a subsequent purchaser from Defendant No. 1, was, also a mere

name-lender or, in any event, not a bona fide purchaser for value without notice. The contract, alleged by the Plaintiff, has been held to have been proved by both the Courts below.

4. The Plaintiff Respondent has filed a cross-objection against the dismissal of his claim for specific performance in respect of the B schedule property, as prayed for by him in his plaint.

5. In our opinion, on the above findings, the Plaintiff's suit should be decreed, as claimed by him, in respect of the B schedule property. It is clear from the findings of the two Courts below that the contract was for specific sale of the B schedule property to the Plaintiff and although the contract was entered into only by Defendant No. 1, he being the real purchaser, as found by both the Courts below, Defendant No. 3 being a mere name-lender, from the original owner, the contract was enforceable against the B schedule property.

6. An objection is taken that, at the time when the above contract was entered into none of the Defendants had any title to the disputed property. There was only an agreement for sale in favour of Defendant No. 1 the kobala coming later in favour of Defendant No. 1 and Defendant No. 3, the latter, as already pointed out, being merely a name lender of Defendant No. 1. Section 18 of the Specific Relief Act, however, sufficiently indicates that, in such a case, specific performance will be available to the purchaser if the vendor acquires title to the property subsequently, the words "imperfect title" including vide AIR 1949 83 (Nagpur) cases of absence of title too, the Supreme Court case, in Kalyanpur Lime Workers Ltd. Vs. State of Bihar and Another, not affecting the above position as the same is distinguishable and the point did not strictly arise there for consideration. This view, which has an equitable flavour and does not do any violence to the language of the Statute, the words "imperfect title" on a liberal interpretation, being wide enough to include "no title", has now received express legislative sanction in the new Specific Relief Act, the corresponding section thereof being Section 13 (vide, in this connection, Notes on the relative. Clause in the corresponding bill--See Gazette of India Extraordinary, dated December 23, 1960 and June 15, 1962, pt. II, Section 2 pp. 966 and 996 respectively). The above objection of the Appellants to the decree for specific performance in respect of Schedule B would, accordingly, fail.

7. There was a further objection that the Plaintiff did not deposit the outstanding purchase money at the time of institution of the suit. This, however, was not necessary, in the circumstances of this case, as in the plaint (vide para. 12) there was a specific statement or averment that the Plaintiff was always ready and willing and is ready and willing to deposit the outstanding price. To this, in the written statement, no objection was taken and the Court also, in the circumstances, did not deem it necessary to call upon the Plaintiff to make the deposit prior to the decree and immediately the decree was made, the deposit of the outstanding purchase money was made by the Plaintiff in terms of the Court's decree. In the circumstances, this objection also would fail.

8. There being no other point of law, available to support this appeal, this second appeal must be dismissed.

9. The cross-objection, however, must, as stated above, be allowed to the extent that the Plaintiff's claim of specific performance in respect of the B schedule property would be decreed or, in other words, the Plaintiff's suit so far as property is concerned would be decreed as claimed by him.

10. In the result, the appeal would fail and the cross objection would be allowed and the decision of the learned District Judge would be varied or modified by altering the decree for specific performance, given by him into a decree for specific performance in respect of the B schedule property, as claimed by the Plaintiff.

11. There will be no order for costs in either the appeal or the cross-objection.

S.K. Chakravarti, J.

12. I agree.