
(1937) 02 PAT CK 0001
In the Patna High Court

Tribeni Prasad Singh and Others

APPELLANT

Vs

Jainarain Singh and Others

RESPONDENT

Date of Decision : 05-02-1937

Acts Referred:

Citation : AIR 1937 Patna 425 : 170 Ind. Cas. 484

Hon'ble Judges : Madan, J;Fazl Ali, J

Bench : Division Bench

Judgement

Fazl Ali, J.—This is an appeal by the plaintiffs in a suit for specific performance of a contract. The Courts below have awarded a small damage to the plaintiffs against defendant No, 1 but have refused to grant a decree for specific performance and so the plaintiffs have preferred this second appeal.

2. The plaintiffs impleaded in this suit four sets of defendants of which the defendants first party consist of defendant No. 1, the father, defendant No. 2, his major son, and defendants Nos. 3 to 5, his minor sons-Defendants 2nd, 3rd and 4th parties are co-sharers of defendants first party and some of them have purchased portions of the property which is the subject-matter of this suit. The case of the plaintiffs 13 that on February 6,19i8, defendant No. 1 as karta of his family executed an agreement contracting to sell to the plaintiffs 10 gandas odd zamindari interest in Mauza Sukhpur Solhni in the District of Bhagalpur for a sum of Rs. 3,000. In this contract reference has also been made to certain lands which are said to appertain to the said zamindari interest and which are described in these words:

22 bighas khudkasht batai nisf and gairmazrua khas recorded in the khatian of executant No. I and one-third share in the lands recorded in the name of executant No. 1 and one Jogendra Narain Singh.

3. As to these lands it is stated that they had before the date of the contract been settled with a third party at a rental of Rs. 71 per year and the "plaintiffs were entitled only to receive the above rent from the settlement holder. It is

necessary to mention this fact because (1) it has been found by both the Courts below that in spite of this recital the lands in question were actually in possession of the defendants first party and this fact was fully known to the plaintiffs at the time when they entered into the present contract, and (2) because it appears that subsequent to the contract there was an agreement between defendant No. 1 and his other co-sharers, namely defendants 2nd, 3rd and 4th parties by which the position inter se of all these persons in respect of khudkasht lands was defined and it was made clear that the survey entries in respect of some of those lands were not correct. It has been argued in this Court on behalf of the appellants that this agreement was a collusive one and was intended to prejudice their claim for specific performance but the trial Court has found that the agreement had been executed in good faith and that in fact the survey entries are not correct in certain particulars.

4. The first question which was raised in this Court was whether a contract affecting lands which were in possession of a Hindu joint family consisting of certain minor members could be enforced against them. This question has been answered in the negative by the Calcutta High Court in *Nripendra Chandra Sarkar and Others Vs. Ekherali Joardar and Others*, and the view put forward in that case is supported by a reference to the well-known decision of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mohammad Choudhury* 39 IA 1 : 13 Ind. Cas. 331 : 39 C 232 : 16 CWN 74 : (1912) MWN 22 : 9 ALJ 33 : 15 CLJ 69 : 14 Bom. LR 5 : 21 MLJ 1156 : 11 MLT 8. A. Full Bench of this Court, however, in *Hari Charan Koer v. Kaula Rai* 2 PLJ 513 : 40 Ind. Cas. 142 : AIR 1917 Pat. 478 has taken a contrary view and has held that a contract entered into by a manager of a joint Hindu family can be specifically enforced even though some of the members were minors at the time when the contract was entered into. It was pointed out in that case that the manager of a Hindu joint family is not an agent of the other members of the family and that when he contracts in his capacity as a karta, the contract is made not by minors but by a person who has power under the Hindu Law to make a contract on behalf of the joint family. This decision has been followed in other High Courts and as at present advised I am not prepared to dissent from it. As to whether the contract in question was beneficial to the minor defendants and justified by legal necessity or not, the first Court held against the plaintiffs answering the question in the negative, but the lower Appellate Court has reversed its findings and we must, therefore, for the purpose of this appeal assume that the contract, as it was entered into, was for the benefit of the minors. Thus the only point which requires consideration is the point upon which the suit has been dismissed by the learned District Judge on appeal.

5. The learned Judge has held (1) that both the contracting parties were aware that, 22 bighas of khudkasht lands were in the possession of the defendants first party and it was fully understood by them that these lands would continue, to be in possession of the defendants first party and the plaintiffs would be entitled to receive an annual rent of Rs. 71: (2) that in consideration of this fact, the price

of the property to be sold was fixed at Rs. 3,000 though its proper value was at least Rs. 5,000 and (3) that the plaintiffs were not entitled to a decree for specific performance because in their plaint they dishonestly asserted that, they were entitled to the Was possession of 22 bighas of khudkasht lands. The view-taken by the learned District Judge was that in making this demand the plaintiffs had tried to take advantage of the false recital in the contract that the property at the time of the contract was in possession of certain tenants and on this point he has expressed himself as follows:

Now specific performance is an equitable remedy and the Court has discretion in such cases though that discretion must be exercised in a judicial manner. It is one of the principles of equity that he who seeks equity must do equity, or as it has sometimes been expressed "he who seeks equity must come with clean hands". In the present case it is clear that the plaintiffs have not throughout been willing to carry out the terms of the agreement (Ex. 1) as they were really intended by the parties; but have instead attempted by suit to punish the defendants first party for the failure of defendant No. 1 to carry out his agreement by claiming in their suit those 22 bighas of land to which they had not, and knew they had not any legal or equitable claim.

6. It is contended on behalf of the appellants that the District Judge was wrong in refusing to pass a decree for specific performance in favour of the plaintiffs on the ground stated in the above passage and that the utmost that he should have done was to compensate the defendants by making a suitable order as to costs. It was also pointed out on their behalf that though the plaintiffs did state in their plaint that they were entitled to khas possession of 22 bighas, yet when the matter came up before the District Judge on appeal, they expressed their willingness to allow the defendants first party to remain in possession of those lands on payment of an annual rent of Rs. 71 as provided in the contract. This argument appears to be plausible at the first sight, but on a careful consideration of all the facts of the case I have come to the conclusion that the view taken by the learned District Judge is correct in law. The plaintiffs came to Court with a definite case that they were entitled to khas possession of the 22 bighas of land as will appear from para. 10 of the plaint which runs as follows:

That the defendants first party being in khas mission of the said kamat lands, the clause in the dated February 6, 1928 regarding the Efland cannot be binding on the plaintiffs and plaintiffs are t entitled to khas possession of the said kamat lands.

7. This claim was persisted in by the plaintiffs so long as the case was before the trial Court and the trial Court took some pains to point out that they were trying to enforce a contract which was not beneficial to the minors and was also different from thee contract which had been entered into by the parties. When the plaintiffs appealed to the District Judge they still claimed in the memorandum of appeal that they were entitled to khas possession of the 22 bighas of land, but when it was found that the court-fee paid by them on the memorandum of

appeal was insufficient, they filed a petition withdrawing their claim for khas possession. The learned Judge has noted in his judgment that he asked the Pleader for the plaintiffs what justification they had for attempting to obtain khas possession of the 22 bighas of land, if, as he has already urged, the price to be paid was fixed on the basis that the plaintiffs would be excluded from khas possession of those lands and to this the only reply of the Pleader for the plaintiffs was that when defendant No. 1 failed to carry out the agreement, the plaintiffs probably thought it advisable to claim as much as possible. These facts make it clear that the plaintiffs did attempt to put a construction upon the contract which was known by them to be wrong and in doing so they acted dishonestly. Now Section 22 clearly states that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such a relief merely because it is lawful to do so. It is true that it also states that the discretion Of the Court is not arbitrary but sound and reasonable, but in my opinion the reasons given by the learned District Judge for not granting a decree for specific performance were far from arbitrary and were based upon the well-known principle that equity will not help a dishonest suitor who demands what he is not entitled to. This principle was stated very clearly by the Lord Chancellor in *Molloy v. Egan* (1845) 7 Ir. Eq. Kep. 590 in these words:

Here the evidence shows the real nature of the contract; and the question is, whether I can give the aid of this Court to a plain tiff making Such a case us this. This plaintiff now says, "I am content to admit that the real contract was not as I stated it, but as it is proved". I never will execute a contract for a plaintiff one way, when with his eyes open he insists in hi? bill on a different construction against good faith. If he attempts to perpetrate a fraud and fails, I shall take care that he fails altogether, and does not obtain the aid of the Court at all. A Court of Equity is not to let parties speculate whether they can commit a fraud and then if they fail, seek what they are really entitled to. I am perfectly justified in dismissing the bill on that ground, although 1 should have had no difficulty in giving the plaintiff a decree according to the real meaning of the contract, if he had asked for it directly, properly and fairly.

8. There also appears to me, apart from the ground upon which the suit has been dismissed by the learned District Judge, the following other grounds for holding that a decree for specific performance should not be granted in this case: (1) Ex. 1 purports to be a contract by defendant No. 1 as well as by defendant No. 2 and defendant No. 1 is described therein as the guardian of his minor sons. The trial Court had after a full discussion of the evidence adduced in the case held that although in fact defendant No. 1 was the karta of the family, yet at the time when he signed the contract he purported to act merely as the guardian of his minor sons and not as representing the whole family and for this reason defendant No. 2 was also joined as a party to the agreement. It appears that defendant No. 2 neither signed the contract nor was present at the time of its registration. The plaintiffs now want to enforce the contract- on the ground that defendant No. 1 purported to register the contract as a karta and that he was in

fact a karta. The learned Judge seems to have accepted this contention but he has made no attempt to meet the arguments which" were advanced by the trial Court to show that although it was open to defendant No. 1 to execute the contract as a karta, yet as he had elected not to do so, the plaintiff could not now turn round and say that he should be deemed to have executed it as a karta. However that may be, the fact remains that one of the parties to the written contract who was to have executed it, did not execute it and the reasons for his not executing it are not clearly before us; (2) it has been found by the trial Court (and the finding of the Court has not been disturbed in appeal) that the survey entries with regard to khudkisht lands are not correct in certain respects and there is thus a conflict between the contract relied upon by the plaintiffs and the agreement subsequently entered into between defendants first party and his co-sharers. Moreover, as the learned trial Court has pointed out, no particulars have been given in the contract of the 22 bighas of khudkasht lands and the identity of those lands is by no means clear. In such circumstances a decree for specific performance of the contract would only lead to confusion and also involve the minors in further litigation. I would, in these circumstances, dismiss the plaintiffs appeal but having regard to the fact that defendant No. 1 did not contest the suit, I would direct that the costs incurred by the plaintiffs throughout should be paid by him (defendant No. 1). There will be no order for costs between the plaintiffs and the respondents who have appeared in this Court, but the decree for costs obtained by the latter in the trial Court will stand.

Madan, J.

9. I agree.