

Shankar Narayan Timmanna Vs. Puttu Bhatta Manju Bhatta

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Court : Mumbai

Decided On : Aug-20-1931

Reported in : AIR1932Bom175; (1932)34BOMLR125

Judge : Tyabji, J.

Appeal No. : Second Appeal No. 442 of 1929

Appellant : Shankar Narayan Timmanna

Respondent : Puttu Bhatta Manju Bhatta

Judgement :

Tyabji, J.

1. The facts of this case attract attention by their naivete.
2. There was an agreement between the first plaintiff and the first defendant. By it the first defendant was to transfer to the first plaintiff certain property, which I shall call property A; and the first plaintiff was to cause a third person to transfer to the first defendant the property, which I shall call property B. At least, it was assumed before me that the latter is the effect to be given to the third clause of Exhibit 31.
3. The first defendant carried out his part of the contract to the extent that the property A was conveyed to the plaintiff by a conveyance made on April 13, 1919. The plaintiff did not obtain possession : the present suit was brought on June 19,

1925,-more than six years alter the conveyance-not for possession, but for a declaration under 8. 42 of the Specific Relief Act, that the first plaintiff had become entitled to property A.

4. The first and obvious objection to this suit would appear to be that under the proviso to Section 42 of the Specific Relief Act such a suit is not maintainable.

5. The proviso has, no doubt, a varied history. It has been occasionally interpreted stringently, and occasionally with laxity But in a case like the present, where the plaintiff desires, in a circuitous manner, to get performance of that portion of the agreement which is in his favour and shirks the performance by himself of that portion of the agreement, which consists of the consideration proceeding from him, to the other party, it might have been thought that there would be no difficulty in the Courts looking only a little beyond the immediate allegations, and insisting that the suit should be so framed as really to effectuate a complete adjudication of the matters between the parties. Surely, it is extremely desirable in such a case to refuse to make a mere declaration, baaed on a single aspect of one of several terms of the contract The discretionary nature of the jurisdiction might well be borne in mind when such circumstances arise. Both the lower Courts, for some reason or other, considered that the plaintiff had become entitled to this declaration by itself, without seeking further relief: notwithstanding that the result of this would be that he would be entitled to have his portion of the agreement enforced-or at any rate carried one step towards enforcement-without giving effect to that which he has taken upon himself to perform.

6. The scheme of procedure that the plaintiff evidently has in mind is something like the following: first step, conveyance to himself of property A; second step, the present suit to get a declaration of title in his favour; third step, a second suit to gat himself installed into possession. Then, as two suits are allotted in this scheme to the plaintiff himself, it would be churlish on his part to give an allowance of less than three or four suits to the defendant, who has to get property B from a third party at the instance of the plaintiff. So that he provides for five or sis suits out of the enforcement of this agreement, a goodly crop. This, however, is not exactly the spirit of the Civil Procedure Code, Order II, Rule 1. The section of the Common

Law Procedure Act, and the decision on it, to which I intend referring presently, throw light on the direction contained in Order II, Rule 1, that every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. This rule is not to be confined in its incidence to the manner in which the pleadings ought to be drafted. It should be the effort no less of the Court to attain a final decision upon the subjects in dispute and prevent further litigation concerning them.

7. My attention has been drawn to the Indian Contract Act, Section 51, which deals with contracts with reciprocal promises; and Sections 118, 120 and 55 (4) of the Transfer of Property Act, which deal with exchange. These provisions have a bearing on the question. I should have sought their aid, had the case been less plain. But when the agreement is looked at and the few facts that I have stated are considered, I feel no doubt as to what the Courts should have insisted upon being done in this suit. The proper course is to insist that the plaintiff should pray for possession, and that he should aver his willingness to perform his part of the agreement.

8. Some doubt was suggested whether I had the power of effecting such amendments in the plaint, and whether I should exercise it at this late stage. The powers of the Court are laid down in Order VI, Rule 17, of the Civil Procedure Code. This rule is palpably based on Section 222 of the Common Law Procedure Act, 15 & 16 Vic. C. 76, which is as follows:-

'CCXXII. It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, at all Times to amend all Defects and Errors in any Proceeding in Civil Causes, whether there is anything in writing to amend by or not, and whether the Defect or Error be that of the party applying to amend, or not; and all such Amendments may be made with or without costs, and upon such Terms as to the Court or Judge may seem fit; and all such Amendments as may be necessary for the purpose of determining in the existing Suit the real Question in controversy between the Parties shall be so made.

9. I do not think I need say more as a commentary on Order VI, Rule 17, of the Civil Procedure Code, than cite the following words of the great Judge who himself

bad drafted the exemplar of our rule. I refer in particular to the last nine words quoted below :

The 22nd section of the Common Law Procedure Act does not deal with questions of variance only,' said Lord Bramwell, 'but enables a judge to make any amendment necessary for determining the real controversy between the parties. I am of opinion that a claim may be amended under the terms of this section, which was purposely framed by the late Mr. Justice Willes and myself in the most comprehensive words which could be used.- Knowlman v. Bluett (1873) L.R. 9 Exch.1, 5.

10. Plaintiff No. 1 is willing to amend his plaint in the two respects have mentioned; and that may be considered to be done.

11. The present decree will be modified by ordering that the first plaintiff should have possession of the property on his giving effect (as provided below) to the third clause of Exhibit 31. That clause is as follows:-

The right of Mulgeni (permanent lease) held by Tari Yanktu bin Birappa in the lands owned by Anant Manju Bhatta Kodtoka in Kakurve village should be caused by the first party (the first plaintiff) to be sold to the second party (the first defendant) together with the crop standing thereon.

12. As to the mesne profits, I shall not disturb the order with reference to the mesne profits awarded to the first plaintiff. But there must also be corresponding order with reference to the mesne profits for three years before suit due to the first defendant in respect of property B. This will be determined in accordance with Order XX, Rule 12. The final decree will, provide for it. It is pointed out to me that there was no counterclaim by the first defendant and that there might be some difficulty in his obtaining the mesne profits to which he is entitled and which I desire to award. This portion of my order is, however, made with the consent of the first plaintiff. Unless he had agreed to this, I should have been unwilling to let the decree for masne profits in favour of the first plaintiff stand. The decree for mesne profits in favour of the plaintiff stands. If within six months the first plaintiff is unable to give effect to Clause 3 of Exhibit 31, then the suit will be dismissed.

13. The parties will bear their own costs throughout.

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