

M. Pooran Singh Vs. Krishna Bai and ors.

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Court : Chennai

Decided On : Aug-07-1950

Reported in : AIR1951Mad396; (1950)2MLJ757

Judge : Horwill, J.

Acts : [Contract Act, 1872](#) - Sections 2

Appeal No. : City Civil Court Appeal No. 32 of 1948

Appellant : M. Pooran Singh

Respondent : Krishna Bai and ors.

Advocate for Def. : C. Santhamurthy Naidu, Adv.

Advocate for Pet/Ap. : T.K. Subramania Pillai, Adv.

Disposition : Appeal allowed

Judgement :

Horwill, J.

1. The plaintiff, the defendant, and one Dei Singh were three brothers who partitioned their house No. 36 Kutchari Road, Mylapore, by a registered partition deed, under which they agreed that in the event of any one of the brothers wishing to sell his share of the house he should sell it to the other brothers at the market

value. Dei Singh sold his property some years ago. Recently the defendant entered into negotiations with a stranger and agreed to sell his share of the house to him for Rs. 1700. The negotiations went so far that the stranger deposited Rs. 100 as earnest money. Purporting to comply with the terms of the partition deed, the defendant then wrote to his brother, the plaintiff, and told him that he had entered into negotiations with the stranger to sell his property to him for Rs. 1700 but that as he was under the obligation under the partition deed to offer it first to the plaintiff he expressed his willingness to sell it to him for the aforesaid sum of Rs. 1700. To that the plaintiff replied that Rs. 1700 was an inflated price, and that the real value of the share was Rs. 250 for which sum he was willing to purchase it. Later on, as would appear from the written statement, on account of the notice of the plaintiff and the possibility of further litigation, the stranger withdrew from the contract and received back the sum of Rs. 100 paid by him. The plaintiff then filed the suit out of which this appeal arises in the City Civil Court praying for a decree against the defendant directing him

'to sell the portion of the premises belonging to him. ... for the sum of Rs. 250 or at such other sum as the honourable Court may fix as the market value.'

The learned Additional Judge of the City Civil Court decreed the suit and appointed a commissioner to ascertain the market value.

2. A term in the partition deed such as that I am called upon here to give effect to, has been construed by Ramesam J. in *Alagirisami v. Kathia Goundan* : AIR1931 Mad799 , following earlier decisions, as merely an undertaking to make an offer of sale upon the arising of a certain contingency. It was not an offer in itself. It is not denied that a right to pre-emption arises only when the sale has been effected; for unless the sale has taken place one cannot be sure that there will be any breach of the undertaking contained in the partition deed. Even when an enforceable agreement to sell has been entered into with a stranger, something may happen as a result of which the contract is not given effect to and no sale takes place. That was the case here, when the third party withdrew from his contract because of the fear that he might be involved in litigation. Under the partition deed, therefore, the plaintiff can have no right to any specific performance of the undertaking contained

in the deed; nor is he entitled to damages; because the sale to the third party has not in fact taken place and no right to pre-emption or to damages has arisen.

3. The plaintiff could, therefore, have acquired a right to bring a suit of this nature, only if the correspondence between the parties indicated that the plaintiff had acquired some larger right arising out of the offer made by the defendant. It has been argued by the learned advocate for the plaintiff-respondent that there was an offer by the defendant in fulfilment of his obligation under the partition deed to sell his portion of the house to the plaintiff at its market price, and that the plaintiff accepted that offer, the only difference outstanding between the parties was with regard to the actual market value, which could be ascertained, as the learned Additional Judge of the City Civil Court intended, by the appointment of a commissioner. The correspondence does not however show that there was an offer by the defendant which was accepted by the plaintiff. It is true that the defendant realised his obligation to sell to the plaintiff at the market value, but he at no time during the course of the correspondence offered to sell at the market value. He stated that the market value was Rs. 1700 and he offered to sell the property for Rs. 1700. There is nothing in the letters that the defendant or his advocate wrote that suggested that the defendant was willing to sell the property for a lesser sum, if in fact the market value was less than that mentioned by him. On his part, the plaintiff in his replies at no time expressed his willingness to purchase the house at the market price, whatever that might be. He asserted that the market value was Rs. 250, and offered to purchase his brother's portion of the house at that value. Nothing in the correspondence suggested that he was prepared to pay more than Rs. 250. It is therefore impossible in these circumstances to say that the plaintiff acquired some right which was higher than that afforded to him under the partition deed. In short, the plaintiff did not, either through the partition deed or as a result of the correspondence, obtain any right to the relief which he sought in his plaint.

4. The appeal must therefore be allowed, but as the appellant (defendant) put forward in the lower Court various contentions which were certainly not maintainable, such as that the relevant term of the partition deed was void as being a restriction on alienations the appellant will be given his costs only in this

Court. In the Court below, both parties will bear their own costs. The memorandum of objections is dismissed. No costs.

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