Purcell Vs. Miner

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Decided On : 1866

Appeal No. : 71 U.S. 513

Appellant : Purcell

Respondent : Miner

Judgement :

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Purcell v. Miner

71 U.S. (4 Wall.) 513

ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose must bring himself within the same conditions

before he can invoke the aid of a court of equity.

That is to say, he must make full, satisfactory, and indubitable proof:

First. Of the contract, and of its terms, a proof which must show a contract leaving no *jus deliberandi* or *locus poenitentiae,* and which cannot be made out by mere hearsay or by evidence of the declarations of a party to mere strangers to the transaction in chance conversation.

Second. That the consideration has been paid or tendered. And even the payment of the price in part or in whole will not of itself be sufficient for the interference of a court of equity if the party have a sufficient remedy at law to recover back the money.

Third. That there has been such a part performance of the contract that its rescission would be a fraud on the other party and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract and acquiesced in by the other party -- a requisition which is not satisfied by proof of a scrambling and litigious possession.

Purcell filed a bill against Coleman, Miner and wife, and others in the Supreme Court of the District of Columbia, where the statute of frauds -- enacting that all estates in lands made by parol only and not put in writing and signed by the parties making the same shall have the force and effect of estates at will only -- is in force. The bill set forth that, Coleman having a house in Washington and he, Purcell, a farm in Virginia, "a trade" had been made between them, and the possession and key of the house delivered to him by Coleman, and full payment admitted by Coleman's

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receiving the farm, the title of which he had examined and "the trade" closed, and that Coleman had requested the complainant to prepare both deeds; that Purcell had done so, and had tendered and was now ready to tender to Coleman a deed

for the farm according to the contract.

The bill then went on:

"Your orator further avers that several weeks thereafter, to his great surprise, about the time he had commenced improving the house for the purpose of placing a tenant in it, the said Coleman, in the night time, entered the back way, be means of a ladder, and took from the back door the key on the inside of said house, and held forcible possession of the same until he was found guilty of the charge by two justices, after hearing all the testimony and having the aid of two counsel. That the said Coleman then delivered the key to your orator, and stated in the presence of several gentlemen that the change of property was fair; that he knew its condition before trading, in relation to its value and title; that it was advantageous to him, but that his wife had a few days previous refused to go with him to the said farm, and that was his only reason for his unlawful conduct, and that he would not do it again, and that he would pay all the costs in the case, which he has failed to do."

"Your orator further avers that notwithstanding the key, possession, and equitable title being with your orator, and that he had actually prepared a bill in equity to compel said Coleman to make him a deed for the house and lot and was about to file it, that to his great surprise it appeared that on the 9th March, 1861, one Miner had entered into a conditional contract with the said Coleman for the house and lot and obtained a deed for the same in the name of his wife, the said Miner well knowing at the time he made the conditional contract with the said Coleman that your orator was entitled to the equitable estate in said house and lot as well as the peaceable and lawful possession of the same, that the said Miner, in order to get possession of the house, in the absence of your orator prepared a false key and entered it, first having torn down the printed advertisement from the door showing the house was for rent by your orator. And that your orator had again to incur the expense, loss of time, and annoyance of prosecuting the writ of

forcible entry, and the said Miner was found guilty as charged and fined fifty dollars."

"Your orator further avers that the said Miner stated to your orator in the presence of several gentlemen that it was not necessary to make him a party to the suit to compel the legal title; that if your orator succeeded against said Coleman, that said Coleman was to convey back to him or his wife the land in Virginia which he had conveyed to said Coleman for the house and lot referred to, thereby showing that their pretended exchange was entirely depending on the right of your orator to the said house and lot, which is still in your orator's possession, but owing to the annoyance by said Coleman and Miner, he has been unable to rent it."

"Your orator further avers that it is impossible to place your orator and the said Coleman in the same situation they were in before they exchanged property, because the said Coleman not having given attention to the farm, a barn has been destroyed, and also much of the fencing, as your orator has been informed and believes, and that he has been at expense in repairing the house and lot &c.;"

The bill prayed a specific performance of the contract set up.

The bill was answered by Miner, denying &c.;, and set out that Miner also having a farm in Virginia, he and Coleman had agreed on and actually consummated a *bona fide* and unconditional exchange of the house for it.

The answer then thus went on:

"This defendant further says that soon after the execution of said deed to his said wife, he took possession of the premises (as this defendant was authorized to do as the property of his wife) in a peaceable, quiet, and proper manner, and that he met upon the street a locksmith who unlocked the front door of said house and sold this defendant a key. Some days subsequently, the said complainant demanded of this defendant the possession of said house and lot, which demand this defendant refused to comply with. The next day, the complainant came to the premises with a large number of officers and two justices of the peace, and in their presence again demanded possession

of the house and lot, which this defendant again refused to grant, but being requested by said justices, he opened the door and allowed them to enter. The said justices immediately proceeded to try the question of possession, and, to the utter surprise and astonishment of this defendant, imposed a fine for withholding from the said complainant the possession of the said house and lot. This defendant requested the said complainant to show his title to the said house and lot which he claimed, and the said complainant exhibited some papers, but none of them was signed by said Coleman, nor were they of any consequence in reference to the support of his pretended claim of title. This defendant immediately called upon Coleman and related to him the circumstances in reference to the claim upon the house and lot set up by the complainant, and was informed by Coleman that the complainant had no claim upon the said house and lot, but admitted that they had been negotiating for an exchange of properties, and while the negotiations were going on, he, the said Coleman, learned that the farm in Virginia that said complainant had offered him for said house and lot did not belong to the said complainant, and that he could not give him, the said Coleman, a clear title thereto, and consequently that he, the said Coleman, had declined closing any contract with said complainant."

Mrs. Miner did not answer, but made default. A good deal of testimony was taken, many of the interrogatories -- the parties managing their own case -- being of a most leading character.

The court below dismissed the bill, and the case was now here on appeal.

MR. JUSTICE GRIER delivered the opinion of the Court.

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose, must bring himself within the same conditions

before he can invoke the aid of a court of equity. The statute, which requires such contracts to be in writing, is equally binding on courts of equity as courts of law. Every day's experience more fully demonstrates that this statute was founded in wisdom and absolutely necessary to preserve the title to real property from the chances, the uncertainty, and the fraud attending the admission of parol testimony. It has been often regretted by judges that courts of equity have not required as rigid an execution of the statute as courts of law.

Nevertheless courts of equity have in many instances relaxed the rigid requirements of the statute, but it has always been done for the purposes of hindering the statute made to prevent frauds from becoming the instrument of fraud.

A mere breach of a parol promise will not make a case for the interference of a chancellor. It is plain that a party who claims such interference has the burden of proof thrown on him. He knows that the law requires written evidence of such contracts in order to their validity. He has acted with great negligence and folly who has paid his money without getting his deed. When he requests a court to interfere for him and save him from the consequences of his own disregard of the law, he should be held rigidly to full, satisfactory, and indubitable proof:

First. Of the contract, and of its terms. Such proof

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must be clear, definite, and conclusive, and must show a contract, leaving no *jus deliberandi* or *locus poenitentiae.* It cannot be made out by mere hearsay or evidence of the declarations of a party to mere strangers to the transaction in chance conversation which the witness had no reason to recollect from interest in the subject matter, which may have been imperfectly heard or inaccurately remembered, perverted, or altogether fabricated -- testimony therefore impossible to be contradicted.

Second. That the consideration has been paid or tendered. But the mere payment of the price in part or in whole will not of itself be sufficient for the interference of a

court of equity, the party having a sufficient remedy at law to recover back the money.

Third. Such a part performance of the contract that its rescission would be a fraud on the other party, and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract, and acquiesced in by the other party. This will not be satisfied by proof of a scrambling and litigious possession.

The application of these principles to the case before us will show that the plaintiff has wholly failed to establish a case proper for the interference of a court of equity.

We do not think it necessary to a vindication of our judgment to give a history either of the pleadings or evidence disclosed by the record. The case appears to have been carried on by the parties *propria persona,* who are excusable for their ignorance of all the rules of pleading and practice in a court of chancery or the proper mode of taking testimony. The merits of the case seem to have been tried in a verbal wrangle before two justices, and afterwards converted into a written one for the consideration of the court.

Taking the complainant's bill to be a correct statement of the facts, he has shown no case for the interference of the court. By his statement, the contract was not intended

to be left in parol; but when the parties had each examined the properties proposed to be exchanged, they contemplated to come together and perfect the exchange. If either party had delivered a deed in execution of the "trade" or bargain and the other refused to fulfill his part by making a proper conveyance, or if valuable improvements had been made by the party in possession, there would have been a case for a decree of specific execution. As it was, the defendant declined to go on with the "trade," alleging that the plaintiff's farm was

encumbered. He had given the key of the house to the complainant, which was set up as a delivery of possession, while the defendant denied any intention to make such delivery and took forcible possession of his house. While this contest about the possession was going on, the defendant sold his house and conveyed it to the wife of his counsel, who carried on the litigation for him before the justices and here.

The bill must fail:

1. For want of clear, definite, and conclusive proofs of the contract.

2. For want of any delivery of peaceful and uninterrupted possession.

3. Or of valuable improvements made.

We find no part execution on either side, nor anything but a breach of promise, and a consequent quarrel before the contract of exchange was executed.

Decree affirmed.