

Metta Rambhatlu Vs. Metta Anniahbhatlu and ors.

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Court : Chennai

Decided On : Feb-14-1925

Reported in : 90Ind.Cas.605

Judge : Phillips, J.

Appellant : Metta Rambhatlu;metta Anniah Bhatlu and ors.

Respondent : Metta Anniahbhatlu and ors.;metta Jogi Bhatlu and ors.

Judgement :

Phillips, J.

1. This is an appeal by the 3rd defendant against the decree for specific performance of a contract of sale entered into by defendants Nos. 1 and 2 in favour of the plaintiffs. It has been found that the contract was a valid contract and that the 3rd defendant (appellant) purchased property from defendants Nos. 1 and 2 with notice of the contract. The only question argued in the appeal is that the contract is not one of which performance can be enforced by virtue of Section 21 of the Specific Relief Act I of 1877, because it is a contract for the non-performance of which compensation in money is an adequate relief. Under Section 12 of the Act 'unless and until the contrary is proved, the Court shall presume that a breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money.' This rule would prima facie apply here, but it is argued that, as there is a condition in the contract for the payment of damages

in default of performance whether by the vendor or by the vendee, it must be held that the parties considered that the enforcement of these damages would be adequate in case the contract is not performed. So far as the default on the purchaser's side is concerned, it is not suggested that the provisions for default can be treated otherwise than as furnishing security for performance. There is really nothing to show that the clause with reference to the default on the part of the vendor was for any other purpose. It is suggested that as the amount fixed as damages was high such damages must be deemed to be adequate relief, but as the amount is only Rs. 37-8-0 it does not seem to me a tenable contention. There are no other circumstances to prove that in this case money compensation is adequate. Consequently this plea must be rejected. The Second appeal is dismissed with costs.

In C.R.P. NO. 442 of 1923 and C.M.P. No. 258 OF 1923.

2. Before the appeal was filed, the plaintiff failed to deposit money in accordance with the decree of the lower Appellate Court, and it has been held by that Court that it had no power to alter its order giving three months time for the payment and it dismissed the petition, put in by the plaintiff for extension of time and also the petition put in for amendment of the decree. The plaintiff has filed a civil revision petition against this order and has also put in a petition in this Court asking for extension of time to be granted in case the second appeal is dismissed. So far as the revision petition is concerned it appears to me that in accordance with the principles laid down in *Abdul Shaker Sahib v. Abdul Rahiman Sahib* 72 Ind. Cas. 868 : 44 M.L.J. 107, the lower Court, had power to extend the time. It is argued that that decision relates only to the order of an original Court, but as it is based on the fact that an order for specific performance of this nature is in the nature of a preliminary decree and that the Court does retain power to make any stipulation it thinks fit with reference to the performance. I think that the power must rest in the Court which actually passes the order for specific performance and the language of the judgments in the case support this view--both the judgments of the late learned Chief Justice and Wallace, J. From the fact that the Subordinate Judge dismissed the plaintiff's petition without making any order as to costs, it would appear that he thought that there was ground for extending time, but that because

it was not competent to review its own order, the request could not be granted. In considering whether time should be granted, it has to be remembered that the delay need not be explained so minutely in a case of this sort as in a case for instance, under the Limitation Act where it is sought to excuse a bar of limitation. In the latter the applicant is seeking to revive a right which he has lost and it is necessary for him to show that he has not lost it by his negligence. Here it is a question of destroying a right which plaintiff had to enforce under a contract and it does not necessarily follow that because he has been guilty of some delay in enforcing the contract, that that fact alone should deprive him of a right which undoubtedly is his. Consequently I think that the delay in such a case should be looked at more leniently than in a case of limitation. In the present case the plaintiff states that he was not aware of the provisions in the decree until the time for payment had passed, and if that is so, there were very good reasons for his not making the payment in time. The main cause for the delay appears to be the inordinate time taken by the lower Appellate Court in granting a copy of its decree. The copy was applied for on the 14th October 1921 and the copy was not ready until the 5th January 1922; and for other reasons the plaintiff did not receive the copy till the 17th January. It is this delay by the officers of the Court that has been mainly responsible for the delay. I think that it should be excused, and consequently I order that the time for payment be extended till the date on which the plaintiff deposited money or if the deposit has been withdrawn till one month from this date.

3. I pass no order as to costs of the revision petition.

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