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Court : Kolkata

Decided On : May-12-1955

Reported in : AIR1957Cal209

Judge : P.N. Mookerjee, J.

Acts : Specific Relief Act, 1877 - Sections 14 to 17

Appeal No. : A.F.A.D. No. 55 of 1950

Appellant : Dwijendra Kumar Roy and ors.

Respondent : Monmohan De and ors.

Advocate for Def. : Bankim Chandra Dutt, ;Brotendra Narain Banerjee and ;Bhabani Sankar Bagchi, Advs.

Advocate for Pet/Ap. : Lala Hemanta Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

P.N. Mookerjee, J.

1. A short point requires consideration in the Second 'Appeal. The point is not altogether free from difficulty but it appears to be covered by certain decisions of this Court, to which, reference will be made in the course of this judgment, and,

giving the matter my best consideration, I have myself reached the same conclusion as found favour with the learned Judges on these previous occasions, and, as that conclusion favours the plaintiff-respondent, this appeal must eventually fail.

2. The appeal arises out of a suit for specific performance of a contract to settle the suit lands at an annual rental of Rs. 70/- per annum on receipt of a selami of Rs. 700/-. The suit lands belonged to Defendants Nos. 1 to 4. On 28th Ashar, 1364, B.S., Defendant No. 5 Nibaran Chakrabarty who was an officer of Defendants Nos. 1 to 4, under due authority from them, accepted the plaintiff's offer to take settlement, of the suit lands on the above terms and received from him a sum of Rs. 100/- towards the selami. This was followed by payment of the balance selami of Rs. 600/- on 3rd Sraban following, when a further sum of Rs. 40/- was also paid by the plaintiff to Nibaran towards costs of the necessary document of lease. This document was to be registered on 25th Bhadra 1354 B.S. but the defendants Nos. 1 to 4 refused to register it on the plea that defendants Nos. 6 and 7 were willing to take the lease for a much higher consideration. The present suit was brought on 20th September, 1947, corresponding to early Aswin 1354 B.S. Defendants Nos. 6 and 7 were subsequently impleaded on the allegation that, during the pendency of the suit, they had obtained a document of lease from defendants Nos. 1 to 4 in respect of the disputed property with full knowledge of the said defendants' contract to settle the same with the plaintiff.

3. The suit was contested by defendants Nos. 1 to 4 and defendants Nos. 6 and 7 and their principal defence was that there was no contract with the plaintiff, as alleged in the plaint, that defendant No. 5 Nibaran had no authority to enter into any such contract, that the story of payment or payments narrated in the plaint, was false, that defendant No. 2 was a minor and no specific performance would lie against him, the alleged contract not being binding upon him, and on that ground the entire suit would fail as the alleged contract could not be specifically enforced in part and that defendants Nos. 6 and 7 were bona fide transferees for valuable consideration without notice and were entitled to protection as such,

4. The Courts below have concurrently Overruled the major defences to the suit but, having found that defendant No. 2 was a minor and the plaintiff's contract was not binding upon him the said minor defendant No. 2, they have refused specific performance in respect of his one-fourth share and have granted the plaintiff a decree for Specific performance of the contract of lease in respect of three-fourths of the suit property at the full stipulated rental of Rs. 70/- per annum and without any abatement either in respect of rent or in respect of the selami money. This they have apparently done under the last part or the proviso of Section 15 of the Specific Relief Act.

5. Upon the concurrent findings of fact of the two Courts below, the only point that arises for consideration is, whether in the events which have happened, the plaintiff is in law entitled to any decree for specific performance. The appellants argue that, in view of the fact that defendant No. 2 was a minor at the relevant time and the contract so far as he is concerned, has been held to be not binding and not enforceable in law, specific performance of the contract as against the remaining defendants Nos. 1, 3 and 4 cannot be decreed. For this argument reliance has been placed in particular upon the Privy Council case of *Graham v. Krishna Chunder Dey*, and the decision of the Letters Patent Bench *Das and Sen JJ. in Nakuleswar Chatterjee v. Baidyanath Banerjee*, L.P.A. Nos. 8 and 9 of 1952 (Cal) (B). I am, however, unable to accept this argument and I shall presently indicate my reasons for this view.

6. Defendant No. 2 was certainly a minor at the date of the contract in suit and *Nibaran's* authority, so far as he is concerned, to settle the suit lands with the plaintiff must be held to have emanated from his (defendant No. 2's) guardian brother defendant No. 1. The Courts below have considered the circumstances and they have held that this authority would not bind defendant No. 2 and the contract, so far as he is concerned, cannot be enforced. This is now the accepted position and the rights of the parties will have to be ascertained on this footing.

7. It is clear' from what I have stated above that the suit contract cannot be enforced as a whole and the question is whether it can be specifically enforced, in part, that is, with regard to the shares of the adult contracting defendants Nos. 1. 3

and 4.

8. The relevant law of partial enforcement is to be found in Sections 14 to 17 of the Specific Relief Act. Section 17 of the Act provides that 'the Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections'. The general rule thus is that a contract must be specifically enforced as a whole and the exceptions to this general rule are to be found in Sections 14 to 16 of the Act. The Judicial Committee in , has authoritatively laid down that the four Sections 14 to 17 of the Act taken together 'are both positive and negative in their form' and 'they constitute a complete Code within the terms of which' relief by way of specific performance of part of a contract will have to be brought. My present enquiry is thus of a limited character, namely, whether the plaintiff has succeeded in making out a case under any of the said three Sections 14 to 16.

9. On the facts found, the suit contract was made in favour of the plaintiff by defendants Nos. 3 and 4 and defendant No. 1 acting on behalf of himself and his minor brother defendant No. 2, and the contract, so far as this defendant No. 2 is concerned, is unenforceable in law. In the face of the decision in L.P.A. Nos. 8 and 9 of 1952 (Cal) (B), cited by the appellants, it is difficult to apply Section 16 to such a case when, under almost similar circumstances, this Court (Das and Sen, JJ.) refused to hold that the disputed contract was divisible in the sense that its enforceable and unenforceable parts stood on 'separate and independent' footings within the meaning of the Section. I must, therefore, leave aside Section 16 and turn to the other two Sections 14 and 15. Of these, again, Section 14 requires that the unenforceable part should bear only a small proportion to the whole in value which obviously refers to or connotes negligible or insignificant or immaterial deficiency, implying substantial compliance with the whole contract. The present case is certainly not one of substantial compliance, as contemplated in Section 14 and, accordingly, that section also must be left out of account. I am thus left with Section 15 which applies where inter alia substantial compliance is not possible and the latter part of the section which is in the nature of a proviso provides that in such a case the defaulting party may be made

'to perform so much of his part of the contract as he can perform provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant.'

This section has often been applied to cases like the present and specific performance of the enforceable part of the contract has been decreed if the plaintiff relinquished his claim to the remainder as required by the statutory proviso, quoted above. For instance, it is enough to refer to Dinanath Sarma v. Gour Nath Sarma : AIR1925 Cal434 ; Purna Chandra Mukherjee v. Gopendra Krishna AIR 1926 Cal 744 (D); Panchananda Kundu v. Rajani Kanta Pal : AIR1931 Cal463 ; Rai Promatha Nath Mittra v. Gostha Behari Sen . Reference may also be made to Shama Charan Kotal v. Kumed Dasi 27 Cal LJ 611: (AIR 1918 Cal 889) (G); Srinath Bhattacharya v. Jatindra Mohan Chatterji, 30 Cal WN 263: (AIR 1926 Cal 445) (H); Mahendra Nath Srimani v. Kailash Nath Das : AIR1929 Cal50 ; Nripendra Ch. Sarkar v. Ekherali Joardar : AIR1930 Cal457 and Baluswami Aiyar v. Lakshmana Aiyar, ILR 44 Mad 605: (AIR 1921 Mad 172) (FB) (K), which appear to proceed on the same principle and the correctness of the position has been accepted and applied in the L.P.A. Nos. 8 and 9 of 1952 (Cal) (B), particularly relied on by the appellants, where the decision of the Privy Council in , has been exhaustively reviewed, examined and explained. Harendra Chandra Das v. Nanda Lal Roy : AIR1933 Cal98 is even wider but, in view of the fact that the plaintiff is content to have the lesser relief under Section 15 (Proviso), it is unnecessary to consider the applicability of that case to the facts before us. I would, accordingly, hold that the plaintiff-respondent is entitled to a decree for specific performance in regard to the three-fourths share of the adult contracting defendants Nos. 1 and 3 and 4 without any abatement in the stipulated selami and rent in respect of the sixteen annas share. That is what the Courts below have given him and the plaintiff has definitely accepted it and thus waived or relinquished all his claim in respect of the remaining one-fourth as required by the proviso in Section 15. Even if the necessary relinquishment be not inferable from the above circumstance, the plaintiff-respondent is in no worse position, as his learned Counsel has categorically and unequivocally stated before me that his client is prepared to relinquish his claim to further performance and compensation,

as required by the proviso in Section 15. This is clearly sufficient, as relinquishment for purposes of the said section can be made at any stage of the litigation (Vide the Kalyanpur Lime Works Ltd. v. The State of Bihar, : [1954]1SCR958 (M), approving Waryam Singh v. Gopi Chand, ILR 11 Lah 69:(AIR 1930 Lah 34) (N), and as, in my opinion, there is nothing on the present record to justify withholding of specific performance, in the exercise of my discretion, I am bound to affirm the decisions of the two Courts below. This appeal must, therefore, fail.

10. I, accordingly, dismiss this appeal, but, having regard to the circumstances of this case I direct the parties to bear their own costs in this Court.

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