

Kartik Chandra Pal Vs. Dibakar Bhattacharjee

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Court : Kolkata

Decided On : Feb-24-1949

Reported in : AIR1952Cal362

Judge : R.P. Mookerjee and ; J.P. Mitter, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 2 - Order 21, Rule 32

Appeal No. : A.F.O.O. No. 119 of 1948

Appellant : Kartik Chandra Pal

Respondent : Dibakar Bhattacharjee

Advocate for Def. : R.B. Pal and ; Purushotam Chatterji, Advs.

Advocate for Pet/Ap. : Apurba Charan Mukherji and ; Ganga Narayan Chandra, Advs.

Disposition : Appeal dismissed

Judgement :

R.P. Mookerjee, J.

1. This is an appeal on behalf of the J.-D. against an order passed by the Additional Subordinate Judge, Burdwan dismissing an objection filed under Section 47, Civil P. C.

2. The plff.-respondent had brought a suit for specific performance of a contract against the defts. The suit was decreed on 21-2-1948 in the following terms: Claim for

'Properties mentioned in the Schedule below belonged to one Raman Dhara & defts. became owners of the same after the death of said Raman Dbara Defts. on different dates took Rs. 600 as earnest money from the plff. & executed a bainanama in favour of the plff. & promised to sell those properties to plff. by executing & registering a sale deed. A deed of sale was dratted on proper stamps on the advice of the deft. 1, But as defts. subsequently refused to execute & register the said deed, plff's claims are for a decree of specific performance of contract in respect of the said deed against the deft. & on deft, fail- ing to execute & register the deed within the same limit prescribed by the Court to have the deed executed & registered by the Court & to have coats of this suit from the defts. & if claim of specific performance of contract be refused to the Court then to have tbe amount of money raid by the defts. with interest. Claims valued for Rs 9024 Rupees nine thousand twenty four only.

(Schedule omitted)

This suit coming on this day for final disposal before Sreejot Jyotindra Mohan Bir Sub-Judge in the presence of Babu Haradas Banerjee, pleader for plff. & of Babu Durga Pada Choudhury pleader for the deft.

It is ordered & decreed that the suit be decreed on contest with cost?. Deft, do execute & register the sale deed Ex. 3 within one month from today upon plff's depositing in Court, the sum of Rs. 2998-less costs of the present suit awarded in plff's favour in defence the plff. may have valid & proper kobala through Court & that the sum of Rs. 1071 4-9 paid by the deft, to the plff. on account of the costs of this suit.'

3. After the decree had been passed, a joint application was filed on behalf of the plff. & deft, 1 (deft. 2 having died in the meantime leaving deft, 1 as the sole legal representative) stating inter alia that the deft. intended to have the document registered & that he 'amicably gives up khas possession from this day to the properties sold out' & the plff. also

'amicably paid to the deft, the balance of the consideration money getting the kobala duly executed & registered in respect of property included in Ex. 3 & getting khas possession this day of the property sold.'

The prayer was in the following terms:

'It is accordingly prayed that in the aforesaid circumstances a proper order, may be passed directing due execution & registration of the said deed on the deft's acknowledging receipt of the balance of the consideration money & for granting khas possession to the plff.'

The document was accordingly returned on a joint receipt by the lawyers of both the parties.

4. On 10-8 1948 the D. H. filed an application in execution of the decree aforesaid with a prayer for khas possession of the properties mentioned in the schedule by evicting the J.-D. therefrom under O. 21, r. 32, Civil P. C. The J.-D. filed an objection under Section 47 of the Code raising various points in opposition. We need refer only to those which are relevant for the present appeal. They are: (1) That after the execution of the document in terms of the decree there is nothing further which can be put into execution. (2) That even if the D. H. was entitled to pray for delivery of khas possession in execution of the decree he is not entitled to do so in as much as the D.H. had admitted in the joint petition filed in Court on 21.2.1948 that possession had been delivered on that day.

5. The learned Subordinate Judge overruled the objections raised & directed the execution to proceed.

6. On behalf of the appellant the contentions as made in the Court below are reiterated.

7. Before we consider the terms of the decree which is under execution, it is necessary to consider the scope & function of a suit for specific performance. It is

incontestable that in a suit for specific performance of contract for the sale of land it is open to the plff. to join in the same suit two prayers, one for the execution of the deed of transfer & another for recovery of possession of the land in question. Ranjit Singh v. Kalidasi Devi, 37 Cal. 57. Mookerjee J. in Madanmohan Singh v. Gaja Prasad Singh, 14 C. L. J, 159, repelled the argument that the plff. in a suit for specific performance has no cause of action for delivery of possession until the conveyance is actually executed in his favour & the title is completed. It was also held that the right to recover possession springs out of the contract which is being specifically enforced & not on the narrower view expressed in some of the oases that it was only as a result of the execution & completion of the conveyance that such a right arises. The same view was expressed by the Patna High Court in Deonandan Prasad v. Janki Singh, 5 Pat. L. J. 314:

'In a suit for specific performance of a contract for the sale of land it is open to the plff. to join with his prayer for especial performance a claim for delivery unless the contract expressly disentitles him to Bach relief.'

In a more recent decision Atal Behary v. Barada Prasad, A. I. R. (18) 1931 Pat. 179, the Patna High Court has reiterated the same view & has held that even when in an order for the execution of the necessary document the Court makes no specific direction for possession being delivered, yet the executing Oourt has a right to order delivery of possess on of the property which is the subject matter of the suit. Some of the Courts have gone so far as to hold that if the plff. in a suit for specific performance omits to ask for delivery of possession he -might be barred under the provisions of O. 2, R. 2, Civil P. C. Deonandan Prasad v. Janki Singh (Supra); Narayana Kavirayan v. Kandasami, 22 Mad. 24 ; Nathu v. Budhu, 18 Bom. 537. We do not overlook the contrary view expressed in a later case by the Madras High Court in Krishnammal v. Soundararaja Aiyar, 38 Mad. 698, but in a more recent case reported in Sundara Ramanujam Naidu v. Sevalingam Pillai, 47 Mad. 150, this view was not followed & dissented from. It was also pointed out that if the learned Judges in the case reported in Krishnammal v. Soundararaja Aiyar, 88 Mad, 698, intended to dissent from the earlier view there should have been a reference to a larger Bench & that decision was not taken to represent the view of the Madras High Oourt.

8. On a reference to the plaint in the present case, it is evident that the entire case was based on the agreement evidenced by Ex. 3. The prayer was for specific performance of the contract as contained in that document. On a reference to the decree passed in the present case also it will appear that the opening words of the ordering portion of the decree are in the following terms : 'It is ordered & decreed that the suit be decreed on contest with cost.' No doubt there are further directions given as to the due execution of the document as also for the payment of the balance of the consideration money. As observed by Einkin C. J. in the case of Heramba Chandra v. Jyotish Chandra, 59 cal. 501, the usual form of a decree in a suit for specific performance is that the agreement is referred to be specifically performed & carried into execution with a further provision about the details of the steps to be taken by the parties. The most important part of the decree is that portion where the Court directs the contract to be specifically performed. The details which follow do not in any way limit the jurisdiction of the executing Court to the particular steps which are mentioned in the decree but all such: other steps which ought to be taken for giving full effect to the decree for specific performance are not only within the competence of the Oourt but the Court is bound to assist the party to that extent, Eankin C. J. quotes with approval the observation by Sergeant C J. in Karim Mahomed

v. Rajooma, 12 Bom. 174, where a decree was allowed to be amended to be put in the proper & usual form so as to declare.

'that the agreement ought to be specifically performed & the Court doth order & decree that the same be specifically performed accordingly,'

for the purpose of avoiding any doubt as to its scope & implication.

9. When the decree in the present case is in the general form that the suit be decreed on contest reference his to be made to the plaint along with the agreement, Ex.-6. There is no doubt that the declaration made by the trial Judge was 'for the purpose of giving all the reliefs which the party required for giving effect to the agreement.

10. We ought to remember in this connection that no special form of decree in a suit for specific performance is supplied by the Civil P. C. chap. II, Specific Belief Act, deals with the various circumstances under which a contract may be enforced specifically & where it cannot be so allowed. When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually the intervention of the Court is required & the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court. A sale of a property after payment of the consideration & upon due execution of the deed of sale pre-supposes & re-quires the vendor to put the purchaser in possession of the property. It cannot be suggested that when a party comes to Court for the specific performance of a contract he is to be satisfied with simply the execution of the document on payment of the consideration money. The Court when allowing the prayer for specific performance vests the executing Court with all the powers which are required to give full effect to the decree for specific performance. By the decree for specific performance, the Court sets out what it finds to be the real contract between the parties & declares that such a contract exists & it is for the executing Court to do the rest.

11. It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail all the different steps which are required to be taken to implement the main portion of the order directing specific performance of the contract. The executing Court is in such a case vested with authority to issue necessary directions.

12. In our view, therefore, the directions given by the trial Court for putting the D. H. in pos-tession is correct & must be maintained unless of course the next point taken on behalf of the judgment-debtor is sustainable.

13. As already indicated, the J. D. relies upon the passages already quoted in the joint petition filed on behalf of the plff. & the deft, on 21-2-1948. The interpretation which Mr. Mukherji wants to put on this petition if given effect to would introduce clear contradictions between the body of the petition & the prayer as made. We have gone through the original petition in Bengali & have no doubt that what the parties recited in the body of the petition was not what has already been done but what was purported to be done by the parties. The parties clearly stated that they wanted directions from the Court on the points referred to therein including the prayer for delivery of possession. That this was the real intent of the parties is clear from the last portion of the prayer where both the parties pray for delivery of possession to the plff. under the orders of the Court. This point must therefore be overruled.

14. The appeal is accordingly dismissed with costs.

J.P. Mittar, J.

15. I agree.

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