

**IN THE HIGH COURT OF LAHORE**

Decided On: 10.03.1924

Appellants: **Imam Din**

**Vs.**

Respondent: **Muhammad Din and Ors.**

**JUDGMENT**

1. This is an appeal against a decree dismissing a suit for the specific performance of a contract for sale. The following facts will disclose the nature of the question that arises for decision in this appeal.

2. Defendants 1 and 2 agreed to sell the land in dispute to the plaintiff for Rs. 5,600 by a deed dated 19th September 1919. Defendants 1 and 2 were originally occupancy tenants of the land. They agreed to sell the land to plaintiff on acquiring proprietary rights therein. The proprietary rights were conferred upon them on 8th October 1919. Instead of selling the land to the plaintiff they sold it to Abdul Wahab, defendant 3, by a registered sale-deed dated 16th October 1919. Defendant 3 took possession under the deed.

3. Defendant 1 is the uncle of original Defendant 2, the latter being a minor at the date of the agreement in favour of the plaintiff as well as at the date of the sale in favour of the defendant.

4. The plaintiff brought the suit for the specific performance of the above agreement. Defendant 1 did not put an appearance and the suit proceeded ex parte against him. On behalf of the minor defendant it was pleaded that he being a minor, his uncle, defendant 1, had no right to sell his share in the land in dispute. Defendant 3, the vendee, under the sale-deed, dated 16th October 1919, pleaded that he had no knowledge of the alleged agreement in favour of the plaintiff, and that therefore he had a preferential and indefeasible title under his sale-deed.

5. The principle questions that arose for decision in the Court below upon these pleadings were:

(1) Whether defendant 1 had any right to sell the share of defendant 2 who was a minor; and:

(2) Whether it lay upon defendant 3 to prove that he had no knowledge of the agreement of sale in favour of the plaintiff; or whether it was the duty of the plaintiff to prove that the vendee, defendant 3, had knowledge of the agreement in his favour.

6. The trial Court found that defendant 1 had power to sell the share of the minor also and that the burden of proof lay upon the plaintiff to prove positively that defendant 3 had notice of the agreement in his favour. It further held that even if defendant 1 had no power to convey the interests of the minor, the plaintiff cannot succeed, as a partial decree for the specific performance cannot be made. Upon these findings the Court below dismissed the suit.

7. The plaintiff has come up in appeal to this Court, and it has been contended that the decision of the lower Court on the question of the burden of proof is opposed to the current of authorities. There is no doubt that there used to be some controversy as to the burden of proof in such cases, but the matter appears to have been set at rest by later authorities for, example see the case of Nawbat Rai v. Dhunkal Singh A I R 1916 All 342, and the case of Ganga, Prasad v. Khushal Chand A I R 1917 Nag 33.

8. In our opinion the burden of proof lay upon Defendant 3 to prove that he had no

knowledge of the agreement of sale in favour of the plaintiff. He has given some evidence to prove that he had not this knowledge; but this evidence is inconclusive, and even if accepted proves nothing more than that the existence of a previous agreement was not discussed at the time of the sale. Defendant 3 did not put himself in witness-box nor did he state on oath that he had no knowledge. We should have been prepared to accept light evidence in proof of this issue in negative form but as in our opinion there is no evidence at all worthy of the name, we are constrained to hold that Defendant 3 has failed to discharge the burden of this issue.

9. The other question that requires decision is whether Defendant 1 had any right to agree to sell the interests of the minor defendant. It has not been seriously contended before us that he had such a right. It is however urged that it does not lie in the mouth of Defendant 3, who has derived his own title from an equally vitiated source, to question the title of the plaintiff. Whatever might be the position in an ordinary suit where it is a question of ordering specific performance it is for the Court to decide whether any relief should be given; and if so what and in circumstances like the present, where the plaintiff bases one-half of his title on a wholly void agreement, we find that he is entitled to no relief so far as the share of the minor is concerned.

10. The next question that arises is whether a decree for specific performance should be granted in respect of the share of Defendant 1. The plaintiff has offered to purchase the share of defendant 1 alone on payment of the entire consideration, i. e., Rs. 5,600. There is authority for such a proposition for example, see Mahmud Ali v. Yawar Beg MANU/UP/0427/1915 : AIR1915All263 and Panota Subba Rani Beddy v. Vadamadi Seshachellam Chetty (1910 ) 33 Mad 359. In the latter case it was held that the purchaser in such a case will be entitled on offering to pay the whole purchase-money to a decree directing the adult party to convey all his interest in the properties.

11. We accordingly accept the appeal in part and direct that Defendant 1 should execute a sale-deed in favour of the

plaintiff conveying all his interests in the property in dispute in consideration of the entire amount of Rs. 5,600 minus Rs. 500 (earnest money already paid). Having regard to the special features of this case we make no order as to costs.

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