

ORIGINAL CIVIL.

Before Ghose J.

PURNA CHANDRA DUTT

v.

INDRA CHANDRA ROY.*

1921

July 13.

Vendor and Purchaser—Principal and Agent—Agent employed to procure a buyer—Authority—Specific performance.

On the 20th January 1920, the defendant handed to two brokers a letter in these terms : " I authorise you to procure a buyer of my divided portion of the above premises (meaning premises Nos. 1 and 2, Gopal Chandra's Lane) for Rs. 45,000 and on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase money. The same will be paid at the registration of the conveyance, otherwise not. This letter will remain in force for a week." On the 27th January 1920, the offer contained in the said letter was accepted by the plaintiff and thereupon the fact of such acceptance was communicated on the same day to the defendant :—

Held, that the offer contained in the said letter amounted only to an offer to be put into touch with intending buyers of the premises in question and that it was in no sense an authority to the brokers to sell the plaintiff's property or an offer on the part of the vendor to sell the premises to whoever might be brought into touch with the vendor by the brokers and that in the circumstances, the plaintiff's suit for specific performance must be dismissed with costs.

Hamer v. Sharp (1), *Saunders v. Dence* (2), *Chadburn v. Moore* (3) and *Thuman v. Best* (4) followed.

ORIGINAL SUIT.

This was a suit for a declaration that there was a valid and subsisting agreement between the plaintiff and the defendant for the sale of the defendant's divided portion of premises Nos. 1 and 2, Gopal Chandra's Lane, for an enquiry whether a good title

* Original Civil Suit No. 348 of 1920.

(1) (1874) L. R. 19 Eq. 108.

(3) (1892) 61 L. J. Ch. 674.

(2) (1885) 52 L. T. 644, 646.

(4) (1907) W. N. 170.

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could be made out to the said premises, for an order on the defendant specifically to perform the said agreement, for damages, etc.

The facts of the case are fully stated in the judgment. The following issues were settled between the parties:—

(i) What was the offer made by the letter of the 20th January 1920?

(ii) Does the acceptance of sale by the plaintiff constitute a valid agreement of sale between the plaintiff and the defendant?

(iii) If so, did the plaintiff carry out his part of the agreement?

(iv) Was the alleged acceptance in time?

Mr. S. K. Chuckerbutty (with him *Mr. A. N. Chaudhuri* and *Mr. N. K. Chatterjee*), for the defendant. Having regard to the state of the evidence, we do not press the last contention. On a true construction of the letter of the 20th January 1920, it did not amount to an authority to sell. The letter was intended merely to make *pucca* the broker's remuneration. There was a world of difference between a letter authorizing a broker to sell and one authorizing a broker to procure a purchaser. In the latter case the vendor reserved to himself the further consideration of the matter when an offer for the purchase of the property is placed before him by the broker in pursuance of that letter. The matter is concluded by authority: *Hamer v. Sharp* (1), *Saunders v. Dence* (2), *Chadburn v. Moore* (3), *Thuman v. Best* (4). See also Fry on Specific Performance, 6th edition, p. 254, and Halsbury's Laws of England, Vol. I, p. 166. The plaintiff by accepting the offer contained in the letter

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in question could not in law urge that there was a valid agreement between him and the defendant for sale and purchase of the premises in question.

Mr. S. N. Bannerjee (with him *Mr. S. Ghose* and *Mr. A. P. Basu*), for the plaintiff. The offer contained in the letter of the 20th January 1920 was an offer on the part of the vendor to sell the premises in question to whoever might be brought into touch with the vendor by the broker. The English cases relied upon by *Mr. Chuckerbutty* did not apply.

Curr. adv. vult.

GHOSE J. This is an action for specific performance of an agreement to sell the divided portion of premises Nos. 1 and 2 Gopal Chandra's Lane in the town of Calcutta for a sum of Rs. 45,000.

The facts shortly are as follows. On the 20th January 1920, the defendant handed to two brokers *Bhupendra Kumar Dutt* and *Gosto Behari Das* a letter in these terms:—

“ Dear Sirs,

I authorise you to procure a buyer of my divided portion of the above premises” (meaning premises 1 and 2 Gopal Chandra's Lane) “ for Rs. 45,000 and on your sending same I shall pay you as remuneration at 1 per cent. on the purchase money. The same will be paid at the registration of the conveyance, otherwise not. This letter will remain in force for a week.”

On 27th January 1920, the offer contained in the said letter was accepted by the plaintiff and thereupon the fact of such acceptance was communicated to the defendant through the said brokers and also by a letter written by the plaintiff's attorney, *Mr. B. P. Chunder*, which ran in these terms:—

“ Calcutta, 27th January 1920.

Dear Sirs,

Re. 1 and 2 Gopal Chunder's Lane.

My client, *Babu Purna Chandra Dutt* of 7-2-1 *Joynarain Chunder's Lane*, hereby accepts the offer made by you to brokers, *Babus*

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Bhupendra Kumar Dutt and Gosto Behari Das, for the sale of your divided portion of the above premises for Rs. 45,000. Please send me the documents of title for investigation. If you so desire, my client is willing to enter into a formal agreement for sale and purchase."

The plaintiff alleges that in the circumstances, there was a valid agreement between him and the defendant for the sale of the defendant's divided portion of the house and premises 1 and 2 Gopal Chandra's Lane and that although he has repeatedly called upon the defendant to perform his part of the contract and to send the documents of title for examination by the plaintiff's attorney, the defendant has failed and neglected to comply with the plaintiff's demands. The defendant in his written statement stated that the offer contained in the letter did not amount to an offer to sell the divided portion of the premises in question; it only amounted to an offer to be put into touch with intending buyers of the premises in question and that it was in no sense an authority to the brokers to sell the plaintiff's property. He further raises the question that the acceptance of the offer by the plaintiff, even if it be assumed that it was communicated to him on the 27th January 1920 and not on the 28th January 1920 (as the defendant alleges) was out of time because time ran from the 20th January 1920 to the 26th January 1920 both days inclusive.

At the hearing Mr. Chuckerbutty, who appeared for the defendant, did not press the last contention and he agreed that I should treat the acceptance as having been communicated to the defendant on the 27th January 1920 and that it was in time. He, however, argued on the construction of the letter of authority to the brokers that the same did not amount to an authority to sell and that, therefore, the plaintiff, by accepting the offer contained in the letter in question

could not in law urge that there was a valid agreement between him and the defendant for sale and purchase of the premises in question.

The matter seems to be concluded by authority. It is settled law that if an owner of land instructs a broker or an estate agent to place it on his books and to find a purchaser for him, that does not authorise the agent to enter into an open contract for sale of the land or indeed to make any firm contract for sale binding the principal: see *Hamer v. Sharp* (1), *Saunders v. Dence* (2), *Chadburn v. Moore* (3) and *Thuman v. Best* (4). (See also Fry on Specific Performance, 6th edition, page 254.) I think on a fair construction of the letter of authority in this suit, giving to the words thereof their natural and literal meaning, it is impossible to read the letter as an authority to sell the property. The language is "I authorise you to procure a buyer of etc." These words mean, in my opinion, that offers for the purchase of the property in question should be placed before the vendor for his consideration. They do not amount to an offer on the part of the vendor to sell the premises in question to whoever may be brought into touch with the vendor by the broker. That being so, I am of opinion that there was no valid agreement for the sale and purchase of the property in question between the plaintiff and the defendant and that the plaintiff's suit cannot succeed.

On these short grounds, I am of opinion that the plaintiff's suit fails and must be dismissed with costs on scale 2.

A. P. B.

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