

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

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May, 25.

NIHAL SINGH AND ANOTHER (DEFENDANTS) v. FATEH CHAND AND ANOTHER (PLAINTIFFS).\*

*Specific relief—Suit by purchaser deprived of property in consequence of a decree for specific performance, to recover consideration money from successful plaintiffs—Equitable relief—Privity of contract.*

B agreed to sell certain property to N and D with the object of paying off a decree held against him by S. The terms of the sale were that Rs. 100 was to be paid as earnest money, Rs. 200 in cash, and Rs. 2,600 was to be paid to the decree-holder.

Thereafter B, instead of carrying out this agreement, sold the property in question to S himself for Rs. 3,800, of which Rs. 3,034-6 were credited in payment of the decree, satisfaction of which was entered up, and the balance was paid in cash to the vendor.

N and D then sued B and S for specific performance of the agreement to sell to them, and on appeal obtained a decree from the High Court, in pursuance of which a conveyance was executed and S lost possession of the property.

The surviving brothers of S, who had died meanwhile, then sued N and D to recover from them the sum of Rs. 3,034-6, the part of the consideration for the sale to S which had been applied in satisfaction of his decree :

*Held* that the suit would lie, and the plaintiffs were entitled to recover, but only to the extent of Rs. 2,600, the amount which, under the original agreement between B and the defendants, was declared payable to the decree-holder S.

*Debnarayan Dutt v. Chunilal Ghose* (1) referred to.

The facts of this case are fully set forth in the judgment of the Court.

Dr. Kailas Nath Katju, for the appellants.

Munshi Girdharilal Agarwala, for the respondents.

LINDSAY and KANHAIYA LAL, JJ. :—This case has been argued at considerable length before us but we have come to the conclusion that the decree of the lower court ought to stand.

The suit was a suit for the recovery of a sum of Rs. 3,034-6 alleged to be due from the first two defendants, Kunwar Nihal Singh and Kunwar Dwarka Singh. The plaintiffs in the suit were Fateh Chand and Hira Lal, who admittedly are the brothers and survivors of one Sewa Ram.

It is necessary to set out in some detail the earlier history of this case. Sewa Ram had obtained in the year 1908 a simple money decree against a judgment-debtor, named Kunwar Bhawani Singh, who is impleaded in the present suit as defendant No. 3.

\* Second Appeal No. 388 of 1921, from a decree of Shekhar Nath Banerji, District Judge of Mainpuri, dated the 14th of December, 1920 confirming a decree of Raghunath Prasad, Subordinate Judge of Mainpuri, dated the 2nd of April, 1919.

(1) (1913) I. L. R., 41 Calc., 137.

In execution of that decree Sewa Ram attached certain immovable property on the allegation that it belonged to his judgment-debtor.

This attachment produced an objection on the part of Bhawani Singh's wife, Musammat Durga Kunwar, who put forward the plea that the property had been transferred to her.

This objection of Musammat Durga Kunwar was allowed. Thereafter Sewa Ram brought a declaratory suit for the purpose of establishing that the property which he had got attached was, in fact, the property of his judgment-debtor. Sewa Ram won this case and, thereafter, began execution proceedings.

Meanwhile, on the 19th of February, 1910, Bhawani Singh entered into an agreement with Nihal Singh and Dwarka Singh to sell to them certain zamindari property, his object being to pay off the decree which was outstanding in favour of Sewa Ram.

There can be no question that by this agreement Bhawani Singh undertook to sell the property to Nihal Singh and Dwarka Singh for a sum of Rs. 2,900, Rs. 100 was given as earnest money, Rs. 200 was paid in cash, and the balance of Rs. 2,600 was left with the purchasers for payment to Sewa Ram in satisfaction of his decree.

This sale, however, was not carried out, and on the 7th of June, 1910 Sewa Ram, the decree-holder, himself got a sale deed from the judgment-debtors, Bhawani Singh and his wife, Durga Kunwar. The consideration of this deed was a sum of Rs. 3,300. Out of this Rs. 3,034-6 were appropriated by Sewa Ram in satisfaction of his decree. Sewa Ram certified satisfaction to the court. The rest of the money was paid to the vendor in cash.

Following on this, in the year 1912, Nihal Singh and Dwarka Singh brought a suit for specific performance of the contract for conveyance which had been executed in their favour on the 19th of February, 1910. They lost this suit in both the courts below, but in second appeal this High Court gave a decree directing that specific performance of the contract to sell should be enforced. It was directed by this Court that Sewa Ram, the subsequent purchaser, and Bhawani Singh should join in executing a conveyance in favour of the successful plaintiffs, Nihal Singh and Dwarka Singh, and that conveyance was ultimately executed on behalf of Sewa Ram and

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Bhawani Singh by the learned Subordinate Judge of Mainpuri. The terms embodied in this conveyance were the terms which had been agreed upon by the parties to the contract of the 19th of February, 1910. After this conveyance had been executed by the Court in favour of Nihal Singh and Dwarka Singh, Sewa Ram lost possession of the property, and now we have this present suit brought by the survivors in interest of Sewa Ram to recover from Nihal Singh and Dwarka Singh a sum of Rs. 3,034-6, that being the amount which under the sale-deed executed in favour of Sewa Ram was appropriated in satisfaction of Sewa Ram's decree.

The suit was contested on every imaginable ground. The main plea with which we are concerned was that there was no privity of contract between Nihal Singh and Dwarka Singh on the one side and the plaintiffs or their predecessor on the other. Great reliance was placed upon the fact that Sewa Ram was a stranger to the contract of the 19th of February, 1910 and it was pleaded that being a stranger to that contract, neither he nor his successors were entitled to sue for the purpose of enforcing any covenant entered into between the defendants and their vendor.

The result has been that both the courts below have decreed the claim, though not to the extent to which the plaintiffs desired. Both the courts have held that although the defendants Nos. 1 and 2 are liable to these plaintiffs, they are only liable to the extent of Rs. 2,600, that being the amount which under the contract of the 19th of February, 1910 was left with them for payment to Sewa Ram. Interest on this sum to the amount of Rs. 144-11 has been allowed.

It has been strongly argued before us that the suit was not maintainable inasmuch as Sewa Ram was no party to the contract of the 19th of February, 1910. There can be no doubt that the general law is that a stranger to a contract is not entitled to sue, but there are cases in which the courts have granted relief in favour of a stranger to the contract on principles of equity. We have been referred to a great many cases of various courts but we shall content ourselves with referring to the case of *Debnarayan Dutt v. Chunilal Ghose* (1). There the whole law on the subject has been lucidly laid down in the judgment of JENKINS, C. J. We consider that there is a close analogy between the facts of the present case

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and the facts of the case with which the Bench of the Calcutta High Court was dealing in the reported case, and we think, when all the facts are examined, it is not possible to maintain the plea that Sewa Ram or his successors-in-interest, the present plaintiffs, are altogether strangers to the dealings between Bhawani Singh on the one side and Nihal Singh and Dwarka Singh on the other, so as to preclude them from asking for the relief which has been asked for in this case. We start with the fact that Sewa Ram was outside the contract of the 19th of February, 1910; but then we have the fact that Sewa Ram was impleaded as defendant in the suit for specific performance of that contract which was brought by Nihal Singh and Dwarka Singh, and we have the fact that under the decree of this Court Sewa Ram and Bhawani Singh were both directed to convey the property in dispute to Nihal Singh and Dwarka Singh. Further, it is not to be doubted that it was the intention of this Court that this conveyance to be executed both by Sewa Ram and Bhawani Singh was to be executed upon the very terms which were embodied in the contract of the 19th of February, 1910 and one of those terms was that Nihal Singh and Dwarka Singh were to be liable to pay Rs. 2,600 to Sewa Ram in discharge of the debt owing to him from Bhawani Singh under the decree. In other words, although Sewa Ram was at the outset a stranger to the dealings between Bhawani Singh and his purchasers, nevertheless by reason of these subsequent proceedings terminating in a decree for specific performance passed by this Court, Sewa Ram was brought into a degree of privity with Nihal Singh and Dwarka Singh which, in our opinion, justifies us in holding that this is a case in which the equitable relief ought to be granted as it was granted in the Calcutta case to which we have referred. There the relief was granted on the ground of certain subsequent dealings between the plaintiff and the defendant No. 5, dealings by which the parties were brought into a relation of privity, and it was upon that basis that the Calcutta Court considered that the plaintiff was entitled to equitable relief. Similarly in the present case we think there can be no doubt that in equity the plaintiffs are entitled to the sum which was awarded to them by the court below. In our opinion no question arises of *res judicata* or of the application of section 47 of the Code of Civil Procedure. The case is to our mind a straightforward case in which the plain-

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tiffs had a cause of action arising out of a decree which was passed by this Court for specific performance and out of the conveyance which followed upon that decree.

The result, therefore, is that we affirm the decision of the court below and dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.*

DALIP SINGH (PLAINTIFF) v. KHURSHED HUSAIN (DEFENDANT).\*

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*Act (Local) No. IV of 1912 (Court of Wards Act), sections 37, 45—Property of disqualified proprietor retained after death of owner—Position of successor as to debts incurred by him.*

Where, on the death of a ward, the possession of the ward's property is still retained by the Court of Wards, the ward's successor is not disqualified from incurring any liability which might affect the property after the debts and liabilities due by the Court of Wards have been discharged.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Nihal Chand Vaish*, for the appellant.

Maulvi *Iqbal Ahmad*, for the respondent.

LINDSAY and KANHAIYA LAL, JJ. :—This appeal arises out of a suit brought by the plaintiff (appellant) for the recovery of money due on account of cloth supplied to and money borrowed by the defendant. The defence, so far as it is material for the purpose of this appeal, was that the defendant was, at the time of the alleged transactions, a ward of the Court of Wards and, therefore, incompetent to enter into a contract, to make him pecuniarily liable under section 37 of the Court of Wards Act.

The court of first instance decreed the claim; but the lower appellate court set aside the decree. The view taken by the court of first instance was that the defendant was a ward as regards the property which he had inherited from Musammat Ahmadi Begam, but was not a ward as regards the property which he owned in his own right. The lower appellate court, however, held that he was a ward with respect to both the properties.

It appears that Musammat Ahmadi Begam was the owner of certain property, the superintendence of which was taken over by the Court of Wards on the 22nd of August, 1911. She

\* Second Appeal No. 268 of 1921, from a decree of E. R. Neave, District Judge of Meerut, dated the 22nd of December, 1920, reversing a decree of P. K. Roy, Subordinate Judge of Meerut, dated the 15th of May, 1920.