

APPELLATE CIVIL

1934
July, 21

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Allsop

GAURI SHANKAR (DEFENDANT) *v.* RAM SEWAK AND AN-
OTHER (PLAINTIFFS) AND SHAMBHU PRASAD (DEFENDANT)*

Specific Relief Act (I of 1877), section 27(b)—Contract for sale of immovable property—Subsequent sale to another person—Vendee paying bulk of purchase price after notice of prior contract, though a small part before such notice—"Paid in good faith without notice"—Burden of proof.

In a suit for specific performance of a contract to sell immovable property, which, subsequent to the contract, has been sold to another person, the burden is on the defendant vendee who seeks the benefit of the exception in section 27(b) of the Specific Relief Act to satisfy the court that he is a transferee for value who has paid his money in good faith and without notice of the original contract. Where he has paid only a small part of the consideration previous to notice and pays the bulk of the consideration after notice, he can not be said to have paid his money in good faith without notice so as to be entitled to the protection given by section 27(b) of the Specific Relief Act.

Dr. N. P. Asthana, for the appellant.

Mr. P. L. Banerji, for the respondents.

SULAIMAN, C.J., and ALLSOP, J.:—This is an appeal by the defendant Gauri Shankar arising out of a suit brought for specific performance against him by the plaintiff. On the 18th July, 1932, the vendor Shambhu Prasad entered into a contract for the sale of a shop to the plaintiff Ram Sewak for Rs.2,500. On the 22nd July, 1932, he executed a sale deed of the same shop in favour of the appellant Gauri Shankar ostensibly for a sum of Rs.3,300. It was recited in the sale deed that Rs.300 out of the sale consideration were paid at the house of the vendor and the balance of Rs.3,000 would be paid at the time of the registration. Just when the

*Second Appeal No. 1280 of 1933, from a decree of Girish Prasad, Subordinate Judge of Mainpuri, dated the 27th of April, 1933, reversing a decree of Brij Narain, Munsif of Shikohabad, dated the 8th of December, 1932.

document was presented for registration at the office, and the Sub-Registrar was proceeding to make the endorsement of the presentation on the back of the instrument, Ram Sewak filed an application to the effect that he had a prior contract in his favour of which notice should be given to the vendor and the vendee. The Sub-Registrar announced the fact to them and then completed his endorsement and later on the amount was paid by the vendee to the vendor and the further endorsement as to the payment of the consideration money was made by the Sub-Registrar.

The courts below have assumed that the recital contained in the sale deed that Rs.300 had been paid by the defendant to the vendor at the house, which fact had been deposed to by the appellant on oath, was correct. It is not necessary in this case to send down an issue for any finding on this question, for we are prepared to make the same assumption. In cases where a vendee acting in good faith and without notice of a previous contract of sale pays the whole sale consideration to the vendor whether before or at the time of the execution of the sale deed but before receiving notice of the previous contract, even though the document be not registered, it would be obvious that he may bring himself within the scope of the exception in section 27(b) of the Specific Relief Act. On the other hand, where the vendee does not pay any part of the sale consideration at the time of the execution of the sale deed and has to pay the whole of it at the time of the registration of the document, but before he makes the payment he is informed of the previous contract, there would be no doubt that he would not be acting in good faith if in spite of such notice he makes the payment in pursuance of his own contract. The case before us, however, is slightly different. Here a small part of the sale consideration has been assumed to have been paid by the vendee before he had notice of the previous contract, whereas the bulk of the sale consideration was

1934

GAURI
SHANKAR
v.
RAM SEWAK

1934

GAURI
SHANKAR
v.
RAM SIVAK

paid by him at the registration office after he had been informed of it.

There is no doubt that the burden is on the defendant vendee to satisfy the court that he is a transferee for value who has paid his money in good faith and without notice of the original contract. Where a defendant has paid only a small part of the consideration previously and pays the bulk of the consideration after notice, it is impossible to hold that he is acting in good faith or is a person who has paid his money without notice of the original contract. In the present case it is not necessary to decide where the line has to be drawn and what the position would be if a vendee pays a substantial portion before notice and the balance after such notice. We are clearly of opinion that in a case where the vendee has not paid at least a substantial portion of the sale consideration before notice, he cannot be said to have paid his money in good faith so as to be entitled to the protection given by section 27. In this view of the matter the appeal has no force, and we accordingly dismiss it with costs. The vendor Shambhu Prasad will bear his own costs.

REVISIONAL CIVIL

Before Mr. Justice Kendall

1934
July, 26

BRIJ BEHARI LAL (PLAINTIFF) v. LALTA PRASAD & SONS
(DEFENDANTS)*

Provincial Small Cause Courts Act (IX of 1887), sections 17, proviso, and 35—Ex parte decree passed by Small Cause Court—Subsequent abolition of that court—Application in Munsif's court for setting aside the ex parte decree—Deposit or security for decretal amount necessary.

An *ex parte* decree was passed by a small cause court, and thereafter that court was abolished. An application to set aside the *ex parte* decree was then made to the court of the Munsif, according to the provisions of section 35 of the Provincial Small Cause Courts Act. *Held* that the application being a proceed-