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SITAL
v.
KING-
EMPEROR

Penal Code to section 325/109 of the Indian Penal Code and the sentence reduced to three years' rigorous imprisonment and a fine of Rs.50 in default of payment of which he shall undergo further rigorous imprisonment for six months.

Appeal partly allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

1935
July 15

ANANT RAM (DEFENDANT-APPELLANT) v. SARJU PRASAD
(PLAINTIFF-RESPONDENT)*

Specific Relief Act (I of 1877), sections 14, 15 and 19—Specific performance of contract—Contract of sale—Party found entitled to sell half only—Specific performance, whether can be allowed—Terms on which specific performance can be allowed—Compensation for part unperformed whether can be allowed.

Where a person claims a decree for specific performance of part of the contract and the portion of the contract which must be left unperformed is equal to the portion in respect of which specific performance is claimed, it is impossible to say that the part unperformed is small and section 14 cannot apply, but the case is governed by section 15 of the Specific Relief Act. He can get a decree for specific performance of only so much of the contract as can be performed on payment of the full amount agreed upon provided he relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Section 19 of the Act is to be read subject to the provisions of sections 14 and 15 when the case is one of specific performance of part of the contract. *Graham v. Krishna Chunder Dey* (1), referred to.

Mr. Mahabir Prasad Srivastava, for the appellant.

Mr. Ram Bharose Lal, for the respondent.

SRIVASTAVA, J.:—This appeal arises out of a suit for specific performance of a contract of sale. Both the lower

*Second Civil Appeal No. 342 of 1933, against the decree of S. Khurshed Husain, First Subordinate Judge of Kheri, dated the 31st of August, 1933, modifying the decree of M. Mohammad Tufail Ahmad, Additional Munsif of Kheri, dated the 16th of April, 1932.

(1) (1924) L.R., 52 I.A., 90.

Courts have found that the defendant No. 1 entered into a contract for sale of the house in suit to plaintiff for Rs.600. Admittedly the defendant No. 1 did not carry out the contract, and on the 11th of July, 1931, he executed a mortgage deed in respect of the house in favour of defendant No. 2. It is also common ground between the parties that the house in suit belongs jointly to the defendant No. 1 and his minor brother. Both the lower Courts have concurrently found that the defendant No. 1 was not competent to enter into the contract on behalf of his minor brother as it was not entered into either for the benefit of the minor or for legal necessity. As a result of this finding the learned Munsif gave the plaintiff a decree for specific performance of the contract of sale in respect of half the house on payment of the full amount of Rs.600. Two appeals were filed against the decree of the learned Munsif, one by defendant No. 2 and the other by the plaintiff. The learned Subordinate Judge dismissed the appeal of defendant No. 2, but allowed the plaintiff's appeal in part. While maintaining the decree for specific performance in respect of half the house on payment of Rs.600 he gave the plaintiff a decree for Rs.300 as damages for breach of contract on the part of defendant No. 1 and authorised the plaintiff to deduct this amount of compensation from the sale price.

The only contention urged on behalf of the defendant-appellant is that on the findings arrived at by the lower appellate Court it was wrong in awarding compensation to the plaintiff. In my opinion the contention is correct and ought to succeed. It is no longer disputed by the plaintiff that he is entitled to a decree for specific performance in respect of only the half share of defendant No. 1 in the house in suit. Sections 14 to 17 of the Specific Relief Act contain provisions in regard to cases of specific performance of a part of the contract. In *Graham v. Krishna Chunder Dey* (1) their Lordships of the Judicial

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Committee referring to these sections observed that "taken together they constitute a complete code, within the terms of which relief of the character in question must be brought, if it is to be granted at all". As the portion of the contract which must be left unperformed is equal to the other portion in respect of which the decree for specific performance has been given, it is impossible to say that the part unperformed is small. Section 14 cannot, in the circumstances, apply to the case. The case is therefore governed by section 15 of the Specific Relief Act. The second sentence of this section runs as follows :

" But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant."

Illustration (a) of the section is also practically on all fours with the present case. This provision of the Specific Relief Act seems to have been overlooked by the lower appellate Court. It clearly shows that if, in the circumstances of this case, the plaintiff desires to have a decree for specific performance of part of the contract he must relinquish all claim to compensation for the default on the part of the defendant. Section 19 of the same Act on which reliance has been placed by the lower appellate Court makes general provision as regards the awarding of compensation in certain cases. It is to be read subject to the provisions of sections 14 and 15 when the case is one of specific performance of part of the contract. I have therefore no hesitation in holding that the order of the learned Subordinate Judge awarding Rs.300 by way of compensation is incorrect and must be set aside.

The result therefore is that I allow the appeal in part, set aside the decree of the lower appellate Court and

restore the decree of the first Court. In the circumstances I order the parties to bear their own costs throughout.

Appeal partly allowed.

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APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

PARMANAND MISIR (PLAINTIFF-APPELLANT) v. GUR PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS)*

1935
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Registration Act (XVI of 1908), section 60—Registration endorsement, evidentiary value of—Hindu Law—Alienation—Antecedent debt—Time-barred debt, whether can constitute antecedent debt.

Under section 60 of the Registration Act the certificate signed by the registering Officer is evidence of the fact that the payment of money referred to in the endorsement was made as therein mentioned. The mention in the endorsement of the executant as mortgagor does not prove the execution of the mortgage but it is certainly evidence of the payment of the sum mentioned as a loan.

A time-barred debt can constitute a valid antecedent debt. *Gajadhar v. Jagannath* (1), relied on.

Messrs. *Rajeshwari Prasad* and *Raj Bahadur Srivastava*, for the appellant.

Mr. Kashi Prasad Srivastava, for the respondents.

SRIVASTAVA, J.:—This is a plaintiff's appeal. It arises out of a suit on the basis of a mortgage deed, dated the 22nd of June, 1914, executed by defendant No. 1 in favour of Chandrabhukhan, the uncle and predecessor-in-interest of the plaintiff. Defendants 2 to 4 are the sons of defendant No. 1. They contested the plaintiff's claim and denied the mortgage deed. They also contended that it was not executed for legal necessity. The learned Munsif who tried the suit held that out of

*Second Civil Appeal No. 264 of 1933, against the decree of Babu Mahabir Prasad Varma, Subordinate Judge of Lucknow, dated the 10th of May, 1933, modifying the decree of Sayed Akhtar Ahsan, Munsif, Lucknow District, dated the 31st of March, 1932.