

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice and Mr. Justice Brown.

U DUN HTAW AND ANOTHER

v.

MAUNG AW AND OTHERS.*

1929

Mar. 25.

Specific performance—Contract for purchase of immoveable property—Remedy does not die with the party—Remedy available against legal representatives—Contract Act (IX of 1872), s. 40—Specific Relief Act (I of 1877), s. 27 (b).

The remedy of specific performance in respect of a contract for the purchase of immoveable property does not die with the party who agreed to purchase but survives against his legal representatives so far as the estate will enable them to defray the liabilities.

Thet Tun for the appellants.

Halkar for the respondents.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal by special leave from a judgment on Second Appeal by Mr. Justice Das reversing the decision of the Sub-divisional Court, confirmed on first appeal by the District Court of Amherst, on the ground that specific performance could not be asked in respect of a contract for the purchase of immoveable property, the remedy apparently, in the opinion of the learned Judge, dying with the party who agreed to purchase.

This decision seems to be irreconcilable with section 40 of the Indian Contract Act and its illustrations, namely :—

“(a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.”

* Letters Patent Appeal No. 134 of 1928 from the judgment of the High Court in Civil Second Appeal No. 254 of 1928.

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These illustrations seem to indicate the class of contracts which one cannot ask the legal representatives of a dead man to perform such as the painting of a picture, and the class of contracts which the legal representatives must perform, such as the payment of the balance of purchase money, as in the present case.

The learned Judge seems to have misconstrued the terms of section 27, clause (b), of the Specific Relief Act. The words, "any other person claiming under him by a title arising subsequently to the contract," in our opinion clearly include the heirs and legal representatives of a deceased party to a contract. The test is not whether they repudiate and wish not to be bound by the contract, which their predecessor-in-title had entered into, but it is whether they are, in fact, the heirs and legal representatives of such deceased party. If they are, the estate of the deceased is vested in them, and that vesting, or title, arose subsequently, namely, on his death, to the contract in suit. They claim under him by operation of law, being his heirs and legal representatives. If the estate is unable to meet the legal obligations of the deceased, the law does not require them to do the impossible. No personal liability devolves upon them, but the estate which has come into their hands is answerable for the liabilities of its deceased owner, and, as representatives of the latter, they must defray these liabilities so far as that estate will enable them to do so. The other points raised in the memorandum of appeal before Mr. Justice Das do not seem to have been proved before him and do not require discussion here.

For these reasons we reverse the decision of this Court and restore the order of the District Court. The plaintiff-appellants to have costs throughout.