

APPELLATE CIVIL.

Before Tek Chand and Agha Haidar JJ.

KANHAYA LAL (DEFENDANT) Appellant,

versus

DEVI DAS-JAGAN NATH
(PLAINTIFF)
RAM CHAND (DEFENDANT) } Respondents.

Civil Appeal No. 291 of 1925.

Specific Relief Act, I of 1877, sections 20, 27 (b)—Contract to sell immovable property—Suit for specific performance—Subsequent transferee—absence of knowledge of prior contract—burden of proof—Notice—received by a member of transferee's firm—Section 20—sum specified on breach of contract—whether payment of, a defence to the suit.

Defendant No. 1, having received earnest money and having entered into an agreement with the plaintiff to sell him certain shops by deed to be registered on a specified date (failing which to pay Rs. 800 damages), subsequently executed a deed purporting to sell the same property to defendant No. 2. The latter pleaded that it was for the plaintiff to prove that he, defendant No. 2, made his purchase with notice of the prior agreement, while defendant No. 1 pleaded that, in view of the stipulation, all that plaintiff could claim was the Rs. 800 as damages.

Held, that under section 27 of the Specific Relief Act, once the plaintiff had succeeded in proving that the agreement to sell had been arrived at between him and the vendor, it was for defendant No. 2, in order to defeat the plaintiff's claim, to prove that he paid the money to the defendant-vendor under the sale-deed in his favour in good faith and without notice of the prior contract.

Himat Lal v. Vasudev (1), *Hem Chandra De Sarkar v. Amiyabala De Sarkar* (2), and other cases followed.

Held further, that section 20 of the Act was a complete answer to the contention of defendant No. 1, that plaintiff was, under the agreement, entitled only to the Rs. 800.

(1) (1912) I. L. R. 36 Bom. 446. (2) (1925) I. L. R. 52 Cal. 121.

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Held also, that notice sent to defendant No. 2's firm and received by a member of that firm was as good as if it had been directly delivered to defendant No. 2, himself.

First appeal from the decree of Khawaja Abdus Samad, Senior Subordinate Judge, Lyallpur, dated the 3rd of December 1924, granting the plaintiff specific performance of the contract of sale, etc.

NAND LAL and AMOLAK RAM KAPUR, for Appellant.

RAM CHAND MANCHANDA, S. C. MANCHANDA, and DIN DIYAL KHANNA, for Respondents.

AGHA HAIDAR J.—This is an appeal by the defendant-vendee in a suit for the specific performance of a contract for sale.

On the 10th April 1924, one Narain Singh, who is the agent of Ram Chand, defendant No. 1, vendor entered into an agreement (Exhibit P/1) with the plaintiff-firm, Jagan Nath-Devi Das, represented by Jagan Nath, that certain shops situate at Gojra Mandi, owned by Ram Chand, shall be sold to him under a registered sale-deed on the 25th April, 1924. The price agreed upon was Rs. 10,000, out of which Rs. 400 were paid by Jagan Nath to Narain Singh at the time of the agreement by way of earnest money. It was further stipulated that, if the sale-deed was not registered by the vendee on the date fixed, the earnest money would be forfeited, and that, if, on the other hand, the vendor failed to get the deed registered, he would have to pay to the vendee as damages a sum of Rs. 800.

Defendant No. 1, however, executed a sale-deed in favour of the defendant-appellant on the 3rd May 1924 for Rs. 10,000, and got the same registered at Toba Tek Singh. Hence, the present suit which the plaintiff firm filed on the 30th May 1924.

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In pursuance of agreement (Exhibit P/1), Jagan Nath went to the Sub-Registrar's office at Lyallpur on the 25th April 1924, accompanied by one *Sardar* Parman Singh, a *Vakil* practising at Lyallpur. He had with him a sum of Rs. 9,600, the balance of Rs. 400 having already been paid to Narain Singh on the 10th April 1924. Narain Singh was not to be found at the Registration Office at Lyallpur. On the same date Jagan Nath presented an application (Exhibit P/4), printed at page 31 of the record, to the Sub-Registrar. The application also bears the signature of *Sardar* Parman Singh, *Vakil*. The application is to the effect that Narain Singh, the agent of *Lala* Ram Chand *Suri*, Honorary Magistrate, had entered into a transaction with the applicant for the sale of certain shops at Gojra Mandi belonging to *Lala* Ram Chand for a sum of Rs. 10,000, that, out of that sum, Rs. 400 had been paid to the said Narain Singh by way of earnest, and that the remaining sum of Rs. 9,600 was to be paid at the time of registration. It goes on to say that the registration of the sale-deed was to be completed on the 25th April 1924, but that neither Narain Singh nor *Lala* Ram Chand, the owner of the property, had put in an appearance for the completion of the sale-deed and the registration thereof. The application concludes with the words that the applicant was prepared to have the transaction completed and had the sum of Rs. 9,600 with him. There is also a reference in this application to certain telegraphic notices which had been sent to Narain Singh and *Lala* Ram Chand, defendant No. 1. On this application the Sub-Registrar made an endorsement to the effect that the petitioner was present with a sum of Rs. 9,600, and that, in spite of being called, Narain Singh was not found to be present.

The plaintiff has produced evidence to show that he, as a matter of fact, provided himself with the sum of Rs. 9,600 before he went to Lyallpur in order to get the document registered ; but, apart from this evidence, we have in the present case the positive evidence of Mr. David, Sub-Registrar (P. W. 1), who corroborates that portion of the application (Exhibit P/4) which refers to the plaintiff's appearance before the Sub-Registrar with the sum of Rs. 9,600, being the balance of the price of the property in dispute. The evidence given by *Sardar* Parman Singh, *Vakil* (P. W. 6), is also to the same effect. Thus, apart from other evidence on this point, which I do not see any reason to disbelieve, there is the absolutely reliable evidence of these two witnesses, namely, Mr. David, Sub-Registrar, and *Sardar* Parman Singh, *Vakil*, and there cannot therefore be any manner of doubt that the plaintiff did, as a matter of fact, go to the Registration Office at Lyallpur on the 25th April 1924, in fulfilment of the agreement arrived at between the plaintiff and Narain Singh, and that he was ready and willing to perform to the fullest extent his part of the contract.

The defendants have put forward the plea that the plaintiff was not ready and willing to perform his part of the contract, and that, as a matter of fact, he never went to Lyallpur in order to get the document registered. But, having regard to the evidence of the plaintiff's witnesses and particularly that of Mr. David and Parman Singh, I am not prepared to attach any importance to the evidence produced by the defendant in this behalf.

It was argued by the appellant's counsel that it was for the plaintiff to prove that the defendant-appellant made his purchase with notice of the prior

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agreement, that in fact, the defendant-appellant had no such notice and that, in any event, the defendant-appellant had discharged the *onus* even if it lay upon him of proving want of notice.

The relevant portion of section 27 of the Specific Relief Act runs as follows:—

“Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.”

There cannot be any question that, when once the plaintiff has proved an agreement to sell arrived at between him and the vendor, it is for the vendee, in order to defeat the plaintiff's claim, to prove that he paid the money to the defendant-vendor under the sale-deed in his favour in good faith and without notice of the prior contract. And it is one of the recognised canons of jurisprudence that a person, who seeks to take advantage of an exception, has to prove affirmatively that his case falls within the scope of that exception. This is the principle which lies at the root of a number of precedents which lay down that in these cases it is for the vendee to prove want of notice. By way of illustration I may here quote the following cases on this point:—

Himat Lal v. Vasudev (1), *Naubat Rai v. Dhaukal Singh* (2), *Ramdeni Singh v. Gurmani Raut* (3), *Dharamdeo Singh v. Ram Prasad Shah* (4), *Hem*

(1) (1912) I. L. R. 36 Bom. 446.

(3) 1929 A. I. R. (Pat.) 300.

(2) (1916) 14 All. L. J. 111.

(4) (1918) 44 I. C. 470.

Chandra De Sarkar v. Amiyabala De Sarkar (1); and lastly a judgment by Abdul Raooof J., a learned Judge of this Court, reported as *Bindraban v. Bodh Raj* (2). In all these cases the principle enunciated has been very fully and thoroughly discussed, and I hold that it was for the defendant-vendee to prove by reliable evidence that he had no notice of the agreement (Exhibit P/1), already arrived at between the plaintiff and his vendor, defendant No. 1. On this point I may refer to the evidence of Nanak Chand (P. W. 7). On the 2nd May 1924, this witness went to prepare the plan of the shops in suit. According to him, Kanhaya Lal, defendant-appellant, came to the spot and the plaintiff, who was present, pointed out to the witness that Kanhaya Lal was disputing his right to get the shops, and that on this, the witness remonstrated with Kanhaya Lal as to why he was doing this. As already stated, the sale-deed in favour of the appellant, Kanhaya Lal, was executed at Toba Tek Singh on the 3rd May 1924, and from the evidence of this witness it is clear that at least a day before the defendant-appellant had notice that the plaintiff had already entered into an agreement to purchase the property. I do not see any reason whatsoever to doubt the veracity of this witness who seems to be a disinterested person. There is further this important fact that on the 2nd May 1924, a telegram, Exhibit D/1, was despatched by *Sardar Parman Singh*, Plaintiff's *Vakil*, to Kanhaya Lal-Piyare Lal at Gojra in the following words:—

“As instructed by my client *Lala Jagan Nath* I hereby give you notice that *Lala Ram Chand* through his *mukhtar* contracted sale of *ahata 352/13* to *Jagan*

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1930 Nath, a fact you already know. If you purchase it
 KANHAYA LAL you will be responsible.”

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 DEVI DAS- JAGAN NATIL. Now according to the evidence of Gurditta Ram
 A.GHA HAIDAR J. (D. W. 1), this telegram was received at Gojra at 6-47
 A.M. The train by which the defendant-appellant is
 supposed to have left for Toba Tek Singh arrived at
 Gojra before 7-30 A.M. and the telegram was un-
 doubtedly delivered to Piare Lal (D.W. 2), the son of
 Kanhaya Lal, defendant-appellant. Now, according
 to the evidence of Kanhaya Lal himself, the name of
 the firm, of which Kanhaya Lal and Piare Lal are
 members, is Mehnga Ram-Kanhaya Lal. Kanhaya
 Lal says in his evidence that he as well as his son Piare
 Lal worked in the family firm, that they were joint,
 and that the price of the shops in dispute was paid out
 of the assets of the firm. There cannot be any doubt
 that, on receipt of the telegram, it was perfectly open
 to Piare Lal, who is a grown-up man of twenty-two
 and carries on the business of the family firm, to wire
 to his father about the receipt of the telegram.
 Furthermore, the notice sent to the firm of Kanhaya
 Lal-Piare Lal and received by Piare Lal, a member of
 the firm, is just as good a notice as if it were directly
 delivered to Kanhaya Lal himself. However, taking
 this telegram and the position in which Piare Lal
 stood towards his father and the firm together with
 the evidence of Nanak Chand (P. W. 7), there cannot
 be any doubt that the defendant-appellant had notice
 of the transaction which is embodied in Exhibit P/1
 before he obtained the sale-deed in his favour on the
 3rd May 1924. It is thus clear that the defendant-
 appellant purchased the property with his eyes open,
 after having full notice of the agreement to sell which
 had already been entered into between Narain Singh,

the accredited agent of Ram Chand, defendant No. 1, and the plaintiff on the 10th April 1924.

Dr. Nand Lal, who argued at considerable length the case for the appellant, raised a further question with reference to the concluding portion of the agreement, Exhibit P/1, where it is provided that in case of default on the part of the plaintiff, his earnest money was to be forfeited and if the vendor resiled from the agreement, he would have to pay a sum of Rs. 800 to Jagan Nath, the plaintiff, as damages. The argument is that in view of this stipulation, no question of specific performance can arise, and all that the plaintiff can claim is to insist upon defendant No. 1 paying him the sum of Rs. 800 as damages under the terms of the agreement. I have considered this argument, and, in my judgment, the provisions of section 20 of the Specific Relief Act are a complete answer to it and I do not propose to discuss it at any length.

Having regard to what has been stated above, I am fully satisfied that the learned Senior Subordinate Judge rightly passed the decree in favour of the plaintiff. I would, therefore, affirm the decree of the Court below and dismiss the defendant's appeal with costs throughout.

TEK CHAND J.—I agree.

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Appeal dismissed.