

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892.
March 2.

GITA'BA'I, (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'LA'JI KESHAV
SHA'STRI NAGARKAR, (ORIGINAL PLAINTIFF), RESPONDENT.*

Specific performance—Agreement to sell—Reversionary interest, sale of—Purchase-money less than market value of reversion—Stat. 31 Vic., c. 4—Inadequate consideration.

The rule observed in England until the passing of Stat. 31 Vic., c. 4, that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase-money was less than the market value of the reversion,

Held not to be the rule in India.

THIS was a first appeal from the decision of Khán Bahádur L. G. Fernandez, First Class Subordinate Judge of Poona.

Suit for specific performance of an agreement to sell a house.

The defendant, Gitábái, was the daughter-in-law and heiress of one Nána, deceased. On 18th December, 1885, Nána had agreed to sell the house in question to the plaintiff for Rs. 2,000, and then received Rs. 25 earnest-money. At the time of the agreement, Nána was not entitled to the possession of the house. His adoptive mother, Renukabái, was in possession and management, and under the will of her deceased husband she was entitled to it during his lifetime and after her death it was to go to Nána.

On Renukabái's death the plaintiff, in accordance with the agreement, tendered the rest of the purchase-money to Nána, and asked him to execute a conveyance, but he refused. Nána subsequently died, and the plaintiff now sued the defendant, as his representative, to enforce the agreement of sale.

The defendant pleaded that Nána was of weak mind, and had been induced by the plaintiff's misrepresentation to enter into the agreement; that the agreement was, therefore, invalid, and that the suit was time-barred.

The Subordinate Judge found that the claim was not barred by limitation, and allowed it, observing: "The plaintiff has. no

* Appeal No. 47 of 1890.

doubt, secured a good bargain from Nánáji Dinkar without any risk at all to himself * * . I cannot say that he dealt very fairly with Nána, but he is within his legal rights in trying to enforce the agreement, and, as defendant has failed to establish the ground on which the agreement was impeached, the plaintiff is entitled to succeed."

The defendant appealed.

Jardine (Mahádeo Chinnáji Apté) for appellant:—Nána had only a reversionary interest in the property. The Court cannot give specific performance of an agreement relating to the sale of such interest. By this agreement Nána sold a house for Rs. 2,000, which, according to the evidence and in the opinion of the lower Court, was worth Rs. 5,000 or Rs. 6,000. The consideration is inadequate. The onus lies on the plaintiff to show it was sufficient: see *White and Tudor's Leading Cases*, Vol. I, p. 685. Moreover, it is shown that Nána was of weak mind, and undue advantage was taken of him. A Court of Equity will not give effect to such an agreement. Under section 28 of the Specific Relief Act (I of 1877) the plaintiff is not entitled to relief, because the consideration for the sale is grossly inadequate.

Branson (D. S. Garud and N. V. Gokhale) for respondent:—A new case is made here on appeal. The appellant's case in the lower Court was that fraud was practised on Nána, but no fraud was proved. The consideration is not inadequate. Some witnesses, no doubt, say that the house is worth Rs. 6,000, but it is very old, and requires extensive repairs. The plaintiff did not induce Nána to make the agreement of sale. On the contrary, it was he who was anxious to sell. Fraud cannot be presumed, and there is no evidence to prove it. The agreement is, therefore, capable of specific performance (section 22 of Specific Relief Act I of 1877). Nána was not a man of weak intellect. The lower Court has found that he was a man possessed of ordinary capacity. He himself could not have resisted a decree for specific performance, and if so, his heirs cannot.

SARGENT, C. J.:—The case was tried below on the statements contained in the written statement that the plaintiff had practised

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fraud on Nána by representing that Nána's mother had given a the house away from Nána to her mother. It was also stated that Nána was a simpleton. Those defences were held by the lower Court not to be supported by the evidence. And no attempt has been made before us to impeach that finding.

Here, however, it has been sought to impeach the sale on the ground that, being a sale of a reversionary interest, the Court would not decree specific performance, as the purchase-money was less than the market value of the reversion. Such, no doubt, was the practice in England until the passing of 31 Vic., c. 4, but it cannot, we think, be held to be the rule in India. No mention of it is to be found in the Specific Relief Act, and, if it had been intended to give effect to it, we should have expected to find it in section 28 of the Act. It is further to be remembered that the Specific Relief Act I of 1877, which was passed after the English Act had been passed, abolishing the rule, was drawn by a jurist who had had long experience of the practice of the Court of Chancery.

The only other question which can be raised on the evidence is, whether the price for which the property was sold was so grossly inadequate as to be evidence of fraud practised on the vendor. We do not think that was the case. The property would not probably have been let for more than Rs. 250 per annum. That rental capitalized at 16 per cent. subject to a deduction of 10 per cent. for repairs would give Rs. 3,400 as the value of the property, and it was sold for Rs. 2,000. The defendant having failed to establish the defence actually set up, and the only grounds on which the case has been argued before us having also failed, we confirm the decree of the Court below with costs.

Decree confirmed.