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The settled doctrine is that a Court of execution cannot award interest where the decree is silent—*Sadasiva Pillai* v. *Ramalinga Pillai*(1), *Hurro Doorga Chowdhrani* v. *Maharani Surut Soondari Debi*(2), and *Forester* v. *The Secretary of State for India in Council*(3). *A fortiori* this doctrine must apply where, as under section 497, a special procedure is provided in a different forum. We think section 497 applies, and that the relief which the District Judge might award upon the application would be pursuant to an adjudication under the section. To hold that the executing Court can adjudicate would be contrary to section 497, which assigns the duty to the Court which issued the injunction. To hold that no adjudication is necessary would also be contrary to section 497, which further provides for the result being embodied in the decree. If, then, the respondents had wished to get relief in the matter of interest from the Court of execution, they should have first applied under section 497, and got provision made in the decree of the District Court.

For these reasons we reverse the order of the District Judge and restore that of the Subordinate Judge: the respondent to pay the costs of both appeals.

Decree reversed.

(1) L. R., 2 I. A., 219, 228. (2) L. R., 9 I. A., 1.
(3) I. L. R., 3 Calc., 169.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

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RAMCHANDRA GANESH PURANDHARE (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAMCHANDRA KONDAJI KATE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Vendor and purchaser—Specific performance—Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple—Specific performance refused—Specific Relief Act (I of 1877), Sec. 21.

On the 16th November, 1893, the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the

* Appeal, No. 123 of 1895.

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21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession. In the suit brought by plaintiff against defendants Nos. 1 and 2 for specific performance of the contract of the 16th November,

Held (1) that the second defendant was a proper party to the suit.

(2) That specific performance could not be granted, the covenants contained in the agreement being such as the Court could not enforce.

APPEAL from the decision of Rao Bahadur N. N. Nanavati, First Class Subordinate Judge of Poona.

The plaintiff sued for specific performance of an agreement of sale *(satekhat)* passed to him by the first defendant on the 16th November, 1893. By that agreement the first defendant agreed to sell a certain house to the plaintiff for Rs. 4,000 and Rs. 100 was paid by the plaintiff as earnest-money. Two deeds of conveyance were to be executed conveying different parts of the property. The agreement of sale contained a clause under which the plaintiff (the purchaser) agreed to build a temple and to secure the payment of an annuity to the first defendant and his wife. The following clauses in the document set forth this part of the agreement:—

"3. You are to erect a temple of the deity Datt in the place to be entered in the gift-deed and to raise in front thereof a sabha-mandap for Katha and Kirtan. You are to build the aforesaid temple and the sabha-mandap within six years from this day. If you do not do so within the aforesaid time you are to pay Rs. 2,000 (two thousand) for the expenses for the said devasthán (temple institution). Within that sum either I or any body else will erect the temple and the mandap. You, your sons and grandsons, &c., from generation to generation should use the said temple institution, the place and the building and perform the *puja*, &c., of the deity. All the right to receive the income and carry on every kind of management, &c., belongs to you. I shall have nothing to do with the same.

"4. Besides (doing what is stipulated above with regard to) the above mentioned property, so long as myself and my wife are alive you are to pay me or in my absence to my wife Rs. 5 every month from this day. After my and my wife's death you are to spend the said Rs. 5 every month towards the said temple. Should you fail to pay the fixed sum every month, you are to deposit a sum of Rs. 1,000 (one thousand) at 8 annas per cent. per month with any banking firm that we may name, so that we may get the above sum without obstruction. So long as we both are alive we will draw the interest on the abovementioned amount. After the death of both of us, you should take the

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interest on the said amount or the principal amount itself and do as mentioned above.

On the 21st November, 1893, the first defendant sold the same property to the second defendant by a deed which was duly registered, and the second defendant was put into possession.

The plaintiff sued both defendants, praying for specific performance of the above contract of sale.

The second defendant pleaded that he purchased *bonâ fide* and without notice of the prior sale to the plaintiff.

The Subordinate Judge held that the second defendant had notice of the prior sale to the plaintiff, but that the contract of sale to the plaintiff could not be specifically enforced having regard to section 21 (clauses *b* and *g*) of the Specific Relief Act I of 1877. He, therefore, dismissed the plaintiff's claim.

The plaintiff appealed.

Lang (Advocate General with *Manekshah J. Taleyarkhan*) appeared for the appellant (plaintiff):—We merely desire that documents should be executed according to the *satekhat* and nothing more. Such a suit does not in any way contravene the provisions of section 21 of the Specific Relief Act (I of 1877) —*Blackett* v. *Bates* (1). The Judge has decided on all the issues in our favour.

Macpherson (with *Inverarity* and *Narayan G. Chandavarkar*) appeared for the second defendant:—We rely on section 21 of the Specific Relief Act (I of 1877). Supposing that specific performance could be granted, still it cannot be enforced against us, as we have not joined in passing the *satekhat*—*Luckumsey Ookerda* v. *Fazulla Cassumbhoy* (2).

[PARSONS, J., referred to *Chunder Kant Roy* v. *Krishna Sunder Roy* (3).]

That decision is against us; still the decision of this Court should be followed.

(1) L. R., 1 Ch. App., 117. (2) I. L. R., 5 Bom., 177.
(3) I. L. R., 10 Cal., 710.

We have bought the property for valuable consideration and are in possession. The plaintiff's remedy is to sue us for possession.

FARRAN, C. J.:—The first defendant in this case on the 16th November, 1893, agreed to sell the house, the subject-matter of the suit, to the plaintiff; and the plaintiff on the same day paid him Rs. 100 as earnest-money. The sale contract or *satekhat* (Exhibit 43) was to be carried out by two documents conveying different parts of the same premises, the first being styled a deed of gift. The second was to be in form an ordinary deed of purchase. The plaintiff was to pay Rs. 4,000 as the price of the house. The contract also contained a covenant on the part of the plaintiff to build a temple and to secure a small annuity to the vendor and his wife.

On the 21st of the same month the first defendant sold and conveyed the same house to the defendant No. 2 for Rs. 8,000 and put the second defendant in possession of it on the same day (Exhibit 35).

The plaintiff has filed the present suit for specific performance of his contract of the 16th November against both the defendants. It has been objected that the suit is not maintainable in that form, but we consider that there is no force in that objection. *Chunder Kant* v. *Krishna Sunder* (1) is a case exactly similar to the present, where the original vendor and his alienee with notice were made parties to the suit. See, too, Fry on Specific Performance, p. 18.

The important question to be determined at the threshold of the case is whether the second defendant when he purchased was a transferee for value who had paid his money in good faith and without notice of the plaintiff's original contract within the meaning of clause (*b*) to section 27 of the Specific Relief Act.

We agree with the Subordinate Judge in his finding that the second defendant was a transferee for value. The evidence that he actually paid the purchase-money is overwhelming. There was a particular reason, too, for his purchase of the house derived from the circumstance that it adjoined his own: and from the

(1) I. L. R., 10 Cal., 710.

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connection between him and the first defendant there is no ground for assuming that the whole transaction was a sham to get rid of the plaintiff's purchase and that he is now holding merely as a trustee for the first defendant. We think that he clearly purchased on his own account and to suit his own object. After a careful perusal of the evidence we do not feel disposed to differ from the Subordinate Judge in his finding that the plaintiff has not proved the four specific instances of direct notice of his contract to the second defendant which his witnesses depose to. The Subordinate Judge saw these witnesses and was in a position to judge of the credit to be given to them, and the reasons which he has given for distrusting their testimony appear to us to be of considerable cogency.

The Subordinate Judge has, however, come to the conclusion, from the facts elicited in the examination of the second defendant himself, that he did not pay his money in good faith and without notice of the plaintiff's contract. The correctness of that conclusion from the facts deposed to has been assailed before us in the argument of counsel for the respondent. (His Lordship referred to the evidence and continued :—) We have read over the evidence more than once, and the conclusion to which it inevitably leads us is that the defendant No. 2 is not a purchaser in good faith and without notice within the meaning of the section, and we, therefore, agree with the finding of the Subordinate Judge on the fourth issue.

The Subordinate Judge has refused to decree specific performance of the plaintiff's contract on the ground that the covenants which the plaintiff has entered into are not such as the Court can specifically enforce. We agree with the Subordinate Judge that they are of that nature. The Advocate General, however, for the appellant contends that the plaintiff has not directly entered into these covenants, but has only agreed that the deeds to be executed to carry out the contract shall contain such covenants on his part. The law on this part of the case is expressed with great clearness by Cranworth, L. C., in *Blackett* v. *Bates* [1] cited by the Advocate General. "If the arbitrator instead of award-

[1] L. R., 1 Ch. Ap., 117.

ing that the plaintiff should do certain acts had awarded that the lease to be executed should contain covenants by the plaintiffs to do them, the case would have stood on an entirely different footing. The Court would not then have been called on to enforce either directly or indirectly the doing of these acts, but merely to decree the execution of a lease containing certain covenants, a kind of relief which is clearly within the jurisdiction of the Court and open to no objection." These observations apply exactly to the contract in the present case. We must read it carefully, therefore, to see whether it provides that the deeds to be executed shall contain these covenants or whether the plaintiff has directly covenanted by the contract to perform them. Having done so we find no agreement expressed in it that the deeds to be executed shall contain any stipulations whatever. One is to be in form a deed of gift and the other a deed of sale. The first defendant is to get these prepared, stamped, and registered. There is not a word said as to their containing any covenant whatever. The agreement that the plaintiff is to erect a temple within six years, as well as that to secure an annuity to the first defendant and his wife, are direct obligations imposed on the plaintiff by the agreement and so fall within the general rule laid down in *Blackett* v. *Bates* and not within the exception which the passage we have cited from the judgment lays down. In decreeing specific performance of the contract as a whole we should be decreeing the plaintiff to perform his part of the agreement as well as directing the defendant to execute the conveyance. The Advocate General at the hearing of the appeal treated the case as though the contract was that the plaintiff should join in the sale-deeds for the purpose of covenanting to perform these acts, and on the supposition that such was its nature we were at the time misled by his argument. The plaintiff is entitled to recover the Rs. 100 earnest-money from defendant No. 1.

We confirm the decree with costs as against defendant No. 2. Decree as against defendant No. 1 varied by awarding the plaintiff Rs. 100 against him.

Decree confirmed and partially varied.