

Before Mr. Justice Norman and Mr. Justice E. Jackson.

RAMJAY DEY (DEFENDANT) v. SRINATH SING (PLAINTIFF)*

1869
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Limitation—Act XIV. of 1859, s. 1, c. 9—Commencement of Right to Sue.

In a suit brought on the 29th July 1867 to recover back a deposit of purchase-money paid in September 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re-sale, this decree was reversed on the 29th August 1865. *Held*, that the suit to recover back the deposit was not barred under clause 9, section 1 of Act XIV. of 1859, since the cause of action for its recovery did not accrue till 29th August 1865.

Baboo *Mohini Mohan Roy* and *Ramesh Chandra Mitter* for appellants.

Baboo *Bhagabati Charan Ghose* for respondent.

The facts of this case sufficiently appear in the judgment of the Court, which was delivered by

NORMAN, J.—This is a suit to recover a sum of 1,451 rupees paid as a deposit by the plaintiff in Bhadra 1270 (August, September 1863) to Prasanna Nath Dutt, the husband of the defendant as part of the purchase-money of an estate which Prasanna Nath Dutt then agreed to sell to the plaintiff. By the terms of the original contract, the purchase was to be concluded within seven days. The plaintiff appears not to have paid the residue of the purchase-money, and 10 months afterwards, viz., on the 30th of June 1864, Prasanna Nath Dutt re-sold the property for an amount less by 300 rupees than the plaintiff had agreed to pay. The plaintiff then brought a suit for the specific performance of the contract against Prasanna Nath Dutt and the purchaser, and obtained a decree in the first Court. From that decision Prasanna Nath Dutt appears not to have appealed, but the purchaser at the second sale did appeal, and the decision of the lower Court was reversed by the Judge of Rajshahye. The decision on the appeal was given on the 29th of August 1865. This suit was commenced on the

* Special Appeal, No. 1327 of 1868, from a decree of the Judge of Rajshahye, dated the 24th of February 1868, modifying a decree of the Principal Sudder Ameen of that district, dated the 17th of September 1867.

29th of July 1867, and the question we have to consider is whether the suit is barred by limitation under clause 9, section I of Act XIV, of 1859. The first Court appears to have held that the suit is not barred by limitation, and the point was not argued before the Judge on appeal. It appears to us that the right of the plaintiff to sue to recover back the deposit dates from the decision of the Judge on appeal, namely, 29th of August 1865, because it was upon the giving of that decision, upon the determination by the Judge that the plaintiff was not entitled to the land as against the purchaser at the second sale, who had appealed, that the right of the plaintiff to obtain the deposit accrued. So long as the decision of the first Court stood, which declared that, subject to the payment of the balance of the purchase-money, the plaintiff was entitled to the land, the plaintiff could not have been and was not entitled to treat the money in the hands of defendant as money which he was entitled to receive back. If Prasanna Nath Dutt, or the now defendant, had appealed from the decision of the first Court, and obtained a declaration on that appeal that Prasannanath Dutt had rightly rescinded the contract when he re-sold the property, it would have been established that, as between Prasanna Nath Dutt and the plaintiff from that time, namely from the 30th of June 1864, the contract was rescinded, and the plaintiff entitled to the money, and not the land. But Prasanna Nath Dutt did not appeal, he obtained no reversal of the first Court's judgment; and, consequently, it stood established as against him that the plaintiff was entitled to the land, and consequently he, or the defendant, to the money deposited as part of the purchase-money, till by the decree in favor of the second purchaser it become impossible for him or the defendant to make over the land to the plaintiff. Down to that date the defendant rightly held the money, and the plaintiff had no cause of action for its recovery. The result is that the action was brought within time. The decision of the Judge awarding to the plaintiff the amount of his deposit, less the difference in price between the sums which the plaintiff was to have paid and which the second purchaser paid, will stand, and the appeal will be dismissed with costs.

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