

1964

April 24

SILLA CHANDRA SEKHARAM

v.

RAMCHANDRA SAHU

[K. SUBBA RAO, K. C. DAS GUPTA AND RAGHUBAR DAYAL,
JJ.]

Specific Performance—Perfection of title after contract to sell—Applicability of s. 18(a)—Subsequently to the sale or lease, meaning of—Specific Relief Act, 1877 (Act 1 of 1877), s. 18(a).

The respondent executed an agreement to sell his house in order to meet family necessities for a certain sum on the condition that he and his mother would execute a sale deed in favour of the appellant. On the failure of the execution of the sale-deed the appellant instituted a suit for specific performance of the contract. The trial court held that the sale was not for legal necessity and therefore decreed the suit in part directing that the respondent would execute the sale deed for the alienation of his interest in the entire house and that the appellant would be entitled to get possession of the same jointly with the respondent's mother. The appellant appealed to the High Court and during its pendency the respondent's mother died and therefore the only question urged on behalf of the appellant was that the respondent, having perfected his title to the entire house, be made to sell the same. The High Court did not agree with the contention and held that s. 18(a) of the Specific Relief Act did not apply to the facts of the case as it comes into operation subsequent to the sale having taken place. On appeal by special leave.

Held: The High Court was wrong in not applying the provisions of s. 18(a) of the Act to the facts of the case.

The expression 'subsequently to the sale or lease' in s. 18(a) means subsequently to the contract to sell or let. This clause cannot be restricted in its application to cases where actual sale or lease of property had taken place.

Kalyanpur Lime Works Ltd. v. State of Bihar. [1954] S.C.R. 958, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 398 of 1962. Appeal by special leave from the judgment and decree dated January 7, 1959, of the Orissa High Court in Appeal from Original Decree No. 57 of 1953.

B. R. L. Iyengar, S. K. Mehta and K. L. Mehta, for the appellant.

K. Bhimsankaram, B. Parthasarthy, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent.

April 24, 1964. The judgment of the Court was delivered by

Raghubar Dayal, J.

RAGHUBAR DAYAL, J.—This appeal, by special leave, raises the question of the correct interpretation of s. 18(a) of the Specific Relief Act, 1877 (Act 1 of 1877), hereinafter called the Act.

Ramchandra, respondent, executed an agreement to sell the house in suit to the appellant, on February 21, 1951. The agreement stated that he was in sole possession and enjoyment of the house which was his paternal property, that he was the Managing Member and Karta of the family and that for meeting family necessities and discharging certain loans he agreed to sell his undisputed house for Rs. 6,000/- on condition that he and his mother would execute a deed of sale in favour of the appellant with respect to the house within a period of one year from the date of the execution of the deed of agreement. Ramchandra did not execute the sale deed and the appellant instituted the suit for specific performance of the contract.

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The trial Court held that the sale was not to be for legal necessity and therefore decreed the suit in part, on the appellant's depositing a sum of Rs. 6,000/- less the sum of Rs. 300/- paid before the Sub-Registrar at the time of the execution of the agreement to sell and less the amount of costs granted to the appellant against Ramchandra within a month and directed that defendant No. 1 would execute the sale deed for the alienation of his interest in the entire house as covered by the agreement and that the plaintiff would be entitled to get possession of the same jointly with defendant No. 2, mother of Ramchandra.

The appellant went up in appeal to the High Court against the dismissal of his suit with respect to the sale of half the house. During the pendency of the appeal Ramchandra's mother died and therefore the only question urged on behalf of the appellant at the hearing of the appeal was that Ramchandra, respondent, having perfected his title to the entire house, be made to sell the same. The High Court did not agree with the contention and held that s. 18(a) of the Act did not apply to the facts of the case as it comes into operation subsequent to the sale having taken place. The High Court therefore dismissed the appeal. It is against this order that this appeal has been filed.

Section 18(a) of the Act reads:

"Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;"

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The question is whether the expression 'subsequently to the sale or lease' means 'subsequently to the contract to sell or let' or means 'subsequently to the execution of the sale deed or lease deed by the vendor or the lessor, as the case may be' in pursuance of the contract to sell or let. It is contended for the appellant that this expression means subsequently to the contract to sell or let, while the contention for the respondent is that it means subsequent to the actual sale or lease. We are inclined to agree with the contention for the appellant.

The case, in a way, is concluded by the decision of this Court in *Kalyanpur Lime Works Ltd. v. State of Bihar*(¹). In that case the Government agreed to let the lease of the hills to Kalyanpur Lime Works Ltd., but the lease could not be executed as the forfeiture of the lease of a previous lessee was held invalid by the Court. When the lease of the previous lessee expired, Kalyanpur Works Ltd., wanted the execution of the lease for a period during which the lease to it would have continued if it had been granted in 1934. This Court held that the case fell within s. 18(a) of the Act. It said at p. 972:

"We agree with the High Court that section 18(a) of the Specific Relief Act applies to the case. That section lays down that where a person contracts to sell or let certain property having only imperfect title thereto, if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest. There can be no doubt whatever that when the Government entered into the contract to grant leases to the Lime Co. in 1934, it had an imperfect title, inasmuch as it could not grant a fresh lease to anyone during the existence of the previous lease in favour of Kuchwar Co. No doubt the Government thought it had the right to forfeit those leases and did in fact order forfeiture but it having been found subsequently that the forfeiture was legally invalid, rights of the previous lessees were restored. As already pointed out above this is not the case of absence of title but is one of imperfect title and hence falls within the meaning of section 18. After the 31st March, 1948, when the leases in favour of Kuchwar Co. expired, the impediment in the way of the Government to grant leases of the property stood removed, and the Lime Company's right to get the leases revived in its favour. This right

(¹) [1954] S.C.R. 958.

of the plaintiff was resisted by the Government who, on the other hand, granted the leases to defendant No. 2.

The High Court of Patna rightly took the view that section 18(a) was applicable to the facts of this case and although defendant No. 1 was not in a position to grant a lease from the time it agreed to do, the impediment being now removed and a suit for specific performance not being barred, the Lime Company was entitled to sue for that relief. We have already held in agreement with the view of the High Court that section 18 is attracted to the facts of this case, and the contract of which specific performance can be decreed in favour of the plaintiff is the one embodied in Exhibits 22 and 22(a)."

It is urged for the respondent that in that case it was not contended before this Court that s.18(a) could not apply to the facts of the case as no lease in favour of Kalyanpur Lime Works Ltd. had been executed and that therefore the question now before us was not discussed. It is also urged that the Patna High Court had not actually applied the provisions of s. 18(a) to the facts of the case but had decreed the specific performance of the contract on the basis of the general principle that the purchaser in a contract to sell entered into in the circumstances of the case, was entitled to sue for specific performance against such interest as the vendor might afterwards acquire in the property and support was found in what was said in Art. 994 in Fry's 'Specific Performance', 5th Edition. In these circumstances, we would like to consider the question directly before us.

Sections 12 to 20 of Chapter II of the Act deal with contracts which may be specifically enforced. Section 18(a) deals with the rights of the purchaser or lessee in cases where the vendor has imperfect title to the property which he has contracted to sell or let. Apparently this must deal with the rights of the would be purchaser or lessee, and not of those who have already got the sale or lease of the property in pursuance of the contract to sell or let. If the person who contracted to sell or let has completed the sale or the lease transaction, nothing is left for the vendee or the lessee to seek by way of specific performance of the contract. This is when he himself acts according to the contract. If he does not act according to the contract, the person who has agreed to purchase or take on lease the property will have to seek enforcement of the contract through Court and then it may be that the Court might not enforce the contract. The Court will not, in view of the provisions of ss. 14 to 17 be able to

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enforce the contract even with respect to the property over which the person contracting to sell or let had perfect title, except in certain special circumstances, dealt with in ss. 14, 15 and 16.

Section 14 deals with cases where the part of the contract which could not be performed bears only a small proportion to the whole in value and admits of compensation in money. Section 16 deals with the specific performance of a part of a contract when that stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed. Cases coming under these two sections are not expected to give rise to circumstances in which provisions of sub-cl. (a) of s. 18 can be applied. Section 15 deals with the specific performance of a contract where the part unperformed is large. The Court has discretion in such circumstances to direct the party in default to perform specifically so much part of the contract as it could perform provided that the plaintiff relinquishes all claims to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant. When a Court has dealt with a case under s. 15, no question can however arise for action under s. 18(a). It follows, from the consideration of both the sets of circumstances, viz., when the person contracting to sell or let him self performs his part of the contract and when he is made to perform the contract wholly or partially by Court, the occasion to apply for specific performance of the contract with respect to the property over which the person contracting to sell or let had originally imperfect title, does not arise. This points to the conclusion that this clause cannot therefore be restricted in its application to cases where actual sale or lease of property had taken place.

If clause (a) of s. 18 was to apply after the completion of the sale or lease and on the vendor or lessor acquiring interest in the property in which he had imperfect title to start with, there would be considerable overlapping between the provisions of cl. (a) of s. 18 and s. 43 of the Transfer of Property Act.

Section 43 of the Transfer of Property Act comes into play when a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, while cl. (a) of s. 18 would come into play when the person with imperfect title has sold or leased the property. There is some sort of representation whenever a person sells or leases property, the representation being implicit and to the

effect that he is competent to sell or let the property. Thus there is over-lapping of the provisions of the two sections.

The actual right of the transferee under s. 43 and cl. (a) of s. 18 is however expressed in different language. In cases where s. 43 operates, the transferee, at his option, can have the transfer operate on any interest which the transferor may acquire in the property at any time during which the contract for transfer subsists. The illustration to the section indicates that the transferee can require the transferor to deliver the property acquired to him. The purchaser or lessee on the other hand, acting under cl. (a) of s. 18, can compel the seller or the lessor to make good the contract out of such interest. The difference between the two provisions is this that in the case of the operation of s. 43, no recourse to Court is necessary. The transfer operates on the property transferred and the transferee can call upon the transferor to deliver the property to him. The purchaser or the lessor having the right mentioned in cl. (a) of s. 18 has to go to Court to compel the vendor or lessor to perform the contract out of the interest subsequently acquired by him. The purchaser or lessee goes to the Court to enforce the contract and the contract in cl. (a) of s. 18 must refer to the contract to sell or let and not to the contract of sale or lease, which, as indicated earlier, if voluntary, would have covered the entire property contracted to be sold or leased, and if enforced through Court no occasion for the operation of clause (a) of s. 18 would arise.

The expression in cl. (a) of s. 18 should preferably be construed in a way so that there will be no overlapping between the provisions of this clause and of s. 43 of the Transfer of Property Act, as ordinarily the legislature does not intend to make duplicate provisions for similar situations.

The use of the words 'vendor or lessor' in cl. (a) are no definite pointers to the conclusion that the expression 'subsequently to the sale or lease' be given the meaning 'subsequently to the actual sale or lease'.

The sections preceding s. 18 deal with specific performance of contracts in general and therefore use the expression 'party to a contract'. Section 18 deals with the cases of contracts to sell or let and therefore appropriately uses the simple word 'vendor' or 'lessor' with respect to the party contracting to sell or let and 'purchaser' or 'lessee' with respect to the party agreeing to purchase or take the property on lease. There is no incongruity in using such expressions so long as one knows to whom those expressions refer. In fact the word 'purchaser' or 'lessee' can be appropriately applied to persons agreeing to purchase or take the property on lease.

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In this connection reference may also be made to the provisions of cl. (d) of s. 18 which uses the words 'vendor or lessor' and provides that where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit.....and to a lien for such deposit, on the interest of the vendor or lessor in the property agreed to be sold or let. It is clear that the words vendor or lessor in this clause refer to the person contracting to sell or let the property and who did not perform his part of the contract.

Section 25 of the Act also uses the expression 'vendor or lessor' who has not actually sold or leased the property. It provides *inter alia* that a contract for the sale or letting of property cannot be specifically enforced in favour of the vendor or lessor who comes within the provisions of cls. (a) to (c) of the section. The provisions of s. 27A also use the expression 'lessor and lessee' in connection with provisions relating to the contract to let when actually no lease is executed.

There may be another reason for using the expression 'sale or lease' in cl. (a) of s. 18. Section 13 and illustration (a) read:

"13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations

- (a) A, contracts to sell a house to B, for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B, may be compelled to perform his part of the contract by paying the purchase-money.

* * * * *

In Pollock & Mulla's 'Specific Relief Act', 8th edition, under s. 13, is a note:

"Illustration (a) assumes that a contract for the sale of a house does, of itself, transfer the beneficial interest in the house to the purchaser, and make him owner in equity in the English phrase. This was also the law here before the Transfer of Property Act, 1882, came into force. By s. 54 of that Act it is provided that a contract for the sale of immoveable property does not, of itself,

create any interest in or charge on such property. By s. 55(5) it is enacted that the risk of destruction is borne by the purchaser only from the date when the ownership appears to pass on execution of a proper conveyance by the vendor [see s. 55(1)(d)]. It would, therefore, seem that the illustration cannot now be applied where the Transfer of Property Act is in force."

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It may be that just as illustration (a) to s. 13 continues in the Act, the expression 'sale or lease' continued in cl. (a) of s. 18 as at the time cl. (a) of s. 18 was originally enacted some sort of beneficial interest had passed to the person agreeing to purchase the property by the mere agreement to sell, arrived at between the parties.

It has also been urged for the respondent that cl. (a) of s. 18 of the Act applies only when the person contracting to sell or let has imperfect title to the property and not when he is not entitled to the property as is the case in this suit, as Ramchandra had no title to half the house. We do not consider it necessary to decide this question as we are of opinion that it cannot be said that Ramchandra had no interest in half the house. He had interest in the entire house and so had his mother, though in case of actual partition the interest of each would have been fixed at half. If Ramchandra was not competent to pass title with respect to the entire house during the life time of his mother, he can be said to have imperfect title to it.

We are therefore of opinion that on the death of the mother, Ramchandra obtained title to and interest in the portion of the house which on a private partition subsequent to the contract to sell had taken place between Ramchandra and his mother and that therefore he has to make good his contract out of the property he acquired subsequent to the contract to sell.

It has been submitted for the respondent that it need not be taken for granted that Ramchandra got title to the property which belonged to his mother as it might be that the mother had executed some will. No such allegation appears to have been made before the High Court where it was urged that Ramchandra had acquired title to that portion of the house. It was in view of this allegation that the appellant did not argue the appeal on the basis of the ground that had been taken in the memorandum of appeal, the ground being that Ramchandra had agreed to sell for reasons of legal necessity. We therefore do not consider any force in this contention.

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We hold that the High Court was wrong in not applying the provisions of cl. (a) of s. 18 of the Act to the facts of the case. We therefore allow the appeal, set aside the orders of the Courts below and decree the plaintiff's suit and order that on payment of Rs. 6,000/- minus Rs. 300/- paid to the respondent at the time of the execution of the agreement for sale and such other costs to which the appellant be entitled within a month from the date of the costs being taxed, the respondent will be directed to execute the sale deed of the entire house covered by the agreement in favour of the appellant. The appellant will get his costs of the trial Court, as decreed by that Court, and of the appeal in this Court, the parties bearing their own costs of the appeal in the High Court. In case the appellant fails to deposit the amount aforesaid within the time allowed, his suit will stand dismissed with costs throughout.

Appeal allowed.