

## Raghunandan Lal vs Sheodhan Das And Ors. on 16 March, 1953

**Equivalent citations: AIR1953ALL594, AIR 1953 ALLAHABAD 594**

### JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for specific performance of a contract.

2. Sheodhan Das, defendant 1, and Ballabn Das lather of Janki Das, defendant 2, were brothers & formed a joint Hindu family governed by the Mitakshara. On 24-8-1945 Sheodhan Das entered into an agreement of sale of certain house property with the plaintiff appellant for a sum of Rs. 11250/-. The agreement of sale was executed by Sheodhan Das alone for himself and as agent for Ballabh Das and as a Karta of the family consisting of himself and of his brother. The sale consideration was apparently to be paid in cash. One of the terms of the agreement of sale was that Sheodham would have the sale executed by himself, his brother Ballabh Das and Janki Das, defendant 2. The sale deed was not executed within the stipulated time and Ballabh Das died. Later on, after his death, Sheodhan Das and Janki Das executed a sale deed of the disputed property in favour of Kanhaiya Lal, defendant 3-respondent, for a sum of Rs. 13000/-. The plaintiff-appellant then filed the suit, which has given rise to this appeal, for specific performance of the contract, and he impleaded, besides Sheodhan Das and Janki Das, Kanhaiya Lal, the subsequent purchaser as defendant 3.

3. Defendant 3 defended the suit. The other two defendants remained absent. The defence of defendant 3 was that he paid the price in good faith and had no knowledge of the agreement of the sale between the plaintiff and defendant 1, that the property was joint family property and defendant 1 had no right to make sale in respect of it on behalf of defendant 2, that the plaintiff did not pay the price within three months as agreed upon by him in the agreement of sale, and that, in any event, the plaintiff was not entitled to have the sale deed executed.

4. The trial Court held that defendant 3 had notice of the contract of sale of the plaintiff. But on the other issues in the case he decided against the plaintiff. It further held that the property was joint family property and defendant 1 was not entitled to make an agreement with the plaintiff on behalf of the other members of the joint family and that the contract was not for legal necessity or for family benefit. In the result it dismissed the suit.

5. In this appeal by the plaintiff, it has-been urged that defendant 1, as Karta of the family and as Mukhtaram of Ballabh pas, father of defendant 2, was entitled to enter into a contract of sale of the joint family property, and in the alternative, even if he could not do. so, the agreement of sale could at least be enforced against him 'qua' his own half share in the family property. There is no evidence on the record that defendant 1 was the Mukhtaram of Ballabh Das. Even if he were, he would not enter into a contract of sale of the joint family property, since there was a third person, namely

defendant 2, a coparcener in the joint family property, unless the agreement of sale was for legal necessity. The Court below has found that the agreement of sale was not for legal necessity. Indeed, the plaintiff did not base his right to have the specific performance of contract on there being legal necessity for the contract. Learned counsel for the appellant has not seriously pressed this aspect of the case before us. He has, however, vigorously urged that under Section 15, Specific Relief Act, the plaintiff was entitled to have the contract of sale enforced as against defendant 1 'qua' his own half share.

6. Now it is settled law so far as this State and the States governed by the Banaras School of Hindu Law are concerned, that one member of a joint Hindu family cannot transfer even his own share of the joint Hindu family property before partition. A 'fortiori' such "member cannot enter into an agreement of sale with regard to his own share of joint Hindu family property. There being no question of legal necessity involved in the case, the agreement of sale made by defendant 1 was wholly unauthorised in respect of the share of defendant 2 and also in respect of his own share. Section 15, Specific Relief Act does not make it obligatory upon the Court to enforce a contract of sale-entered into by one member of the joint Hindu family in respect of his own share. Section 15 says:

Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he 'can perform', provided that the plaintiff relinquishes all claim 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."

Leaving aside the proviso, the section authorises the Court to direct the defendant, who has entered into a contract of sale of a property, which he could sell, to execute a sale deed in respect of that portion of the property in respect of which the defendant could have executed the sale deed. The words "as he can perform" are important. If the defendant could not sell even his own share of the property by reason of a rule of Hindu Law because the property was joint family property, he could not be said to be in a position to perform the contract in respect of even that part of the property. Section 15, therefore, cannot apply to the case of a member of a joint Hindu family who enters into an agreement of sale of joint family property and who cannot transfer his own share in the joint family property.

7. Further, the lower Court has held that the plaintiff did not relinquish all claim to further performance of contract, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant, as provided in the proviso to Section 15. This is also correct. If the plaintiff relied upon Section 15, he should have satisfied the requirements of the proviso. No other point is urged.

8. There is no force in this appeal and it is dismissed with costs.