

## **Sm. Shakuntla Devi And Anr. vs Harish Chandra And Anr. on 10 August, 1950**

**Equivalent citations: AIR1952ALL602, AIR 1952 ALLAHABAD 602**

### **JUDGMENT**

P.L. Bhargava J.

1. This appeal arises out of a suit for specific performance of a contract for sale. The suit was instituted by the plffs.-appellants, Sm. Shakuntla Devi & Sm. Om Piari, against Harish Chandra alias Ramesh Chandra, who had executed an agreement on his own behalf & on behalf of his minor brother, Brijesh Chandra, & also against Ram Gopal, who has subsequently purchased a portion of the property covered by the agreement. The agreement is dated 25-7-1940. The suit has been dismissed by both the Courts on the ground that the agreement was vague & incapable of enforcement. Consequently, the plffs. have filed this appeal.

2. The facts which led to the institution of the suit are these : Harish Chandra & Brijesh Chandra are the sons of Raj Kumar, who died in the year 1932, leaving two sons & a widow Sm. Brij Rani. Raj Kumar was the owner of two houses, one situate in mohalla Bhoor in Bareilly & the other known as Kothi, in Ujhiani in the district of Budaun. After the death of Raj Kumar these houses came into the possession of Harish Chandra & his brother. The agreement, which is now sought to be enforced, after referring to the indebtedness of Raj Kumar & the necessity for the sale stated, that Harish Chandra would apply for obtaining a certificate of guardianship of his minor brother & thereafter separate his share in the two houses from that of his minor brother. It was further stated in the agreement that, after the partition of the houses, the half share of Harish Chandra would be sold & the remaining half share of his brother would be mortgaged to the plffs.-appellants. One of the relevant conditions in the deed of agreement was that the value of Harish Chandra's half share of the kothi in Ujhiani was settled at Rs. 2,000 & the value of the half share in the Bareilly house was assessed at Rs. 3,000. It was agreed that, if on partition, the entire Bareilly house was allotted to the share of Harish Chandra & the Kothi was allotted to the share of his brother, the price of the Bareilly house would be taken as Rs. 6,000 while that of the Kothi as Rs. 4,000. Another condition in the agreement was that Harish Chandra would make an application for obtaining the certificate of guardianship in the Court of the Dist. J. of Bareilly on 26-7-1940, that is, on the day following the execution of the agreement. After obtaining the certificate of guardianship & permission for partitioning the property, a draft deed of partition was to be drawn up and if, on partition, the Bareilly house was to be allotted to Harish Chandra, it was to be sold for Rs. 6,000 & if the Ujhiani Kothi was to be allotted to his share, it was to be sold for Rs. 4,000. The sale deed was to be executed on the day following the registration of the deed of partition.

3. No application for obtaining the certificate of guardianship was filed by Harish Chandra & no deed of partition was executed. In execution of a decree in favour of Shri Ram & Co., the Bareilly house was put to sale & purchased by Shadi Lal for Rs. 200. That sale was, however, cancelled & it

was again put up to sale. It was again purchased by Shadi Lal, but on this occasion for Rs. 2,000. The sale took place in December 1940 that is, about five months after the agreement. Thereafter, the house was sold to Ram Gopal (deft. 2) by Harish Ohandra & his brother as well as his mother, the decree was satisfied & the sale in favour of Shadilal was set aside.

4. Then the present suit was filed on 2-4-1943. The plaintiffs-appellants stated the above facts & circumstances & alleged that Harish Chandra had refused to execute a sale deed in respect of his share in spite of repeated demands. Accordingly they prayed for a decree for specific performance of contract & also claimed such other relief as they were found entitled to by the Court. The suit was contested by the defts. on various grounds & the validity of the agreement was also challenged. It was further pointed out that it could not be enforced.

5. As already stated, both the Courts have held that the agreement was vague & unenforceable. Learned counsel for the appellants has challenged this finding of the Courts below. We are, however, of opinion that, in the circumstances of the case, the finding recorded by the Courts below is fully justified.

6. The agreement, as we have already seen, shows that, in the first instance, Harish Chandra, the executant of the agreement, was to obtain a certificate of guardianship of his brother & then he was to have his share separated from that of his minor brother. It was, no doubt, provided that Harish Chandra was to sell his half share in the property; but in the very first clause of the agreement, which has been referred to above, it was provided that the property constituting the half share was to be determined after partition had taken place. It was anticipated that in consequence of the partition Harish Chandra might get a half share in each of the two houses or one full house might be allotted to him. Therefore, the property which was to be sold in terms of the agreement was not certain up to the date of the agreement. Further, as pointed out by the trial Court, it was likely that on partition the share of Harish Chandra in the presence of his mother might be reduced to one-third. Consequently, the Courts below were justified in holding that the agreement was vague & incapable of enforcement.

7. Learned counsel for the appellants has next contended that, when the Court below refused to grant the relief by way of specific performance of the contract, under Section 19, Specific Relief Act, they should have awarded compensation. In reply to this argument it has been pointed out on behalf of the respondents that the plffs.-appellants never claimed damages in the suit; & in fact, they confined their claim to specific performance.

8. Section 19, Specific Relief Act, is in these terms:

"Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the

deft. & that the plff. is entitled to compensation for that breach, it shall award him compensation accordingly.

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9. Learned counsel for the respondents has argued that the words "such suit" occurring in the second para. of the section refer to a suit for specific performance of a contract in which compensation for its breach has been asked either in addition to or in substitution for such performance. There, however, appears to be no reason to confine these words to a suit so framed. The first para. of the section primarily refers to a suit for specific performance of a contract, which may also (and not necessarily) contain a prayer for compensation. The provisions contained in the second para. of the section empower the Court to award compensation in a case of breach of contract, where the Court decides that specific performance of the contract ought not to be allowed. The Legislature could never have intended that where a contract had been entered into, & there has been a breach of the contract & where it is not possible to allow specific performance of the contract, the Court may refuse to award compensation, merely because there is no prayer in the plaint for compensation; more especially when it is always open to the Court to give such relief as it "may think just to the same extent as if it had been asked for."

10. In our opinion, therefore, where the Court finds that a contract has been entered into & there has been a breach of that contract & that it is not possible or desirable to order specific performance of that contract but it is just & proper to award compensation, the Court can make an order allowing compensation to the aggrieved party even without a specific prayer in the plaint. There is nothing in Section 19 to prevent the Court from doing so.

11. On behalf of the appellants reference has been made to certain decisions of the Madras & Lahore High Courts where it was held that the Court, in exercise of the powers conferred upon it by Section 19, Specific Relief Act, may grant the relief of compensation even without a prayer for such relief in the plaint. The cases referred to are reported in Krishna Aiyar v. Shamanna, 171. C. 497 (Mad.), Ookerjee Cowasjee v. Sabhapathy Mudaliar, 51 I.C. 908 (Mad), Arya Pradishak Pratinidhi Sabha v. Ram Chand, A. I. R. (11) 1924 Lah. 713 and K.H. Skinner v. B. Skinner, A.I.R. (12) 1925 Lah. 132. The view expressed in these cases is in accord with the view which we have expressed above. In the first case of the Lahore High Court, Shadi Lal C. J., observed that it has been often held that the plff. is not obliged in a suit for specific performance to pray specifically for damages & that the Court has always a discretionary power to award damages in a suit for specific performance and ought to exercise that discretion when it is of the opinion that damages should be given. In support of his observations the learned Chief Justice referred to two decisions of the Bombay High Court in Callianji v. Narsi, 19 Bom. 764 & Kallian Dass v. Tulsi Dass, 23 Bom. 786. In the other case of the Lahore High Court it was held that a plff. was not obliged in a suit for specific performance to pray specifically for damages whether in addition to or in substitution.

12. We find that the executant Harish Chandra committed a breach of the contract when he did not file an application for obtaining the certificate of guardianship on 26-7-1940, and further committed a breach, when he did not take any steps within reasonable time to bring about a partition of the

property covered by the agreement. Learned counsel for the respondents has pointed out that there was no time limit fixed for partitioning the property in the agreement; but, as has been just stated, a specific date was fixed for obtaining the certificate of guardianship & the deed of partition was to be executed within & reasonable time thereafter. Admittedly no steps have been taken to effect partition so far. Apart from it, one of the items of property covered by the agreement has been sold by the executant as well as his minor brother & their mother. Therefore, there was undoubtedly a breach of the contract & the plaintiffs-appellants are entitled to compensation for that breach; & the amount of that compensation must be determined in the present suit.

13. For the reasons stated above, we dismiss the appeal so far as Ram Gopal, deft. 2, is concerned; but allow it as against Harish Chandra, defendant 1, set aside the decree passed by the Court below so far as he (Harish Chandra) is concerned & remand the suit to the trial Court with a direction to readmit it to its original number & to determine & award such compensation to which the plff's. may be found entitled against Harish Chandra. deft. 1. The parties will be entitled to lead evidence to enable the Court to determine the amount of damages. No order is made as to the costs of Ram Gopal deft. 2, so far as this appeal is concerned. The costs here & hitherto as between the plff's. & deft. 1 will abide the result.