

CALCUTTA HIGH COURT

Durga Charan Mitra

Vs

Rajendra Narain Sinha

(A Mookerjee and Cuming, JJ.)

02.08.1922

JUDGMENT

A Mookerjee, J.

1. This is an appeal by the plaintiff in a suit for specific performance of a contract for sale of land. The Subordinate Judge has dismissed the suit on the ground that there was no valid and complete contract between the plaintiff and the defendant for the sale of the property.

2. On the 9th June 1919 the defendant Singh gave the following letter of authorisation to a man named Bose: I hereby authorise you to negotiate the sale of the binds at Tolligunge I have recently purchased from Messrs. Martin and Co. If you can secure a purchaser to purchase the same at the gross value of Rs. 16,000. I shall pay 3011 Rs. 200 as your remuneration. If you be able to raise the price to any amount above Rs. 16,000, you will be entitled to the excess amount fully and I shall be bound to mention the whole amount in the conveyance. Please note that this letter of authority will remain in force for a fortnight only to complete the transaction; after that this letter will stand cancelled.

3. On the 20th June 1919 the Solicitors of the plaintiff Mitra wrote the following letter to Singh : "Re. brickfield (belonging lately to Messrs. Martin and Co., and recently, purchased by you) in Mutiagara, Road, Tolligunge. Our client Babu Durga Charan Mitra, of No. 3 Peary Charan Lane, Calcutta, has been approached by the broker appointed by you whom you authorised to sell the above land. Our client is a purchaser for the property and He accepts the terms contained in the letter addressed by you to the broker.

4. On the same date, Bose wrote as follows to Singh: I have this day sold by your order and for your account the lands in Tolligunge recently purchased by you from Messrs. Martin and Co., on the authority and in terms of your letter of authority dated the 9th June 1919. Brokerage of Rs. 200 as arranged has become payable to me.

5. On receipt of these letters, Singh appears to have informed Bose that he would not sell the land. Bose communicated this to Mitra. Thereupon, on the 21st June 1919, the Solicitors of the plaintiff wrote to the defendant and informed him that their client was not prepared to withdraw his acceptance of the contract. Bose also informed defendant at the same time that Mitra had

accepted the offer to sell the land and insisted upon completion. Singh took no notice of these letters. Two days later, the Solicitors of the plaintiff wrote to the defendant that as the latter refused to complete the agreement, the plaintiff would take legal steps to enforce his rights. This suit was thereafter instituted on the 2nd July 1919.

6. It is well-settled that an estate or house-agent, authorised to procure a purchaser, has no implied authority to enter into an open contract of sale. In *Hamer v. Sharp*¹. Hall, V.C., decided that if you go to an estate agent and tell him that you have a property to sell and that you want a purchaser, and you tell him what you have made up your mind shall be the price, and to a certain extent what shall be the conditions, and you instruct him to try and find a purchaser, that is not sufficient to authorise the agent to make a contract without any conditions whatever with regard to the title. This decision was applied by *Kekewich, J., in Prior v. Moore*² and *Chadburn v. Moore*³. In the case last mentioned, Moore authorised Newman to find a purchaser for some houses and to negotiate a sale, but Moore did not in express terms authorise Newman to enter into a contract. Kekewich, J., held that instructions to a house and estate agent to procure a purchaser and to negotiate a sale do not amount to authority to the agent to bind his principal by a contract for sale of real or leasehold property, and observed as follows: "Newman was to find a purchaser, and to negotiate a sale. Is that sufficient? No evidence was given as to custom; no evidence was brought to show that the position of a house or estate-agent resembles that of a broker on the Stock Exchange or any other exchange. A house or estate-agent is in a different position owing to the peculiarity of the property with which he has to deal, which does not pass by a short instrument as stocks and shares do, but has to be transferred after investigation of title and in accordance with strict laws. An agent for sale of real estate must be more formally constituted than a seller of stocks and shares and securities of a similar nature. There is no definite authority. In *Hamer v. Sharp* (1875) 19 Eq. 108 : 44 L.J. Ch. 53 : 31 L.T. 643 : 23 W.R. 158(Supra). Vice Chancellor Hall does not... decide the question of authority, but only states his opinion. I must therefore refer to *Prior v. Moore* (1892) 61 L.J. Ch. 674 : 67 L.T. 257 : 41 W.R. 39(Supra), where I indicated my own opinion distinctly, that instructions to a house agent to procure a purchaser and to negotiate a sale do not amount to authority to the agent to bind his principal by contract. Here the circumstances must not be forgotten, that Moore, on the second occasion, told Newman what he was prepared to take for the twenty-nine houses. Newman then jumped at the conclusion that he had power at that price to enter into a contract. That is, in my opinion, not sufficient, and unless express authority is given to the agent to sell, and for that purpose to enter into a binding contract, the principal reserves his final right to accept or refuse."

7. The rule was applied by Parker, J. in *Thuman v. Best*⁴. To the same effect is the decision of Chatterton, V.C., in *Wilde v. Walton*⁵ that when an owner of property employs an estate-agent to procure a purchaser or tenant at a specified price, the agent has no implied authority to conclude a contract for sale. His duty is simply to find a purchaser or tenant and to communicate his offer to the owner. The Vice-Chancellor added that it was a common practice to place houses or estates on the books of a number of house or estate agents at the same time, and if each had authority to conclude a contract for the owner, the result would be that he might become bound to let or sell the same premises to several different parties at the same instant. The decision of Field, J., in *Saunders v. Dence* (1895) 52 L.T. 644 at p. 646 is clearly distinguishable there the vendor had himself bought only a right to the specific performance or a contract, and that was the matter which he agreed to sell through the auctioneer. The decision of Romilly, M.R. in *Wright v. Bigg*⁶ also does not affect the present question. In that case, Tootel was authorised by the defendant to make a proposal of sale of some land to the plaintiff but to be accepted within a week. The

plaintiff wrote to Tootel within that time, accepting the offer but Tootel did not communicate the acceptance until long after. It was ruled that there was a Valid contract which was not destroyed by the neglect of Tootel to communicate the acceptance to the defendant. There was no contention raised that Tootel had not the requisite authority to make the proposal of sale. The view we take is in harmony with that adopted by Ghose, J., in *Purna Chandra Dutt v. Indra Chandra Roy*⁷ and the decisions in *Koylash Chunder Doss v. Tariney Churn* 10 C. 588 : 5 Ind. Dec. (N.S.) 394(supra), and *Hyam v. Gubbay*⁸, undoubtedly do not militate against our conclusion. The essential question is, whether the agent employed is authorised to make a binding contract for sale. Such an authority may be expressly conferred, as in *Rosenbaum v. Belson*⁹ As Buckley, J., points out, there is a substantial difference between an authority to sell and an authority to find a purchaser. Authorising a man to sell means an authority to conclude sale; authorising him to find a purchaser means less than that it means, to find a man willing to become a purchaser, not to find him and also make him a purchaser. On the other hand, in *Godwin v. Brind*¹⁰. Bovill, C.J., held that where applications to treat and view were to be made to certain persons described, they had authority to enter into negotiations but not to enter into a contract for sale of the land. In the case before us, some stress has been laid on the sentence in the letter of authorisation from Singh to Base, dated the 9th June 1919, which states that the letter would remain in force for a fortnight only to complete the transaction. But this does not advance the contention of the plaintiff the transaction mentioned is that specified earlier in the letter, namely, to negotiate the sale and to secure a purchaser. We hold accordingly that the Subordinate Judge, has correctly interpreted the terms of the agreement between the parties as disclosed in the correspondence.

8. The plaintiff, who is himself a Solicitor, appears to have realised the difficulty of the situation, and in his cross-examination he endeavored to alter the foundation of his claim. He conceded that the broker had no authority, to sell the property and that he could not have taken a conveyance or an agreement for sale from the broker. On this basis, it was contended before the Subordinate Judge that the letter from the defendant was an offer by the latter and that the communication of his own willingness to purchase the property constituted an acceptance of that offer. The Subordinate Judge has rightly held that the plaintiff could not be permitted to depart from his pleadings in this manner. He has also pointed out that, in substance, there was at best an offer by the plaintiff to purchase, which was never accepted, and consequently did not ripen into a contract. In this view, it is not necessary to consider the decision of the Judicial Committee in *Harvey v. Facey*¹¹ which was mentioned in the course of argument and may require, explanation.

9. Our conclusion is that the claim for specific performance cannot be sustained and that the suit has been rightly dismissed, the appeal is consequently dismissed with costs.

Cases Referred.

1(1875) 19 Eq. 108 : 44 L.J. Ch. 53 : 31 L.T. 643 : 23 W.R. 158

2(1887) 3 T.L.R. 624

3(1892) 61 L.J. Ch. 674 : 67 L.T. 257 : 41 W.R. 39

4(1907) W.N. 170 : 97 L.T. 239

5(1878) I.L.R. Ir. 402 at p. 405

6(1852) 15 Beav. 592 : 92 R.R. 568 : 51 E.R. 668

769 Ind. Cas. 978 : 49 C. 389 : (1922) A.I.R. (C.) 397

832 Ind. Cas. 53 : 20 C.W.N. 66

9(1900) 2 Ch. 267 : 69 L.J. Ch. 569 : 82 L.T. 658 : 48 W.R. 522

10(1889) 17 W.R. 29 : 5 C.P. 299 n. : 39 L.J. C.P. 122

11(1893) A.C. 552 : 62 L.J.P.C. 127 : I.R. 428 : 69 L.T. 504 : : 42 W.R. 129