

# PATNA HIGH COURT

Rameshwar Prasad Sahi

Vs

Anandi Devi

Letters Patent Appeal No. 11 of 1955

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

20.10.1959

## JUDGMENT

### **R.K. Choudhary, J.**

1. In the suit out of which this appeal arises the plaintiff claimed a decree for specific performance of a contract for sale entered into by defendant no. 1 on her own behalf and on behalf of her minor grandson, defendant no. 2, with regard to 3 bighas 14 kathas 2½ dhurs of land in village Baruraj of Muzaffarpur district, for a consideration of Rs. 1000/-. The plaintiff alleged that the contract was made sometime in September, 1945, and the plaintiff also paid a sum of Rs. 555/- to defendant no. 1 out of the consideration money. It is stated by the plaintiff that defendant no. 1 could not register the document on account of illness, and after she had recovered from her illness defendant no. 1 refused to register the document of sale which she had executed on the 21st September, 1945. The suit was contested by the defendants on the ground that there was no contract of sale, and that no kebala was executed by defendant no. 1 on the 21st September, 1945, but that the plaintiff had fabricated the document. Defendant no. 1 also denied the receipt of the amount of Rs. 555/- from the plaintiff. The trial court found that defendant no. 1 had entered into a contract with the plaintiff for the sale of the land and that she had received a sum of Rs. 555/- as part of the consideration money. The trial court, however, found that the contract was not for the benefit of the minor defendant No. 2 and so it was not binding so far as the minor defendant no. 2 was concerned. The trial court also came to the finding that the kebala was not registered on account of the laches and negligence of the plaintiff and so no decree for specific performance could be granted. The decree of the Munsiff was affirmed by the Subordinate Judge in appeal. When the matter came up to the High Court in second appeal, C. P. Sinha, J, also held that the plaintiff was guilty of laches and acquiescence and so he is not entitled to a decree for specific performance. The suit in this case was brought by the plaintiff on the 11th September, 1946, and the view of the learned Single Judge was that the inaction of the plaintiff for a period of about twelve months amounted to an abandonment of the contract and waiver of

the right of the plaintiff to sue for specific performance which was discretionary relief. The result, therefore, was that the second appeal was dismissed by C. P. Sinha, J.

2. In support of this appeal under the Letters Patent the argument on behalf of the appellant is that the view of law expressed in the Madras cases, *Satyanarayana v. Venkatarao*<sup>1</sup> *Valambalachi v. Duraiswami Pillai*<sup>2</sup> and *Venkatasami v. Kristayya*<sup>3</sup>, has not been followed by the Patna High Court. It was submitted that there were two alternative remedies open to the plaintiff in the circumstances of the present case. In the first place it was open to the plaintiff to apply for a compulsory registration of the document under Section 23 of the Indian Registration Act, and in case the prayer of the plaintiff was refused by the Sub-Registrar, it was open to him to bring a suit under Section 77 of the Registration Act. It was also open to the plaintiff to have recourse to the fuller and more comprehensive remedy provided for a suit for specific performance of contract for sale. It was contended that these remedies were independent and it was open to the plaintiff to follow either of these two courses for obtaining the relief. In support of this argument reference was made to a Division Bench decision of this High Court of Fazl Ali, C. J. and Sinha, J. in *Jhaman Mahton v. Amrit Mahton*<sup>4</sup>, and also to an earlier Division Bench decision of this Court in *Uma Jha v. Chetu Mander*<sup>5</sup> In our opinion the argument of learned Counsel on this point is right and we are bound to follow the *cursus curiae* of the Patna High Court in preference to the decisions of the Madras High Court to which we have already referred. But even so, we think that the plaintiff in the present case is not entitled to a decree for specific performance in view of the finding of the lower courts that the plaintiff has made an undue delay in bringing a suit for specific performance of the contract and the inaction of the plaintiff for about twelve months amounted to an abandonment of the contract and waiver of his rights to sue for specific performance. The explanation of the plaintiff for the delay was that defendant No. 1 was ill for about six months and she was not available for going to the Registrar's office for the purpose of registering the document. The plea of illness of defendant No. 1 has been rejected by the lower courts and it has been found that there is no explanation at all why the plaintiff made a delay of about twelve months before bringing a suit for specific performance of the contract. It was open to the plaintiff in the present case to present the document before the Registrar for registration under Section 23 of the Indian Registration Act within a period of four months from the date of its execution. It was also open to him under Section 25 of the Indian Registration Act to present the document for registration after a further period of four months. There is also provision in Section 75 of the Indian Registration Act for compulsory registration of the document, and Section 77 of the Act provides for the institution of a suit by the person aggrieved in case of refusal of registration by the Registrar of the document in question. In the present case the plaintiff did not take any steps under the Registration Act either for presenting the document before the Registrar or in getting it registered, and the failure of the plaintiff to take any kind of action for a period of about twelve months is tantamount, in our opinion, to an abandonment of the contract and waiver of his rights to sue for specific performance. Delay of this kind is always fatal to the plaintiff in a suit for specific performance, and it is well settled by numerous authorities that in a case of this description the plaintiff is not entitled to a decree for specific

performance of the contract which is a discretionary relief. In *Erlanger v. New Sombrero Phosphate Co*<sup>6</sup>. the law was stated by Lord Penzance as follows :

"Delay, as it seems to me, has two aspects. Lapse of time may so change the condition of the thing sold, or bring about such a state of things that justice cannot be done by rescinding the contract subject to any amount of allowances or compensations. This is one aspect of delay, and it is in many cases particularly applicable to property of a mining character. But delay may also imply acquiescence, and in this aspect it equally bars the plaintiff's right, for such a contract as is now under consideration is only voidable and not void. It conduces, I think, to clearness and to the exclusion of a certain vagueness which is apt to hang about this doctrine of delay as a bar to relief, to keep these two different aspects of it separate and distinct when the consequences of delay come to be considered in connection with the circumstances of an individual case." A similar view has been expressed by the Privy Council in *Bindeshri Parshad v. Jairam Gir*<sup>7</sup>,

3. For these reasons we hold that the learned Single Judge of this Court has rightly refused to grant the plaintiff a decree for specific performance in this case. We accordingly affirm the decree of the learned Single Judge and dismiss this Letters Patent Appeal. There will be no order as to costs in this Letters Patent Appeal.

Appeal dismissed.

Cases Referred.

<sup>1</sup> ILR 49 Mad 302

<sup>2</sup> AIR 1928 Mad 344

<sup>3</sup> ILR 16 Mad 341

<sup>4</sup>AIR 1946 Pat 62

<sup>5</sup>7 Pat LT 730

<sup>6</sup>(1877) 3 AC 1218 at p. 1231

<sup>7</sup>14 Ind App 173 (PC)