Smt. Nirmala Sundari Dutta Choudhary and another Vs Kumode Bandhu Deb

Court: Gauhati High Court

Date of Decision: Sept. 30, 1974

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 80
Contract Act, 1872 â€" Section 23

Citation: AIR 1976 Guw 58

Hon'ble Judges: R.S. Bindra, J; B.N. Sharma, J

Bench: Division Bench

Advocate: N.C. Roy, for the Appellant; A.K. Shyam Choudhury, for the Respondent

Judgement

Bindra, J.
This second appeal by two out of four defendants arises out of a suit filed by Kumode Bandhu Deb for specific enforcement of

an agreement dated 28-3-1960 executed by the defendant No. 1 Mangalia Munda in his favour and in favour of Upendra Chandra Das. The suit

was dismissed by the trial Court but was decreed on appeal by the learned Additional District Judge, Tripura.

2. The plaintiff alleged that on 28-3-1960 an agreement in writing which was duly registered, was concluded between him and Upendra Chandra

Das on one hand and Manglia Munda on the other respecting 8 kanis of land situate in village Chaliajala. The sale price was settled at Rs. 1,000/-

out of which Rs. 300/- was paid as earnest money. It was agreed that Mangalia Munda would execute sale deed within the next three months on

receipt of the balance sum of Rs. 700/-. It was alleged further that it was also settled that the plaintiff would purchase 6 kanis and the defendant

No. 2 would go in for 2 kanis, and that the advance payment of Rs. 300/- made to Mangalia Munda was contributed in that share by the plaintiff

and the defendant Upendra Ch. Das.

However, the plaintiff pleaded further, at the instance of persons inimically disposed towards him and with the object of making some illegal gains,

the defendant Mangalia Munda sold 2 kanis of land to Upendra Chandra Das and the balance of 6 kanis to Nirmala Sundari and Shyam Lal,

respectively the defendants Nos. 3 and 4, for an apparent total consideration of Rs. 2,000/- which was twice the amount for which the sale

agreement had been concluded on 28th of March, 1960. The sale deeds in favour of defendants Nos. 2, 3 and 4 were all executed on 6-4-1960,

that is to say, only nine days after the original agreement. Since the defendant No. 2 Upendra Chandra Das was entitled to purchase only 2 kanis in

terms of the agreement dated 28-3-1960 and he had purchased that much area from the vendor on 6th of April, 1960, the plaintiff prayed that he

be granted a decree for specific enforcement of the sale agreement respecting the balance of 6 kanis of land on declaring the sales made by the

vendor in favour of defendants Nos. 3 and 4 as void.

3. The defendants set up a monolithic defence through a joint written statement. The main contentions raised were that the agreement dated 28-3-

1960 had actually been concluded between Mangalia Munda and Upendra Chandra Das, that the entire earnest money had been paid by the latter

to the former, that since the defendant No. 2 had not been able to arrange the entire money for purchase of 8 kanis, he had settled with the vendor

to take 2 kanis against payment of Rs. 500/-, and that since the plaintiff was not prepared to pay Rs. 500/- for the remaining 6 kanis of land, the

vendor had sold those 6 kanis for that much consideration to defendants Nos. 3 and 4. It was denied that defendants Nos. 3 and 4 had any

knowledge about the agreement, dated 23-3-1960, when they purchased 6 kanis of land from Mangalia Munda on 6th of April, 1960. The

defendants also raised the plea of limitation.

4. The trial Court settled the following issues between the parties:

(1) Is the suit barred by limitation?

(2) Whether the contract for sale of land by defendant No. 1 was made with the plaintiff and the pro-defendant No. 2 or with the pro-defendant

No. 2 alone?

(3) Is the bainapatra true and genuine?

(4) Whether the pro-defendants Nos. 3 and 4 are bona fide purchasers of land for valuable consideration without any knowledge of the prior

contract for sale?

(5) Is the plaintiff entitled to get any kabala in respect of the suit lands?

(6) What relief, if any, is the plaintiff entitled to get?

5. By its judgment dated 18-6-1962 the trial Court held that issue No. 1 was not pressed before it, that the agreement had actually been

concluded not between the defendant No. 1 and the defendant No. 2, as set out in the written statement, but between the plaintiff and defendant

No. 2 on one hand and defendant No. 1 on the other, that the Bainapatra Ext. P-1 was a genuine document, and that defendants Nos. 3 and 4

were well aware of the agreement dated 28-3-1960 when they purchased 6 kanis of land on 6th of April, 1960. After deciding the first four issues

in favour of the plaintiff, the trial Court however, held under issue No. 5 that the suit ""does not embrace the original contract as a whole"" and that

the plaintiff''s ""demand for reconveyance on receipt of the proportionate amount for six kanis of lands, even if true, was not a valid offer to perform

his part of contract and the suit to enforce the contract piecemeal is not maintainable"". It is on the footing of this double finding that the trial Court

dismissed the suit with costs.

6. On appeal the learned Additional District Judge affirmed the findings of the trial Court on the first four issues and on reversing his conclusions on

the basis of which it had dismissed the suit, allowed the appeal and decreed the suit. In the opinion of the learned Additional District Judge, the

contract being for 8 kanis of land and the vendor having already sold 2 kanis to one of the promisees namely, the defendant No. 2, the plaintiff

could under the circumstances claim specific enforcement of the agreement respecting 6 kanis and not more. That Court held further that ""the

contract has been made divisible by the action of the defendant No. 1 who has already performed his part of the contract in respect of 2 kanis of

lands"", and so in such circumstances he (the defendant No. 1) must specifically have performed the remaining part of the contract.

7. Having felt aggrieved with the decree of the first appellate Court the defendants Nos. 3 and 4, who alone, in practical terms, are affected by that

decree, have come up in second appeal to this Court. Their counsel Shri N.C. Roy urged only one point in support of the appeal, it being that

Section 17 of the Specific Relief Act, 1877, hereinafter called the ''Act'', by which the present appeal is governed, forbids specific performance of

a part of contract except in cases falling under Sections 14, 15 and 16, and that the present case does not fall under either of those three sections.

Shri A.K. Shyam Choudhury urged on the contrary, on behalf of the plaintiff-respondent, that the present is not a case which is hit by the

provisions of Section 17. Alternatively he urged upon this Court to maintain the decree on the strength of Section 16 of the Act.

8. The foremost question that arises for determination is whether the defendants had taken the plea that the plaintiff''s suit is not tenable as he seeks

specific performance of a part and not of the whole of the agreement. After a very close look at the joint written statement of the defendants, I

have not been able to lay hand on any such plea therein, not even an allegation out of which by some process of sophistication or syllogism one can

spell out such a plea. Rule 2, Order 6, Civil Procedure Code, enjoins that every pleading shall contain a statement in a concise form of the material

facts on which the party pleading relies for his claim or defence, as the case may be. It is well settled that if a party omits to plead some material

fact, he will not be allowed to give evidence of that fact at the trial. It is equally well settled that if by inadvertence some evidence has been led in

respect of such a fact it cannot be looked into. If the defendants had set up the plea that the suit was not maintainable because the plaintiff had

claimed specific performance of a part of the agreement which was not permitted by Section 17 of the Act, the plaintiff may well have by further

pleadings in the nature of a replication taken the stand that the defendants had waived such an objection by the execution of sale deed Ext. D-1 on

6-4-1960 in favour of the defendant No. 2.

The decision in T.V. Kochuvareed v. P. Mariappa, AIR 1954 Trav. Co. 10, is an authority for the proposition that the provisions contained in

Sections 14 to 17 of the Act ""do not involve any questions of public policy"" and as such it is ""perfectly open to the contracting parties to waive the

benefits conferred by these sections and to restrict and regulate their rights by inserting suitable provisions in the contract"". I respectfully agree with

these observations for it is open to the parties to arrive at any agreement convenient to them unless, of course, such an agreement is not rendered

void by some provisions like those enacted in Section 23 of the Contract Act. There is no provision either in the Specific Relief Act or in any other

Act which forbids the parties concluding an agreement not conforming to the provisions of Section 17 of the Act. Section 17 would come into play

only if there is no agreement to the contrary between the parties or if its benefits are not waived by the party entitled to avail of the same. It may be

appropriately stated to reinforce the conclusion just reached, that there is abundant authority for the proposition that even the statutory notice

provided for by Section 80 of the CPC can be waived by the Government or the public servant concerned.

It was held by the Privy Council in the case of AIR 1947 197 (Privy Council) , that the notice required to be given u/s 80 is for the protection of

the authority concerned and that if in a particular case he does not require that protection and says so, he can lawfully waive his right to the notice.

If a statutory notice u/s 80 can be waived, on principle I see nothing wrong in the proposition that the provisions of Section 17 may either be

waived by the party entitled to their benefit or those provisions may be got over by a specific agreement to the contrary. The corollary that follows

is that the defendants having not raised any plea bearing on the provisions of Section 17, and further they having claimed no specific issue in that

connection, they had no right to pray at the stage of arguments before the trial Court to dismiss the suit on the contention that it had infringed the

terms of Section 17. Nor the Court had the sanction of law to entertain such an objection at the stage it was done.

9. The discussion on issue No. 5 was opened by the trial Court with the observation: ""What remains to be seen is whether the plaintiff has

performed his part of the contract and whether a piecemeal performance of the contract is legally enforceable"". The first part of this observation is

intelligible because it had been specifically alleged in the written statement that the plaintiff had refused to pay Rs. 1,500/- as consideration for 6

kanis of land and so the defendant No. 1 had sold that much area of the land to defendants Nos. 3 and 4. This imputed refusal on the part of the

plaintiff could legitimately lead to an issue whether the plaintiff had performed his part of the contract. However, it passes comprehension how

could the trial Court pose the question for its reply whether a piecemeal performance of the contract is legally enforceable when such a plea had

not been adopted by the defendants, nor any specific issue had been raised in that respect. Therefore, on the present record it is not possible to

hold that the trial Court was justified in permitting a point being raised which had neither been adopted in the written statement nor had formed the

basis of a specific issue.

10. Assuming that the trial Court had the right to examine the question raised before it on the strength of Section 17 of the Act, the real point that

arises for determination would be whether the plaintiff is seeking in the present suit only part performance of the agreement dated 28-3-1960.

According to the finding of the first appellate Court, the defendant No. 1 having voluntarily sold 2 kanis of land to the defendant No. 2 in part

performance of the contract, the plaintiff can in such circumstances claim specific performance in respect of the balance land measuring 6 kanis

alone. The legislative injunction outlined in Section 17 is that the Court shall not direct the specific performance of a part of contract except in cases

corning under one or other of the three last preceding sections. A plain reading of the section, in my opinion, yields two conclusions, namely, (1)

that it is open to the parties to agree subsequent to the original agreement to implement a part and not the whole of it, and (2) that the question of

the Court directing the specific performance of a part of contract would arise only when the whole of the contract, as on the date of the suit, is

capable of implementation in a manner bigger and to the extent larger than what is claimed in the suit.

I may bring out the point by an illustration. Supposing A has undertaken to sell to B two properties, situate in two different villages falling under

different registration divisions, and he has executed and got registered a sale deed relating to the property of one village but subsequently refuses to

honour his commitment in respect of the second property. In such a situation if B brings a suit for specific enforcement of the contract relating to

property in the second village, will it be legitimate for A to say that it is a suit for specific performance of a part of the contract and so is hit by

Section 17 of the Act? The situation in the present case is not much different from that of the illustrative case. Here the defendant No. 1 had

undertaken to sell 8 kanis of land to the plaintiff and the defendant No. 2, and according to the plaintiff he had be purchase 6 kanis and the

defendant No. 2 was to get the remaining 2 kanis.

The defendant No. 1 has executed sale deed respecting 2 kanis out of 8 in favour of the defendant No. 2 and so the plaintiff can under the existing

circumstances claim specific enforcement of only 6 kanis to which alone he had a claim in terms of the agreement. He cannot, in fairness, approach

the Court for specific enforcement of the entire agreement, a part of which having already been carried out. It was urged on behalf of the appellants

that the sale made by defendant No. 1 in favour of defendant No. 2 was not pursuant to the agreement dated 28-3-1960 but it represented

culmination of a distinct and a separate agreement. I remain unimpressed about the soundness of this submission. Apart from the statement of the

plaintiff, as P.W. 1, that it had been agreed between him and the defendant No. 2 that they shall share the land in the ratio of 3 to 1 and that they

had also paid the earnest money of Rs. 300/- in that proportion, we have the testimony of P.W. 4 Sachindra Chandra Banik, an attesting witness

of the agreement Ext. P-1, to the same effect.

He affirmed that he is an attesting witness of the document, that Kumode was to purchase 6 kanis and Upendra 2 kanis, and that the former had

paid Rs. 225/- and the latter Rs. 75/- to Mangalia Munda at the time of the execution of Ext. P-1. These averments of the witness were not

challenged in cross-examination, nor the identical statement of the plaintiff was assailed during his cross-examination. P.W. 4 said during his cross-

examination that at the time the deed Ext. P-1 was scribed it was stated that the plaintiff and the defendant No. 2 would respectively purchase 6

and 2 kanis out of a total of 8 kanis. The unchallenged statements of the plaintiff and Sachindra Chadra Banik leave no room for doubt that the

plaintiff had to purchase 6 kanis and the defendant No. 2, 2 kanis, and since the defendant No. 2 has already purchased 2 kanis the plaintiff can

claim at the best specific enforcement of the agreement relating to remaining 6 kanis.

11. The mere payment, if at all, of Rs. 500/- by the defendant No. 2 as price for 2 kanis of land as against the contractual price of Rs. 250/- would

not clothe the transaction evidenced by Ext. D-1, dated 6-4-1960 as representing a separate and different agreement. This sale deed, as also the

other two sale deeds executed by defendant No. 1 in favour of defendants Nos. 3 and 4, it will be noticed, are dated 6-4-1960. In other words,

the entire 8 kanis of land was sold by the defendant No. 1 within nine days of the agreement concluded by him on 28-3-1960. What led the

defendants to conclude the transactions so soon, after 28-3-1960 which deprived the plaintiff completely of the benefit of the agreement, dated

28-3-1960, is made clear by the testimony of D.W. 3 Manindra Das Gupta. He also describes himself as an attesting witness of Exhibit P-1 but

according to the statements of plaintiff and Sachindra Chandra Banik, P.W. 4, his attestation, was secured subsequent, to the completion of the

document. Anyway, let us sleep over that aspect of the matter and examine the main thrust of the statement of Manindra Das Gupta.

He affirmed that the defendants Nos. 1 and 2, the plaintiff and scribe of Ext P-1 met him, on the date of execution of Ext. P-1, near the Court

room of the Judicial Commissioner at Agartala and requested Mm for attestation thereof. He enquired of them all that the land being under the

possession of Shyam Lal (defendant No. 4) whether they had taken the latter into confidence before executing the document, and the reply that he

received was in the negative. He then apprised the party of four that the vendees will have to file a suit in case Shyam Lal refused to deliver

possession Thereupon Mangalia Munda, the vendor, said, to dispel any such apprehension, that he would return the money to the vendees if

Shyam Lal refused to surrender possession. It is at that stage, states the witness, that he attested the document, and professed that he would have

a word with Shyam Lal within 3 to 4 days, and then requested them all that the execution of the kabala be deferred until after his meeting with

Shyam Lal. When the witness went to Shyam Lal after 3/4 days'' time in company with the plaintiff and defendants Nos. 1 and 2, besides some

tribals, and told him (Shyam Lal) that Mangalia Munda was out to sell the land and enquired if he (Shyam Lal) would purchase the same. Shyam

Lal asked Manindra Das Gupta what was the price for which the land was being sold, and then Manindra Das Gupta mentioned that it was Rs.

2,000/-.

Shyam Lal exhibited his inability to purchase the land at such a high price. However, Shyam Lal said that he could manage to purchase 4 kanis,

and then the witness requested the plaintiff and the defendant No. 2 each to purchase the remaining 4 kanis in equal shares. The defendant No. 2

agreed but the plaintiff refused to go in for 2 kanis instead of 6 which he had contracted to purchase and added that he would pay the price

mentioned in the Bainapatra and nothing more. The witness went on to depose that the defendant No. 2 being not in a position to purchase even 4

kanis he requested Nirmala Sundari, the defendant No. 3, to purchase 2 kanis and she nodded assent. It is in this manner, the witness affirmed,

that 2 kanis of land was purchased by defendant No. 2, another 2 kanis by defendant No. 3 and the balance of 4 kanis by defendant No. 4.

According to the statement of this witness, the actual price of the land was Rs. 2,000/- though the plaintiff and his witnesses have seriously

contested that claim.

12. Another few facts may be stated to explain why the four defendants could have colluded, as alleged by the plaintiff, to oust him from the benefit

of the agreement dated 28-3-1960. Shyam Lal, the defendant No. 4, admitted in his statement, as D.W. 2, that Mangalia Munda is his brother-in-

law. Upendra Chandra Das conceded in his statement, as D.W. 1, and which concession accords with the stand of the plaintiff, that he is

sharecropper for a long time of land owned by Nirmala Sundari, the defendant No. 3. Manindra Das Gupta is the Manager of Amarendra of the

taluk of which the land in dispute is a part. It appears that when Shyam Lal learnt about the agreement, dated 28-3-1960, he made up his mind to

see that it was not implemented, at any rate not completely, for if implemented it would mean his dislodgement from the possession, of the land,

and probably he believed that Mangalia Munda, his brother-in-law, had thrown away the land for a paltry sum of Rs. 1,000/-, though it was worth

Rs. 2,000. If the deal went through then he as well as his brother-in-law would be the losers and so they contrived, possibly with the help of

Nirmala Sundari who had a considerable influence with her long standing sharecropper Upendra Chandra Das, to share the land between

themselves by depriving the plaintiff of any part of it.

13. Shall the Court help the persons seized with mala fide motives in frustrating an equitable reliefs sought by the plaintiff against whom no

inequitable charge has been levelled, much leas proved? The various reliefs provided by the Act are essentially equitable in nature and so the mala

fides or otherwise of the contestants are both germane and relevant while deciding the dispute that crops up between them. The whole doctrine of

specific performance of contract rests on the ground that a party to the contract is entitled in equity to have in specie the specific thing for which he

had bargained. ""No principle can be more sacred"", said Jessell, M.R., ""than that a man shall be compelled to perform his contract."" Therefore, I

see no escape from the conclusion that the defendants Nos. 1, 3 and 4 owe it to the plaintiff to transfer 6 kanis of land to him on getting the

balance of price that is due from him in terms of the agreement dated 28-3-1960. I repeat that the plaintiff is not asking for part performance of the

contract. The prayer made by him in fact, would alone carry out the agreement dated 28-3-1960 in its entirety. If his suit is dismissed, then that

agreement would be carried out only in part and the provisions of Section 17 would stand violated. Therefore, it is actually the defendants who are

out to frustrate the legislative injunction enshrined in Section 17 and not the plaintiff. It would therefore be trite to say that the boot is on the other

leg.

14. Before concluding it may be mentioned that the parties'' counsel were at one in stating at the bar that they were not able to find any reported

decision of which the facts are identical, or nearly so, with the facts of the case in hand. I have also not been able to lay hand on any such decision.

However, two decisions, one of the Nagpur High Court and another of the Privy Council, are of some help and so they must be referred to albeit

briefly. The Nagpur High Court decision is reported in AIR 1937 186 (Nagpur) . The three plaintiff''s of that case along with defendant No. 4

Anantram entered into an agreement for purchase of certain land for a stated price but Anantrara refused to join them in the suit when Jagdeo

Singh, the vendor, failed to come up to his commitment. It was urged on behalf of Jagdeo Singh that unless all the four vendees joined in the suit

would be bad as it would tantamount to enforcing the contract piecemeal. Repelling the contention the High Court held that the plaintiff''s had

claimed specific enforcement of the entire agreement on payment of full price, that in view of Section 29 of the Act it was not essential that all the

vendees must join as plaintiff''s, and that so long as the plaintiff''s are willing to pay the vendors the full price bargained for and ask them to sell to

the very persons with whom they had contracted, no violation of the contract was implied.

The Court observed further that any quarrel the purchasers may have among themselves is not being introduced into the suit that each party is

getting exactly what he bargained for and that it is no concern of the vendors how these purchasers choose to arrange about the payment of the

purchase price as between themselves, that being not a part of the agreement. As shown above, in the present case as well the entire agreement

shall be carried out only, and at the agreed price, if the present suit is decreed. It could be no concern of the vendor, the defendant No. 1, how the

vendees, the plaintiff and the defendant No. 2, share the property between themselves so long he gets the full price. It was too much for the

defendants to call upon the plaintiff, as mentioned in the written statement, that since the plaintiff was not out to pay Rs. 1,500/- for 6 kanis of land,

that much area was sold for the stated amount to defendants Nos. 3 and 4. I fail to see how should the plaintiff pay Rs. 1,500/- for a parcel of land

which he had contracted to purchase at Rs. 750/-.

15. The Privy Council case is reported in (1950) 54 Cal WN 770, Abdul Karim v. Gladys Muriel. There three persons had agreed to sell

property jointly owned by them to one individual but one of them was found subsequently to have no power to sell his share in the land. When the

vendee brought a suit for specific enforcement of the agreement against the other two of them, an objection was raised that the suit was bad

because it did not cover the whole of the land mentioned in the agreement. This contention was negatived by the Privy Council on the finding that

there is nothing to prevent the conveyance of the interest which belonged to those two persons though such a conveyance would mean only

specific performance of a part of the contract. This decision of the Privy Council has its importance in the fact that in certain cases even part

performance of the agreement may he enforced, and this principle is recognised in Sections 14 to 16 of the Act.

16. It is mentioned on page 263 of Specific Relief Act by Iyer & Anand, 6th Edition, that ""Having regard to the reason of the thing and to the

language of sub-sections (2) and (3) of this section (Section 12 of the Specific Relief Act, 1963), it does not seem applicable to a case where all

the rest of the contract has already been performed. Neither can it be used, it seems, to override an express agreement of the parties."" Though the

Commentators have not cited any decision in support of their opinion that sub-section (1) of Section 12 of 1963 Act, which corresponds with

Section 17 of the old Act, but that opinion appears to be persuasive. If the plaintiff can claim in a given case specific enforcement of a part and not

of the whole of the contract, as when a part of it has already been carried out outside the Court, it would mean real hardship to non-suit him on the

principle that he is claiming only specific enforcement of a part of the agreement, which in fact would not be the case. According to Dr. S.C.

Banerjee, vide page 133 of his Commentary on the Specific Relief Act, 5th Edition, a vendee has rights more extensive compared to those of the

vendors that if the vendee chooses to have as much as he can, he has the right to that, that the purchaser cannot object that the vendee cannot have

it, and that it is no excuse for the vendor for not doing all the physical acts necessary for the performance of the contract.

The principle is Dr. Banerjee opines further, that the party who is not at fault is entitled to a specific performance of so much of the contract as the

other can perform and that it is the vendor"s own fault, if he "has assumed an obligation which he cannot fulfill. On Page 131" the learned

Commentator states that the Courts, having regard to the substance rather than to the form of contracts, do not allow the impossibility of a literal

fulfillment to prevail as a defence, and the agreement can be substantially carried out, so as to effectuate the intention of the parties, and do entire

justice between them. These wise observations I am inclined to think, would be translated into actuality only if the suit of the plaintiff is decreed.

Such a decree alone would go to effectuate the true intentions of the parties as originally conceived and uphold the majesty of the principle of the

sanctity of the contracts voluntarily entered into.

17. A passing reference may be made to the argument of Shri Roy that Upendra Chandra Das had purchased 2 kanis not in terms of the

agreement dated 28-3-1960 but de hors it. In other words, Shri Roy contended that the sale deed Ext. D-1 dated 6-4-1960 executed by

Mangalia Munda in favour of Upendra Chandra Das was not in partial implementation of the agreement dated 28-3-1960 but it represented a

separate and distinct deal between the parties. To reinforce this submission, Shri Roy urged that the vendee paid Rs. 500/- for 2 kanis purchased

by him instead of Rs. 250/-which he was bound to pay in terms of agreement dated 28-3-1960 for 2 kanis of land and that double the amount of

consideration which the vendee paid clearly brought out that it was a separate and subsequent agreement, having nothing to do with the agreement

dated 28-3-1960. This submission has not even the veneer of plausibility if only because such a plea was not taken in the written statement.

Moreover, in his Court statement as D.W. 1 Upendra Chandra Das did not affirm that he had purchased 2 kanis of land on the basis of some

agreement concluded between him and the vendor after the original agreement dated 28-3-1960. Why Upendra Chandra Das paid Rs. 500/-for a

land measuring 2 kanis instead of Rs. 250/- which he had to pay in terms of agreement dated 28-3-1960, is not clearly deducible from the material

available on the record. It is, speaking prima facie, incredible that he should have paid Rs. 500/- for a land for which he was bound in law to pay

only Rs. 250/-, but that aspect of the matter has no decisive value for determining the rights of the plaintiff with which alone we are concerned in

the instant appeal. If for any reason Upendra Chandra Das decided to pay Rs. 500/- to the vendor for a land which was worth Rs. 250/-, the

plaintiff, or for that matter this Court, need not feel bothered. I repeat that this being not the pleading of the defendants that Upendra Chandra Das

had purchased the land in terms of some fresh agreement reached between him and the vendor, and there being no evidence to sustain such a

finding, the submission made by Shri Roy has to be negatived.

18. In consequence of the conclusions reached above, the appeal fails and is dismissed with costs to the plaintiff-respondent.

19. In the case of Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, , the Supreme Court prescribed the form of a decree which

should be passed in a case like the present one. The Supreme Court held that the proper form of decree is to direct specific performance of the

contract between the vendor and the prior transferee and direct, in addition, the subsequent transferee to join in the conveyance so as to pass on

the title which resides in him to the prior transferee. This form of the decree was prescribed by the Supreme Court after studying the various forms

which were then in vogue. I think that the direction of the Supreme Court has to be complied with and so I direct that the sale deed in favour of the

plaintiff respecting 6 kanis of land shall be executed by Mangalia Munda, Nirmala Sundari and Shyam Lal. If, however, they fail to come forward

to do the needful the Court shall execute the sale deed on their behalf in favour of the plaintiff.