

(1924) 11 BOM CK 0025

Bombay High Court

Case No: Second Appeal

Duma Toma Rumav

APPELLANT

Vs

Nathu Farsha Kurel

RESPONDENT

Date of Decision: Nov. 13, 1924

Citation: (1925) 27 BOMLR 249

Hon'ble Judges: Norman Macleod, J; Crump, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

In this suit the plaintiffs sued for specific performance of the contract for sale of the suit land by the 1st defendant's brother Juzia which the plaintiffs said was entered into on December 5, 1910, by Juzia Rumav on the one hand and on the other by Farsha Degu Kurel, father of plaintiffs Nos. 1 and 2, and Simav Ina, husband of plaintiff No. 3 and brother of plaintiff No. 4, both dead at the time of the suit. The terms of the document on which the plaintiffs relied are set out at page 2 of the print. The effect of that document was that Farsha and Simav could within a period of ten years from the date of the document tender Rs. 1500 and demand a conveyance from Juzia. There are two ways in which the document can be read; (1) as an offer by Juzia which was to remain open for ten years acceptable by Farsha and Simav at their option; or (2) as an agreement by Juzia that he would hold the property for ten years at the disposal of Farsha and Simav and to sell to no one else. The latter would be a contract and the first would be an offer. If the document amounts to a contract then there was no consideration proceeding from Farsha and Simav for the agreement by Juzia to sell the property to no one else during the ten years. Therefore the contract would be unenforceable as being without consideration. But if the document amounts to a more offer to Farsha and Simav that a conveyance could be given on their tendering Rs. 1,500 within ten years, it would remain an offer and would not become a contract until the offer was

accepted. Then the question would arise whether the offer made to Farsha and Simav could be accepted by their legal representatives. No authority has been shown to us for such proposition, and it seems to me uncontestable that if A makes an offer to B and nothing further is done before B dies, B's representatives could not claim to have a right to accept the offer made by A to B. On this ground it seems to me that the representatives of Farsha and Simav, who are the present plaintiffs, are either suing on a contract without consideration or are claiming a right to sue for a declaration that they are entitled to accept an offer made to their ancestors, which is not a right recognised in law. It seems to me, therefore, that the suit should have been dismissed, and accordingly we make that order with costs throughout.

Crump, J.

2. I concur.