

For the reasons given above we allow the appeals and answer the question referred to the High Court in favour of the assessee. The appellant will be entitled to his costs in this court as also in the High Court ; there will be one hearing fee.

*Appeals allowed.*

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*Philip John Flasket  
Thomas*

v.

*Commissioner of  
Income-tax, Calcutta*

*Das J.*

MRS. CHANDNEE WIDYA VATI MADDEN

v.

DR. C. L. KATIAL & OTHERS

(B. P. SINHA, C. J., J. C. SHAH and  
N. RAJAGOPALA AYYANGAR JJ.)

1961

March 25

*Specific performance—Contract to sell house property—  
Implied term—Points not raised in the High Court, if be allowed  
for the first time in this Court.*

The plaintiffs-respondents entered into a contract of sale in respect of a house property belonging to the appellant. The deed of agreement provided that the vendor shall obtain the permission of the Chief Commissioner to the transaction of sale within two months of the agreement and if the said permission was not forthcoming within that time, it was open to the purchasers to extend the date or to treat the agreement as cancelled. As the necessary permission was not forthcoming within the stipulated time, the purchasers extended the time by another month. The appellant withdrew her application for the necessary permission. The defendant having failed to perform her part of the contract, the plaintiffs brought a suit for specific performance of the contract for sale or in the alternative for damages. The trial court, although it found that the plaintiffs had been throughout ready and willing, indeed anxious, to perform their part of the contract and that it was the defendant who had backed out of it, refused the main relief of specific performance of the contract on the ground that the agreement was inchoate, as the previous sanction of the Chief Commissioner to the proposed transfer had not been obtained. The High Court came to the conclusion that there

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was a completed contract between the parties and that the condition in the agreement that the vendor would obtain the sanction of the Chief Commissioner to the transaction of sale did not render the contract incomplete and the trial court was in error in holding that the agreement was inchoate.

*Held* that on the findings in this case, the court had got to enforce the terms of the contract and to enjoin upon the defendant-appellant to make the necessary application to the Chief Commissioner, which was implied in the contract. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction. In the event of the sanction being refused, the plaintiffs shall be entitled to the damages as decreed by the High Court. In this view of the matter, the High Court was entirely correct in decreeing the suit for specific performance of the contract.

*Motilal v. Nanhelal* (1930) L. R. 57 I. A. 33, referred to.

*Held* further, that the points not specifically raised in the High Court nor pleaded in the pleadings should not be allowed for the first time to be raised in this Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal  
No. 559 of 1962.

Appeal from the judgment and decree dated March 21, 1961, of the Punjab High Court (Circuit Bench) at Delhi in Regular First Appeals Nos. 8 D and 21-D of 1960.

*A. Ranganadham Chetty, S. K. Mehta and K. L. Mehta*, for the appellant.

*M. C. Setalvad, Hardyal Hardy and S. N. Anand*, for the respondents.

1963. March 25. The Judgment of the Court was delivered by

*Sinha C. J.*

SINHA C. J.—This appeal on a certificate granted by the High Court of Punjab arises out of a suit for specific performance of a contract of sale in respect of a house property situate in Tughlak Road, New Delhi, belonging to the appellant and built on a lease-hold plot granted by the Government

in the year 1935, to her predecessor-in-title. It appears that the plaintiffs entered into a contract of sale in respect of the disputed property for the sum of Rs. 1,10,000/-. The deed of agreement is dated September 4, 1956. In so far as it is necessary to notice the terms of the document, the agreement provided that the vendor shall obtain the permission of the Chief Commissioner to the transaction of sale within two months of the agreement, and if the said permission was not forthcoming within that time, it was open to the purchasers to extend the date or to treat the agreement as cancelled. As the necessary permission was not forthcoming within the stipulated time, the purchasers extended the time by another month. The appellant had made an application to the proper authorities for the necessary permission, but withdrew her application to the Chief Commissioner by her letter dated April 12, 1957. The plaintiffs called upon the defendant several times to fulfil her part of the agreement but she failed to do so. It was averred on behalf of the plaintiffs that they had always been ready and willing to perform their part of the contract and that it was the defendant who had backed out of it. Hence, the suit for specific performance of the contract for sale or in the alternative for damages amounting to Rs. 51,100/-. The suit was contested on a large number of grounds of which it is necessary now to take notice only of the plea on which issue No. 8 was joined. Issue No. 8 is as follows :

“(8) Is the contract contingent or impossible of performance and is uncertain and vague and is therefore void ?”

The other material issues were concurrently decided in favour of the plaintiffs, and, therefore, need not be referred to.

The trial Court in a very elaborate judgment dismissed the suit for specific performance of contract

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and for a permanent injunction and decreed the sum of Rs. 11,550/- by way of damages, with proportionate costs, against the defendant. Though the Court found that the plaintiffs had been throughout ready and willing, indeed anxious, to perform their part of the contract, and that it was the defendant who backed out of it, it refused the main relief of specific performance of the contract on the ground that the agreement was inchoate in view of the fact that the previous sanction of the Chief Commissioner to the proposed transfer had not been obtained.

The High Court on appeal came to the conclusion that the agreement was a completed contract for sale of the house in question, subject to the sanction of the Chief Commissioner before the sale transaction could be concluded, but that the Trial Court was in error in holding that the agreement was inchoate, and that, therefore, no decree for specific performance of the contract could be granted. The High Court relied mainly on the decision of their Lordships of the Judicial Committee of the Privy Council in *Motilal v. Nanhelal* (1), for coming to the conclusion that there was a completed contract between the parties and that the condition in the agreement that the vendor would obtain the sanction of the Chief Commissioner to the transaction of sale did not render the contract incomplete. In pursuance of that term in the agreement, the vendor had to obtain the sanction of the Chief Commissioner and as she had withdrawn her application for the necessary sanction, she was to blame for not having carried out her part of the contract. She had to make an application for the necessary permission. The High Court also pointed out that if the Chief Commissioner ultimately refused to grant the sanction to the sale, the plaintiff may not be able to enforce the decree for specific performance of the contract but that was no bar to the Court passing a decree for that relief. Though it was not necessary in the view the High Court took of

(1) (1930) L. R. 57 I. A. 333.

the rights of the parties, it recorded a finding that a sum of Rs. 5,775/- would be the appropriate amount of damages in the event of the plaintiffs not succeeding in getting their main relief for specific performance of the contract.

The main ground of attack on this appeal is that the contract is not enforceable being of a contingent nature and the contingency not having been fulfilled. In our opinion, there is no substance in this contention. So far as the parties to the contract are concerned, they had agreed to bind themselves by the terms of the document executed between them. Under that document it was for the defendant-vendor to make the necessary application for the permission to the Chief Commissioner. She had as a matter of fact made such an application but for reasons of her own decided to withdraw the same. On the findings that the plaintiffs have always been ready and willing to perform their part of the contract, and that it was the defendant who wilfully refused to perform her part of the contract, and that the time was not of the essence of the contract, the Court has got to enforce the terms of the contract and to enjoin upon the defendant-appellant to make the necessary application to the Chief Commissioner. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction.

In this view of the matter, the High Court was entirely correct in decreeing the suit for specific performance of the contract. The High Court should have further directed the defendant to make the necessary application for permission to the Chief Commissioner, which was implied in the contract between the parties. As the defendant-vendor, without any sufficient reasons, withdrew the application already made to the Chief Commissioner the decree to be prepared by this Court will add the clause that the defendant, within one month

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from to-day, shall make the necessary application to the Chief Commissioner or to such other competent authority as may have been empowered to grant the necessary sanction to transfers like the one in question, and further that within one month of the receipt of that sanction she shall convey to the plaintiffs the property in suit. In the event of the sanction being refused, the plaintiffs shall be entitled to the damages as decreed by the High Court. The appellant sought to raise certain other pleas which had not been raised in the High Court, for example, that this was not a fit case in which specific performance of contract should be enforced by the Court. This plea was not specifically raised in the High Court and the necessary facts were not pleaded in the pleadings. It is manifest that this Court should not allow such a plea to be raised here for the first time.

For the reasons given above, the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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