

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

BANI RAMCHANDRA SALVI (ORIGINAL DEFENDANT NO. 2), APPELLANT,
v. JAYAWANTI GOVIND PANDIT AND ANOTHER (ORIGINAL PLAINTIFF
AND DEFENDANT NO. 1), RESPONDENT.*

1918.

January 10.

*Contract Act (IX of 1872), section 24—Contract void—Consideration unlawful
—Agreement to stifle criminal prosecution—Agreement against public policy.*

The plaintiff sued for specific performance of a contract whereby the defendants' husband had agreed to convey certain land to her (plaintiff) for Rs. 150, subject to the condition that in the event of a criminal prosecution for criminal breach of trust instituted by the plaintiff against the said intending vendor not being withdrawn, the contract was not to be enforced.

The defendants contended that the contract was void as being opposed to public policy :—

Held, dismissing the suit, that the contract could not be enforced as part of the consideration was void on the ground of being opposed to public policy.

SECOND appeal from the decision of E. F. Rego, First Class Subordinate Judge, A. P., at Ratnagiri, confirming the decree passed by B. N. Butti, Subordinate Judge at Deorukh.

Suit for specific performance of a contract.

The contract in question was passed by one Ramchandra (husband of defendants) to the plaintiff on the 12th June 1913 to sell certain lands for Rs. 150. It was made subject to a condition that it was not to be enforced, if the plaintiff did not withdraw a criminal complaint which she had filed against Ramchandra and one Dinkar for criminal breach of trust. It ran as follows :—

"I purchased your property on 6th December 1912, but we cannot agree as to the consideration as settled orally. Hence I have to reconvey the property but you have filed a complaint for criminal breach of trust against me and

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Dinkar in the First Class Magistrate's Court at Chiplun, I cannot reconvey the the same. It is settled to reconvey the property after you withdraw the complaint. I paid Rs. 115 to your mortgagee and Rs. 10 for registration and other expenses and Rs. 5 on 26th January 1913 and Rs. 20 on 31st January 1913. In all I paid Rs. 150 and the rest of the consideration is to be paid, but we cannot agree and hence it is settled to reconvey the property on receipt of Rs. 150. You have taken a *patti* for the amount due to me and I have taken two *pattis* from you for Rs. 5 and Rs. 20. I shall return the same to you. You had deposited Rs. 135 with Dinkar. He returned the same to you and you have given him a *patti* on 26th January 1913. I shall return that *patti* to you after taking it from him. This contract is not to be in force if the complaint is not withdrawn."

Accordingly, the plaintiff applied to the Magistrate the next day to be allowed to withdraw the complaint; but no order was passed as the Magistrate was transferred. It was eventually withdrawn on the 15th August 1913, but had effect only as against Dinkar, Ramchandra having died in the meanwhile.

The present suit was filed on the 8th April 1914 to have the contract specifically enforced against the defendants. The defendants contended *inter alia* that the consideration being against public policy, the contract was unlawful and therefore void.

The lower Courts held that the contract was not unlawful and decreed the suit.

The defendant No. 2 appealed to the High Court.

D. W. Pilgamkar, for the appellant:—The agreement in dispute is against law and public policy. A non-compoundable offence having been compounded, it was null and void: see section 23 of the Indian Contract Act, 1872.

P. B. Shingne, for the respondent:—The consideration for the transaction was one in which the civil liability towards the respondent was contemplated to be discharged. A debt was due to the respondent. The prosecution was of a civil nature. If any relief is given

to the appellant, he should be made to pay the amount due to the respondent.

BEAMAN, J. :—The plaintiff sued for specific performance of a contract by which the husband of the defendant agreed to convey to her certain land for a consideration of Rs. 150. Annexed to the contract was a term that in the event of a criminal prosecution for criminal breach of trust instituted by the plaintiff against the said intending vendor not being withdrawn, the contract was not to be enforced. The explanation briefly is this. The plaintiff had previously sold this land to Ramchandra. The agreed price was Rs. 250 in all. Ramchandra advanced to the plaintiff Rs. 115 to pay off a mortgagee and a further sum of Rs. 135, of which Rs. 100 at any rate was either taken back by Ramchandra or deposited with him by the plaintiff. Admittedly the plaintiff retained Rs. 35, which, with the Rs. 115 paid to the mortgagee, makes Rs. 150. In respect of the other Rs. 100 she complained that after she had deposited it with Ramchandra he criminally misappropriated it in the sense that he withheld it and denied her right to obtain it from him. That was the origin of the criminal prosecution.

It is perfectly clear from the agreement upon which this suit is brought, Exhibit 27, that Ramchandra, husband of the defendants, virtually admitted the truth of the allegations made by the plaintiff and was ready to make complete reparation in the terms of this agreement, provided that the criminal law stayed its hand. Thus all the equities are clearly on the side of the plaintiff. If she cannot enforce this contract, she must lose her land and she must lose the Rs. 100, part of the consideration of which Ramchandra had defrauded her. It appears that pursuant to this agreement the plaintiff did make an application to the Magistrate to withdraw the prosecution. As, however, the offence charged

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was not compoundable, it is clear that unless the Magistrate had failed in his duty or mistaken the facts, it no longer lay in the power of the plaintiff to affect the course of the trial. Just about that time, however, the Magistrate was transferred and the case was delayed. Before it was resumed Ramchandra died. There was another person Dinkar co-accused with the defendant and we are told, though we can find no proof of the fact, that the prosecution against Dinkar was dropped.

Now, upon these facts we have to determine whether the contract, Exhibit 27, can be specifically enforced. It is pretty clear that if the concluding term had been complied with, or could have been complied with, then part of the consideration would have been void on the ground of being opposed to public policy. No one may contract upon the footing of part of the consideration being the compounding of a felony. But assuming that this term could not have been complied with, then the whole contract becomes equally unenforceable for failure of an essential condition. So that in either view it is very clear upon an understanding of the facts and the terms of the contract that the plaintiff cannot have it specifically enforced.

There are other considerations which may be drawn from other principles of contract which are equally fatal to it; as for example, the provisions of section 24 of the Indian Contract Act; for having regard to the actual nature of the condition which the plaintiff undertook to fulfil, the result that that condition was impossible from the first makes the contract void.

Speaking for myself I much regret that the plaintiff should have been misled into framing her contract in this way, since, as I have indicated, the result is certainly one of great hardship to her; but I see no alternative upon the plain law of the case than to hold,

as I have indicated above, a view in which I believe, I have the complete concurrence of my learned brother, and so to reverse the decree of the Courts below and dismiss this suit; but bearing in mind the hardship of the case and the probable ignorance of the plaintiff which has led her into this unfortunate position, I would make both the parties bear their own costs throughout.

HEATON, J. :—I agree with the order proposed and I fully agree that it is an unfortunate thing that this claim has to be dismissed. But it must be dismissed because the contract, specific performance of which was sought by the plaintiff, is one which, on the face of it, is opposed to public policy. The contract, which is for the sale of land by Ramchandra to the plaintiff at a stated price, recites that “you (i. e., the plaintiff) have filed a complaint for criminal breach of trust against me and Dinkar in the First Class Magistrate’s Court at Chiplun.” A complaint of criminal breach of trust is not of a kind that can be compounded. Then the contract ends by saying: “This contract is not to be in force if the complaint is not withdrawn.” That seems to me to be, unmistakably on the face of it, an illegal contract. However unfortunate the result, we have to give effect to law.

Decree reversed.

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