

1956

Present : Gratiaen, J., and Gunasekara, J.

NOMIS PERERA, Appellant, and C. MASINGHE,
Respondent

S. C. 117—D. C. Panadura, 2,642

Contract—Period for performance specified—Is formal demand for performance necessary then ?

Where a vendor undertakes to execute a conveyance of property before the expiration of a specified period and there is no corresponding obligation to call for a conveyance imposed on the vendee, the vendee's *causio of action* accrues immediately upon the vendor's failure to execute the conveyance within the specified period. In such a case, the maxim *dies interpellat pro homine* applies and it is not necessary that the vendee should first make a demand for the conveyance.

APPPEAL from a judgment of the District Court, Panadura.

Sir Ukwatte Jayasundera, Q.C., with *A. M. F. Siriwardene*, for the plaintiff appellant.

L. G. Weeramantry, for the defendant respondent.

Cur. adv. vult.

February 15, 1956. GRATIAEN, J.—

Selestina Hamy (hereafter called the vendor) undertook in terms of a notarially attested agreement dated 9th September 1941, to convey to the plaintiff, for a consideration which was duly paid to her, the divided allotment that would be allotted to her in a pending partition action (D. C. Colombo, 1959 P). She died on 8th June 1943 before the partition action was concluded, and the defendant, who was her sole heir and the executor of her estate, was substituted as a party. On 20th January 1950 an order was made for a final decree to be entered whereby Lot G (more fully described in the schedule to the plaint in the present action) was to be allotted to the defendant.

This formal decree was not signed until 20th March 1951 pending disposal of the defendant's application (now admitted to have been completely devoid of merit) to have the order dated 20th January 1950 vacated on certain grounds. The application was in due course refused, but the defendant, to whom Selestina's obligations under the agreement dated 9th September 1941 had been transmitted, refused to execute a conveyance of Lot G in favour of the plaintiff. The present action was therefore instituted on 9th May 1951 to compel specific performance of the agreement.

The learned District Judge, in dismissing the action, upheld the objection that the plaintiff could not enforce the agreement because he had failed to demand a conveyance within a period of 1 month commencing on 20th January 1950 (i.e., the date on which an order for final decree had been entered). In my opinion, there was no substance in this plea. In the first place, the vendor's obligation under the agreement was not made conditional on any antecedent request or demand for a conveyance. In the second, such a request or demand would clearly have been premature until the formal decree was signed on 20th March 1951. It is not denied that the plaintiff did call upon the defendant to execute a conveyance within one month of the date.

The relevant stipulation in the notarial agreement as to the time for performance is as follows :

“As the land called Makulugahawatte described in the under-mentioned schedule is the subject matter of a partition action in the District Court of Colombo, the aforesaid first party having agreed to transfer to the aforesaid second party the allotment to be partitioned as the due share of the first party (in the partition action) within one month from the date of entering the final decree for a sum of Rs. 100, the receipt of the said Rs. 100 is hereby acknowledged.”

It will be observed at once that the vendor had undertaken to execute the conveyance before the expiration of a specified period, but that no corresponding obligation to call for a conveyance was imposed on the plaintiff. In these circumstances the maxim *dies interpellat pro homine* applies. "It is not only men who make demands, but the law or even the date demands instead of a man, provided only that a fixed date was made a term in the obligation." *Foot 22: 1: 26*. Accordingly, the plaintiff's cause of action accrued immediately upon the defendant's failure to execute a conveyance within the specified period.

The learned Judge seems to have construed the agreement dated 9th September 1941 as conferring on the plaintiff only an option to purchase the property provided that he exercised it one month from the date of the final decree. This is not a correct interpretation of the document, and even if it was, the relevant date would have been 20th March 1951 (when the decree was in fact drawn up and signed) and not 20th January 1950 (when the order was originally made for a final decree to be entered). It is no doubt true that, after a final decree has been duly signed and entered, the new title thereby created vests retrospectively as from the date on which the judgment was pronounced. But this does not mean that the decree can be regarded as having taken effect before it comes into existence. Besides, the language of the document indicates a clear intention that the date on which the decree would be formally "entered" should be the operative date. In addition, the effect of the judgment dated 20th January 1950 was suspended until the defendant's application to have it vacated was disposed of.

I would allow the appeal and enter judgment in favour of the plaintiff as prayed for in the plaint with costs both here and in the Court below.

GUNASEKARA J.—I agree.

Appeal allowed.

