

1958

*Present* : Basnayake, C.J., and Sinnetaṃby, J.

W. M. PELIS, Appellant, and K. N. SILVA, Respondent

*S. C. 89 Inty.—D. C. Hambantota, 462/L.**Jurisdiction—Agreement to sell land—Action for specific performance—Forum—Civil Procedure Code, s. 9 (b).*

An action for specific performance of an agreement to sell land is not an action in respect of land within the meaning of section 9 (b) of the Civil Procedure Code. A Court, therefore, has no jurisdiction to try the case merely on the ground that the land in respect of which the contract was made is situated within the local limits of its jurisdiction.

**A**PPEAL from a judgment of the District Court, Hambantota.

*H. W. Jayewardene, Q.C.*, with *G. T. Samerawickreme* and *N. R. M. Daluwatte*, for Defendant-Appellant.

*E. B. Wikramanayake, Q.C.*, with *V. J. Martyn*, for Plaintiff-Respondent.

August 29, 1958. BASNAYAKE, C.J.—

This is an action to enforce two agreements to sell, No. 15346 of 30th March 1940 and No. 15494 of 5th June 1940. Each agreement is to sell ten acres out of the lot that would be allotted to the promissors in D. C. Tangalle Partition Action No. 3199. It is sufficient to quote the terms of the first of them which are as follows :—

“ This is the Agreement to sell entered into on the 30th day of March 1940 between Samararatnappuli Kodikara Kankanage Podihamy Weerasinghe Magam Pattuwe Vidana Aratchige Siyoris Pelis and —do.—Gunawathie all of Dondra in Wellaboda Pattu of Matara being parties of the first part and Kalubadanage Nadoris Silva of Nakulugamuwa in West Giruwa Pattu of Hambantota District being party of the second part.

“ The party of the first part do hereby agree to transfer ten acres extent to the party of the second part within two months of the entering of the final Decree in case No. 3199 of the District Court of Tangalla from the lot that would be allotted to the first party out of the subject matter in the said case and described in the schedule below for a sum of Rupees Four Hundred (Rs. 400) and subject to the condition herein contained and further that the ten acres extent hereby agreed to be sold be surveyed by a Surveyor and a Plan thereof be made.

“ *Conditions above referred to*

“ That out of the consideration Rs. 400 a sum of Rs. 200 be paid at the execution of these presents and the balance Rs. 200 be paid at the time of signing the transfer deed in favour of the party of the second part.

“ That the party of the first part shall pay survey fees, assessment charge and all other costs due in the said case No. 3199 in respect of the said premises.

“ That survey fees for surveying and preparing a plan of the said ten acres be also paid by the party of the first part.

“ And that the parties of the first and second parts do hereby for themselves, their heirs, executors, administrators and assigns firmly bind for due performance of the condition herein contained. ”

The plaintiff instituted this action at Hambantota and he averred in his plaint that during the pendency of Partition Case No. 3199 in the District Court of Tangalle, the defendant Weerasinghe Magam Pathuwe Vidana Arachchige Siyoris Pelis, his sister Gunawathie, and Samaratnappuli Kodikara Kankanage Podihamy by deeds Nos. 15346 and 15494 dated 30th March 1940 and 5th June 1940 respectively agreed to transfer to the plaintiff a total extent of 20 acres out of the lot that would be allotted to them on the Final Decree within two months of its being entered. Final Decree in the partition action was entered on 24th November 1954 and the defendant was allotted lot P in extent 46 acres and 34 perches. The plaintiff had requested the defendant to execute a transfer and convey to him the extent of 20 acres out of the extent allotted to him but the defendant had failed and neglected to comply with his request. The plaintiff says that a cause of action has accrued to him to sue the defendant for a decree ordering him to execute a transfer in his favour in respect of 20 acres of the land in question, and on the failure of the defendant to do so prays that the Court be pleased to execute a deed in his favour conveying 20 acres out of the said land.

As a preliminary issue the question of jurisdiction of the Court was tried. The following was the issue that was framed :— “ Has this court jurisdiction to hear and determine this action ? ”. The learned District Judge held that the Court had jurisdiction to entertain the action on the ground that it fell within the ambit of section 9 (b) of the Civil Procedure Code. This is not an action in respect of land. It is an action for the enforcement of an agreement to sell land. In the instant case the agreement was executed at Dondra where the defendant resides, a place outside the jurisdiction of the District Court of Tangalle. Hambantota where this action has been instituted is a place at which the District Judge of Tangalle sits. A Court has jurisdiction to try an action where within the local limits of its jurisdiction—

- (a) a party defendant resides, or
- (b) the land in respect of which the action is brought lies or is situated in whole or in part, or
- (c) the cause of action arises, or
- (d) the contract sought to be enforced was made.

The District Judge of Tangalle sitting either at Tangalle or Hambantota therefore had no jurisdiction to try this action.

We accordingly allow the appeal with costs in both Courts. The plaintiff's action will stand dismissed.

SINNETAMBY, J.—I agree.

*Appeal allowed.*

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