Fusion of Law and Equity--Suit at Law for Purchase Price of Land

Henry Howe Bramblet
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj
Part of the Contracts Commons, and the Property Law and Real Estate Commons
Click here to let us know how access to this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol31/iss3/6

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledges@lsv.uky.edu.
FUSION OF LAW AND EQUITY—SUIT AT LAW FOR PURCHASE PRICE OF LAND

Upon breach by the vendee of an executory contract for the sale of land, the weight of authority is that the vendor’s remedy is in equity for specific performance, or at law for damages, rather than an action at law for the contract price. This is the rule laid down in the leading English case of Labrd v. Pim decided in 1841. The reason given in this case is that the title to land can pass only by deed and a recovery of the purchase money will leave the title in the vendor, thus allowing him to have both the land and the vendee’s money. The above rule has met particular favor in those jurisdictions drawing sharp distinctions between actions at law and suits in equity.

A substantial minority of the jurisdictions, however, have taken the position that the vendor in an executory land contract

---


containing dependent covenants may maintain a law action in *assumpsit* against the vendee for the balance due on the full purchase price, amounting in effect to a suit at law for specific performance. The objectionable qualities of an action for the purchase price mentioned in *Laird v. Pim* are avoided by requiring the vendor to evidence his good faith by depositing the deed in court at the beginning of the action, to be awarded to the vendee if the suit is successful.

Kentucky has been cited as among those states allowing an action at law for the purchase price, but it is doubtful whether the precise question has ever been passed upon in that state. However, there is some *dictum* to lead one to believe that such an action may be maintained.

In *Golden v. Riverside Coal and Timber Co.*, the appellant was defendant in a former action to which the appellee was not a party. In the former action the plaintiff sought to have an agreement with appellant concerning the sale of land declared an option to purchase which had expired rather than a contract to sell, thereby removing a cloud from the plaintiff's title. The appellant filed a counter claim for a judgment requiring the plaintiff to specifically perform the contract, which was granted. Before judgment had been rendered the plaintiff sold the land to the present appellee, against whom appellant filed a bill alleging that the appellee had actual notice of his contract and prayed that he be required to release any claim of ownership. The vendor (plaintiff in the former action) joined with appellee and their defense was that appellant was insolvent and unable to carry out his contract. The court held that the vendor could not abandon the contract under circumstances which justified a judgment against him in favor of appellant for specific performance and that the vendor's remedy "was to tender a good title.

---


6 66 C. J. Sec. 1357 at page 1358, citing Golden v. Cornett, 176 Ky. 133, 195 S. W. 1080 (1917); Golden v. Lewis, 176 Ky. 23, 195 S. W. 144 (1917). In the latter case the court said: "Where land has been sold by executory contract, the remedy of the seller, in the absence of facts which would justify its cancellation, when the buyer fails or refuses to take the property according to the contract, is to bring a suit to recover the purchase money; or, in other words for a performance of the contract."

7 184 Ky. 200, 211 S. W. 761 (1919).
and sue for specific performance of the contract, or for a recovery of the purchase money. This dictum may indicate that the court recognized the possibility of a suit at law for the purchase price.

Since there is no Kentucky decision directly upon the point it cannot definitely be said that Kentucky would allow an action at law for the purchase price. Nor is the dictum in the case mentioned strong enough to warrant such a view. But assuming the propriety of such action, would its effect be to decrease the jurisdiction of equity over the same type of case, thus making it more difficult to maintain an equity action for specific performance where the sole object of the suit is a money judgment? Clearly the jurisdiction of equity is not diminished. The power of courts of equity to deal with land or any interest therein is firmly established. Equity jurisdiction, once established because of the inadequacy or absence of a remedy at law, is not defeated by an extension by the law courts of the scope of their remedies so as to render them adequate. In such cases the plaintiff is not compelled to resort to his legal remedy but rather may seek relief either at law or in equity.

Although when the sole object of a suit is to obtain the purchase price of land the result in law and in equity is ostensibly the same, there are certain procedural incidents attaching to each remedy which may be material in determining which is more advantageous. Laches, marketable title, and hardship are defenses because of which equity may refuse to grant specific performance in a particular case. Whether or not these equitable defenses should be carried over to law actions is a matter upon which authorities differ. Probably law courts now follow the requirement of marketable title. However, a person may be barred by his laches from obtaining specific performance of a contract in equity whereas he might bring an

---

8 Italics added.
10 1 Pomeroy, Equity Jurisprudence (5th Ed. 1941) Sec. 182; Clark, Principles of Equity (1924) Sec. 16; 30 C. J. S. Equity Sec. 21; ibid. Sec. 23a; C. J. Equity Sec. 21 and cases cited.
11 Note (1936) 34 Mich. L. Rev. 545, for a general discussion of the subject and authorities cited.
12 Walsh, Treatise on Equity (1930) 381; Ethington v Rigg, 173 Ky. 355, 191 S. W. 98 (1917), Note (1909) 22 Harvard L. Rev. 529.
13 2 Pomeroy, Equity Jurisprudence (5th Ed. 1941) Sec. 419, 452; Cocanaugher v. Green, 93 Ky. 519, 14 Ky. L. Rep. 507, 20 S. W. 542 (1892).
action at law up until the time the statutory period of limitation expires. The plaintiff then would find it advantageous to sue at law only when by his own neglect he has placed himself in a position where the defendant might invoke against him the doctrine of laches. Also specific performance in equity will be denied when it appears that hardship or injustice will result to one of the parties.\(^{14}\) Since law courts usually do not look behind the legal right asserted by the plaintiff to determine if undue hardship will result to the defendant,\(^{15}\) a law suit will prove advantageous to the plaintiff under circumstances which would provide the defendant with the defense of undue hardship if the action were brought in equity.\(^ {16}\) The plaintiff would be to a great extent guided by his own conduct and by a survey of the possible defenses available to the defendant in order to determine whether equity or law affords the better remedy under the particular circumstances of his case.

HENRY H. BRAMBLET

\(^{14}\)Lexington and E. R. Co. v. Williams, 183 Ky. 343, 209 S. W 59 (1919), Rogers Bros. Coal Co. v. Day, 222 Ky. 443, 1 S. W (2d) 540 (1927); 4 Pomeroy, Equity Jurisprudence (5th Ed. 1941) Sec. 1405a.

\(^{15}\)A party is not discharged merely because the contract turns out to be difficult, unreasonable, dangerous or burdensome, Runyon v. Culver, 188 Ky. 45, 181 S. W 640 (1916).

\(^{16}\)Woollums v. Horsley, 93 Ky. 582, 20 S. W 781 (1892)