

JOE THOMPSON, Appellant, v. ANIS ABI FARAJ,
Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued March 23, 1976. Decided April 23, 1976.

1. A trial court is required to decide all issues of law raised by the pleadings before dealing with the facts.

The appellant instituted an action in specific performance to compel defendant to deliver to him a bill of sale acknowledging the receipt in full of the purchase price for a factory and its land bought by appellant. After postponements the case came on for hearing, and in the absence of counsel for plaintiff the action was dismissed. Thereafter the trial judge ruled on the issues of law presented only by defendant and rendered judgment for defendant. An appeal was taken therefrom.

The Court held that it is incumbent to rule on all issues of law raised in the pleadings. The judgment was *reversed* and the case *remanded*.

Robert C. Tubman for appellant. *Samuel E. H. Pelham* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Plaintiff brought an action for specific performance to compel the execution and delivery to him of a bill of sale evidencing the sale and transfer to him by defendant of a factory and land, for which he contends he had paid the purchase price. At the postponed hearing the complaint was dismissed for failure of counsel to appear. Thereafter it appears that the court ruled on the issues of law

presented only by defendant's pleading. The court ruled for defendant, and an appeal was taken from the final decree. Plaintiff contends that the sale was in accordance with an oral understanding with the defendant, and that he has fully satisfied his side of the agreement by making full payment for the properties, but that defendant has refused to sign a bill of sale prepared by plaintiff reflecting such payment. This constitutes the basis of the suit in equity for specific performance instituted by plaintiff.

There is authority on specific performance of oral contracts in the sale of realty:

"Where the contract is one which is required by the statute of frauds to be in writing, and is wholly executory, equity will not[,] against the objection to the oral character of the contract[,] decree its specific performance[,] unless the circumstances are such that the defendant's refusal to execute the contract would itself amount to the practice of fraud on the plaintiff, as is often the case when there have been acts of part performance by one party to an oral contract in reliance upon and referable to that contract. An action for specific performance is within the operation forbidding any civil action to be maintained upon stipulated agreements unless in writing. Under the equitable doctrine of part performance, however, recognized in most jurisdictions, a court of equity will, in order to prevent the use of the statute of frauds as an instrument or shield of fraud, decree the specific performance of an oral contract at the instance of the party thereto who in reliance upon that contract and pursuant thereto has partly performed it, notwithstanding it is of the class of contracts required by the statute of frauds to be in writing, provided the alleged oral contract is one which if in writing would be enforceable in equity. 49 AM. JUR., *Specific Performance*, § 21 (1943).

The trial judge dismissed the action instituted by plain-

tiff and the complaint upon which rests the entire suit. This is unusual in that, where the complaint is dismissed, there is no issue of law left for the trial judge to rule upon.

Despite this fact, the trial judge passed upon issues of law raised in defendant's answer, but failed to pass upon the issues embraced in plaintiff's reply. This we consider highly improper, for it is axiomatic that the trial court shall rule upon all issues of law presented by the pleadings, before the facts of the case are considered.

We hereby adjudge that the decree of the lower court be and the same is hereby reversed and the case remanded, in order that the issues of law involved be fully considered and passed upon. Should grounds appear therefor, the court shall rule the case to trial on its merits, thereby affording plaintiff an opportunity to present all the evidence that he has in support of his complaint. Costs to abide final determination. And it is hereby so ordered.

Reversed and remanded.