

(1912) 08 MAD CK 0078
In the Madras High Court

Adusumilli Singarayadu, minor, by Guardian Runganna

APPELLANT

Vs

Sayani Narayanasami

RESPONDENT

Date of Decision : 12-08-1912

Acts Referred:

Citation : 17 Ind. Cas. 273

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The finding that the plaintiff was not a benamidar for Brahmanandham in the agreement for sale cannot be questioned in second appeal.

2. The next point argued is that the defendant is entitled to recover from the plaintiff the expenses of the suit he instituted against Brahmanandham to recover the property from him. In that suit costs were decreed to the defendant against Brahmanandham. There is no evidence that he has incurred any additional costs. The agreement must be construed as meaning that, if the defendant had to incur any costs out of his own pocket, he should be reimbursed by the plaintiff. This contention must, therefore, be overruled.

3. The next and last contention is, that the defendant is entitled, under the terms of the agreement with defendant, to interest from the 31st May 1903. The contract for sale, so far as it is material for this point, runs thus: "I shall receive the money on any day you may bring the same within the 31st May 1903...on any day that you may bring the balance and give me within the due date, I shall execute on a proper stamp paper a sale-deed in your favour in respect of the property mentioned in the letters." There is no covenant in this agreement to pay interest, but in the letter, Exhibit I, we find the following statement:

4. "If I fail to pay you the sale amount within the due date (that is the 31st of May 1903) and get the sale-deed executed. I shall pay to you the said sum with interest thereon at one rupee per cent. per mensem, from the due date and get the sale-deed executed." We may, therefore, take it that there was an express

covenant to pay interest from the 31st of May 1903 but the defendant was also bound to execute a sale-deed at the same time. As a matter of fact, in this case the defendant was not able to establish a clear title until after he instituted his suit against Brahmanandham and obtained a decree. That decree was passed on the 26th April 1905. Notwithstanding the covenant to pay interest, the defendant would not be entitled to recover it unless and until he was able to make out a good title. Fry in his work on Specific Performance says: "In a case where there was a stipulation that if, by reason of unforeseen or unavowed obstacles, the purchase should not be completed by the day fixed, the purchaser should from that day pay interest at 5 per cent. on his purchase-money and be entitled to the rents and the vendor did not show a good title till long after the specified day, Leach, V.C., held that the stipulation would not make interest run before the time when a good title was shown, but would only affect its rate." (See page 683, 5th Edition paragraph 1413). This rule commends itself to us as a reasonable one. The plaintiff's obligation to pay interest and the defendant's obligation to execute a valid sale-deed must be treated as mutually dependent covenants. In this case, after the defendant had established his title against Bramanandham, he refused to execute a conveyance in plaintiff's favour. He cannot, therefore, claim interest even for the period after his title was established against Bramanandham. We may, no doubt, award him interest from the date of the first Court's decree. He would at the same time be bound to pay mesne profits from the same date. Ho does not wish to have a decree for interest on these terms.

5. The second appeal is dismissed with costs.