

(1924) 11 MAD CK 0011
In the Madras High Court

C. Govindswami Pillai

APPELLANT

Vs

Doraiswami Mudali and Others

RESPONDENT

Date of Decision : 10-11-1924

Acts Referred:

Citation : 91 Ind. Cas. 181

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—In this case the plaintiff sued to recover two items of property-described in Schedules A and B. He got a decree in the first

Court for both these properties. In appeal the Subordinate Judge has disallowed his claim for A Schedule property. He purchased this property

under Ex. A, dated 20th April 1914. The 3rd defendant who is the contesting defendant before me also purchased the very same property on 9th

May 1914. The 3rd defendant claims priority for his purchase over that of the earlier purchase by the plaintiff on the ground that he had a contract,

under which the owner of the property, the 1st defendant, had agreed to sell it to him, of an earlier date than the 26th April 1914. That agreement

was produced and it is Ex. III. The agreement was found to be genuine. The question that I have to decide turns upon Section 27 of the Specific

Relief Act. If it is an agreement which could be specifically enforced u/s 27 against the plaintiff as purchaser subsequent to the date of that

agreement then the 3rd defendant's claim would be good. If there was an agreement established of an earlier date, it would be for the plaintiff who

subsequently purchased the property to show that he is a transferee for value who has paid his money in good faith and without notice of the

original contract. But before the 3rd defendant can take advantage of Section 27, Clause (b), of the Specific Relief Act he has to show that he has

a contract in his favour to sell. The document he produced, Ex. III, it is argued by the appellant's Vakil, does not amount to a contract at all but

amounts only to an offer by the owner of the property to give a sort of right of pre-emption to the 3rd defendant. It says ""If it so happens that I

have to sell it (the property) out of necessity, I will sell it to you for Rs. 60 and I bind myself to take the money from you and convey the land to

you. I will give you ten days" time from the date of my proposing to sell it within which time you should pay me the money and take the sale-deed

from me. But if you fail to pay the money within the ten days I will overlook your right and claim and I will be at liberty to sell it as I like."" It is

argued by the learned Vakil for the appellant that this does not amount to a contract at all but it is only a binding offer on the part of the 1st

defendant to the 3rd defendant that he would sell the property to him first, if necessity arises for him to sell it, at the price of Rs. 60. The document

cannot be treated as a contract, for there is nothing in it to compel the 3rd defendant to buy the property on the terms set out in it. As was held in a

recent decision of this High Court in *Eagala Nagappa Naidu (dead) and Others Vs. P. Munuswamy Iyer and Others*, such a document as this

would only amount to an offer and until that offer is perfected there is no binding contract resulting. No doubt when once the Offer is accepted,

there will be a binding contract. Exhibit III, therefore, by itself, is not sufficient to justify the finding of the Subordinate Judge that the 3rd

defendant's purchase should prevail as against the plaintiff's earlier purchase. But the question that has been now raised was not properly put

forward in the lower Appellate Court and I think, therefore, that an opportunity should be given to the 3rd defendant to show, if he can, that this

offer in Ex. III became a completed contract by his acceptance before the date of the sale to the plaintiff. If he is able to prove that, then the

plaintiff will have to show that he paid the purchase-money in good faith and without notice of that contract, to save his purchase being postponed

to the purchase by the 3rd defendant; but till the 3rd defendant proves the existence of a binding contract prior to 26th April 1914, the date of Ex.

A, no question under the Specific Relief Act will arise.

2. The Subordinate Judge will be requested to submit findings on the issues whether Ex. III was converted into a binding contract between the parties by its acceptance by the 3rd defendant before the 26th April and, if so, whether the plaintiff is a transferee for value who paid his money in good faith without notice of that contract. Both parties will be allowed to adduce fresh evidence. The findings will be returned in two months from this date and ten days will be allowed for objections.

3. As regards the memorandum of objections filed in this case, it seems to me that there is no ground to support it. The finding of the lower Appellate Court that the property in Schedule B belonged to the 2nd defendant, as whose property the plaintiff purchased it, and was not the property of the 1st defendant is conclusive against the 3rd defendant. That finding is supported by the evidence of the plaintiff's witnesses and I must accept it in second appeal. The memorandum of objections will, therefore, be dismissed with costs.

* * * * *

4. This second appeal coming on for final hearing after return of the findings of the lower Court [which were to the effect that there was no completed contract between defendants Nos. 1 and 3 before the date of the plaint sale, and even if there were one, the plaintiff was bona fide purchaser for value without notice] the Court delivered the following

JUDGMENT

5. I accept the finding and as a result the second appeal is allowed and the decree of the lower Appellate Court is set aside and that of the District Munsif is restored. There will be no costs to either side in the appeal or the second appeal. This does not affect the order on the memorandum of objections.