

(1914) 09 MAD CK 0047
In the Madras High Court

Davvur Subba Reddi

APPELLANT

Vs

Kakuturi Venkatrami Reddi Alias Venka Reddi and Another

RESPONDENT

Date of Decision : 24-09-1914

Acts Referred:

Citation : (1916) ILR (Mad) 1187 : (1915) ILR (Mad) 1187

Hon'ble Judges : Spencer, J;Sankaran Nair, J

Bench : Division Bench

Judgement

Sankaran Nair, J.—This is an appeal from a decree of the District Judge of Nellore dismissing the plaintiff's suit for specific performance of a contract entered into between himself and the first defendants. The plaintiff's case is that the first defendant who had brought a suit for partition against his co-parceners for his two-sevenths share of the family properties, was in embarrassed circumstances and in order to get rid of his debts agreed to sell the plaintiff's properties to him for a sum of Rs. 8,429 on 14th April 1904 (Exhibit I). The properties were to be sold soon after the disposal of the suit and after he had obtained his lands on partition. This agreement was renewed on 1st August 1907. The plaintiff states that after the decree was passed in favour of the defendant he was placed in possession of some of the lands but has not obtained possession of the rest. He accordingly prays for specific performance and for possession of the rest of the lands. The suit was originally brought only against the first defendant, His plea was that the agreement was really entered into between him and the plaintiff's father-in-law, one Ramachandra Reddi, as a consideration for the latter giving evidence in the partition suit which was then pending. He also pleaded that Ramachandra Reddi threatened to place obstacles in the way of his obtaining a decree, that he was thus coerced into entering into this transaction and that it is, therefore, not binding on him. He pleaded that the sale price is inadequate and that there was no necessity for him to enter into this agreement to sell his property. His son the second defendant was subsequently made a party to the suit. In addition to the pleas advanced by his father, he said that as there was no necessity to sell the lands the agreement is not binding on him and cannot be

enforced against him under the Hindu Law.

2. The District Judge found that there was no necessity to sell the lands and that there was no pressure by any of the creditors. He found also that the plaintiff was in debt himself and is not a person likely to be in possession of funds for the purchase of lands. It was also found by the District Judge that the plaintiff was not placed in possession of the lands but that the defendant's co-parcener who was in possession of these lands delivered them to the plaintiff's relative, plaintiff's first witness, who is now in possession. He was apparently of opinion that the real beneficiary under the agreement was not the plaintiff himself but Ramachandra Reddi. Whether Rs. 8,429 was a fair value for the land agreed to be sold he does not find. On these findings the suit was dismissed.

3. On appeal it is contended that the Judge is wrong in all his findings. It is argued that he does not find that there was coercion and the evidence does not support that plea. It is pointed out by the appellant's pleader that when Exhibit I was executed, the plaintiff was not the son-in-law of Ramachandra Reddi and when Exhibit IT was executed, Ramachandra Reddi had already given his evidence. It is quite possible that the desire to secure the assistance of Ramachandra Reddi may have materially influenced the defendant in entering into this agreement. But if the consideration is not inadequate it is difficult to say that this fact will vitiate the transaction. The evidence as to the value of the lands is very meagre. The defendant's first witness, who is the first defendant's own son-in-law, states that the wet land is worth about, Rs. 500 an acre and that the dry land, is worth Rs. 450 an acre. According to this evidence the value of the lands will be about Rs. 20,000. On the other hand, his own second witness, who appears to be a comparatively wealthy man, admits that the lands in 1911 sold at Rs. 250 an acre and at the time of Exhibit I only at Rs. 150 an acre, and the plaintiff's first witness states that the price for which the plaintiff's lands were to be sold is reasonable. Exhibit VIII shows that other lands in the vicinity sold at about Rs. 100 an acre. In these circumstances I am not prepared to say that the consideration has been proved to be inadequate. I must accordingly hold that so far as the first defendant is concerned there is no evidence of undue influence and that he has not proved that it was a hard bargain. But it is also quite clear that there was no necessity to sell the lands. The fact that for more than three years after the date of Exhibit I no creditor sued to enforce his claim, is itself strong evidence, and the defence evidence is that the first defendant has succeeded in paying off the other debts by selling other lands. The plaintiff's first witness admits that defendant's family had about 200 or 240 acres of land, dry and wet put together. There is no evidence that any creditors were demanding payment of their debts. There is no evidence given by the plaintiff to show why it was necessary to enter into this agreement to sell the property at a future uncertain date while the lands were rising in value. There is absolutely no evidence, therefore, that it was necessary to enter into this agreement to sell. I must, therefore, hold that it is not binding on the second defendant.

4. It is argued before us on behalf of the appellant that he is entitled to obtain a decree for specific performance against the first defendant. A contract can be enforced against any person who was a party to it. The plaintiff was therefore right in bringing the suit only against the first defendant and if he alone had been a party to the suit he might have been entitled to get a decree against him without the question whether it was binding on the family of the first defendant being gone into. This was pointed out in *Kosuri Ramaraju v. Ivalury Ramalingam* ILR (1903) Mad. 74 and in *Srinivasa Reddi v. Sivarama Reddi* ILR (1909) Mad. 320. In *Kosuri Ramaraju v. Ivalury Ramalingam* ILR (1908) 26 Mad. 74, the suit was dismissed against persons other than the first defendant therein who alone was a party to the contract. In *Srinivasa Reddi v. Sivarama Reddi* ILR (1900) Mad. 320 the son was not a party to the second appeal. In neither case, therefore, was the question, whether the agreement was binding on the family or not considered. Nor was the question decided whether, if the agreement was not binding on the family, the plaintiff was not entitled to get a decree for the managing member's share of the property on payment of the entire purchase money. That he was so entitled was conceded on behalf of the managing member in *Poraka Subbarami Reddy v. Vadlamudi Seshachalam Chetty* ILR (1910) Mad. 359. In fact the argument was that he was entitled only to that relief. But in the case before us, the son has been made a party to the suit and I am not prepared to hold that after the trial of the case, we shall be justified in dismissing him from the suit, without a consideration of the pleas advanced by him. Moreover, the fact that the agreement is not binding on the family has been proved by the evidence let in to prove undue influence and the unconscionable nature of the bargain. On the finding, therefore, that the agreement is not binding on the family, the suit for a decree directing the first defendant to sell these lands must; be dismissed. The plaintiff offers to pay the full amount; for a conveyance to him of the lands which are the separate property of the first defendant and of the first defendant's interest in the family lands. This requires a determination of the question whether any of these lands form the separate property of the first defendant; and such a decree will only lead to litigation between the same parties to determine their rights. We think we should not be justified in passing such a decree in this suit. He is therefore) not entitled to a decree for part performance. In this view it is unnecessary to consider certain dicta in *Nagiah v. Venkatarama Sastrulu* ILR (1914) Mad. 387. But as the question has been argued before us I shall briefly refer to them.

5. A person is entitled to specific performance of a contract by a member of a Hindu family to sell his share of the family property. But there is no question of part performance in that case. If the learned Judges intended to go further and lay down that if a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree may be passed against him to sell his share of that specific property, I am unable to agree with that view. Because the junior member is unable to perform the whole of his part of the contract by conveying the entire property agreed to be sold and for the same reason that he

is not entitled to claim any specific property till partition, conveyance of a portion, is not a part of the contract "as he can perform" in the terms of Section 15 of the Specific Relief Act. On the view that a co-parcener cannot alienate any specific property, no specific performance can be decreed. The opposite view rests on the principle laid down in some of the cases that a co-parcener is entitled to alienate any particular property. Bakewell, J., and myself have dissented from those cases in *Nanjaya Mudali v. Shanmuga Mudali* (1914) 15 M.L.T. 186 and our judgment has been followed by the Officiating Chief Justice and Kumaraswami Sastri, J., in *Maharaja of Bobbili v. Venkataramanjulu Naidu* (1914) M.L.T. 181. This question, however, does not arise in the appeal. I would dismiss the appeal with costs.

Spencer, J.

6. I concur.