(1912) 01 MAD CK 0024

In the Madras High Court

Govinda Naicken and Another — APPELLANT

Vs

Apath Sahaya Iyer alias Aiyavu Iyer — RESPONDENT

Date of Decision : 05-01-1912

Acts Referred:

Specific Relief Act, 1877 — Section 15(a)

Citation : (1912) 22 MLJ 257

Judgement

1. The suit was brought for specific performance of a contract to sell certain lands. Although the agreement to sell was executed by the defendant

alone, it was stated in the document that the lands were being enjoyed in equal shares by the defendant and the defendant''s divided elder brother

and that they had been purchased out of money belonging to them severally. The defendant agreed to have the proposed sale deed executed by

himself and by his brother on his own account and as guardian of his minor son.

2. The District Munsif found (1) that both the parties knew full well at the time of execution of the agreement to sell (Ex. A) that one-half of the

land belonged to Ramaswami Iyer and his son, (2) that the agreement fell through owing to the default of both parties. Referring to illustration (a) to

Section 15 of the Specific Relief Act and to Section 17, he decided that this was not a case in which specific performance of a part of the contract

could be enforced in as much as the defendant was not competent to transfer the half to which he did not possess a title and as the plaintiff made

no offer to purchase the defendant''s own half, paying the price agreed upon and waiving all right to compensation for deficiency or for loss. The

District Judge did not agree with the District Munsif upon this point. He was unable to see that there was anything to debar the plaintiff from asking for a sale deed for the whole land to be executed in his favour by the defendant as stipulated in Ex. A, the plaintiff being allowed to take the

document for what it was worth. The District Judge further remarked that he found no reason for declaring the agreement unenforceable on general

grounds. He declined, however, to give the plaintiff a decree on account of his delay of 3 years in instituting the suit.

3. In a case of minors when a suit was brought for specific performance of a contract of a sale and the contract was found to be not binding on the

minors this court in Poraka Subbarami Reddi v. Vadlamudi Seshachelam Chetty ILR (1909) M. 359 observed : "" If the contract is indivisible u/s

17 of the Act, what then is the relief to which the plaintiff is entitled ? We are asked by the appellant to give him a decree for the whole against the

1st and 4th defendants on the authority of Srinivasa Reddi v. Sivarama Reddi ILR (1909) m. 320. This we are unable to do.

4. In that case the appellant expressed his willingness to take a conveyance from the 1st and the 4th defendants, of all their interests in the suit

properties for the purchase money agreed upon without abatement or compensation, and a decree for that relief was granted accordingly. This

course is not open in the present case as the appellant does not ask for it.

5. The cases of Kosuuri Ramaraju v. Ivaluri Ramalingam ILR (1902) M. 74 and Srinivasa Reddi v. Sivafama Reddi ILR (1909) M. 330 were

both cases in which a managing member of an undivided family contracted to sell undivided property without the concurrence of other members.

Without determining whether the sale by the manager would bind the other members, it was considered that the plaintiff was entitled to a decree

for specific performance. Section 15 of the Specific Relief Act was not applied for the reason given in the latter decision, viz., that an undivided

father has an interest in every portion of the undivided property. But when the family is undivided as here, Section 17 distinctly prohibits a court

from directing the specific performance of a part of a contract except in accordance with the preceding sections. Even in cases where the

conditions of Section 15 are fulfilled, the use of the word ''may'' indicates that the granting of a decree for pad: performance is discretionary with

the court, and we should hold that when there has been great delay in attempting to enforce a contract and circumstances have greatly changed either from a rise of prices or other causes in the interval, the courts, would be justified in refusing to give legal effect to an inequitable arrangement.

6. Now the plaintiff in the present case wants the court to compel the defendant to execute a deed of sale for the whole property and if he refuses

to issue one in his name under the seal of the court and to allow him to make what he can out of the title thus conveyed such a request is quite

inadmissible. A sale is a transfer of ownership in exchange for a price (Section 55 of the Transfer of Property Act). The defendant has nothing,

which he is capable of transferring in the moiety of the property of which he is not the owner and is not in possession. It is impossible to sever the

execution of the deed from the transfer to be effected thereby and to treat them as separate acts of the same person.

7. The court will not lend its sanction to a transaction devoid of legal effect. See Dart''s. Vendors and Purchasers pp. 1072-3; Fry on Specific

Performance, paras 1,000,1002 ; Banerji on Specific Relief, pp. 457 to 467.

8. The case of Barret v. Ring (1854) 2 Sm. 43 referred to for the appellant is not in point as there the vendor was not without any title at all to the

property agreed to be conveyed. Moreover the execution of a sale deed by the 1st defendant over property which does not belong to him would

be an act improper in itself as it is calculated to throw a cloud over the title of his brother which would be sufficient to give him a cause of action for

a declaratory suit. The court will not compel him to do such an act.

9. The second appeal is therefore dismissed with costs.