
(1936) 12 MAD CK 0041
In the Madras High Court

Gudia Dullabho Sahu

APPELLANT

Vs

Cinni Adinarayana and Others

RESPONDENT

Date of Decision : 02-12-1936

Acts Referred:

Citation : AIR 1937 Mad 831

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This revision petition raises a question of court-fee. A few facts may be necessary for the disposal of the same. Defendant 1's grandfather was entitled as reversioner of one Cinni Errayya to certain properties and he filed a suit for recovery of the same as reversioner.

2. All the properties which appertain to the estate of Cinni Errayya are described in Schedule A to the plaint in this action. While the litigation was pending, defendant 2 in this suit who was financing the plaintiff in the said litigation in consideration of the advances made by him obtained a transfer of two-third share in all the properties which defendant 1's family would obtain as a result of the said litigation. Defendant 1's grandfather succeeded in the suit and an appeal was preferred against the said decision to this High Court. While the appeal was pending, a certain arrangement took place on 26th January 1927 between the plaintiff and the father of defendant 1 who had succeeded to the estate by virtue of his father's death. The arrangement was this: Both the plaintiff and the father of defendant 1 should buy out defendant 2 by paying Rs. 7,500 and get a transfer of the two-third share which defendant 2 was entitled to under the sale in his favour; after getting the said transfer the property should be sold except 3 acres 73 cents being items 10, 11, 13 and 36 in Schedule A and the plaintiff and the father of defendant 1 should enjoy the profit resulting from the said sale in equal shares. The reason why 3 acres 73 cents of land was omitted is that the plaintiff purchased from some of the defendants in the reversionary suit the said property and obtained possession and was in

possession of the same on the date of the said arrangement. But somehow the arrangement of 26th January 1927 was not carried into effect and defendant 1's father died. The appeal in the High Court was settled by a compromise in and by which among other things the title of defendant 1's family was declared and established. At any rate from the plaint it appears that defendant 1's family was ultimately declared the owner of all the properties left by Cinni Errayya. As I stated above, the arrangement of 26th January 1927 was not given effect to and both defendants 1 and 2 also sold some of the properties which formed the basis of the said arrangement.

3. In consequence whereof, the plaintiff, defendant 1's guardian on behalf of defendant 1 and defendant 2 entered into an arrangement in regard to the properties which were left undisposed of, viz. both defendants 1 and 2 should retain certain items: defendant 1 should retain one-third share in certain items which are specifically described in Schedule C to the plaint; defendant 2 should transfer all his interests in the remaining properties to the plaintiff for a sum of Rs. 6,088 which properties are now specifically described in Schedule D hereto. It was also a part of the said arrangement that in the 3 acres 73 cents which also formed part of Schedule D property excluding the two-third which had to be conveyed to the plaintiff under this arrangement, defendant 1 also should relinquish his one-third share so that the plaintiff may get a complete title in respect of the entire 3 acres 73 cents possession whereof had been disturbed by the decree of the High Court.

4. It will thus be seen that so far as the plaintiff is concerned, the arrangement is that in consideration of the sum of Rs. 6,088 payable by him to defendant 2, defendant 2 should convey two-third of the properties in Schedule D and defendant 1 should convey one-third of his interest in the 3 acres 73 cents which are items 10, 11, 13 and 36 in Schedule A and which also formed part of Schedule D and which now form part of Schedule E. The prayer in the present plaint is that defendant 1 should be directed to execute a relinquishment in favour of the plaintiff for the one-third share in 3 acres 73 cents which are items 1 to 4 of Schedule E and defendant 2 directed to execute a conveyance in plaintiff's favour of two-third of all the properties in Schedule E. There is a further prayer that the property should be partitioned and the plaintiff be put in possession of the entire items 1 to 4 being 3 acres 73 cents and two-third of the remaining items in Schedule E.

5. The question is what is the court-fee payable on the basis of the allegations and the reliefs claimed in the plaint. There can be no question that so far as a conveyance is sought in favour of the plaintiff in respect of defendant 2's interest, the suit is essentially one for specific performance of a contract and court-fee will have to be levied u/s 7, Clause (x), Court-fees Act. That will be on the amount of Rs. 6,088. But what Mr. Lakshmananna contends is that the present Schedule E properties do not comprise all the properties which were intended to be conveyed under the arrangement entered into between the parties. According

to the said arrangement the properties that were intended to be conveyed were defendant 2's interest in the entire Schedule D properties; by a subsequent arrangement between the plaintiff and defendant 2 the properties which were intended to be conveyed were sold to third parties and the moneys realised therefrom were credited towards the said sum of Rs. 6,088, the price fixed to be paid to defendant 2. Thus a greater portion of the properties comprised in Schedule D had been sold away and only the properties in Schedule E remained to be conveyed.

6. It is only in respect of these properties Mr. Lakshmanan says that a conveyance is sought and he is therefore not bound to pay the court-fee leviable on a claim for specific performance. His argument is that as the entire contract could not be performed, the suit cannot be deemed to be one for specific performance but only for possession of the plots in Schedule E. It seems to me that this argument is unsound. The basis of the plaintiff's claim is the arrangement that was come to between the plaintiff and defendants 1 and 2. It was for a conveyance of the entire properties in Schedule D. It can only be by enforcing that contract the plaintiff can get any relief. Unless that contract is affirmed and declared, the plaintiff cannot get any relief either in respect of the whole or any portion of the properties sought to be conveyed under the said arrangement. The fact that certain properties have been sold by mutual arrangement will not alter the nature of the claim which is essentially one for specific performance of contract of sale which is implied in the said arrangement. How I understand the relief claimed is this:

7. The plaintiff requests the Court to give effect to the arrangement which he entered into, but desires that in effecting the conveyance only the properties described in the Schedules should be conveyed and possession in respect thereof should be given. As the Court will in any event have to declare the original arrangement entered into and only on that basis should give the relief to the plaintiff, the suit will have to be valued on the consideration mentioned therein. In a suit for specific performance, the view has always been taken by this Court that there is no question of primary and secondary relief and both the execution of the conveyance and delivery of possession are essential reliefs. Further, without getting a conveyance it is not possible to get possession. In *Sundara Ramanujam Naidu Vs. Sivalingam Pillai and Another*, *Venkatasubba Rao, J.* explains the scope and the nature of a suit for specific performance thus:

In a suit for specific performance the purchaser seeks to enforce the terms of his contract. The seller as much agrees to put the purchaser in possession as he agrees to execute a conveyance in his favour. Then it is argued that as the plaintiff also claims possession in the suit, the suit must be regarded as one for possession. But the specific provision relating to suits for specific performance excludes the applicability of the general provision relating to suits for possession. If the claim to possession is involved in the claim to specific performance, the suit will still remain one for specific performance and it must be dealt with only

on that footing.

8. Therefore I have no hesitation in holding that so far as the plaintiff claims relief against defendant 2, court-fee must be paid on the sum of Rs. 6,088. The question then is how is the relief against defendant 1 to be valued. As I have already indicated, the consideration for the relinquishment is also the said sum of Rs. 6,088. Again what is essentially sought so far as that relief is concerned, is this: The plaintiff by virtue of sale deed from some of the defendants in the reversionary suit obtained possession of 3 acres 73 cents aforesaid but the title thereto was challenged and by a compromise between the plaintiff and defendant 1 it was negatived. To the said compromise the plaintiff was not a party. The plaintiff seeks possession of the said property from both defendants 1 and 2 and an assurance that he will not be disturbed in the said possession by getting a release from defendant 1, because as far as defendant 2 is concerned he gets a conveyance. It seems to me that the essential claim against this defendant 1 is really one for possession and he is entitled to value the same u/s 7, Clause (v), Court-fees Act. On the basis of this valuation the suit will certainly not lie on the District Munsif's Court. In the result the revision petition fails and is dismissed with costs.