

(1912) 04 MAD CK 0054
In the Madras High Court

I. Nagiah

APPELLANT

Vs

A. Venkatarama Sastrulu and Seven Ors.

RESPONDENT

Date of Decision : 19-04-1912

Acts Referred:

Citation : (1914) ILR (Mad) 387

Hon'ble Judges : Wallis, J; Ayling, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the Lower Courts refusing specific performance of a contract of sale entered into by the first defendant.

The suit is brought against the first defendant who is the managing member of the family and against defendants Nos. 2 to 4, his major sons, and

defendants Nos. 5 to 8, his minor sons, who appear by their guardian the first defendant. The Lower Courts have both found that this contract is

not binding on defendants Nos. 2 to 8, and the question which we have to decide is whether specific performance should in these circumstances be

granted or not.

2. We have been referred to a decision in Kosuri Ramaraju v. Ivalury Ramalingam ILR (1903) Mad. 74 in which it was decided without specific

reference to the provisions of the Specific Relief Act that the proper course in such cases as this would be to give a decree for specific

performance of the whole contract against the first defendant leaving it to be settled in future litigation what passed under the conveyance.

3. Another case to which we have been referred is Srinivasa Reddi v. Sivarama Reddi (1909) 32 Mad. 320 in which similarly a decree was

granted directing the first defendant to sell the whole land without determining

whether such a sale would bind the second defendant. In that case the provisions of Section 15 of the Specific Relief Act were referred to and it was observed that ""Section 15"" of the Specific Relief Act ""would be applicable only if the first defendant had no interest in any portion of the property agreed to be conveyed as in illustration (a) or is unable to convey such portion as in illustration (b) to that section.

4. In *Poraka Subbarami Reddi v. Vadlamudi Seshachalam Chetty* ILR (1910) Mad. 359 the Court considered it unnecessary to express any opinion as to the correctness of the observations that we have just cited, and refused, in that case to grant a decree for specific performance of the whole contract distinguishing the previous case on the ground that the contract before them was one entered into on behalf of the minors as well, but gave the plaintiff the benefit of the latter provision of Section 15 of the Specific Relief Act.

5. In *Govinda Naicken v. Apathsahaya Iyer* (1912) M.W.N. 87 these cases were again considered and *Srinivasa Reddi v. Sivarama Reddi* ILR

(1902) Mad. 320 was distinguished from the case before the Court and was explained as proceeding on the ground that an undivided father has an

interest in every portion of the undivided property, and that therefore Section 15 of the Specific Relief Act does not apply. To us, however, it

appears that the consideration that an undivided father has an interest in every part of the undivided property in no way takes the case out of the

operation of the section which runs thus: ""Where a party to a contract is unable to perform the whole of his part of it, and the part which must be

left unperformed forms a considerable portion of the whole,...the is not entitled to obtain a decree for specific performance."" We think the words

of the section apply where a member of an undivided family agrees to sell part of the joint property in which he has only a share; and the present

case is a particularly plain one, because according to the plaintiff's own evidence the first defendant agreed to get the other members of the family

to execute the sale deed. Further the contract has been decided in the present suit not to be binding on the other members of the family; and to

decree specific performance against the first defendant only would be merely encouraging useless litigation. We may add that *Barrett v. Ring*

(1854) 2 Sm.43 is no authority on the present point as the facts were entirely

different.

6. The plaintiff does not claim the benefit of the latter part of Section 15 of the Specific Relief Act and we dismiss the Second Appeal with costs.