
(1975) 04 MAD CK 0033
In the Madras High Court

K. Appa Rao and Another

APPELLANT

Vs

P. Balasubramania Gramani and Others

RESPONDENT

Date of Decision : 07-04-1975

Acts Referred:

Specific Relief Act, 1877 — Section 28

Citation : AIR 1976 Mad 70 : (1976) ILR (Mad) 114 : (1976) 89 LW 32 : (1976) 1 MLJ 96

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—These are appeals by the legal representatives of the plaintiff under the Letters Patent. The plaintiff or his legal representatives as the case may be, had failed in all the Courts below to get specific performance of the three agreements, all executed on 28th October, 1957 to sell certain shares, which the executants of the agreements had in certain joint family properties. The three agreements put together had undertaken an obligation to convey to the plaintiff a total of 3/5 share in those properties. At the time the agreements were entered into, O.S. No. 150 of 1952, which was a suit for partition by two of the coparceners, was pending, and in fact, a preliminary decree had been passed in 1954. Defendants 3 to 7 forming one unit, defendants 8 and 9 forming another unit and defendant 10 in that suit for partition, who held each 1/5 share, were the executants. On 18th April, 1958, the plaintiff -ought to get himself impleaded as a party defendant in the partition suit, but without success. The suit for partition eventually ended in a compromise decree dated 1st May, 1958, the effect of which was that whatever share the executants of the agreements had agreed to convey had in fact been allotted to the plaintiff and defendants 1 and 2 in that suit. The trial Court found that the agreements were not genuine and dismissed the suit. In passing, it had also observed that if the agreements, were genuine, there would be no difficulty in holding that the compromise decree in the partition suit would be a collusive one against the interest of the plaintiff and that, as such, it would not bind him. The first lower appellate Court did not

share that view, but held that the agreements were genuine. But it being of opinion that the consideration for the agreements was grossly inadequate it declined to grant a decree for specific performance. In second appeal, Srinivasan, J., concurred with the first appellate Court and dismissed it.

2. Two questions, which arise for our decision, are:

1 Whether the agreements aforesaid were for grossly inadequate consideration, so that specific performance of the agreements should not be ordered in view of Section 28 of the Specific Relief Act, 1877; and,

2. If that question were answered in favour of the appellants, whether they could still succeed in the light of the compromise decree and Section 27(b) of that Act. In order to appreciate the first question, the related facts are briefly these. The agreements were to convey a total of 3/5 share in what was called Samadhi Thottam and Pananthope. The first was of an extent of 7 acres 26 cents. Pending the partition suit, there was a Receiver appointed. The plaintiff had offered Rs. 7,250 for the first property to the Receiver, and at a subsequent stage, the very same plaintiff enhanced his offer to Rs. 8,500. Pananthope, we find, was of an extent of about 5 acres. But this item of property had been sold away by the Receiver, and it does not form the subject-matter of the suit. The first appellate Court, with whom Srinivasan, J., agreed, held that in view of the offer made by the plaintiff himself for one of the properties covered by the agreements, each of which was executed for a consideration of only Rs. 800 for Samadhi Thottam the consideration was not only inadequate, but grossly inadequate which attracted the provisions of Section 28 of the old Specific Relief Act.

3. Specific performance of an agreement to sell Immovable property is not invariably ordered as a matter of right. The relief is discretionary; but the discretion being a judicial one, it has to be exercised neither arbitrarily nor unreasonably, but according to law and reason. The Specific Relief Act itself has provided certain guidelines as to when specific performance could be ordered and when not. Section 28 is one of them, which provides what parties cannot be compelled to perform. Specific performance of an agreement cannot be enforced against a party thereto if the consideration to be received by him "is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff". Two matters will have to be considered: one while consideration was obviously inadequate, was it grossly inadequate; and the other, whether the fact by itself or in association with other circumstances would amount to undue advantage taken, by the party asking for enforcement of the agreement. The first one involves a question of degree. If the inadequacy of consideration is so much as to shock the conscience of the Court in respect of the fairness of the agreement, it is a case of gross inadequacy of consideration. It is not any inadequacy of consideration that will help a defence in a suit for specific performance but when the inadequacy is unconscionable or is so patently unjust that it savours by itself of fraud or that it amounts to that

when it is taken in conjunction with other circumstances that exist on the date of the contract. In the instant case, the plaintiff himself had valued one of the two items covered by these agreements at more than Rs. 8,000. That being the case, we are of opinion that the sum of Rs. 800 for 1/5 share was grossly inadequate. That was the view of Srinivasan, J., with which we agree. The learned Judge has also pointed out the miserable and unenviable position in which the executants were placed vis a vis the powerful plaintiff who took undue advantage of their position and had the agreements executed in his favour. That will suffice to conclude the appeals against the appellants.

4. But the other question, which we have formulated at the start of this judgment, has also been argued at the Bar, and in fairness thereto we shall notice it. Section 27(b) relied on by the respondents is to the effect that except as otherwise provided by the chapter in which the section occurs, specific performance of a contract may be enforced against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. It is contended for the respondents that plaintiffs 1 and 2 and defendants 1 and 2 in the partition suit, to whom the whole of Samadhi Thotam had been allotted as and for their share, could not be regarded as persons claiming under the executants of the agreements in favour of the plaintiff in the instant case. But this contention is met by the learned Advocate-General for the appellant by relying on the finding of the trial Court that the decree in the partition suit was a collusive decree inasmuch as it had been entered into by all the parties concerned with full knowledge of the agreements. De hors authority, we should have found no difficulty in accepting the contention for the respondents. But the learned Advocate-General has invited our attention to *Fateh Chand v. Narsingh Das* (1915) 22 Cal.L.J. 383 : 16 INDCAS88 T. Rangayya Reddy Vs. V.R. Subrahmanya Aiyar and Others, , and *J. Venkataramayya and Another Vs. J. Raghavalu*, . The first of these cases did not involve a suit for partition pending which agreements, sought to be enforced specifically had been entered into. The question mooted for the respondents whether persons, to whom allotment of this or other specific property was made in a suit for partition, which belongs to a joint family, can be regarded as claiming title thereto under any other coparcener, did not fall to be decided in that case. But the Court held that a plaintiff who sought specific performance of an agreement could show that the compromise decree which was put in defence, was fraudulent and collusive and that it would not affect his legal rights. It is this principle which the learned Advocate-General sought to press into his service. In the second case, *T. Rangayya Reddy Vs. V.R. Subrahmanya Aiyar and Others*, , the only two questions which were referred for decision were; (1) whether defendants 2 to 5 in that case were proper parties to the suit; and (2) whether the relief of partition and possession could be claimed by the plaintiffs in one suit as well as execution of a sale deed.

The first question was answered in the affirmative and the second in the

negative. In so doing, one of the learned Judges (Srinivasa Ayyangar, J) observed:

But a partition involves the release of the interest of the other coparceners in the properties allotted to one of them and though by virtue of their prior title defendants Nos. 2 to 5 may be entitled to a release from the first defendant of his interest in his properties the subject of the present suit, if these properties were allotted to them in a fair partition without their being affected by the contract of sale which can only operate subject to their rights, yet if the partition is proved to be a fraudulent design to defeat the rights of the plaintiff under his contract of sale, by the first defendant giving up the chance of the suit properties or a share in them being allotted to him in a fair division, I think that defendants 2 to 5 in such a case may fairly be treated as subsequent transferees with notice.

It is not clear whether the learned Judge in making this observation had in view Section 27 of the old Specific Relief Act at all. It would appear that the learned Judge was rather proceeding on the general principle that a plaintiff, who seeks specific performance of an agreement, can attack a compromise decree standing in his way as having been obtained fraudulently or collusively. The last case, J. Venkataramayya and Another Vs. J. Raghavalu, , decided by Devadoss, J., held that where an undivided coparcener of a joint Hindu family, consisting of himself and his brother, entered into a contract for the sale of his share in the joint family properties, which consisted only of two items of land and subsequently effected a settlement conveying his share to his brother, who took the settlement with knowledge of the contract, the promisee under the contract was entitled to specific performance, as against the brother who took the settlement and that the brother who took the settlement was a transferee within the meaning of Section 27(b) of the Specific Relief Act, 1877. On facts, this case seems to be nearer to the one under our consideration. But the question is whether a coparcener allottee at a partition of a particular property as and for his share can be regarded as claiming under any one or other of the coparceners, who, on partition, were allotted other properties so as to attract Section 27. It has been recognised in T. Rangayya Reddy Vs. V.R. Subrahmanya Aiyar and Others, that a partition involves the release of the interest of each of the coparceners in the joint Hindu family and that no member of a joint Hindu family as a coparcener can predicate either the quantum of his share in the joint family or claim a particular property or specific item as belonging to him or referable to his share. The concept of joint Hindu family property is that each of the coparceners is entitled to the same right as the other and they all hold together the coparcenary property and that when a partition is effected all that happens is, not a transfer of interest from one to the other but only release of the interest of one coparcener in favour of the other in specific immovable property allotted to the latter as and for his share. In such circumstances, it is, in our opinion, doubtful whether there is any occasion to apply Section 27(b) for, in such a case, there is no room for applying the language "any other person claiming under him." A sharer on partition does not derive title to his share from any one else and,

therefore, it cannot be said that he is claiming under somebody for the purpose of the application of the section. Even assuming, therefore, that the compromise decree was collusive, it is not possible to apply Section 27 to a case like this.

5. On the question whether the compromise decree was collusive it is true the first Court gave such a finding. But these are cases where the agreements sought to be enforced were entered into the pending suit for partition and, therefore, the agreements would be affected by the doctrine of *Us pendens*. Where, under the personal law, the parties, in a suit for partition are entitled to allotment of particular properties as and for their shares irrespective of any agreement entered into by any one of the sharers to sell any quantum of their share, it would be hardly, possible to say that the compromise resulting in allotment of properties was collusive. The Trial Court, in concluding that the decree was collusive, did not consider any specific circumstances which would justify that conclusion. It may be that the parties in the suit for partition were aware of the agreements. But if, notwithstanding the agreements, under the personal law they were entitled to allotment, as they desire as per the agreement on which the compromise decree was based, it cannot be said that that by itself should necessarily lead one to the conclusion that the said compromise decree is collusive merely because it is against the interest of the plaintiff in the present suit.

6. As a matter of fact, in the plaint no ground was taken that the compromise decree was collusive; nor was there any specific issue on that question. It is not also clear whether any evidence was directed on the point. The first lower appellate Court did not consider this question at all.

7. Anyway, since these appeals are capable of disposal on our answer to the first question which we have set out at the beginning, we do not think it necessary to express any final opinion on the second question. The appeals are, therefore, dismissed. No. costs.