

(1953) 08 MAD CK 0004

In the Madras High Court

Case No : Letters Patent Appeal No. 106 of 1950

Kakarla Venkatasubbayya and Another

APPELLANT

Vs

Sravanam Venkatarathnamma

RESPONDENT

Date of Decision : 20-08-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Contract Act, 1872 — Section 17
Registration (Amendment) Act, 1929 — Section 49
Registration Act, 1908 — Section 72, 73, 74, 75, 76

Citation : AIR 1954 Mad 681 : (1954) ILR (Mad) 775 : (1954) 67 LW 99 :
(1954) 1 MLJ 396

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : P. Sithikanta Sastry, for the Appellant; B.V. Ramanarasu, for the Respondent

Final Decision : Allowed

Judgement

Basheer Ahmed Sayeed, J.—This Letters Patent Appeal is against the Judgment and decree passed by our learned brother Panchapakesa

Aiyar J. confirming the lower appellate Court's order directing appellants defendants 1 and 2 to execute a fresh sale-deed and get it registered and

modifying the lower appellate Court's decree so far as costs were concerned.

2. The facts involved in this Letters Patent Appeal have been elaborately set out by our learned brother in his judgment dated 12-12-1,949. We

do not think it is necessary for us to restate them over again in this judgment.

3. Two main legal contentions have been raised in this appeal by the learned counsel for the appellants. The first contention is that the suit is not

maintainable, as Section 77, Registration Act has not been complied with, and

that unless the remedy provided u/s 77, Registration Act is sought by setting the machinery provided therefore in motion, a suit for specific performance cannot lie. The second contention is that, in second appeal, it was not open to the learned Judge to upset a concurrent finding of fact arrived at by the trial as well as the appellate Courts in regard to the genuineness of the signatures of the first defendant in Ex. P. 5 dated 5-2-1942.

4. We shall first deal with the latter contention. The respondent entered into an oral agreement with P. W. 3 and the first appellant that they should reconvey the property which had been conveyed in their favour by the respondent and her sister under Ex. P. 3, dated 24-7-1940. In pursuance of this oral agreement, Ex. P. 5 was executed by P. W. 3 and the first appellant in respect of the suit property which was said to be a valuable land. The document was presented for registration some 3 1/2 months after the stamp papers had been purchased. The first appellant failed to appear before the Sub-Registrar despite a notice calling upon him to appear and admit execution. P. W. 3 alone admitted execution. The Sub-Registrar registered the document so far as P. W. 3 was concerned. The respondent appealed to the District Registrar, West Godavari, against the order of refusal by the Sub-Registrar to register the document as against the first appellant.

The District Registrar, for elaborate reasons given by him in his order, dated 5-9-1942, declined to register the document so far as the first appellant was concerned. Thereupon, the respondent filed a suit for specific performance of the oral agreement to reconvey, dated 24-7-1940, being O. S. No. 309 of 1942, out of which this Letters Patent Appeal has arisen, against the two appellants, the first appellant being the person who refused to register the document and the second appellant being the person in whose favour the first appellant had executed another document during the pendency of the enquiry before the Registrar and the Sub-Registrar. The respondent also prayed for a permanent injunction restraining the appellants from interfering with her enjoyment of the suit lands, as, according to her, she had been in enjoyment of the same from 24-7-1940 despite the sale-deed, Ex. D. 3, written in favour of the second appellant by the first appellant.

The learned District Munsif of Gudivada who tried the suit dismissed it holding

that the alleged oral contract of sale was absolutely false, that Ex. P.

5 was an entirely suspicious document, that its genuineness had not been proved and that, as the document was incomplete the respondent could

not get any rights thereunder. The learned District Munsif also held that as the document Ex. p. 5 on which the suit was laid was an inchoate and

suspicious document and it had not been registered, the remedy of the respondent ought to have been to file a suit u/s 77, Registration Act to direct

the registration of the document and therefore held that as the document was not subjected to scientific examination and as the appellants denied

the contract, the suit for specific performance was not maintainable.

He relied upon the decision of this Court in -- " Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others, . He declined to follow

the decision in -- N.M.S.S. Subramanian Chettiar Vs. S.M.A.M. Arunachalam Chettiar and Others, , holding that that decision would apply if Ex.

P. 5 was shown to be a genuine document. Against this, the respondent plaintiff preferred an appeal before the learned Subordinate Judge of

Masulipatam in A, S. No. 104 of 1944. The learned Subordinate Judge, however, reversed the decree of the learned District Munsif and found

that the oral agreement set up was true and valid and that the suit for specific performance was maintainable as the only remedy left for the

respondent was to seek specific performance of the oral contract. Therefore, he allowed the appeal with costs.

5. When the matter was taken up in second appeal (S. A. No. 329 of 1946 (Mad) (C) before our learned brother Fanchapakesa Aiyar J., he

called for findings from the learned Subordinate Judge of Masulipatam on two points not covered by the lower appellate Court's judgment, and

gave an opportunity also to the parties to let in additional evidence, oral or documentary, if they were so advised including that of the handwriting

expert. The first point was whether the signature purporting to be that of the first appellant's in the sale-deed. Ex. P. 5, dated 5-2-42 was genuine

as urged by the respondent-plaintiff or was a forgery as urged by the trial Court. The second point was whether the second appellant who had

purchased the property from the first appellant who was a "bona fide" purchaser for value without notice of the oral contract to reconvey in favour

of the respondent plaintiff.

The lower appellate Court submitted its findings to the effect that the signature of the first appellant in Ex. p. 5 was not genuine but was a forgery

and that the second appellant had notice of the prior oral contract of sale. On these findings, after hearing the objections filed by the respondent

plaintiff, our learned brother Panchapakesa Aiyar J. accepted the findings of the lower appellate Court regarding the second appellant's being not

a "bona fide" purchaser for value without notice of the oral agreement to reconvey. But, regarding the finding of the lower appellate Court that the

signatures purporting to be that of first appellant's in Ex. P. 5 were probably forgeries, our learned brother did not accept that finding. On the other

hand, he held that they were genuine signatures. Our learned brother has given reasons for his not accepting this concurrent finding by the two

Courts below on the question of the genuineness of the six signatures of the first appellant in Ex. P. 5.

6. The learned counsel for the appellants-defendants contends that, in a second appeal, it was not open to our learned brother to set aside the

findings of fact by the trial Court and the first appellate Court. He argues that our learned brother does not refer to any vitiating circumstances

affecting the findings of the two Courts below in order to justify his refusal to accept the said findings of fact. After a careful perusal of the judgment

of our learned brother, we feel that there is force in the contention of the learned counsel for the appellants. We do not think that the reasons

adduced by our learned brother would constitute sufficient justification for setting aside in a second appeal, the concurrent findings of fact on the

question of genuineness of signatures of the first appellant in the said Ex. P. 5. Both the Courts have heard the witnesses and have considered the

documentary evidence and the surrounding circumstances and have come to the conclusion that the signatures could not be held to be genuine.

In such circumstances, we think, on the facts of this case, our learned brother was not justified in setting aside the concurrent finding of fact of the

two Courts below on the question of the genuineness of the signatures of the first appellant in Ex. P. 5. It must, however, be said that this point

does not, by any means, dispose of this Letters Patent Appeal. We have, therefore, necessarily to go into the second point raised by the learned

counsel for the appellants in order to hold whether or not there are any merits in this Letters Patent Appeal.

7. In -- Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others, ", Coutts-Trotter C. J. and Reilly J. have considered at length

the scope of Section 77, Registration Act and whether the remedy provided under the Act is merely optional or compulsory and whether, without

exhausting the remedies provided under this Section 77, a suit for specific performance could be maintainable. After reviewing all the authorities of

this court and the Calcutta and Allahabad High Courts, the learned Judges declined to agree with the views held by the Calcutta and Allahabad

High Courts and followed the decision in -- "Venkataswami v. Kristayya", 16 Mad 341 (D). They dissented from the decisions in -- "Amerchand

v. Nathu", 7 All LJ 887 (E); -- "Surendranath Nag Chowdhury v. Gopalchunder Gosh", 12 Cal LJ 464 (P) and -- Nasiruddin v. Sidhoo Mia".

AIR 1919 Cal 477 (G). The learned Judges also distinguished the decisions in -- "Chinnakrishha Reddi v. Doraiswami Reddi", 20 Mad 19 (H)

and -- "Nynakka Rowther v. Vavana Mohamed Naina Rcwther", 5 Mad HCR 123 . (I).

In -- "16 Mad 341 (D)", the plaintiff sued for specific performance and a decree was passed by the lower court directing the defendant to execute

and register a deed of transfer. When the matter was taken up on appeal, Muthuswami Aiyar and Handley JJ. upset that judgment. The reasoning

given by the learned Judges has been extracted at pp. 532-533 by the learned Judges who decided -- Komiresetti Satyanarayana Vs. Yeeranki

Chinna Venkatarao and Others, " and, with respect, we also think it worth-while to extract that passage. That passage runs as follows : ""If

defendant had appeared and admitted execution, the document would have been registered. If he had appeared and denied execution, registration

would have been refused and plain-tiff would have been entitled to an enquiry before the Registrar under Sections 73 to 76. If defendant did not

appear, plaintiff might have proved execution of the document, and on such proof would have been entitled to registration. If the registering officer

was not satisfied with the evidence of execution and refused to register, an appeal would have lain to the Registrar u/s 72. If the decision u/s 72 or

Section 76 had been adverse to plaintiff, he would have a remedy by suit u/s 77 of the Act. Plaintiff had, therefore, a complete remedy under the

Act, and not having chosen to follow it, has only himself to blame that the efficacy of the document has not been completed by registration.

In this judgment, the learned Judges also negated the doctrine that one can treat an incomplete conveyance as a complete agreement for a

conveyance and claim specific performance thereof. This decision has been followed by the learned Judges who decided --"Thayrammal v.

Lakshmiammal", AIR 1920 Mad 660 (J) and -- "Subba-raya Pillai v. Devasahayam Pillai", 1922 Mad WN 70 (K). After extracting the terms of

Section 77, Registration Act, the learned Judges who decided -- Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others, ",

observed as follows:

That is a statutory remedy given to a person who stands in the position that he is entitled to have a document registered by somebody else, that

that somebody else has refused and the Registrar has upheld the refusal and he wants to have that compulsorily registered as against the other

person. It should be observed, and I think this is a most important thing to notice about the section, that it provides a limitation of a short period of

33 days, the object no doubt being to ensure that matters of this kind should be gone into when the evidence is fresh in everybody's mind and in all

human probability all of it available, whereas if left to an ordinary suit some people might be dead who could throw light on the matter and others

might have let it fade from their recollection. I should have thought that looking at the statute alone it is clear that the object of the legislature was to

provide a remedy of a very short period of limitation for putting right a wrongful refusal to register, and that must be held to be the remedy and the

only remedy given by law.

But unfortunately, the matter is covered with conflicting authority. The authorities in Madras appear to differ from the authorities in other parts of

India. In a matter which is open to divergence of view, my opinion is that this court should follow its own "cursus curiae" unless it is of opinion that

the former decisions of the court are clearly wrong. I do not think, if it agrees with those decisions, that it ought to harass the parties with any

argument before a Full Bench merely because of different views in other courts.

Again, at p. 532, after reviewing the decisions of the Calcutta and Allahabad High Courts, Coutts-Trotter C. J. observed as follows :

It seems to me that these decisions in Calcutta and Allahabad in effect taken upon themselves by a side wind to get rid of the period of limitation

strictly imposed by the express words of the statute. To my mind no judicial decision has any right to tamper with a thing directly enforced and enjoined by a statute whose construction is free from possible doubt. The most that can be said is that the remedy given by the statute is not intended to be the only one. It is almost impossible to believe that the legislature can have intended that there should be a direct and an indirect way of effecting the same thing and that the period of limitation applicable to them should be entirely different. That is the view that has been taken in more than one case in this court.

At p. 533, the learned Chief Justice has again observed as follows :

And it must be remembered that although in this country the remedy of specific performance is a statutory remedy, it nevertheless is simply a crystallisation into a statutory form of an equitable remedy to which laches was, as it is to all equitable claims, an answer. How it can be said that a man who was given an express statutory remedy by an Act of legislature u/s 77, Registration Act and has failed to take advantage of it has not been guilty of laches and is entirely free from blame passes my comprehension. It appeals to me that a man who has failed to adopt the remedy expressly provided by the statute cannot come to this court and ask for an exorcise in his favour of a discretionary and equitable remedy.

8. We are in entire agreement with the observations that we have extracted above and we think that, on the facts of this case, that decision has the fullest application. The respondent having gone to the Sub-Registrar for getting the document registered In the first instance and not having got the full relief for which she applied, for, resorted to the District Registrar by way of appeal. When she failed to secure her remedy from the District Registrar as well, the next stage of the machinery which she should have set in motion was the one provided in Section 77, Registration Act. Under that section, the respondent should have filed a suit for a decree directing the document to be registered in the concerned office and this she should have done within thirty days of the order of the Registrar. Instead of doing so, the respondent straightaway went to the Civil Court not u/s 77, Registration Act but under the Specific Relief Act and claimed an equitable remedy provided thereunder for specific performance of the oral contract. That she cannot resort to this procedure is the contention of the

learned counsel for the appellants and we think that this contention has to be upheld.

In support of this contention, the learned counsel has drawn our attention to a decision by one of us sitting as a single Judge in -- Sanga Thevar Vs.

Thanukodi Ammal and Others, . There, it has been observed that when once a oral contract has become executed and has taken the shape of a

document, there is no more scope for enforcing the oral contract against the parties. The remedy open to the aggrieved party is only to resort to

the procedure provided by the statute of registration u/s 77, Registration Act. Though no authorities had been cited before the court, the conclusion

arrived at therein seemed to be in accord with the reasoning contained in -- "AIR 1926 Mad 530 (A)". In that judgment, it was observed as

follows : ""When once in pursuance of the contract which is alleged to have been oral, a document came into existence and that the document went

to the extent of being presented to the registering officer for being registered and was not registered for some reason or other, it follows that there

was no further contract to be enforced. The contract had in fact become executed by reason of the execution of the sale deed so that on this

ground also the plaintiff" was bound to be non-suited. There was nothing more for the first defendant to do if the evidence of the plaintiff's

witnesses was taken to be true, he having executed a document and if the document had gone out of the reach of the plaintiff, it was open to the

plaintiff to have compelled its production from P. W. 8 and to have taken adequate remedies for enforcing her rights by the registration of this

document instead of proceeding to court to enforce the oral contract, which had become performed so far as the first defendant was concerned.

9. As against this, Mr. B. V. Ramanarasu has invited our attention to the amendment of Section 49, Registration Act carried out by Act 21 of

1929. By virtue of this "amending Act, a new proviso was added to Section 49 which is to the following effect:

Provided that an unregistered document affecting Immovable property and required by this Act or the Transfer of Property Act, 1882, to be

registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as

evidence of part performance of a contract for the purposes of Section 53-A of

the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

His contention is that, under this proviso, a suit for specific performance would lie and the unregistered document could be received as evidence of a contract in such a suit for specific performance. He has invited our attention to the commentary of the learned author, Mulla, on the Indian Registration Act (Act 16 of 1903) (5th Edn.) at p. 277. We have read through the observations of the learned author wherein he has commented upon the effect of the decision of the Allahabad, and Calcutta High Courts on the question of a suit for specific performance u/s 42, Specific Relief Act vis-a-vis the proviso introduced by the amending Act (21 of 1929) to Section 49, Registration Act,

As we have already observed, the decisions of the Allahabad and Calcutta High Courts have been dissented from by this court and we do not agree with the learned counsel for the respondent that the enactment of the proviso to Section 49 has made much difference to the ratio decidendi found in --- *Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others*, . When the party in whose favour a contract was entered into in favour of a party and in pursuance thereof a deed of transfer was executed, and when that party has already set in motion the machinery for enforcing the registration of that deed of transfer, the next step which the party should have legitimately taken was the institution of the suit for enforcing the registration as contemplated by Section 77, Registration Act. It would be a different matter if this unregistered document is sought to be received as evidence of a contract in a suit for specific performance if the party had not set in motion the machinery provided by the Registration Act under Sections 72 to 76. In our opinion, when once this machinery has been set in motion, the logical conclusion should be that action should be taken u/s 77 Registration Act and it was incumbent upon the party to file a suit to enforce the registration before she could think of a suit for specific performance.

10. Mr. Ramanarasu further contends that Section 77 does not preclude the party from resorting to any other remedy by way of filing the suit for specific performance. This may be true provided that the party did not go before the Registration Officers to enforce registration and had

starightaway proceeded to enforce the contract, in which case, the unregistered document executed would have been of immense help by way of evidence of the contract in the suit for specific performance. As it is, it can be easily seen that, by resorting to a suit for specific performance on the basis of the oral contract, the party is seeking to get rid of the effect of the period of limitation fixed u/s 77, Registration Act, namely, thirty days, for a suit for a decree directing the document to be registered by the officer before whom it was duly presented for registration. As has been pointed out by the learned Judges who decided the case -- "AIR 1826 Mad 530 (A)", the suit for specific performance is merely an attempt to get rid of the period of limitation imposed u/s 77 as if by side-wind.

The learned counsel for the respondent has also invited our attention to a Full Bench decision in -- "AIR 1843 Mad 761 (B)", which has dealt with the proviso to Section 49, Registration Act. We have read through the facts narrated in that citation and we think the facts of that case are not "ad idem" with the facts in the present case. All that that decision says is that an unregistered document affecting Immovable property may be received as evidence of a contract and is sufficient to support a suit for specific performance, and that a suit by the vendor for the recovery of the purchase consideration is a suit for specific performance within the meaning of Chapter II of the Specific Relief Act. That decision is, therefore, not of any help to the learned counsel for the respondent in this case.

11. The learned counsel also urged that inasmuch as the first appellant has committed fraud in having executed a document of transfer in favour of the second appellant during the pendency of the proceedings before the Registration officers, he cannot be allowed to take advantage of his own fraud. It is true that, in this case, pending the proceedings for the enforcement of registration of the document by the respondent, the first appellant executed a further document of transfer to the second appellant in respect of the very same properties.

We do not think that such execution amounts to any fraud. If in the belief that the document executed by the first appellant had become ineffective so far as he was concerned, he had executed another document in favour of the second appellant, this cannot be said to be due to any fraudulent motive or intention on the part of the first appellant, in having resorted to such

an act. If one document is executed and it does not take effect in law according to the rights of the executant, the executant cannot be said to be acting fraudulently if he executes another document in respect of the same properties. It may be that he will not be entitled to retain the consideration received by him in respect of the ineffective document. It would have been more convincing if such an argument, had been advanced by the learned counsel for the respondent.

12. A further contention was also urged by the learned counsel for the respondent that the supervening circumstances created by the execution of another document by the first appellant in favour of the second appellant make it useless for the respondent to pursue any remedy available u/s 77,

Registration Act. In other words, the learned counsel contends that, as long as the second document is in existence, even if the respondent

succeeds in getting a decree for the registration of the document in her favour, it will not serve any purpose unless and until she seeks to set aside

the second document as well. That means that the decree that she might obtain for the registration of the document in her favour u/s 77,

Registration Act would not give her any useful relief unless and until the second document is sought to be set aside by further proceedings in court.

This may or may not be so. But, for the mere reason that a second document has come into existence during the pendency of the proceedings

before the Registration Officers or even before, it will not take away the effect of Section 77 of the Act and the remedy provided thereunder. A

party, in our opinion, cannot be heard to say that because of such a supervening circumstance as the execution of a second document, the party

which has already started the proceedings under Sections 72 to 76, Registration Act is not compelled to resort to the remedy provided in Section

77, Registration Act. In effect, the argument of the learned counsel amounts to this: namely, that a party who has executed a second document

could easily defeat and nullify the effect of Section 77, Registration Act, and thereby absolve the party in whose favour the earlier document was

executed and who is entitled to enforce the registration from seeking to resort to the remedy that is provided in Section 77. We do not think that

such an argument is tenable when the scope of Section 77 is to be construed.

13. The fact remains that the learned counsel for the respondent has not been

able to bring to our notice any decision of this court which has dissented from the decision in -- Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others, ", or which has sought to distinguish the same. In these circumstances, we think that the decision in -- Komiresetti Satyanarayana Vs. Yeeranki Chinna Venkatarao and Others, ", is still good law so far as this court is concerned and with respect, we follow that decision. We hold that the proper procedure to be adopted by the respondent in the present case is to file a suit for enforcing the registration of the document executed in her favour before she could resort to a suit for specific performance, and the remedy which she has actually sought for, namely, a suit for specific performance of the contract for a decree directing the appellants to execute and register the document in her favour, is not maintainable.

14. This does not dispose of the entire appeal. We think that before the appellants could be allowed to retain the property which they agreed to re convey in favour of the respondent, they should be directed to return the consideration which they had received from the respondent. It emerges from the evidence on record in this case that the appellants, or at least one of them, received a sum of Rs. 300 by way of consideration for reconveying the property. The contention of the learned counsel for the appellants that there was no adequate proof for the payment of this sum by the respondent or on her behalf is not convincing to us. We hold, therefore, that the appellants will be entitled to restoration of the decree of the trial court only on condition that the appellants do refund to the respondent a sum of Rs. 300 within two months from the date of the receipt of this order by the trial court, and also pay her the costs of this appeal and also that in the courts below. Justice and equity require that the appellants should not be allowed to retain benefits of the said sum of Rs. 300 received by them. We, therefore, decree and direct accordingly. In default of the appellants complying with this order, this Letters Patent Appeal will stand dismissed with costs.

15. The appeal is, therefore, allowed but without costs.