

(1964) 11 AP CK 0019

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 149 of 1963

Kidambi Vatapatra Sayi

APPELLANT

Vs

V. Venkata Punnayya and Others

RESPONDENT

Date of Decision : 17-11-1964

Acts Referred:

Companies Act, 1913 — Section 34
Specific Relief Act, 1877 — Section 19, 25

Citation : AIR 1965 AP 353

Hon'ble Judges : P. Chandra Reddy, C.J.; Venkatesam, J

Bench : Division Bench

Advocate : G. Suryanarayana, for M. Dwarakanath, for the Appellant; K. Venkataramaiah Rao, for V. Parthasarathi, for the Respondent

Judgement

Venkatesam, J.

(1) This L. P. A. arises out of O. S. No 14 of 1955 on the file of Subordinate Judge, Guntur. The facts necessary for the determination of the question in issue may be stated thus.

(2) The plaintiff, Kidambi Vatapatra Sayi, and defendants 1 to 3 are shareholders and directors of Chandra Art Studios Ltd., Madras, a company registered under the Indian Companies Act, 1913 in July 1946. The authorised share capital of the company is Rs. 3 lakhs, divided into three hundred shares of Rs. 1,000/- each. The value of each share, viz., Rs. 1,000/- is payable with application for shares. All shares have been subscribed and thus the share capital is fully paid up. At the inception, besides the plaintiff and the three defendants, there were two other Directors. The plaintiff was the Chairman of the Board of Directors throughout. For reasons, which we need not consider, the company, not long after commenced business, found itself in financial difficulties. C. V. Reddy, who held ten fully paid up shares, filed O. P. No. 253 of 1950 on the file of the Madras High Court for winding up of the company. The plaintiff and the defendants considered that the only way of saving the company and

safeguarding the interests of the share holders was to get that petition withdrawn. Accordingly, it was agreed between the plaintiff and the defendants that the plaintiff should advance Rs. 10,000/- pay Venkata Reddi, and obtain a transfer of his shares in the name of the plaintiff . Since the plaintiff already held shares of the value of Rupees 40,000/- and advanced loan to the tune of Rupees 14,000/- it was agreed that he should not be exposed to the entire risk of purchasing the shares of C. V. Reddi. It was, therefore agreed between the plaintiff and the defendants that the sum of Rs. 10,000/- should be paid back to the plaintiff from out of the company's assets, or with the consent of the General Body of members allow the plaintiff to re-pay himself within two years from 23-8-1951 i. e., before 23-8-1953, with the amounts due from the company to the defendants and by making the necessary adjustments in the company accounts. It was also agreed that if the plaintiff could not realise the money in either of these two ways, the three defendants were to pay each 2,5000/- to the plaintiff and take a transfer of 2 1/2 shares. It was also agreed that the plaintiff alone was to receive the dividends on the shares payable for the two years after 23-8-1951, and the plaintiff should not be held responsible for the rise or fall in the value of the shares, or the change in the fortunes of the company.

(3) According to the plaintiff , he paid Rupees 10,000/- to C. v. Reddi, and obtained a transfer of his ten shares by means of Ex. A. 4 dated 30-10-1950, and O. P. No. 253 of 1950 was dismissed . The terms orally agreed upon, the plaintiff and defendants were embodied in the agreement, Ex. A. 1 dated 23-8-1951. The defendants failed to implements the contract in spite of the plaintiff's demands and registered notice dated 4-12-1954 . Hence the present suit was filed on 26-2-1955. with the prayer for specific performance of the contract by directing the defendants to pay the plaintiff Rs. 2,500/- each against 2 1/2 shares to be conveyed by him to each of them.

(4) The suit was resisted by all the defendants on several grounds. They contended, that though they signed the agreement, Ex. A. 1, it was not supported by consideration. They denied that the agreement was executed pursuant to an oral agreement referred to in the plaint, or that the plaintiff paid Rs. C. v. Reddi pursuant to such an arrangement. The plaintiff voluntarily purchased those ten shares. The plaintiff was the chairman of the Board of Directors and also Managing Director at the relevant times and yet did not convene the General body meeting for implementing the 1st clause in the agreement providing for reimbursement of the plaintiff , despite requests. The 1st defendant sent a reply on 10-1-1955 to the plaintiff's registered notice dated 4-12-1954, and thereafter the plaintiff issued a notice for the General Body Meeting to be held on 10-3-1955 to consider the 1st clause of the agreement, which was included in the Agenda as item No. 6 Even before that meeting was convened, he instituted the present suit on 26-2-1955. It was contended that since the second clause relating to specific performance comes into operation only after the plaintiff failed to realise money under the 1st clause, and that the suit is therefore premature. The plaintiff was never able or willing to perform his

part of the contract.

(5) The defendants further contended that one D. Venkataratnam, a share-holder of the company filed a petition O. P. No. 2 of 1955 praying for winding up of the company and the same was ordered to be wound up on 19-7-1955. With the full knowledge of the pendency of these proceedings, this suit was filed without the sanction of the company Court u/s 227 of the Companies Act. The plaintiff mismanaged the affairs of the company Court u/s 227 of the Companies Act. The plaintiff mismanaged the affairs of the company and without resorting to the 1st clause of the agreement, filed this suit to make an unlawful gain, as the shares are now practically worth nothing. Other legal contentions were also taken by the defendants. The plaintiffs had not become the legal owner of the ten shares of C. V. Reddi. In fact, the instrument of transfer by C. V. Reddy was not even stamped, and was not delivered to the company for the shares being transferred in the name of the plaintiff. The plaintiff's name was not entered in the company's register of shares as required by section 34 of the Companies Act, and Regulation 18 of Table A. the instrument of transfer was not executed in the form prescribed by the Companies act and Article 16 of the Company's Articles. Further the transfer of the shares had not been approved by the Board of Directors, the transferor, viz. , C. V. Reddy, remained to be the holder of the shares even on the date of the suit. Hence the plaintiff is not entitled to claim specific performance u/s 25 of the Specific Relief Act. I was also alleged that specific performance cannot be decreed as a fraction of a share cannot be transferred. even after the company was wound up, and liquidator was appointed no steps had been taken by the plaintiff to have the shares transferred from c. V. Reddi to the plaintiff to have the shares transferred from c. V. Reddi to the plaintiff. The contract has become impossible for specific performance also by reason of the winding up of the company.

(6) the plaintiff filed a rejoinder, contending that the transfer-deed was signed by both C. V. Reddi and the plaintiff and it was delivered to him along with the share certificate and the transaction was complete and shares became transferred to him, and that he was the owner thereof and that there was no flaw in his title He also alleged that the transfer of shares of c. v. Reddi in his favour can be effected, and the share register can be amended by the Court u/s 38 and 184 of the companies Act. The omission to stamp the transfer deed would not preclude specific performance of the agreement. There can be a transfer of even a fraction of a share. The agreement is not void u/s 227 of the Act. Besides denying the other allegations it was contended that as the plaintiff is already the owner of 40 shares and he is willing to transfer 7 1/2 shares therefrom, and will look to the registration of ten shares purchased by him from C. V. Reddi later on.

(7) On these pleadings the learned Subordinate Judge, Guntur framed appropriate issues. On a consideration of the evidence he found that there was no oral agreement proceedings Ex. A. 1, as contended by the plaintiff but that Ex. A. 1 was supported by consideration as the plaintiff paid Rs. 10,000/- to c. V.

Reddi for transfer of the ten shares. He also found that the plaintiff was aware that the company had no outstandings, and that there was no question of his being paid cash as provided for in clause. (1) and that he had not taken care to secure the approval of the Directors of the Directors for carrying out the terms of clause (2) The, subordinate Judge further found that the plaintiff deliberately failed to obtain a transfer of shares in his name, and that it is only after the petition for winding up was filed, that he filed the suit. He further held that since the plaintiff was not the legal owner of the ten shares, and the company had gone into liquidation and since the sanction of the High court u/s 227 of the companies Act was not obtained the agreement could not be specifically enforced. On these findings he dismissed the suit.

(8) Against that decree, appeal was preferred to this court, as A. S. No. 319 of 1959, and out learned brother, Umamaheswaram J., confirmed the decree except for a right modification with regard to costs. The learned Judge also declined to adjourn the learning of the appeal to enable the appellant to file an application to prove that ten shares had been transferred in his favour by this court in Application. No. 66 of 1960 in O. P. No. 2 of 1955.

(9) Aggrieved by this decision, the plaintiff has preferred this appeal.

(10) Sri G. Suryanarayana, the learned counsel for the appellant , raised the following contentions :

(1) The finding of the learned Judge that the suit was premature, because the terms of clause (1) were not fulfilled by the plaintiff is unsustainable.

(2) The agreement was capable of being specifically enforced.

(11) We may, at the outset mention that we are unable to agree with Umamaheswaram J. that the suit was premature. If our learned brother, meant that the plaintiff by taking suitable steps could have paid himself in cash in either of the two modes contemplated by clause (1) of the agreement it is not warranted by the evidence .

(12) The agreement, Ex. A. 1, itself may usefully be extracted, and it is as follows :

"Agreement entered into on 23rd August 1951 between the Directors of Chandra Art Studios (1) Kidambi Vatapatra Sayi (2) Vupputuri Venkata Punneya (3) Maddi Rajagopala Rao (4) Moova Basavaiah.

As Sri Chiyyavaram Venkata Reddy resident of Chiyyavaram Cuddapah District, who was a share holder in the Chandra Art Studios, Madras filed O. P. no. 253/50 in the Madras High Court for liquidation of the said Company, number 1 of the prospects of the Company having agreed to get transfer of the ten shares of the said Venkata Reddy, got them transferred and paid Rs. 10,000/- towards the said shares to Sri Venkata Reddy.

It is agreed that the said Rs. 10,000/- shall be recovered from out of the assets

and outstanding General Body of the company and paid to No. 1 of us. If not it is agreed that No. 1 of us shall be paid within two years out of the moneys advanced to the company by Nos. 2, 3 and 4, to better the prospects of the company, by making the necessary credit and debit entries with the consent of the General Body.

It is also agreed that if for any reason whatsoever, No. 1 does not recover the said Rs. 10,000/- in the aforesaid manner, after the expiry of two years, Nos. 2, 3 and 4 to take transfer of 2 1/2 shares each and pay Rs. 2,500/- each to No. 1.

It is further agreed that any dividends on the above 10 shares are declared, they should be given to No. 1. It is also agreed that No. 1 will not be held responsible for the good or bad turn in the affairs of the body or for any rise or fall in the value of the above shares.

To this effect is this agreement entered into and executed.

Witnesses.

1. Naka Prabhakara Rao

2. Kahetri Harisingh. Signed :

Scribe 1. Kidambi Vatapatra Sayi.

Samavedam Appala 2. V. V. Punnaiah

Charyulu Guntur. 3. Maddi Rajagopalarao

23-8-51 4. Movva ; Basaviah.

(13) The learned subordinate Judge found on the plaintiff 's evidence that the suit company had no outstandings and that the plaintiff could not pay himself in either of the two modes contemplated by clause (1) of Ex. A. 1, and that was the reason why the plaintiff tried to convene the meetings of directors for considering clause (2) of that agreement. there is abundant evidence to establish the fact that the financial position of the company was had even from 1948, and that it did not have any cash for the plaintiff to reimburse himself as provided by clause (1). The filing of the O. P. No. 253 of 1950 by C. V. Reddy, who was him self one of the share-holders and an ascertain Director of the Company, for winding up of he company, places the matter beyond all doubt. Ex. a. 1 itself recites that the agreement was entered into in order to better the prospects of the company. Ex. A. 16 , the personal accounts of the Directors, which is an annexure to the audit Report, shows that the 1st defendant was a creditor of the company to the tune of Rs. 10,173-10-6, the 2nd defendant to the tune of Rs. 2,301/- Rachapudi V. Subbarao, another director to the tune of Rs. 1,714-14-3, Basavaiah, 3rd defendant, to the tune of Rs. 2,000/- and the plaintiff himself to the tune of Rs. 4,510/- besides there being several other creditors. The report of the Official Liquidator dated 4-4-1959 reveals that he took possession of the property in September, 1955, and also the same, some by public auction , and some by

private treaty, under the directions of the court and realised a new amount of Rs. 20,500/- which was deposited in the bank . besides, the share-holders, 22 creditors including the Advocates for the company and its executive Director filed claims to the tune of Rs. 2,30,325/- and the claims admitted amounted to Rs. 1,31,466-52 up. There can therefore be little doubt that the plaintiff ,even with the best of efforts could not have paid himself Rs. 10,000/- out of the funds of the company in any of the two modes contemplated by clause (1).

(14) Even so, the question still remains whether the plaintiff is entitled to a decree for specific performance of the agreement. since our learned brother, Umamaheswaram J. had not decided that question as he held that the suit was premature we have heard the learned counsel on both sides on this aspect.

(15) The contention of the respondents that the plaintiff is not entitled to specific performance may be stated thus. The transfer- deed itself is not valid, and the plaintiff did not obtain the transfer of shares in the manner recognised by law. He never became the legal owner thereof not even on the date of the suit, as his name was not entered in the registers of the company. The plaintiff being the Chairman of the Board of Directors and the managing Director at all relevant times, and also the transferee under Ex. A. 4 he was in duty bound to have the transfer recognised or take appropriate legal proceedings for that purpose but he did not do so. His deliberate failure to get the shares transferred amounts to a waiver or abandonment of his rights under the agreement, and on this sole ground he is entitled to any relief. Though the plaintiff had knowledge that O. P. No. 2 of 1955 was filed in the High court of Andhra at Guntur for winding up of the company and even after the company was ordered to be wound up, he did not obtain the leave of the Court under s. 227 92) of the Companies act . Since the company is wound up, there can be no specific performance of the agreement to transfer shares, and there is no prayer in the plaint for changes to the plaintiff as the company had been ordered to be dissolved by the order of this Court.

(16) In order to appreciate the force of these contentions, some more facts have to be noticed.

(17) The transfer-deed is marked as Ex. A. 4. to recites that C. Venkata Reddi, in consideration of Rs. 10,000/- paid by the plaintiff , K. V. Sayi, transferred to him ten shares, Nos. 114 to 123, it was executed on 30th October 1950. It was signed by the transferor and the transferee. Though the printed form on which it is engrossed provided for the signatures of two witnesses and also specimen of the purchaser's signature, and though the signatures have to be verified by a justice of the Peace or a Magistrate, that has not been done. it has also not been stamped. Admittedly, the document was not presented to the company for the shares being, registered in the plaintiff's name in the company's books. the plaintiff admitted that at least at the meeting held on 1-2-1953 evidenced by Ex. A. 22, he could have got the transfer of shares in his dropped, though there was quorum. that would show that even two years after he took a transfer of the

shares registered in his name even though he was the person charged with that duty, and even though the required quorum was present on that day.

(18) Section 34 of the Indian Companies Act, (VII of 1913), omitting unnecessary words, lays down as follows :-

"(1) An application for the registration of the transfer of shares in company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (70) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members in the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee..

(2) * * * * * (3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip : Provided that

(4) if a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferor notice of the refusal."

(19) Regulation 18 of Table A, Schedule I, is to the following effect :-

"The instrument of transfer of any share in the company shall be executed both by the transferor and transferee and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof."

Regulation 20 lays down that the Directors may decline to register any transfer of shares, not being fully paid shares, to a person to whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The Regulation further promises that the directors may decline to recognise any instrument of transfer unless, (a) a fee not exceeding two rupees is paid to the company in respect thereof; and (b) the instrument of transfer is accompanied by the certificates of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

(20) Article 16 of the Articles of Association of the suit company provides that the instrument of transfer of any share in the company shall be executed in the form prescribed by the directors both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the

transferee is entered in the register of members in respect thereof. According to Article 29 of the Articles of Association, the Directors may decline to register any transfer of shares, without assigning any reasons thereof to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. It also lays down that the Directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting each year, and the Directors may decline to recognise any instrument of transfer unless - (a) a fee not exceeding Rs. 5 is paid to the company in respect thereof; and (b) instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence, as the directors may reasonably require to show the right of the transferor to make the transfer.

(21) In *Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta.*, the Supreme Court held that the transferee of shares transferred by way of blank transfer has not the benefit of a legal title until his name is entered in the register of members, although the completion of the transaction by having the name entered in the register of members relates it back to the time when the transfer was made. During the period that the transfer exists between the transferor and the transferee without emerging as a binding document upon the company, equities exist between them, but not between the transferee and the company. The transferee can call upon the transferor to attend the meeting, vote according to his directors sign documents in relation to the issuance of fresh capital call for emergent meetings and inter alia also compel the transferor to pay such dividend as he may have received. But these rights though they no doubt clothe the transferee with an equitable ownership, are not sufficient to make the transferee a full owner, since the legal interest vis a vis the company still outstands in the transferor so much so that the company credits the dividends only to the transferor and also calls upon him to make payment of any unpaid capital, which may be needed. It was further laid down that a person who has purchased shares in a company under a blank transfer and in whose name the shares have not been registered in the books of the company is not a "share-holder" in respect of such states within the meaning of S. 18(5) of the Income Tax Act notwithstanding his equitable right to the dividend on such shares.

(22) It is clear from the above that unless and until the name of the plaintiff is registered in the books of the company, he is not the legal owner of the shares transferred under Ex. a. 4. In the instant case, as pointed out above, the deed of transfer cannot be said to be valid in law, as it is not in the prescribed form, not stamped. The plaintiff himself admitted in his evidence that Ex. A. 4 was incomplete, as it was signed by him and C. V. Reddi when no one was present. He also admitted that he kept Ex. A. 4 with him till 1957 as it was his personal property. What more is needed to hold that the transferee, whose duty, in that regard? It follows that whatever rights he might have had against C. V. Reddi, he cannot for a moment pretend that he had title to the shares even on the date

he instituted the suit.

(23) It is well established that although so far as the specific Relief act is concerned, there is no express statement that in a suit for specific performance the averment of readiness and willingness on plaintiff's part up to the date of decree is as necessary as it was always in England it seems invariably to have been recognised that the Indian and the English requirements in this matter. are the same : Vide, *Ardeshir, H. Mama V. Flora Sassoon* AIR 1928 PC 208 It may be noted that in the instant case, there was not even an averment in the plaint that the plaintiff was ever ready and willing to perform or was in a position to perform his part of the contract, viz., transfer the shares as provided for in Ex. A. 1 We have already noticed that even on the date of the suit he was not registered as a share holder in respect of those ten shares and was not the legal owner thereof. and consequently could not transfer them to the defendants. It is, no doubt true that under Ex. A. 1 the plaintiff was given time till two years. i. e. till plaintiff 23-8-1953 to re-pay himself. But as already stated, even from 1948 the financial position of the company was very gloomy and he could not have thought that there was any prospect of repaying himself in cash. Even granting for the sake of argument that he could wait till 23-8-1953, we see absolutely no justification for his not having obtained a transfer of the shares soon afterwards, or for not filing the suit till 26-2-1955. The plaintiff has not thought of enforcing the agreement Ex. A. 1, till O. P. No, 2 of 1955 was filed for winding up the company. the he appears to have woke up and filed this suit for specific performance of the agreement to transfer the shares in respect of which he has no title. Such a suit must necessarily fail.

(24) The learned counsel for the appellants relied on *Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and Others*, and *Pasumarti Ramulu v. Anantharamulu* (1964) 2 A W. R. 161 in support of the contention that even by the date of the judgment of the trial Court, specific relief could be granted. Those decisions are clearly distinguishable on facts as in those cases the plaintiff undoubtedly had title to the property in question but the sanction of an authority was required to validate the transfer, They have therefore, no application to the present case.

(25) It may also be noted that even though to the knowledge of the plaintiff the company was wound up on 19-7-55, and its properties became vested in the Official Liquidator, he has not been impleaded as a party to this suit. The Subordinate Judge dismissed the suit by his Judgment dated 23rd February 1959, holding that the contract was not specially enforceable as his name was not entered in the register of Share holders of the company. Thereafter, the plaintiff filed an application No. 66 of 1960, O. P. No. 2 of 1955 on the file of this court u/s 38 of the Companies Act, read with O. 13 R. 1 of the originally Side Rules, praying that the Official Liquidator may be directed to rectify the share register of the said company. Showing that ten shares Nos. 114 to 123, are owned by the applicant K. V. Sayi, and to substitute his name in place of the original share-holder, C. V. Reddi. As this application was not opposed it was

ordered on 19-8-1960 Pursuant to this order, the Official Liquidator entered the plaintiff's name in the company's share register.

(26) The learned counsel for the appellant argued that even though the company was in liquidation, the shares can be transferred, and since the shares now stand in his name he is in a position to transfer them, and specific performance could be decreed. It is refuted on behalf of the respondents that on account of gross laches the plaintiff is not entitled to specific performance.

(27) It is well settled that in certain cases of claims the claim to relief in equity must be made with special promptitude. The position is stated thus at pages 646-647 of Halsbury's Laws of England. Volume 14 3rd Edition Paragraph 1188.

"In claims too, for specific performance and for rescission of contracts the special relief in equity is only given on condition of the plaintiff coming with great promptitude, specific performance is relief which the court will not give unless in cases where the parties seeking it come promptly and as soon as the nature of the case will admit."

The plaintiff must, therefore, fail on the sole ground of laches.

(28) It may also be mentioned at this stage that this Court in Company Application No. 21 of 1964 in O. P. No. 3 of 1955 filed by Chandra Art Studios Ltd., (in liquidation) ordered that the above company do stand dissolved, that Subramania Sarma, the official Liquidator of the Company, be discharged and the security bond executed by him be cancelled, and that the official Liquidator do report to the Registrar of Companies Liquidator do report to the Registrar of Companies, Andhra Pradesh, the order of the High Court dissolving the company. In view of this order of dissolution there can be no question of the agreement to transfer shares of such a company being specifically enforced.

(29) It is then argued on behalf of the plaintiff that under S. 25 of the Specific Relief Act, even though he had no title on the date of the plaint, inasmuch, as the shares have subsequently been registered, in his name the contract could be specifically enforced. It is also contended that, in any event, even if specific performance cannot be granted, at least damages should be awarded under S. 19 of the Act. We find no force in any of these submissions.

(30) In Halsbury's laws of England, 3rd Edn., Volume 6, the position is stated thus at page 249:

"Specific performance may be ordered of a contract to sell shares, even although the company pending the litigation has gone into liquidation and also of a contract to take a transfer of shares whereon nothing has been paid."

In Halsbury's laws of England, Volume 36 in paragraph 381 page 276, the position is stated thus:

"The fact that the company is being wound up may have an effect on the grant of relief by the court. This depends on whether the winding up petition was

presented when the contract was made, neither party being aware of the fact, in which case the contract is not enforced; but it seems that if the petition is presented after the contract was made the purchaser is liable and even if specific performance ought not to be granted the vendor will be entitled to an indemnity."

In the instant case, as already stated, the suit itself was instituted with the knowledge, that the petition for winding up was filed in the High court. The plaintiff therefore cannot claim specific performance of the agreement further it is impossible to grant a decree for specific performance as the company itself is dissolved.

(31) Nor can the appellant derive any help from section 25(b) of the Specific Relief Act. That section 25(b) of the Specific reads as follows:-

"A contract for the sale or letting of property. whether movable or immovable cannot be specifically enforced in favour of a vendor or lessor

(a)

(b) who enough he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties, or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt."

This section cannot be invoked because we cannot say that at the time the plaintiff entered into the agreement, Ex. A. 1 he believed that he had good title to the property, as on his own admission the transfer-deed, Ex. A. 4, is incomplete and defective, and he never made any attempts to get the transfer registered. Even if we fix a time for the plaintiff to transfer the shares, he is not in a position to do so, as the company is not would up, but also dissolved.

(32) The other contention that at least damages or compensation should be awarded fro breach of contract under S. 19 of the Specific Relief Act is equally unsustainable. For one thing, there is no prayer in the plaint for the alternative relief for damages. In order to obviate this difficulty, the plaintiff filed C. M. P. no. 11409 of 1964 for an amendment of the plaint by adding a new paragraph so as to include the prayer for a decree for Rs. 2,500/- as and by way of damages, but the same has been dismissed by us by a separate order.

(33) For invoking section 19(2) of the Specific Relief Act, it is necessary that the defendant should have committed a breach of the agreement. Inasmuch as the plaintiff never acquired title to the shares before the institution of the suit we can not hold that the defendants committed breach of the contract.

(34) In the result we affirm the decision of our learned brother Umamaheswaram, J., though for different reasons and dismiss the appeal . Under the circumstances, we make no order as to costs.

(35) Appeal dismissed.