

(1927) 01 MAD CK 0046
In the Madras High Court

(Kolleppa) Seshayya

APPELLANT

Vs

Vedumada Hammayamma and Others

RESPONDENT

Date of Decision : 11-01-1927

Acts Referred:

Specific Relief Act, 1877 — Section 15, 16

Citation : AIR 1927 Mad 1109

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Second appeal from the decree of the 1st Additional Subordinate Judge of Narasapur in A. S. No. 152 of 24 from the decree of the District Munsif of Narasapur in O. S. No. 459 of 22. The plaintiff sued for specific performance alleging that the defendant 1 agreed in July 1922 to sell a house to plaintiff for Rs. 1300/- The District Munsif dismissed the suit and the Additional Subordinate Judge decreed for plaintiff specific performance as against defendant 1 in regard to his half share of the house for Rs. 650/- Defendant 3 appeals. It has been found that the house was jointly owned by defendant 1 and his wife defendant 2 and that defendant 1 had no authority to contract to sell on behalf of his wife. The plaintiff has refused to take advantage of his privilege u/s 15, Specific Relief Act, and the question for determination is whether Section 16 of that Act applies. I think that AIR 1925 45 (Privy Council) is directly in point. It reverses Krishna Chandra Dey v. Graham A. I. R. 1923 Cal. 94 on which the lower appellate Court relies. The question is whether, if the original contract concerned the whole house, a sale of moiety of the house can be described as part of a contract which taken by itself can and ought to be specifically performed, and which stands on a separate and independent footing from the other part of the contract which admittedly cannot be performed. Their Lordships think (p. 39 of 52 Cal.) that before a Court can exercise the power given by Section 16 it must have before it some material to establish these propositions and cannot apply the section on a mere surmise that if opportunity were given for further enquiry such material might be forthcoming and possibly might be found to be sufficient. Applying

these words to the present case, can it be said that if a commission is appointed to divide this house by metes and bounds into two shares sufficient material will be forthcoming to hold that there is an independent contract. Their Lordships proceed on p. 340:

to call the parties to give further evidence now is to try to make them agree to a new price, subject to a settlement by the trial Judge, if they differ. It is in fact to impose on them an arbitration to which they have not submitted. To resort to expert evidence is to inquire what they ought to have agreed upon though the fact is that left to themselves they did not choose to do so.

2. It is argued on behalf of the respondents that the price for the whole house is presumably more than double what would be given for each of the respective halves and, therefore, the defendant is not prejudiced by the plaintiff's taking half the house for Rs. 650/- But as pointed out by the Judicial Committee it is something more than a mere question of profit and loss. Before Section 16 applies there must be a contract which stands on a separate and independent footing and it cannot be said that the contract for the purchase of half the house stands on an independent footing from the contract to purchase the whole house in the light of the observations in this judgment. It is further urged that if the decree of the Subordinate Judge is set aside on this ground the plaintiff should have an opportunity of pressing his claim for damages in the lower appellate Court. To give substance to this plea there must have been such a plea in the lower appellate Court and there must have been a cross appeal in this Court, objecting on that score. But no such claim is put forward and no such objection has been raised here. Therefore I do not feel justified in remanding the suit. The question whether there was a complete contract between the plaintiff and defendants 1 and 2 has not been argued. The second appeal is allowed with costs of defendant 3 throughout and the order of the lower Court as to costs in not otherwise disturbed, i. e., the parties must bear their own costs.