

(1939) 12 MAD CK 0033
In the Madras High Court

Kona Adinarayana

APPELLANT

Vs

Dronavalli Venkatasubbayya and Others

RESPONDENT

Date of Decision : 04-12-1939

Acts Referred:

Citation : AIR 1940 Mad 625 : (1940) ILR (Mad) 852 : (1940) 51 LW 384 :
(1940) 1 MLJ 251

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appeal arises out of a suit for specific performance of a contract for sale of land tried in the Court of the District Munsif of Gudivada. The respondents were the plaintiffs. On the 4th August, 1930, by a contract in writing the respondents agreed to sell three-quarters of an acre of land in the Kistna District at the price of Rs. 1,095. The respondents are brothers and are members of an undivided family. The third respondent was a minor at the time the contract was entered into. The contract was signed by the major brothers and by the first respondent as the manager of the family and as the guardian of the minor. The appellant went into possession immediately after the execution of the contract and admittedly he has remained in possession and has enjoyed the rents and profits ever since. The suit for specific performance was filed on the 4th August, 1933. The appellant, although he was in possession and was treating the land as his own, set up the defence that the suit for specific performance would not lie as one of the vendors was a minor. His attitude in the circumstances can only be described as that of a very dishonest person. At the time of the institution of the suit the minor member of the vendor family had reached majority. The District Munsif granted the respondents a decree, but on appeal the Subordinate Judge of Masulipatam held that the major brothers alone were entitled to sue for specific performance. Accordingly, he limited the decree to two-thirds of the land on payment of two-thirds of the purchase consideration. The appellant then appealed to this Court and the first and second respondents filed a memorandum of cross-objections. The appeal was heard by

Venkataramana Rao, J., who restored the decree of the District Munsif, but gave a certificate permitting of this Letters Patent Appeal.

2. In holding that the respondents were entitled to maintain a suit for specific performance the learned Judge relied on the decisions in Hoggart v. Scott (1830) 1 R. M. 293 : 39 E.R. 113 and Salisbury Hatcher (1842) 2 Y C 54 : 63 E.R. 24. In the first of these cases it was held that a plaintiff in a bill for the specific performance of a contract was entitled to a decree if, at the time of the hearing, he would show a good title, although he had not a good title at the time of the contract. Leach, M.R., observed:

The defendant, if he had thought fit, might have declined the contract as soon as he discovered that the plaintiffs had no title; and he was not bound to wait until they had acquired a title; but, he not having taken that course, it is enough that at the hearing a good title can be made.

3. In Salisbury v. Hatcher (1842) 2 Y. C.C.C. 54 : 63 E.R. 24 , Knight Bruce, V.C., said:

In cases of specific performance the want of mutuality is a consideration generally material, but it is contrary to principle and authority to say that perfect mutuality is requisite in order to call a Court of Equity into action. There are cases in which plaintiffs have had a decree for specific performance against defendants, who, when the bill was filed, were not in a condition to enforce specific performance in their own favour. Where no legal invalidity affects the contracts, the enforcement of it in this Court is matter of judicial discretion.

4. In that case the purchaser not having rejected the purchase as soon as he had ascertained the real interest of the vendor and the vendor later having acquired a perfect title a decree for specific performance was passed.

5. As Venkataramana Rao, J., has pointed out the fact that the appellant remained in possession of the land and did not repudiate the contract the right to repudiate must be deemed to have been waived. There is nothing in the law of India which prevents the application of the principle applied in Hoggart v. Scott (1830) 1 R. M. 293 : 39 E.R. 113 and Salisbury v. Hatcher (1842) 2 Y C.C.C. 54 : 63 E.R. 24 and I consider that those principles have direct application here. It would indeed be regrettable if the Court could not give to the respondents the relief they ask against the injustice which they have suffered at the hands of the appellant. At no stage has he repudiated the contract but he has refused to pay the price of the land which he has enjoyed. for over nine years.

6. The appeal will be dismissed with costs throughout.