

(1928) 01 MAD CK 0043
In the Madras High Court

Mova Nageswara Rao

APPELLANT

Vs

Mandava Kotamma and Others

RESPONDENT

Date of Decision : 27-01-1928

Acts Referred:

Citation : 110 Ind. Cas. 495

Hon'ble Judges : Wallace, J;Srinivasa Ayyangar, J

Bench : Division Bench

Judgement

These two second appeals have arisen from a suit and a cross-suit relating to the same piece of land. Second Appeal No. 446 of 1925 is from a suit which was instituted for possession by the purchaser of property from a person who had become a major after his majority. Second Appeal No. 445 of 1925 is a suit for specific performance of a contract for execution of a conveyance in respect of suit property on the ground that the contract for the sale thereof had been entered into on behalf of the first defendant by the second defendant as his guardian. No question has been raised before us as regards the power of the second defendant to act as guardian of the minor. The question has been considerably narrowed down before us by the very fair manner in which both the learned gentlemen have stated the case and the point that arises for decision. It is simply this, that whether a guardian of a minor can enter into a contract on his behalf so as to bind the minor in such a manner as to be capable of being specifically enforced against the minor. Having regard to the decision in Waghela Rajsanji v. Shekh Masludin 11 B. 551 ; 14 I.A. 89 ; 11 Ind. Jur. 315 ; 5 Sar. P.C.J. 16 ; 6 Ind. Dec. (N.S.) 364 (P.C.) and Mir Sarwarjan Vs. Fakhruddin Mahomed Chowdhuri, it would appear that no Buch contract is capable of being specifically enforced. The point, however, has been carefully considered in a decision of this Court in L.P.A. No. 64 of 1924 to which decision one of us was a party and the correctness of that decision has not been canvassed before us. It follows from this that the lower Courts were clearly wrong in granting specific performance against the minor and in the other case in refusing to the plaintiff a decree for delivery of possession. The only possible question that might have

been raised and argued in the case is whether the matter could be regarded as different if, as in the present case, there was not only a contract by the guardian to convey the property but pursuant to the contract the guardian by way of partly performing the contract had placed the other party in actual possession. But we believe that a satisfactory answer to this has been furnished by Mr. S. Varadachariar the learned Vakil for the appellant. The doctrine of part performance being a doctrine of equitable relief could be held to apply only to the person concerned and if, as in this case, the contract was not a contract of the plaintiff who is suing, it follows that the equitable principle cannot be invoked as against him. In fact, having regard to the decision above referred to in the Letters Patent appeal, Mr. Venkata-chariari, the learned Counsel for the respondents did not seek his way to address Us at any length except as to the question of costs. As regards this, having regard to the circumstances of the case and the Comparative uncertainty of the law, we think the proper order to make is that the appellant shall have his costs throughout in 8. A. No. 445 of 1925 and the appeal and the original suit pertaining to it. There will be no order as to costs of either party in 8. A. No. 446 of 1925.

In the result, both the appeals will be allowed and the suit from which 8., A. No. 445 of 1925 has arisen will be dismissed with costs as aforesaid. As regards Original Suit No. 338 of 1919 on the file of the District Munsifs Court of Avanigadda, there will be a decree for possession in favour of the plaintiff as prayed for and for mesne profits to be determined later on by the Court of first instance. For the purpose of such ascertainment the case is remanded to the said Court of first instance.