

(1936) 08 MAD CK 0033
In the Madras High Court

M.R.M. Ramaswami Chettiar alias M.T.T.V.M. Ramanathan
Chettiar

APPELLANT

Vs

M.T.T.K.R.S.V. Muthiah Chettiar and Others

RESPONDENT

Date of Decision : 19-08-1936

Acts Referred:

Citation : (1936) 44 LW 569 : (1936) 71 MLJ 641

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The facts as found by the lower appellate Court were that the father of the plaintiff and the plaintiff after him have been in

possession of the suit property since the date of the agreement, Ex. D, under which, on the face of the document, the suit property was conveyed

to the plaintiff's father for a consideration of Rs. 2,000 paid on a hundi. That part of Ex. D which deals with this property contains a further

agreement that if Muthu Veeran, the father of the plaintiff, requires any document or power, etc., therefor, the defendants' grandfather should

without delay have the same completed whenever required at the cost of the plaintiff's father. The learned Subordinate Judge found, in agreement

with the trial Court, that this agreement in Ex. D ought not to be specifically performed, because of the laches of the plaintiff and his father, who

have taken no steps during the course of 21 years to get this document executed, because of the changes in the possession of the parties and the

passing of property to third parties, and also because, according to the law of Ceylon, Ex. D, construed as an agreement to sell, would not be

enforceable as it was not executed in the presence of an Notary Public.

2. If Ex. D can be read as an agreement to sell, which has been to a great extent executed by the payment of consideration and the giving of

possession, I do not think that there are any very strong reasons why specific performance should not be granted. As the purchasers had

possession of the property, then as long as they were allowed to remain in peaceful possession and their title was not challenged, there was little

reason why they should require a formal title deed. I cannot see that the fact that Ex. D would have no legal effect in Ceylon affords any reason for

not ordering specific performance. The agreement was executed in British India by British Indians, and one would naturally" expect such persons

to contemplate the execution of a document which conformed with the law of the land in which the document was executed and of which they

were subjects.

3. The main question however is whether Ex. D is a mere agreement to sell or whether it is not rather a record of what the parties considered to be

a sale, with a promise that a regular sale deed should be executed in due course. I have been referred to three cases in which a preliminary

document likened to Ex. D has been executed and in which it has been held that the agreement was merely one to execute another document. The

first of these is *Rajangam Aiyar v. Rajangam Aiyar* (1922) 44 M.L.J. 745 : L.R. 50 IndAp 134 : ILR 46 Mad. Here the parties were divided in

status and executed a document which was described as a yadast or a memo, which recorded a partition and stated that that document would

remain effective until a regular partition deed had been executed. Their Lordships held that from a reading of the document as a whole and from

the name it bore, i.e., a memo., it was not intended to convey any right or title in immovable property. The second case is *Sir Hukumchand*

Kasliwal v. Radha Kishen Moti Lal Chamarla (1929) 58 M.L.J. 453 also a Privy Council case. The first clause of the agreement was that the

advances to be made by the plaintiff to the Mill were to be up to the limit of the stock-in-trade under hypothecation to the plaintiffs and in their

custody. Later, it is agreed:

that all stock-in-trade...shall be under hypothecation to the Banians (Plaintiffs)....

4. Finally, paragraph 7 of the agreement, the defendant Mill requires that:

as soon as possible after the execution of the agreement a regular deed of

mortgage of the land, etc., should be made to the plaintiffs to meet any deficit that may be due to the plaintiffs for the advances made by them after availing of the stock under hypothecation as aforesaid.

5. From the relevant words in the document, the Privy Council held that this document was merely an agreement to execute a proper and regular conveyance in due course. The question however had not to be decided in that case for, as their Lordships pointed out, the plaintiffs were on the horns of a dilemma; for the suit in question was between the plaintiffs who had lent money to this Mill and certain mortgagees to whom the Mill property had been mortgaged subsequently to this agreement. If the agreement in question purported to mortgage the Mill property, then the transaction was void because the agreement had not been registered; if, on the other hand, it was not a mortgage, then the plaintiff failed because in the meantime the other mortgages had come into being; so that the plaintiffs had to fail in any case. The third judgment quoted is one of Bardswell, J., in a criminal matter. I do not think it is safe to place too much weight on this decision; because in a criminal case a judge naturally construes a document with a bias towards the innocence of the accused.

6. Turning now to the actual document we have to construe, we do not find only general words suggesting a conveyance and a definite agreement that another document will be executed, but recitals to the effect that the suit property was sold "this day" and that the hundi for Rs. 2,000, which was the consideration for the sale, was payable with interest "from this day". Then come the usual recitals upon which perhaps too much reliance ought not to be placed, viz., that as the firm has received the amount the property shall be held and enjoyed as long as the sun and moon last by the plaintiff's father as he likes with powers of alienation by way of gift, exchange, and sale. Then comes an important clause:

If Muthu V.M. (plaintiff's father) requires any document or power, etc., therefor, Muthu K.R.S.V. (firm of grandfather of defendants 1 to 5) shall, without any delay, have the same completed whenever required at the cost of Muthu V.M.

7. Although I would like so to construe this document drawn up by a layman as to make it conformable with the provisions of the law, I do not see, in view of the words just set out, how it can be taken as a mere agreement

to sell or as a document of which the main purport was the execution of another document. The recitals make it clear that the parties thought that a sale had actually taken place that day and that a document was only to be executed in the future if the plaintiff's father should require it. I therefore agree with the lower Courts that Ex. D purported to bring about an actual conveyance of property.

8. Ex. D, not being registered, did not bring about any conveyance and the transaction had therefore no legal effect. Under the circumstances therefore we cannot separate the promise to execute a regular deed if the plaintiff's father required it from the rest of the transaction. If the land was not sold, then the plaintiff's father could not insist on the execution of a document. Moreover, as has been further pointed out in Dicey's

"Conflict of Laws", p. 545 (4th edition):

Contracts with regard to land usually form part of an instrument which is meant to convey or alienate land or an interest in land, but the form of

such an instrument is admittedly determined by the law of the country where the land is situate (lex situs). The question, therefore, whether a

contract with regard to an immovable property is or is not, as to its form, governed by the lex situs, can arise only when the contract is not intended

to be a conveyance or alienation of the land.

9. So that even if this promise to execute a document could be enforced in spite of the failure of Ex. D to convey the property, the contract would

have to be interpreted according to the lex situs, which admittedly would invalidate Ex. D, In any event therefore the plaintiff is not entitled to

enforce specific performance of the agreement in Ex. D.

10. The second appeal therefore fails and is dismissed with costs of the contesting respondents.