

(1925) 12 MAD CK 0019
In the Madras High Court

Muthusami Iyer

APPELLANT

Vs

Dharma Raja

RESPONDENT

Date of Decision : 09-12-1925

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1926 Mad 495 : 94 Ind. Cas. 302

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The adoptive father of plaintiff-appellant in this case sold certain property to the defendant in 1912. One item of property was "apparently in the possession of one Veerappa Naidu and, as a matter of fact, the defendant did not get possession of that item until after filing a suit against him and the plaintiff, possession being obtained shortly after the present suit was filed. One item of consideration for the sale deed was a sum of Rs. 400 payable to plaintiff's creditor, Muthayya Chetti and this amount was admittedly not paid by the defendant. Muthayya Chetty eventually filed a suit against the plaintiff and obtained a decree for Rs. 340 in 1917. The plaintiff now seeks to recover from the defendant damages which he has suffered owing to the defendant's non-payment of this portion of the sale price. The District Munsiff gave, a decree for the amount, but the Subordinate Judge in appeal held that inasmuch as the father of the plaintiff had contracted to give possession to the defendant of all the items sold and had failed to give possession of one item, plaintiff was only entitled to a refund of the purchase money with interest from the date on which the defendant actually got into possession. From that amount he allowed the defendant to deduct Rs. 150 said to have been incurred by him for the expenses of his suit against Veerappa Nayudu.

2. In coming to his conclusion he has relied partly on an oral agreement pleaded by the defendant namely, that Eupees 400, due under the sale deed, was not to be payable until the defendant got possession of the whole land. This oral

agreement is inconsistent with the terms of the registered sale deed and consequently u/s 92 of the Evidence Act cannot be proved in this case. On this ground alone it might be held that the Subordinate Judge's finding is not justifiable, but he has also relied on the provisions of Section 55, Clause 2 of the Transfer of Property Act. That runs as follows:

The seller shall be deemed to contract with the buyer that the interest which the seller professed to transfer to the buyer subsists.

3. The Subordinate Judge has held that under this clause the sale deed executed by the father of the plaintiff must be deemed to contain a contract to put the defendant in possession of the property. There is no such contract in terms in the document and the provision that the vendee shall be put into possession cannot be said to come u/s 55, Clause 2, which refers to the interest professed to be transferred. In this case the interest which, the plaintiff's father professed to transfer was the absolute right to the property. It has been found that that right was subsisting on the date of sale and that the plaintiff's father had power to transfer it. The discussion, therefore, in the Subordinate Judge's judgment, with reference to this contract to put the defendant in possession is hardly relevant to the present suit.

4. It is probable that the defendant might have counter-claimed for damages sustained by him by alleging that the plaintiff's father has committed breach of contract by not putting the defendant in possession of the land. It appears that the parties were aware that a third person was in possession of one item although there is no reference to this fact in the sale deed. The defendant bought the properties without any covenant for actual possession and there is nothing in Section 55 to justify such a contract-being implied. As a matter of fact the defendant has not pleaded a set-off in terms and has not proved breach of contract by the plaintiff. We have therefore only to consider the question whether the plaintiff is entitled to the damages claimed by him. The plaintiff has asked for the suit amount to be made a charge on the plaint property, and from that it might be inferred that he was seeking to recover his unpaid purchase money ; but on a perusal of the plaint it is clear that what he is asking for is damages sustained by him in consequence of the defendant's non-payment of the purchase money and it is only through an erroneous view of his rights that he has asked for a charge.

5. A contention is raised as to the quantum of damages, and it is suggested for the defendant that the plaintiff colluded with the creditor, Muthayya Chetti, and allowed a decree for an excess amount to be passed. The Subordinate Judge has found that the agreement to pay compound interest alleged by the plaintiff is untrue but no such allegation was made by the defendant and the finding is certainly vitiated by the fact that it is based on a wrong principle of law. The plaintiff's father admittedly paid a certain sum towards Muthayya Chetti's debt and then the arrangement to pay compound interest is said to have been arrived at because the plaintiff's father wanted further time to pay the balance. The

Subordinate Judge referring to this says:

An ordinary prudent man would not, after having paid Rs. 162, have agreed to pay compound interest when he had three years" time to pay the amount.

6. He seems to be under the impression that a debtor is not bound to pay his debts until the last day of limitation for "filing a suit against him, which is, to say the least of it, a most extraordinary proposition. The agreement is spoken to by the witnesses and seems to be in accordance with probabilities, and it is not the subject of any specific issue. There seems to be no reason for holding that this amount decreed against the plaintiff was due to collusion, and consequently that is the amount of damages the plaintiff has sustained.

7. The appeal must, therefore, be allowed and the District Munsiff's decree restored except that the amount will not be made a charge on the suit property. The plaintiff will get his costs both here and in the lower appellate Court.