(1894) 07 MAD CK 0004

In the Madras High Court

Namasivayam Pillai APPELLANT

Vs

Nellayappa Pillai and Others RESPONDENT

Date of Decision : 16-07-1894

Acts Referred:

Specific Relief Act, 1877 — Section 27
Trusts Act, 1882 — Section 91

Citation : (1895) ILR (Mad) 43

Hon'ble Judges : Muttusami Ayyar, J;Best, J

Bench : Division Bench

Judgement

1. This was a suit brought by appellant as purchaser to recover possession of a house which was alleged to have been sold to him by first and

second defendants for Rs. 250 on the 23rd November, 1888. Exhibit A is the sale-deed sued upon, and it was registered on the 7th December

1888. The appellant''s case was that on the 6th October, 1888, first and second defendants agreed to sell their house to him for Rs. 250, and

received Rs. 12 in advance, that they received afterwards the balance of Rs. 238 and executed and registered the sale-deed A. The third

defendant or respondent who resisted the claim contended that first and second defendants contracted to sell the house to him for Rs. 300 on the

11th October, and, receiving Rs. 50 in advance, placed the house in his possession, and that the balance was paid by him on the 11th November,

1888. He urged further that the contract set up by the appellant as made on 6th October was not true, that document D was spurious, and that first

and second defendants colluded with the appellant and refused to execute a sale-deed to himself. The Court of First Instance decreed the claim,

but on appeal the Subordinate Judge dismissed the suit and directed appellant to pay third defendant''s costs.

2. The lower Appellate Court found that no contract was made with the plaintiff on the 6th October 1888, and that there was no payment of Rs.

12 or of Rs. 238 as alleged by him. It has also been found that first and second defendants agreed on the 11th October to sell the house to third

defendant and placed him in possession on receipt of Rs. 50 in advance and subsequently received the balance of the purchase-money. The

Subordinate Judge has held further that the plaintiff got the sale-deed. A with the knowledge of the prior contract with the third defendant, and that

he was therefore not a bona fide, purchaser for value without notice. It is argued on second appeal that upon the facts found by the lower

Appellate Court, appellant is entitled to a decree. But we are unable to accede to this suggestion. From the fact of appellant having had at the date

of his sale-deed A knowledge of the prior contract of sale with the third defendant, it is clear that u/s 27.of the Specific Belief Act, his claim, as

based on the registered sale-deed, cannot prevail against the third defendant''s right to insist on the specific performance of the prior contract,

though such right rests merely on an agreement to sell. It is obvious from Section 91 of the Indian Trusts Act that, if appellant acquired any

property in the house, he must be taken to have acquired it for the benefit of the third defendant to the extent necessary to give effect to his right to

enforce specific performance. It is then said that such right is now barred by limitation and that the property, acquired under Exhibit A, though

subject to third defendant''s right to enforce specific performance at the date of its acquirement, has now become absolute. To this objection, we

are not prepared to attach any weight. It is conceded that the right to insist on specific performance vesting by prior contract in the third defendant

was actionable both at the time when the sale-deed. A was executed and when the third defendant''s written statement was filed. A legal right,

which is made the subject of a suit or a plea if actionable when the suit was commenced or the plea was set up, does not cease to be adjudicable

by reason of the prescribed period of limitation having since elapsed at the date of decree. For instance, a bond which is not barred at the date of

suit or a plea of set off which is not invalid from lapse of time when it is set up, cannot be held to be barred though, at the date of decree, the period of limitation may have expired.

3. Another fact found by the Subordinate Judge is that for the sale-deed A no value was paid, and that the intention with which it was collusively

given and accepted was merely to thwart the third defendant on this point. The Subordinate Judge observes as follows: ""The truth is the house in

dispute is inconveniently situated so far as the plaintiff is concerned, and he wants to buy it, but is not willing to pay the price demanded, and when

a neighbour arranged to have it, he, with a view to thwart him, induces defendants 1 and 2 to execute a registered sale-deed to himself."" In

substance the finding is that Exhibit A was contrived as a means of defrauding the third defendant and has the semblance of a sale or legal

transaction. The Subordinate Judge has, it must be remembered, discredited appellant''s evidence that he paid value for the sale-deed and found

collusion between appellant on the one part and first and second defendants on the other. No property passes or is presumably intended to pass

when there is in substance no legal transaction, but a mere semblance of it collusively contrived as an instrument of fraud. This second appeal fails

and is dismissed with costs.

