
(1949) 07 MAD CK 0038
In the Madras High Court

N.T. Palanisamy Chettiar by Agent, V.D. Seetharama Mudaliar APPELLANT
Vs
Komara Chettiar and Others RESPONDENT

Date of Decision : 20-07-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1949) 2 MLJ 568

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Division Bench

Judgement

Krishnaswami Nayudu, J.—The petitioner is the plaintiff in O.S. No. 116 of 1947 on the file of the Subordinate Judge's Court of

Coimbatore instituted by him for specific performance of an agreement to sell dated 23rd January, 1944, executed by defendants 1 and 2. The 3rd

defendant is a subsequent purchaser of the property and has therefore been impleaded. The suit was filed on the 22nd January, 1947 and issues

were settled on the 28th August, 1947. The respondents filed I.A. No. 1216 of 1948 for adding themselves as party defendants 4 to 9 and this

application was made under Order 1, Rule 10, Civil Procedure Code. The allegations in the affidavit in support of the application are that

respondents 1 to 5 are the sons of the 1st defendant and that respondent 6 is the son of the 2nd defendant, that in respect of the suit properties

they filed O.S. No. 265 of 1947 in the Sub-Court of Coimbatore alleging that the alienations by the 1st and 2nd defendants are not binding on

them and for partition and possession of their separate shares. They also state that they had to contend that the agreement will not bind them in so

far as they are concerned and that there are good reasons for the success of their defence. The application was opposed and the learned

Subordinate Judge passed an order as follows:

The sons of the defendant want to plead that the agreement to sell is not for the benefit of the sons. To avoid multiplicity of proceedings it is better

that the petitioners are also impleaded.

He also observes that the petition has been delayed and directs that costs should in any event be paid to the plaintiff by the respondents.

2. It is contended on behalf of the petitioner-plaintiff that this is a suit for specific performance of an agreement executed by defendants 1 and 2

and that the main issue that has to be decided in the suit is whether the agreement had been executed and whether the plaintiff had otherwise

complied with the terms of the agreement and entitled to specific performance by getting a document of sale from defendants 1 and 2 and that

questions relating to title are foreign to the suit for specific performance. Further it is pointed out that there is no prayer in the plaint for the recovery

of possession of properties. The prayer in the plaint is for a declaration that the plaintiff is the owner of the plaint properties and to order that the

defendants should execute a sale deed in respect of the plaint properties in favour of the plaintiff and that on their default the sale deed may be

ordered to be executed by the Court on behalf of the defendants in favour of the plaintiff. This is the usual prayer in suits for specific performance

though it is also permissible to add a prayer for possession in such suits.

3. The learned Council for the petitioner cited the decision in *Nagi v. Damodhar* ILR (1947) Nag. 623 where it is held that a Court acts without

jurisdiction if, in a suit for specific performance of contract, it joins other causes of action which cannot properly be investigated in that suit. It is

also held that a person who claims adversely to the vendor is not a necessary party to a suit for specific performance of a contract to sell. Two

English decisions are referred to in that judgment and I will refer to the following passage in the judgment of Cottonham, L.C., in *Tasker v. Small*

(1837) 40 E.R. 848.

It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties;

and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court

assumes jurisdiction in such cases, because a Court of Law, giving damages only

for the non-performance of the contract, in many cases does not afford an adequate remedy. But in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and therefore, neither entitled to the right nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.

4. In Prem Sukh Gulgulia and Another Vs. Habib Ullah and Others, reported in C.V. Muni Samappa Vs. Kolala Gurunanjappa (dead) and

Others, which is also referred to in Nagi v. Damodar ILR (1947) Nag. 623 the learned Judges observed,

The necessary parties in a suit for specific performance of a contract for sale are the parties to the contract, or if they are dead their legal

representatives, as also a person who had purchased the property from the vendor after the contract. He is a necessary party as he would be

affected, if he is a volunteer, or if a purchaser for value, had purchased with notice of the contract. A person who claims adversely to the vendor,

is, however, not a necessary party.

In Muni Samappa v. Gurunanjappa (1949) 2 M.L.J. S. N. 7 since Rajamannar, C.J., observes that

Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is

no necessity to determine the question of the vendor's title, and the fact that the title which the purchaser may acquire might be defeasible by a

third party (for instance the sons of the vendor being entitled under Hindu Law to shares in the property) is no ground for refusing specific

performance if the purchaser is willing to take such title as the vendor has.

It is therefore clear that the respondents are not necessary parties to this suit for specific performance of an agreement to sell. The application is

made under Order 1, Rule 10. Order 1, Rule 10, Clause (2) enables a Court to add as party any person whose presence before the Court may be

necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The question

involved in the suit as disclosed by pleadings in the suit and in view of the observations of the learned Judges whose judgment I have cited above,

is not one relating to the liability of the sons nor does it relate to the right of the sons in respect of the properties. What the plaintiff would get if he

succeeds in getting a decree for specific performance is a sale deed which will bind only the executants of the sale, namely, defendants 1 and 2 and

would not affect the position of the sons or their rights if any to these properties I think that the rights of the sons to these properties is not a

question involved in the suit and it is therefore not necessary that they should be made parties. Mr. Srinivasa Aiyar, learned Counsel, appearing for

the respondents referred me to the prayer in the plaint which includes a declaration that the plaintiff is the owner of the plaint properties and argues

that it involves a question as to the title of the property since the plaintiff's ownership is asked to be declared in this suit itself. What is asked for in

the prayer is only a declaration of the title of the plaintiff as the purchaser from defendants 1 and 2 on the strength of the agreement of sale and it is

not the title of the vendors to the property that has been asked to be established in this suit. I should therefore think that no question of title is

involved in the suit. Balusami Aiyar v. Lakshmana Aiyar ILR (1921) Mad. 605 is cited by the learned Counsel for the respondents. It proceeded

on a different set of facts. In this suit there is no allegation that the agreement to sell executed by these defendants was binding on the sons and in

fact no reference is made in the plaint to the sons at all. The plaint contains only the allegation regarding the execution of the agreement and

payment of the consideration which went in discharge of certain mortgages. In Balusami Aiyar v. Lakshmana Aiyar ILR (1921) Mad. 605

Kumaraswami Sastri, J., observes

Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is

no necessity to determine the question of the vendor's title, and the fact that the title which the purchaser may acquire might be defeasible by a

third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has.

The plaintiff-petitioner is willing to take such title as the vendors, that is, defendants 1 and 2, could pass in his favour. The learned Subordinate

Judge states to avoid multiplicity of suits the addition of parties might be allowed. In an application under Order 1, Rule 10, Civil Procedure Code, the Court should consider mainly whether the presence of the proposed parties would be necessary for adjudicating upon the questions that are involved in the suit and an order for addition of parties should not be made merely with a view to avoid multiplicity of suits if otherwise their presence is not necessary for determining the real questions involved in the suit. In a simple suit of specific performance like the present one filed against the vendors, the sons of the vendors are not necessary parties.

5. As I find that the learned Subordinate Judge has acted with material irregularity in the exercise of his jurisdiction this Civil Revision Petition is allowed with costs and the order of the lower Court is set aside.