

(1924) 11 MAD CK 0050
In the Madras High Court

O. Govindaswami Pillai

APPELLANT

Vs

Doraiswami Mudali and Others

RESPONDENT

Date of Decision : 10-11-1924

Acts Referred:

Citation : AIR 1926 Mad 120

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this case, the plaintiff sued to recover two items of property described in Schedules A and B. He got a decree in the first

Court for both these properties. In appeal the Subordinate Judge has disallowed his claim for A Schedule property. He purchased this property

under Ex. A, dated 26th April, 1914. The 3rd defendant who is the contesting defendant before me also purchased the very same property on 9th

May, 1914. The 3rd defendant claims priority for his purchase over that of earlier purchase by the plaintiff on the ground that he had a contract.

under which the owner of the property, the 1st defendant, had agreed to sell it to him, of an earlier date than the 26th April, 1914. That agreement

was produced and it is Ex. III. The agreement was found to be genuine. The question that I have to decide turns upon Section 27 of the Specific

Relief Act. If it is an agreement which could be specifically enforced u/s 27 against the plaintiff as purchaser subsequent to the date of that

agreement then the 3rd defendant's claim, would be good. If there was an agreement established of an earlier date, it would be for the plaintiff of

who subsequently purchased the property to show that he is a transferee for value who has paid his money in good faith and without notice of the

original contract. But before the 3rd defendant can take advantage of Section 27, Clause (b), of the Specific Relief Act he has to show that he has

a contract in his favour to sell. The document he produced, Ex. III, it is argued by the appellant's vakil, does not amount to a contract at all but

amounts only to an offer by the owner of the property to give a sort of right of pre-emption to the 3rd defendant. It says ""If it so happens that I

have to sell it (the property) out of necessity, I will sell it to you for Rs. 60 and I bind myself to take the money from you and convey the land to

you. I will give you ten days" time from the date of my proposing to sell it within which time you should pay me the money and take the sale-deed

from me. But if you fail to pay the money within the 10 days I will overlook your right and claim and I will be at liberty to sell it as I like."" It is

argued by the learned Vakil for the appellant that this does not amount to a contract at all but it is only a binding offer on the part of the 1st

defendant to the 3rd defendant that he would sell the property to him first, if necessity arises for him to sell it, at the price of Rs. 60. The document

cannot be treated as a contract, for there is nothing in it to compel the 3rd defendant to buy the property on the terms set out in it, As was held in a

recent decision of this High Court in Papa Naidu v. Munisami Naidu AIR 1922 Mad. 16 such a document as this would only amount to an offer

and until that offer is perfected there is no binding contract resulting. No doubt when once the offer is accepted, there will be a binding contract.

Exhibit III, therefore, by itself, is not sufficient to justify the finding of the Subordinate Judge that the 3rd defendant's purchase should prevail as

against the plaintiff's earlier purchase. But the question that has been now raised was not properly put forward in the lower appellate Court and I

think, therefore, that an opportunity should be given to the 3rd defendant to show, if he can, that this offer in Ex. III became a completed contract

by his acceptance before the date of the sale to the plaintiff. If he is able to prove that, then the plaintiff will have to show that he paid the purchase

money in good faith and without notice of that contract, to save his purchase being postponed to the purchase by the 3rd defendant; but till the 3rd

defendant proves the existence of a binding contract prior to 26th April, 1914, the date of Ex. A, no question under the Specific Relief Act will

arise.

2. The Subordinate Judge will be requested to submit findings on the issues whether Ex. III was converted into a binding contract between the parties by its acceptance by the 3rd defendant before the 26th April and, if so, whether the plaintiff is a transferee for value who paid his money in good faith without notice of that contract. Both parties will be allowed to adduce fresh evidence. The findings will be returned in two months from this date and ten days will be allowed for objections.

3. As regards the memorandum of objections filed in this case, it seems to me that there is no ground to support it. The finding of the lower appellate Court that the property in Schedule B belonged to the 2nd defendant, as whose property the plaintiff purchased it, and was not the property of the 1st defendant, is conclusive against the 3rd defendant. That finding is supported by the evidence of the plaintiff's witnesses and I must accept it in second appeal. The memorandum of objections will therefore be dismissed with costs.

4. It is now pointed out that the Subordinate Judge has not given a finding on issue 1 in this case and if the findings on the issues remitted to the lower court are against the 3rd defendant, a finding on that issue will be necessary for the disposal of his second appeal. The Subordinate Judge will be requested to return a finding on that issue as well on the evidence on record already.

[In accordance with the order contained in the above judgment, the Subordinate Judge of Chittoor submitted the following findings:]

The High Court having remanded the case for findings on the following issues. viz :-

- (i) Whether Ex. III was converted into a binding contract between the parties by its acceptance by the 3rd defendant before the 26th April, 1911
- (ii) If so, whether the plaintiff is a transferee for value who paid his money in good faith without notice of that contract ?
- (iii) And whether the sale of Schedule A property by the 1st defendant is inoperative for the reasons stated in para, 4 of his written statement?

5. I submit the following findings :

I therefore hold that there was no completed contract between the defendants 1 and 3 before the date of the plaint sale, i.e., before 26th April, 1914.

Second point.--Assuming that there was a completed contract between defendants 1 and 3 before 26th April, 1914, the next question for

consideration is whether plaintiff is a bona fide purchaser for value without notice of that contract.

In my opinion defendants have failed to prove plaintiff's knowledge of the prior agreement at the time of Ex. A and his want of bona fides.

4. My finding on this second question, therefore, is in the affirmative.

5. Next as regards the last question viz., whether plaintiff misrepresented to 1st defendant that 3rd defendant did not want to purchase the suit site,

I agree with the District Munsif also on this point.

6. In my opinion it was this desire to obtain more money and not any alleged misrepresentation by plaintiff which induced the 1st defendant to sell

the property to the latter.

7. I accept the finding and as a result the second appeal is allowed and the decree of the lower appellate Court is set aside and that of the District

Munsif is restored. There will be no costs to either side in the appeal or the second appeal. This does not affect the order on the memorandum of

objections.