

(1918) 09 MAD CK 0005
In the Madras High Court

P. Bhashyakarlu Naidu

APPELLANT

Vs

Nungambakkam Andalammal

RESPONDENT

Date of Decision : 24-09-1918

Acts Referred:

Transfer of Property Act, 1882 — Section 55

Citation : (1919) 19 LW 19 : (1919) 36 MLJ 89

Hon'ble Judges : John Wallis, C.J.; Seshagiri Aiyar, J

Bench : Full Bench

Judgement

John Wallis, C.J.—This is an application to revise a decision of the Full Bench of the Court of Small Causes, Madras, which came before

me yesterday and was referred to a Bench. It raises the question whether the plaint discloses a suit for specific performance of a contract to sell

land. If it does, then admittedly the Court of Small Causes had no jurisdiction. Ordinarily of course, a suit will not lie for specific performance of a

contract to pay money. But the case of the vendor, as pointed out in Fry's Specific Performance, page 33, is an exception to that rule, and the

Court will grant the vendor specific performance of his contract against the purchaser; and the form of the decree in such a case will be found in

Morgan v. Briscoe (1886) 31 Ch. D. 216 and is set out in Seton's Judgments and Orders, Volume III pages 2174 and 2175. The form is that the

plaintiff is to be at liberty to prepare and execute a conveyance to the defendant as an escrow to be delivered to the defendant on payment of the

purchase money within the time limited, and that the defendant is to pay the purchase money after the conveyance is ready. It was stated that there

was a difficulty about this in India, as under the Stamp Act the money for the purchase of stamp has to be found by the vendee. But this presents

no real difficulty, as the duty may be paid by the vendor and added to the purchase money which the vendee has to pay under the decree.

2. That being so, we have to look at this plaint and see whether it is framed so as to disclose a suit for specific performance. In the passage cited to

us in Halsbury's Laws of England, Vol. 27 page 83, it is stated that the vendor in a suit for specific performance must declare that he is ready and

willing to execute a conveyance. In paragraph 3 of the plaint, the plaintiff recites a contract by which the defendant bound himself to pay the sum

therein mentioned as soon as the High Court of Madras reopened after the summer vacation in July 1914, the plaintiff on her part undertaking to

re-convey the said properties to this defendant by executing a conveyance in his favour and getting it registered. Paragraph 5 of the plaint says that

the plaintiff avers that she is even now ready and willing to perform her part of the contract. Although the prayer only asks for the payment of Rs.

301-13-0, taking the plaint as a whole with the averment that the plaintiff is ready and willing to perform her part of the contract, I think it must

betaken as a prayer for specific performance. That is sufficient to dispose of the present case.

3. The question has been argued before us, whether, supposing the contract between the parties stipulated for payment by the vendee first and

execution of the conveyance by the vendor afterwards, that would make any difference. I am disposed to think it would not, and that the plaint

would still be for specific performance of the contract, and the proper decree in such a case would be a direction that the defendant should pay

followed by a direction in the decree that the conveyance should be executed after payment. The distinction, it seems to me, is whether the suit is

to be regarded as a suit for money payable under the contract, in which case it is strictly a suit for specific performance, or as a suit for damages.

As I read the plaint, I think it is clear that the plaintiff has prayed for specific performance and therefore the petition must be allowed, and the

decree of the Small Cause Court set aside, and the plaint returned for presentation to the proper court. Costs to abide.

Seshagiri Aiyar, J.

4. I agree. The law as stated in Fry's Specific Performance at page 34, is, "It is well established that the remedy is mutual, and that the vendor may

bring his action in all cases where the purchaser could sue for specific performance of the contract." The question in this case is whether the plaintiff is substantially one for specific performance. If there were no contract between the parties and if their relations were regulated by Section 55 of the Transfer of Property Act, there can be no doubt that the plaintiff will not be entitled to any money, and the suit will be regarded as premature, if there was no offer for executing a conveyance. It was suggested that under the terms of the contract there was a right to get money prior to the execution of the document and that the liability to execute the conveyance was to follow sometime after. I have asked the translator to translate the document once again, and I am satisfied that the right to the money and the right to the conveyance are practically contemporaneous. The word "thodane" suggests that the execution of the conveyance is to follow immediately on the payment of the money, and therefore this was a case of a mutual and dependent contract. The right to the money would not accrue unless the other party is ready and willing to execute a conveyance. In that view of the document, it seems to me that we must put a reasonable construction of the plaintiff in this case. If it is to be regarded not as a suit for specific performance, the suit is liable to be dismissed on the ground that there is no present right to the money. We have also to see whether "the averments in the plaintiff are such as to enable us to regard the suit as one for specific performance. As my Lord has pointed out, there is an offer to execute a conveyance, and the document also says that other conveyances in respect of other portions of the property have already been executed. Therefore it seems to me that what the plaintiff wanted was that he should get his money on his executing a conveyance. That, as pointed out by the learned Chief Justice, is really a suit for specific performance, and as such the Small Cause Court has no jurisdiction. I entirely agree with the order as regards the return of the plaintiff to the proper court.