

**(1990) 07 MAD CK 0047**  
**In the Madras High Court**  
**Case No : Appeal No. 951 of 1980**

P. Lakshmi Ammal

APPELLANT

Vs

S. Lakshmi Ammal and others

RESPONDENT

**Date of Decision :** 27-07-1990

**Acts Referred:**

Specific Relief Act, 1963 — Section 16, 19, 9  
Transfer of Property Act, 1882 — Section 52

**Citation :** AIR 1991 Mad 137

**Hon'ble Judges :** Abdul Hadi, J

**Bench :** Single Bench

**Advocate :** M/s. Aiyar and Dolia, for the Appellant; M/s. P. Chidambara Subramanian and R. Sundaramurthy, for the Respondent

## **Judgement**

1. The plaintiff has filed this appeal, aggrieved by the dismissal of her suit for specific performance of Ex. A-3 sale agreement D/-4-7-1974 relating to the suit house belonging to the 1st respondent-1st defendant. The 2nd respondent-2nd defendant is the husband of the 1st respondent and the suit agreement was executed in favour of the appellant by the 2nd respondent, acting as the power agent of 1st respondent, pursuant to the deed of power of attorney Ex. B-1 D/- 30-6-1962 executed by the 1st respondent in favour of the 2nd respondent.
2. The sale consideration under Ex. A-3 is Rs. 30,000/- and according to the appellant, Rs. 5,000/- was received by the 2nd respondent on behalf of the 1st respondent as advance. Under the said agreement, the sale deed has to be executed on or before 31-7-1974 when the balance of Rs. 25,000/- has to be paid. According to the appellant, she informed the respondents I and 2 in July, 1974 her readiness to complete the sale and the

said respondents agreed and requested the appellant to utilise the three stamp papers lying unused with the said respondents for executing the sale

deed. The further plea of the appellant is that on 26-7-1974 she purchased stamp papers for the balance of Rs. 3,037.50 and that on 28-7-1974

under Ex. A-4, the sale deed was written, but that when the 2nd respondent was asked to come for registering the sale deed, the said respondent

represented that he would come to Pudoor the next day, when, on the appellant being ready with the sale deed at the- Sub-Registrar's office,

Pudoor, the 2nd respondent would sign the deed and register it after receiving the abovesaid balance sum of Rs. 25,000/-. The further plea of the

appellant is that the 2nd respondent did not turn up at Sub-Registrar's office, Pudoor the next day and despite appellant's request, the 2nd

respondent did not subsequently also execute the sale deed and register it and that in Aug., 1974, the 1st respondent wrote to the appellant's

husband that the sale agreement was repudiated. The 1st respondent also cancelled the above-said power of attorney on 1-8-1974, The

respondents denied that the sale deed was written and that they agreed to come to the Sub-Registrar's office on 29-7-1974 to sign the sale deed

and register the same. They also denied that they requested the appellant to utilise the three stamp papers as stated above.

3. The 3rd respondent is the subsequent purchaser from the 1st respondent under Ex. B-3 D/-5-5-1975 and he contends that he is a bona fide

purchaser for value without notice of the above sale agreement.

4. In the above circumstances, the present suit was filed on 3-5-1975. The 3rd defendant was impleaded in the suit only in 1988.

5. The trial Court held that the abovesaid power of attorney Ex. B-1 was valid and was in force till it was cancelled on 1-8-1974 by Ex-B-2, that

the sale agreement Ex. A-3 was valid and binding on the 1st respondent. It also held that the 1st respondent is estopped from denying the receipt

of the abovesaid Rs. 5,000/- as advance. It also disbelieved the version of the respondents that the 2nd respondent was drunk when he executed

Ex. A-3. So far, it held in favour of the appellant.

6. But, it held against the appellant in observing that the appellant was not ready and willing to perform her part of the contract, in paying the

balance sum of Rs. 25,000/- It also held that the 3rd respondent was a bona fide

purchaser for value without notice of the sale agreement, that the 1st respondent was not bound to execute the sale deed as prayed for that the appellant was also not entitled to reimbursement of the abovesaid sum of Rs.5,000/- from respondents 1 and 2.

7. The learned counsel for the appellant submitted that the trial Court erred in holding (1) that the appellant was not ready and willing to perform her part of the contract (2) and that the 3rd respondent was a bona fide purchaser for value without notice of the sale agreement. The learned counsel further submitted that at any rate, Ex. B-3 sale in favour of 3rd respondent was hit by lis pendens.

8. On the first of these submissions. I find that as against the definite plea in paragraph 7 of the plaint that ""Plaintiff has been and is still ready and willing specifically to perform the agreement of her part of which the 1st defendant has had notice"". The only plea in the written statement of the 1st respondent is ""the allegations in paragraph 7 of the plaint that this defendant is aware of the contract is denied as false. ""Thus, it is found that there is no denial at all to the plea that the plaintiff was ready and willing to perform her part of the contract. Likewise, the 2nd respondent also has not denied the said plea, in his written statement. Further, to the specific averment in paragraph 5 of the plaint ""by the latter part of July, 1974, the plaintiff informed the defendants of her readiness to complete the sale"", there is no specific denial at all. There is only a vague and evasive denial by the 1st respondent as follows :-- The allegation contained in paragraph 5 of the plaint are frivolous and denied"". Likewise, the 2nd respondent also has not specifically denied the abovesaid averment in the plaint.

9. Further, the 1st respondent, as D.W. 1 and the 2nd respondent as D.W. 2, did not depose at all that the appellant was not ready and willing to perform the contract. In the circumstances, the contention of the learned counsel for respondents 1 and 2 that the abovesaid readiness and willingness has not been proved, cannot be accepted. Therefore, I held that the appellant was ready and willing to perform her part of the contract.

10. The next submission of the learned counsel for the appellant is that the 3rd respondent was not a bona fide purchaser for value without notice of the suit agreement. He pointed out that the third respondent, as D.W. 5 admitted that the suit property was situated next to his own shop. On

this ground, he contended that the third respondent must be held to be not such a bona fide purchaser. He also cited the decision in Annamalai

Gounder v. Chinnatharbi Gounder (1977) I ML.T 385 in support of this contention. I do not think the above decision is applicable to the facts of

the present case. In the said case, no doubt, the subsequent purchaser was of adjacent owner. But that is not the sole factor on which he was held

to be not such a bona fide purchaser. The other important factor in that case was that the agreement holder was given possession of the property

agreed to be sold and he was in possession of it when it was sold to the subsequent purchaser. That is why in view of the existence of these two

factors, the court held that the subsequent purchaser was not such a bona fide purchaser. But in the present case, the later factor is not present and

so the abovesaid decision cannot be applied to the present case.

11. Further, in Arunachala Thevar and Others Vs. Govindarajan Chettiar and Others, it has been held as follows :--

The onus of proof lies upon the party speaking to defeat the prior contract, to adduce prima facie evidence that he is a bona fide transferee for

value without notice. But, the burden is light and he may discharge it by merely denying the factum of notice on oath. In any case, very little

evidence is required on his part to prove this fact which is negative.

"It cannot be said in the present case that the said initial burden has not been discharged by the third respondent. So, the burden has only shifted to

the plaintiff/appellant, but, she cannot be said to have discharged that burden. No doubt the learned counsel for the appellant contended that

admittedly exhibit B-3 was registered not at Pudur where the property was situate, but at Tuticorin. However, the first defendant explained this by

saying that since the stamp papers for Rs. 40,000/- was not available the registration was done at Tuticorin. So, in the circumstances, I held that

the plaintiff has not established that the third defendant was not a bona fide purchaser for value without notice of the abovesaid sale agreement.

12. However, the learned counsel for the appellant contended that Ex. B-3 sale deed was hit by lis pendens since Ex. B-3 sale took place only on

5-5-1975 even while the present suit for specific performance was pending, it having been filed on 3-5-1975 itself. To substantiate that lis pendens

rule would apply to specific performance suit also, the learned counsel relied on

Gouri Dutt Maharaj v. Sheikh Sukur Mohammed (1948) MLJ 79

: 1948 ALJ 263 The learned counsel for the 3rd respondent-subsequent purchaser on the other hand contended that lis pendens theory would not

apply to specific performance suit. But, this contention of the learned counsel for the third respondent is not correct. It is settled law that the rule of

lis pendens is applicable also to suits for specific performance of contract to transfer immovable property. (Vide Gouri Dutt Maharaj v. Sheikh

Sukur Mohammed) (1948) MLJ 79 ; Vedachari Vs. Narasimha Mudali and Others, and G. Rukmani Bai v. Saraswatiammal 1989 TLNJ 40. The

decision in Nirmala Industries Uthaganandalal v. Srinivasa Perumal Financing Corporation 100 LAV 222 cited by the learned counsel for the third

respondent has no application to the facts of the present case.

13. In Smt. Ram Peary and Others Vs. Gauri and Others, it has also been held that S. 52 of the Transfer of Property Act, which speaks about the

rule of lis pendens, is not subject to S. 19(b) of the Specified Relief Act, which provides that specific performance of contract cannot be enforced

against the transferee for value, who has paid his money in good faith, without notice of the original contract. In other words, it was held therein

that the subsequent transferee, even though he has obtained the transfer without notice of the original contract, cannot set up, against the plaintiff-

agreement holder, any right defeating the rule of lis pendens, which is founded upon public policy.

13. So, I agree with the contention of the learned counsel for the appellant and held that Ex. B-3 is hit by the rule of lis pendens.

14. Lastly, the learned counsel for the appellant also rightly pointed out to me N.B. Namazi Vs. Central Chinmaya Mission Trust, to reiterate that

escalation in price cannot be a defence in a suit for specific performance.

15. Therefore, I set aside the judgment and decree of the court below and allow the appeal with costs, granting a decree for specific performance

of the abovesaid Ex. A-3 sale agreement in favour of the appellant. Time for depositing the balance of sale consideration of Rs. 25,000 in the trial

Court is one month. Time for execution and registration of the sale deed is two months.

16. Appeal allowed.