

(1944) 11 MAD CK 0033
In the Madras High Court

Pulingundla Venkatappa Naidu and Others	APPELLANT
Vs	
Geddam Chinnappa Naidu	RESPONDENT

Date of Decision : 13-11-1944

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1945 Mad 171 : (1945) 1 MLJ 158

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The appellants are the plaintiffs and they have appealed against the order of the learned Subordinate Judge of

Chittoor setting aside the decree passed by the District Munsiff of Chittoor in O.S. No. 389 of 1941 and remanding the suit for fresh disposal. The

suit was for a declaration of the plaintiffs' title to properties described in the plaint schedule and for recovery of possession of the same. Their case

was that the properties were ancestral properties, that the defendant unlawfully trespassed on the lands sometime after their father's death which

took place eight years ago, taking advantage of their minority and the illiteracy of their mother. The respondent's case was that the properties had

been delivered over to him by the plaintiffs' father under a contract of sale entered into to discharge a prior mortgage debt evidenced by a

document executed by the plaintiffs' father and Ors. on 21st January, 1927. The defendant also pleaded that he was entitled to retain possession

and that the suit was not maintainable by reason of the provisions of Section 53-A of the Transfer of Property Act, even though the document was

not registered. It was also pleaded that the amount due under the mortgage deed should be paid before any relief could be granted to the plaintiffs.

2. The following issues were framed:

(1) Whether the defendant is in possession in his own right by virtue of a sale and agreement of sale dated 1st January, 1930, by plaintiffs' father in

discharge of the prior registered mortgage deed dated 27th January, 1927, except S. No. 1104/4 and S. No. 1104/10?

(2) Whether the defendant can hold his possession by claiming the protection afforded to him u/s 53-A of the Transfer of Property Act?

(3) Whether, in any event, the plaintiffs are not entitled to possession without the payment of the debt due under the registered mortgage dated

27th January, 1927, to the defendant?

(4) Whether the court-fee paid is correct?

(5) To what relief are plaintiffs entitled to?

On the second issue, the learned District Munsiff found that in view of the fact that the alleged sale was prior to the enactment of Section 53-A of

the Transfer of Property Act and that it had no retrospective effect, the defendant cannot resist the suit for possession of the properties and claim

any rights u/s 53-A. He also held that the defendant was not entitled to retain possession of the suit land till the debt due under his registered

mortgage deed was repaid. He accordingly decreed the suit. On appeal, the learned Subordinate Judge agreeing with the finding of the learned

District Munsiff that Section 53-A of the Transfer of Property Act had no retrospective effect, was of opinion that the plaintiffs were not entitled to

a decree for possession, as u/s 65 of the Indian Contract Act, the contract had become void and that they should disgorge the benefit that they had

under the contract before obtaining possession. He was of opinion that the unregistered sale deed amounted to a contract of sale, and as the right

to enforce specific performance of the contract had become barred, the contract had become void as it ceased to be enforceable and therefore the

provisions of Section 65 of the Indian Contract Act would apply. He set aside the decree and remanded the case to the District Munsiff for fresh

disposal,

3. This is what the learned Subordinate Judge observes:

When a contract which was originally legally enforceable ceases to be so enforceable because of the law of limitation, such a contract becomes

void when it so ceases to be enforceable. Hence I think the provisions of Section 65 of the Indian Contract Act became directly applicable and it

is even unnecessary to base this case on the analogy of the provisions contained in the said section.

Then he points out that as the contract for sale became unenforceable and therefore void, the plaintiffs are bound to return the Rs. 750 before they

can recover possession of the properties. That the learned Judge was wrong in the view that when a contract has become unenforceable by reason

of the fact that the claim to enforce the contract had become barred by limitation it becomes void so as to attract the provisions of Section 65 of

the Indian Contract Act is clear from the decision of the Privy Council in Ramaswami Chettiar and Others Vs. Meyyappan Servai, where they

make the following observations :

Not every unenforceable contract is declared void, but only those unenforceable by law, and those words mean not unenforceable by reason of

some procedural regulation, but unenforceable by the substantive law * * * Mere failure to "live within the time specified by the statute of

limitations or an inability to sue by reason of the provisions of one of the orders under the CPC would not cause a contract to become void.

It is next urged by the learned Counsel for the respondent that the defendant will be entitled to recover back the consideration on the ground that

there has been a breach of the contract of sale by the plaintiffs now claiming back the properties and therefore it will be necessary to go into the

question whether the defendant will be entitled to recover, and how much, by reason of the breach of the contract on the part of the plaintiffs. But

then the suit is one for recovery of possession of the properties and unless the respondent can claim any possessory lien in respect of the money

which he says he is entitled to, there was no justification for the Subordinate Judge setting aside the decree for possession and remanding the suit

for enquiry as regards the amount payable to the plaintiff. No authority has been cited by the learned Counsel for the respondent to show that the

respondent had any possessory lien. The defendant has failed because the title in the properties had not passed to him by reason of the fact that the

document executed to him had not been registered. Since it was executed prior to the enactment of Section 53-A of the Transfer of Property Act

he is not able to take his stand on the document, though he obtained possession. If he has to sue the plaintiffs for any breach of the contract by reason of the failure on the part of the plaintiffs as sons of their father to fulfil the terms of the contract entered into with the defendant, that will certainly give rise to a separate cause of action and it will have to be considered in a separate suit instituted for the purpose. In the suit as framed, the plaintiffs are entitled to possession and that is what the District Munsiff has decreed. Unless the defendant has a possessory lien, that is, a right to be in possession till any amount is paid, he cannot resist the suit for possession or ask for any inquiry to be made as regards the amount to be paid to him. A decree had been passed, and as already stated above, the respondent's counsel is not able to point out any provision of law which would give him a possessory lien. There was therefore no justification for the learned Subordinate Judge setting aside the decree as the plaintiffs are entitled to possession of the properties. On the facts, stated and admitted, if the respondent has any claim to recover any money he would have to proceed by filing a separate suit for the same or for any other relief he may be entitled to.

4. The order of the learned Subordinate Judge is set aside and the decree of the District Munsiff is restored with costs in all the three Courts.