

(1897) 11 MAD CK 0006
In the Madras High Court

Ramanadan Chetti

APPELLANT

Vs

Nagooda Maracayar

RESPONDENT

Date of Decision : 02-11-1897

Acts Referred:

Citation : (1898) ILR (Mad) 395

Hon'ble Judges : Boddam, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff sued the defendant for Rs. 6,233-4-0, consisting of Rs. 5,000, balance of the sale amount of a ship, and Rs. 1,233-4-0, interest

thereon at 12 per cent, per annum from the 2nd August 1893, claimed as damages.

2. The plaintiff's case was that the defendant entered into a written agreement with him (through his agent) on the 21st July 1893 to purchase a

ship belonging to the plaintiff for Rs. 8,250 that, when Rs. 3,250 of the purchase money had been paid in pursuance of the agreement, the

defendant wrongfully obtained possession of the ship without the agreement being fully completed and carried it away and he claimed the balance

and damages.

3. The facts are that on the 20th July 1893, a written agreement was signed by the defendant to the plaintiff's agent, whereby the price of the

vessel was settled at Rs. 8,250 and it was agreed that the defendant having paid Rs. 701 of the purchase money should pay Rs. 2,549 more in

fifteen days and the agreement continues in these words: ""which being done you shall complete and give in my favour a deed of sale of the said ship

for the abovementioned sum of Rs. 8,250, and a pass for the ship. No sooner

that is done than I shall execute to you also the discount bond for Rs. 5,000, on the security of the said ship, etc."" On the 30th July, the defendant paid the Rs. 2,549 and gave the plaintiff's agent a draft sale-deed and power, to register the ship in his name, and the plaintiff's agent gave him a signed document containing an acknowledgment of the receipt of that amount and then continuing ""as you have delivered to me this day the sale-deed and the power to transfer to your name having written out the same I shall forward it (the sale-deed) to my principal at Devakottah, obtain his signature thereto, and get in my name the power to transfer the pass of the ship. I shall come to Porto Novo, hand over the said sale-deed and execute in your name the pass of the said ship. At that time I shall receive the chitta in respect of the said ship from the 7th instant; you shall take the ship to Porto Novo for executing repairs."" The ship was accordingly, handed over to the defendant to take to Porto Novo to be repaired and he took her there, and thence to the mouth of the Coleroon which belongs to that port and where vessels of the size of the ship in question are repaired. There the ship sprang a leak and went to pieces about 26th August 1893. The sale-deed had not been executed by the plaintiff, nor was the sale registered when the vessel was destroyed and no executed sale-deed was ever tendered to the defendant.

4. In these circumstances, the Subordinate Judge dismissed the plaintiff's suit.

5. The plaintiff appeals and claims specific performance by the defendant of the agreement. He also appealed on certain questions of fact which it is unnecessary to deal with further than to say that we see no reason to think that the Subordinate Judge was wrong in his findings of fact.

6. The defendant contends that specific performance cannot be granted, because, firstly, the plaintiff did not claim it but only claimed a money payment and damages, whereas the agreement was that on the sale-deed being executed and registered by the plaintiff the defendant was to give a vatta chit for Rs. 5,000 on the risk of the ship; secondly, it was by the agreement a condition precedent that the plaintiff should execute and deliver to the defendant the sale deed of the ship and register the transfer to him which was never done; and, thirdly, there can be no equitable ownership in a ship apart from the legal ownership, and Courts of Equity will not grant specific performance of an agreement for, the sale of a ship, and he

quoted in support of this proposition the judgment of WOOD, V.C. in the Liverpool Borough Bank v. Turner 29 L.J. Ch. 827 where it is laid down that, since the passing of the Merchant Shipping Act, 17 and 18 Vict., c. 104, the only ownership in a vessel that can be created either in law or in equity is when the requirements of that Act have been complied with, i.e., a sale-deed has been executed and the transfer has been registered, and in which ease specific performance was refused. This case was followed by the Merchant Shipping Act Amendment Act, 25 and 26 Vict., c. 63, which by Section 3 says that certain equities may be enforced and it was argued by the appellant's vakil that the law as to the manner in which valid sales might be made was thereby altered. The case of Ward v. Beck 32 L.J.C.P. 113 however, which discussed this Merchant Shipping Act Amendment Act quotes the judgment of WOOD, V.C. in the above case and approves it, and it must therefore be considered as a binding authority as to the manner in which alone a valid sale of a ship can be effected.

7. For this reason, then, the plaintiff's suit must fail, and we also think that for the other reasons urged by the defendant, the plaintiff cannot succeed in his action. We therefore, dismiss the appeal with costs.