
(1990) 06 MAD CK 0047
In the Madras High Court
Case No : A.S. No. 509 of 1981

R.K. Mohamed Ubaidullah and 3 others APPELLANT
Vs
Hajee C. Abdul Wahab and another RESPONDENT

Date of Decision : 14-06-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
General Clauses Act, 1897 — Section 3(22)
Specific Relief Act, 1963 — Section 16, 16(c), 19, 19(a), 27

Citation : (1990) 06 MAD CK 0047

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : R. Balasubramanian, K.N. Basha and K. Jagannathan, for the Appellant; T.R. Rajagopalan, V. Gunasekharan and N. Subbarayalu, for the Respondent

Judgement

K.M. Natarajan, J.—This appeal is filed by defendants 2 to 5 in O.S. No. 241 of 1971 on the file of the Principal Subordinate Judge, Vellore challenging the decree and judgment passed in the said suit for specific performance of agreement directing defendants 1 to 5 to execute sale deed and deliver possession of the property, etc. The case of the first respondent-plaintiff is briefly as follows: The suit property and its adjoining property originally belonged to the first defendant, her brothers and other members of her family. By virtue of a registered partition deed dated 1-7-1955 the suit property among other items was allotted to the share of the first defendant. The plaintiff is a hardware merchant and he has been carrying on business in door No. 39, Long Bazaar, Vellore, an adjoining property belonging to the brother of the first defendant. The plaintiff is also occupying the suit property as a tenant under the first defendant from the year 1962 on a monthly rent of Rs. 200. Defendants 2 to 4 and the husband of the 5th defendant are brothers and they are also hardware merchants carrying on similar business of the plaintiff in the adjoining shop. They are also residing near the house of the plaintiff. Defendants 2 to 5 are inimically

disposed of towards the plaintiff, since they failed in the prior litigation conducted by defendants 2 to 4 and the husband of the fifth defendant in the name of Kamarunnisa Bi, who is the wife of the second defendant. It is the further case of the plaintiff that the first defendant intimated to him that she proposed to sell the suit property and requested the plaintiff to permit the intending purchasers and brokers to inspect the suit property on her behalf. An invitation was also extended by the first defendant to the plaintiff to purchase the property. Yusuf Sheriff, the sister's husband of the first defendant, who is interested in her affairs, was taking an important part in the transaction on her behalf. The plaintiff, immediately on coming to know of the proposal of the first defendant to sell the property, sent the letter dated 8-1-1971 to the first defendant through Yusuf Sheriff to the effect that he is interested in the purchase of the suit property if the price is reasonable and is within his means. In July 1971 one Thangavelu Chettiar, broker of the first defendant, inspected the suit property on her behalf and informed the plaintiff that the first defendant was prepared to sell the property to the plaintiff and that he could meet her for the purpose of selling the transaction.

2. The plaintiff and his son went to the house of the first defendant at Madras and negotiated for the sale. The first defendant agreed to convey the property to the plaintiff for a sum of Rs. 55,000. She also executed the suit agreement on 27-7-1971 agreeing to sell the suit property to the plaintiff for Rs. 55,000 and received an advance of Rs. 10,000. She further agreed to receive the balance and execute the sale deed within 90 days and register at the expenses of the plaintiff. Yusuf Sheriff and the son-in-law of the plaintiff attested the said document.

3. The plaintiff made all arrangements to pay the balance of sale consideration and was ready for execution of the sale deed. He was always ready and willing to perform his part of the contract and obtain the sale deed by paying the balance of the sale price.

4. It is only the first defendant and Yusuf Sheriff requested the plaintiff to postpone the execution of the sale deed on several occasions in spite of the fact that the plaintiff requested them to complete the contract.

5. While so on 17-9-1971 Yusuf Sheriff informed the plaintiff by phone that the first defendant was not prepared to execute the sale deed and perform her part of the contract. The plaintiff thereupon issued a notice to the first defendant through his counsel setting out the entire facts to receive the balance of sale consideration and act according to the terms. The first defendant did not send any reply. The plaintiff's son contacted the first defendant and Yusuf Sheriff with a draft sale deed. He was informed that they would come to Vellore before 16-10-1971 and execute the sale deed. On 16-10-1971, the plaintiff's counsel received a notice from Mr. Parameswaran, Advocate, Madras, to the effect that because the plaintiff issued a notice before the expiry of 90 days fixed under the agreement, she cancelled the contract and was returning the advance received

by means of a draft drawn on the Syndicate Bank. The notice as well as the enclosure, namely, Draft sent by the first defendant and the draft sale deed were returned as refused on 1-11-1971. The plaintiff did not accept the repudiation of the contract. But, he insisted the first defendant to approve the draft sale deed sent to him along with the reply notice dated 17-9-1971 and also asked her to take back the draft sent by her. The Draft was also enclosed with the reply notice sent by the plaintiff. The plaintiff sent a copy of the reply notice to the advocate Thiru Parameswaran. They were duly received by the first defendant and her counsel. To avoid further complications, the plaintiff's son went to Madras with necessary funds and draft sale deed and called upon the first defendant to execute the sale deed. At that time the first defendant and Yusuf Sheriff requested the plaintiff to wait for some time since the daughter of Yusuf Sheriff was hospitalised and the advocate engaged by them had no time. In view of the above representation, the plaintiff waited on the bona fide belief that the first defendant would execute the sale deed. But, on the other hand, the first defendant sent a notice through her lawyer on or about 30-10-1971 to the effect that the first defendant would not execute the sale deed. The notice sent along with the Draft and the draft sale deed were returned as refused to the plaintiff's counsel on 1-11-1971.

6. It is stated by the plaintiff that the first defendant has no right to repudiate the contract and her refusal to perform her part of the agreement is illegal. Hence the plaintiff is entitled to get the sale deed executed by the first defendant and also formal delivery of possession as the plaintiff is in possession of the property as tenant already. While the correspondences are pending, the first defendant, Yusuf Sheriff, defendants 2 to 4 and Habibulla, husband of the fifth defendant, brought about a sale deed executed and registered on 9-11-1971 for Rs. 50,000. It is stated that defendants 2 to 5 have prior knowledge of the agreement dated 27-7-1971 in favour of the plaintiff. Defendants 2 to 5 had full information through Yusuf Sheriff and Thangavelu Chetty, their broker, of the prior agreement in favour of the plaintiff, before the alleged agreement and the alleged loan (sic) on 9-11-1971. The execution of the sale deed by the first defendant in favour of defendants 2 to 5 is a collusive one. Defendants 2 to 5 did not advance any loan to the first defendant as alleged. The transaction between the first defendant and defendants 2 to 5 is null and void as it is in violation of her obligation to perform her part of the agreement. It was executed in order to defeat the rights of the plaintiff. It is not a bonafide one. Defendants 2 to 5 along with the first defendant are also bound to execute a registered sale deed in favour of the plaintiff. Hence the suit. The plaintiff is also entitled to compensation since the plaintiff has parted with Rs. 10,000 towards advance and for purchase of stamp papers. As no sale deed was executed in favour of the plaintiff and as legal right is vested in him, the plaintiff is obliged to pay Rs. 200 per month as rent till the date of the execution of the sale deed. Hence the defendants are bound to pay additional compensation due to the plaintiff.

7. The said suit was resisted by the defendants and in the written statement filed

by the first defendant it is averred that the plaintiff is not ready and willing to purchase the property within the specified period of 90 days and she also raised various other contentions. But, it has to be noted that the defence taken by the first defendant was struck off as per order on I.A. No. 1050 of 1973.

8. Defendants 2 to 4 filed a separate written statement wherein it is averred as follows: The plaintiff is put to strict proof of everyone of the allegations in the plaint with regard to the execution of the suit agreement. They contend that they are bonafide purchasers of the suit property without notice of the agreement of sale in favour of the plaintiff. They were totally unaware of the suit agreement. The allegations contra stated in the plaint are all not true. Thangavelu Chetty is not the broker of these defendants. Yusuf Sheriff also did not inform anything about the existence of suit agreement. Some time towards the end of October 1971, when defendants 2 to 4 approached the first defendant at Madras to buy the suit property, they sought the permission of the plaintiff who was in the shop to inspect the godown informing him of their intention to buy the property and the plaintiff did not inform defendants 2 to 4 of any agreement in his favour. But, on the other band, he allowed the defendants to inspect the suit property. The first defendant also did not inform of the agreement of sale in favour of the plaintiff. It is only after the sale in favour of defendants 2 to 4, when they demanded the plaintiff to pay rent for his occupation, they were informed of such agreement through the reply sent by the plaintiff. As the first defendant was keen on disposing of her property at Vellore fearing the imposition of urban land tax, they without knowledge of the prior agreement, bargained with the first defendant and purchased the property for Rs. 50,000. After having seen that defendants 2 to 4 purchased the suit property, the plaintiff is now attempting to get at the suit property. Hence the plaintiff is not entitled either to the main relief of specific performance or the other relief of compensation. Further, they are taking steps under the Building Lease and Rent Control Act for taking possession of the property, as the plaintiff is still in occupation of the property. The plaintiff's claim for compensation is in the nature of damages and his claim for damages under O.20, R. 12, C.P.C., is not sustainable in law. Hence they prayed for dismissal of the suit.

9. The fifth defendant remained ex-parte.

10. The trial court framed as many as 8 issues. On the side of the plaintiff, he examined himself as P.W.1 and examined two other witnesses, P.Ws.2 and 3. Exs.A1 to A20 were marked. On the side of the defendants, defendants 2 and 3 were examined as D.Ws. 1 and 2 and another witness was examined as D.W.3 who is the husband of 5th defendant and Exs B1 and B2 are marked. The trial court for the reasons assigned in its judgment found issues 1 to 4 in favour of the plaintiff and against the defendants holding that the plaintiff has always been ready and willing to perform his part of the contract, that the plaintiff never put the agreement to an end, that time was not the essence of the contract and that the suit agreement was subsisting for the plaintiff to specifically enforce it. Under

issue 5 it was held that defendants 2 to 5 are not entitled to claim title to the suit property on the ground that they are bonafide purchasers for value without notice of the agreement. Under issue 6 it was held that until the plaintiff acquires title by means of a document, he is not entitled to seek for a decree for mesne profits or damages. Since no arguments were advanced on issue No. 7 viz. Whether the plaintiff will not be entitled to the relief of specific performance for the reasons stated in paragraph 12 of the first defendant's written statement, the said issue was found against defendants 2 to 4. Consequently, in view of the findings on issues 1 to 7 the trial court granted a decree for specific performance of agreement in favour of the plaintiff directing the defendants 1 to 5 to execute and register the sale deed in respect of the suit property at the plaintiff's expenses after receiving the balance of sale consideration of Rs. 45,000 now deposited in court. Defendants 1 to 5 were directed to deliver formal possession of the property. The first defendant was also directed to pay Rs. 500 as compensation. Defendants 1 to 5 were also directed to pay costs of suit while the other claim made by the plaintiff was dismissed. Aggrieved by the same, defendants 2 to 5 have preferred the appeal. The plaintiff has filed the memorandum of cross-objections against the decree not granting compensation.

11. Learned counsel for the appellants, Mr. R. Balasubramanian, took us through the recorded evidence and the other materials and the judgment of the court below and made various submissions. According to the learned counsel, even though the written statement filed by the first defendant was struck off, in view of his failure to answer the interrogatories, yet the plaintiff must establish that he was always ready and willing to perform his part of the contract from the date of the agreement till the date of the execution and in the instant case, such an ingredient is lacking and the learned Subordinate Judge has not appreciated the same and on that ground alone, the suit is liable to be dismissed. Next he would submit that part of the stamp papers were purchased on 20-9-1971 and the balance was purchased on 20-10-1971 and 26-10-1971 while the evidence of P.W.2, son of the plaintiff is that he went to the house of the first defendant along with the stamp papers Ex.A13 in the month of September, 1971 and the said statement is proved to be false. Further in Ex.A2 notice which is dated 17-10-1971 the plaintiff has stated that the plaintiff was ready with the necessary stamp papers for engrossing the document which also on the face of it is proved to be false and since the relief prayed for is an equitable relief, the plaintiff is not entitled to the relief of specific performance.

12. It is also submitted by the learned counsel for the appellants that in para 6 of the plaint it is stated that since the first defendant did not reply, the plaintiff's son with a draft sale deed contacted the first defendant and Yusuf Sheriff and that he was informed that the first defendant and Yusuf Sheriff would come to Vellore and execute the sale deed before 16-10-1971, while in Ex.A2 notice which is dated 17-10-1971 it is stated that a draft sale deed is enclosed. According to the learned counsel, the said statements are mutually contradictory. It is also submitted that it is seen from Ex.A2 notice that after Ex.A3 agreement

the plaintiff was factually ready only on 24-8-1971 and not on 16-8-1971 as alleged in the earlier notice and in view of this, the plaintiff is not entitled to the relief. It is also submitted by the learned counsel that along with the reply notice Ex.A9 the first defendant has returned the advance amount of Rs.10,000 by way of Draft drawn on the Syndicate Bank dated 14-10-1971 and the plaintiff has filed the Draft only along with the plaint and till then, he did not return the same. Hence the plaintiff is deemed to have waived his right under the contract. The learned counsel for the appellants also submitted that the court below has not appreciated the contention that the appellants were not informed of the earlier agreement and the finding of the lower court in this regard that the appellants are not bonafide purchasers for valuable consideration without notice of the earlier agreement is not sustainable. Lastly it is submitted that there is no privity of contract and the appellants are not liable to pay any compensation as claimed in the cross-objection.

13. Per contra, the learned counsel for the first respondent-plaintiff, Mr. T.R Rajagopalan, submitted that there is no dispute with regard to the execution of the suit agreement in favour of the plaintiff by the first defendant on 27-7-1971 and the receipt of advance of Rs. 10,000 and that the balance is to be paid within 90 days. According to the learned counsel, the plaintiff has been ready and willing to perform his part of the contract and it has been established by documentary evidence and oral evidence and that there is no merit in the submission that the suit agreement is not subsisting for the plaintiff to specifically enforce it. The court below considered issue No. 5 whether the appellants are bonafide purchasers of the suit property in a proper perspective and rendered correct finding after taking into consideration all the circumstances and probabilities and also the documentary and oral evidence and that there is absolutely nothing to interfere with the same. In this connection, he took us through the documentary and oral evidence and also case-laws regarding the burden of proof of ownership of the property which has not been discharged by the appellants. It is also submitted by the learned counsel that there are no materials whatsoever for holding that the plaintiff is a liar and that he is guilty of putting up false claim. As regards the purchase of stamp papers and the readiness of the plaintiff, he is consistent in his evidence. The mere fact that his son P.W.2 has stated that he went to the house of the first defendant along with stamp papers by the end of September, 1971, would not mean that the entire case of the plaintiff is to be thrown away on the ground that he has put up a false case. There is no inconsistency or false version with regard to the material aspects in this case and in any event, there is nothing to hold that the plaintiff is a liar so as to disentitle him to get the relief of specific performance. As regards the cross-objections, it is stated that since the first defendant against whom the decree for damages has been granted has not filed an appeal, the cross objection is not maintainable. Learned counsel for the first respondent submitted that the claim is as against the legal representatives of a deceased defendant. The learned counsel has not seriously disputed the proposition that damages can be

awarded only against the person who is a party to the contract and not against the subsequent transferee.

14. The points that arise for determination in this appeal are:

1. Whether the plaintiff was ready and willing to perform his part of the contract so as to entitle him to obtain a decree for specific performance.
2. Whether the plaintiff was guilty of putting up false claim so as to disentitle him to the relief of specific performance?
3. Whether the finding of the trial court that the appellants are not bona fide purchasers for value without notice is sustainable?
4. Whether the plaintiff is entitled to the relief of damages against the appellants who are the subsequent transferees of the first defendant?

15. Point I: At the outset it is to be noted that these appellants, who are defendants 2 to 5 have not raised the specific plea in the written statement that the plaintiff was never ready and willing to perform his part of the agreement. It is only the first defendant who raised the plea and her defence has been struck off as per order passed in I.A. No. 1050 of 1973 since she refused to answer the interrogatories and obey the orders of the court. Even otherwise we find in the instant case that the suit agreement Ex.A-3, which is admitted by the first defendant is dated 27-7-1971.

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[Discussion on Facts omitted?After referring to the notices issued on behalf of Plaintiff namely, Exs.A1 dt. 19-9-1971 and A2. dt. 17-10-1971, the learned Judge proceeded: Ed.]

15a. In support of the said allegation, the plaintiff examined himself as P.W.1, his son as P.W.2 and also the scribe as P.W.3 and marked Exs.A1 and A2, notices, A4 to A8 trunk call bills, A12, draft sale deed and A13 Non-Judicial Stamp papers of the value of Rs. 4,925 purchased on 20-9-1971. These documentary and oral evidence clearly establishes that the plaintiff was always ready and willing to perform his part of the contract, that the first defendant has no right to unilaterally cancel the agreement and that the contract was subsisting when the suit was filed. The mere fact that the plaintiff filed the Draft sent by the first defendant towards refund of the advance amount, into court along with the plaint and had not returned the same to the first defendant will not mean that the plaintiff has abandoned or waived the contract. As rightly observed by the learned counsel for the first respondent, such plea was not taken earlier. Even otherwise, in view of the exchange of various notices between the parties wherein the plaintiff insisted the first defendant to come and execute the sale deed and also receive the money and she has mentioned about the non-acceptance of the Bank Draft towards the refund of advance, it cannot be said that there was any waiver or abandonment of the contract as alleged. In H.G.

Krishna Reddy & Co. v. M.M. Thimmiah AIR 1983 Mad 169=96 L.W. 88, it was held that?

S. 16(c) of the Specific Relief Act 1963 is prohibitory and a specific performance of a contract cannot be granted in favour of a person unless he avers and prove his readiness and willingness to perform his part of the contract. That being the nature of the statute, it would be the duty of the court to see whether the person who seeks to enforce the contract satisfies the mandatory provisions of S. 16 of the said Act. If the conditions are not satisfied, the court is bound to dismiss the suit.

The said proposition of law is not disputed. In the instant case, as already observed, the plaintiff has not only gone into the witness box but also adduced oral and documentary evidence and has proved his readiness and willingness to perform his part of the contract and that he has averred to that effect in the plaint and in the notice. In view of the above discussion, this point is found in favour of the first respondent and against the appellants.

16. Point 2: The learned counsel for the appellants mainly submitted that the version of the plaintiff regarding the purchase of stamp papers is proved to be false and consequently the version of the plaintiff that he was always ready and willing to perform his part of the contract is false and on that ground also the relief of specific performance cannot be granted. It is seen that Ex.A13 is Non-Judicial Stamp papers, of which 9 stamp papers of the value of Rs. 2,945 were purchased on 20-9-1971 in the name of the plaintiff. Rs. 2,000 on 20-10-1971 in the name of the plaintiff's son and Rs. 280 on 26-10-1971 in the name of the plaintiff. The learned counsel for the appellants mainly relied on the evidence of P.W.2 wherein he has stated that towards the end of September he came along with Ex.A13 stamp papers to the house of the first defendant along with the scribe and demanded the first defendant to agree for execution of the sale deed. The fact that he purchased a major portion of the stamp papers even prior to his coming to the house of the first defendant is very clear and the mere fact that the balance of stamp papers were purchased after some time would not mean that he is a liar. Even otherwise, the evidence of P.W.2 in this regard does not in any way affect the case of the plaintiff as there is absolutely nothing to show that the plaintiff had made any false version with regard to vital aspects of the case. Even in Ex.A2 which is dated 17-10-1971 it is only stated that the plaintiff is purchasing the necessary stamp papers for engrossing the document. In evidence he has not stated anything as to when the stamp papers were purchased. He would only state that as per Ex.A3, stamp papers were purchased for engrossing the sale deed. The version of either P.W.1 or P.W.2 has not been challenged as false in cross-examination. Therefore, it cannot be said that the plaintiff has come forward with false version to obtain the relief of specific performance. We have already held that the plaintiff has established satisfactorily that he has been ready and willing to perform his part of the contract and that it is only the first defendant who has committed the breach of the contract by

repudiating the sale within the time and executed a sale deed in favour of defendants 2 to 5. The decision relied on by the learned counsel for the appellants in *Ramaswamy Gounder v. Venkatachalam* 1976-1-M.L.J. 243, is not at all helpful to the case of the appellants, as that was a case where Ismail, J. (as he then was) found that the plaintiff who had filed the suit for specific performance of an agreement made false allegations in each and every item of vital aspects, namely, tendering the entire balance amount, calling upon the other defendants to be present at the Sub-Registrar's Office for the purpose of executing the sale deed and purchasing the stamp papers. The plaintiff was proved to be an absolute liar as he has gone to deny his own averments in the plaint. That is not the case here. The mere fact that a portion of the stamp papers were purchased later after meeting the first defendant and before filing of the suit would not in any way mean that the plaintiff is a liar and he has come forward with a false case so as to disentitle him to obtain the relief of specific performance. We do not find any merit in the said contention and the said contention fails. On the facts of the case *Ramaswamy Gounder Case* 1976-1-M.L.J. 243, the learned Judge held that the falsity of the case put forward by the plaintiff disentitled him from obtaining the discretionary relief of specific performance of agreement, relying on the earlier Division Bench case in *Sririgneedi Subbarayudu v. Kopauthi Tatayya and others* 1937 M.W.N. 1158, where it was held that a plaintiff who is capable of setting up a false case cannot expect a Court of equity to grant him relief. Hence, in the circumstances of this case, it cannot be held that the plaintiff was guilty of putting up false claim so as to disentitle him to the relief of specific performance.

17. Point 3: The learned counsel for the appellants submitted that the mere fact that the defendants are the neighbours of the plaintiff both in respect of residential and non-residential premises, it cannot be said that the appellants had notice of the prior agreement of sale in favour of the plaintiff and that the finding of the court below that the appellants had notice and that they are not bonafide purchaser is not tenable. It is worthwhile to quote the relevant case-laws with regard to the burden of proof of bonafide purchase for valuable consideration without notice of prior agreement, before ever considering the respective arguments advanced on both sides and the finding of the lower court. In AIR 1934 68 (Privy Council) Their Lordships of the Privy Council held as follows:?

S. 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and therefore it is for the transferee to establish the circumstances which will allow him to retain the benefit of a transfer which prima facie, he had no right to get.

The above view was followed in *Veeramalai v. Thadikara* AIR 1968 Mad. 383=81 L.W. 90, where their lordships relied on the decisions in *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*, . M.R.P. *Yella Reddi v. Subbi Reddi* 67

L.W. 1057=1954-II-M.L.J. Andh. 6=A.I.R. 1954 Andh. 20, and Parvathammal v. Sivasankara Bhattar 64 L.W. 759=1951-II-M.L.J. 191=A.I.R. 1952 Mad. 265, and held as follows:

It only shows that the learned Judge has not carefully looked into the decisions referred to in his judgment. He says that no enquiry is necessary by the subsequent purchaser regarding the rights of the person who is already in possession, once it is found that that person originally got into possession as a lessee under the vendor. In other words, the learned judge holds that if the subsequent purchaser know that at some earlier point of time the person who relied upon the prior agreement of sale was already in possession as a lessee, the subsequent purchaser Deed not make any enquiry as to whether the lessee was continuing in possession only as a lessee or in the assertion of any other right. It is this identical point which has been considered by the leading decisions in England and in India and the view has been uniformly taken in all the cases that it is the duty of the subsequent purchaser to enquire (of) the person in possession as to the precise character in which he was in possession at the time when the subsequent sale transaction was entered into. In Parvathammal v. Sivasankara Bhattar 64 L.W. 759=1951-II-M.L.J. 191=A.I.R. 1952 Mad. 265, a usufructuary mortgage was in possession of the property and an agreement of sale was entered into by the mortgagor to sell the property to the usufructuary mortgagee in satisfaction of the mortgage and also for payment of some additional consideration. The contesting defendant was the subsequent purchaser and it was admitted that the latter did not make any enquiries of the usufructuary mortgagee in order to ascertain from him whether he had any rights in the property other than as usufructuary mortgagee. This identical argument which was accepted by the trial Court in the instant case was advanced that once it was known that the property was in the possession of a usufructuary mortgagee, there was nothing further that a prospective purchaser of the property need have enquired about. This argument was rejected in unambiguous terms. The learned Judge has referred to all the leading decisions and in particular had extracted the following statement of the law in Barnhart v. Greenshields 1853-14-E.R. 204 at 209, with respect to the effect of possession merely we take the law to be that if there be a tenant in possession of land, a purchaser is bound by all the equities which the tenant could enforce against the vendor and that the equity of the tenant extends not only to interests connected with his tenancy as in Taylor v. Stibbert 1794-2 Ves Jr. 437, but also to interest under collateral agreement, as in Daniels v. Davison 1809-16 Ves Jun 249 at 254, Allen v. Anthony 1816-1 Mer 282. the principle being the same in both classes of cases, namely, that the possession of the tenant is notice that he has some interest in the lands, and that a purchaser having notice of that fact, is bound, according to the ordinary rule, either to enquire what that interest is, or to give effect to it, whatever it may be.? M.R.P. Yella Reddi v. Subbi Reddi 67 L.W. 1057=1954-II-M.L.J. Andh. 6=A.I.R. 1954 Andh. 20, was a case in which the person in whose favour a prior agreement of sale was entered into was

already in possession as a lessee but the property was subsequently sold to the contesting defendant. There too the same argument was advanced, that in view of the character of the plaintiff's possession at its inception as a tenant, there was no duty cast upon the subsequent purchaser to make any further enquiry. This argument was not accepted. As this decision reviews the relevant cases on the topic, it is unnecessary to burden this judgment by referring to all the cases. Reference may, however, be made to the following observations of the Lord Chancellor in the leading decision which has been followed in all subsequent cases in *Daniels v. Davison* 1809-16 Ves Jun 249 at 254, where there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession ... that a tenant being in possession under a lease with an agreement in his pocket to become the purchaser, these circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no enquiry as to the nature of his possession. Vide also 34 Halsbury's Laws of England, page 366. para 644, and 14 Halsbury's Laws of England, page 546, para 1024. For all these reasons it has to be held that the defendants have failed to satisfy both the limbs of S. 27(b) of the Specific Relief Act, (1) they have not paid the money and (2) they are not transferees in good faith and without knowledge of the prior agreement of sale. The plaintiff will be entitled to a decree for specific performance as against defendants 2 to 5 and 7 The sale deed to be executed by them shall be on the lines indicated in the decision of the Supreme Court in *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*, .

The above decision was rendered under S. 27 of the old Specific Relief Act which is corresponding to S. 19(a) of the present Specific Relief Act. *Arunachala Thevar v. Govindarajan Chettiar* 90 L.W. 543=1976-II-M.L.J. 431, a Division Bench of this Court considered the meaning of "good faith" as defined in S. 3(22) of the General Clauses Act, 1897 and observed in para 14 as follows:

14. What is good faith ;?

The expression "good faith" is not defined in the Act. S. 3(22) of the General Clauses Act, 1897 defines "good faith" thus :

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

Though the original Specific Relief Act, 1877 (which has now been renumbered as the 1963 Act) was passed earlier in point of time to the General Clauses Act and as such the definition in the General Clauses Act would not expressly be applicable to the terms used in the Specific Relief Act, there are several judicial authorities which have applied the definitions in the General Clauses Act to the Specific Relief Act on the ground of equity and good conscience. The question of good faith is necessarily a question of fact. The test to be applied to find out whether there is good faith or not is to see whether the person "concerned has acted honestly or not. In short the essence of "good faith" is the honesty of

intention. Whether a purchaser has or has not acted in good faith is a question of fact, which has to be determined from the materials placed and the surrounding circumstances appearing in the case.

18. Now let us consider whether defendants 2 to 5 had prior notice of the suit agreement in favour of the plaintiff. It is to be noted that defendants 2 to 4 are brothers. The fifth defendant is the wife of the brother of defendants 2 to 4. Admittedly defendants 2 to 4 are carrying on business at door No. 38, Long Bazaar Street. Vellore, under a registered partnership firm which is adjacent to the suit property as well as the premises where the plaintiff was carrying on business in the same hardware.

X X X

[Discussion of Facts omitted--Ed.]

18a. It is seen from Ex.A4 to A8 which are trunk-call bills issued by the Postal Department to the plaintiff for the period from 16-7-1971 to 15-8-1971 that the plaintiff has booked number of trunk-calls to phone No. 811323 the residential phone number of the husband of the first defendant and also to phone No. 82537 which is the phone number of the beedi factory of the husband of the first defendant.

18b. Therefore, from the circumstances of the case and the various answers elicited in cross-examination of D.Ws.1 to 3, it is clear that it is only after they came to know of the agreement Ex.A3 through phone call, they approached the first defendant and her husband and managed to obtain the sale deed in their favour. Thus from the evidence of P.W.1 which is corroborated by the evidence of P.W.2 and from Ex.A4 to A8 and the admission of D.Ws. 1 and 2 in their evidence, it is clear that defendants 2 to 5 had knowledge of the agreement Ex.A3 before they purchased the property under Ex.B1.

19. Yet another clinching circumstance in this case is that there has been no good faith on the part of defendants 2 to 5 in purchasing the property. It is admitted by the defendants that the plaintiff is in possession of the suit property at least for about 20 years and that they are aware of the same. As laid down in the decision in *Veeramalai v. Thadikara* AIR 1968 Mad. 383=81 L.W. 90, in a case where any person in whose favour an agreement of sale was executed, was in possession of the property on the date when the same was sold, it is the duty of the subsequent purchaser to enquire the person in possession as to the precise character in which he was in possession at the time when the subsequent sale transaction was entered into and if the subsequent purchaser failed to discharge it he cannot be deemed to have purchased the property in good faith. The argument that they knew of the character of the plaintiff's possession at its inception as a tenant there was no duty cast upon the subsequent purchaser to make any further enquiry was not accepted by their lordships in *M.R.P. Yella Reddi* case 67 L.W. 1057=A.I.R. 1954 Andhra 20=1954- 2-M.L.J. Andhra 6, and it was followed by the division bench of this court in *Veeramalai* case 81 L.W.

90=A.I.R. 1968 Mad. 383. In the instant case, attempt has been made on behalf of defendants 2 to 5 to show that they approached the plaintiff before purchasing the property and inspected the suit property. But that has been proved to be false. As per the recitals in the written statement, defendants 2 to 5 themselves sought the permission of the plaintiff to inspect the godown and informed him of their intention to purchase the same. But, they have given a go by to the same as none of the witnesses D.Ws.1 to 3 examined on their side, has made any whisper of such a contact with the plaintiff. When D.W.1 was confronted in cross-examination whether defendants 2 to 5 themselves approached the plaintiff for inspection of the suit property, he answered in the negative stating that he sent only his clerk for the said purpose. But, when he was further questioned, he was not able to give the name of the clerk who was alleged to have been deputed to contact the plaintiff for inspecting the suit property. D.W.2 pleaded ignorance relating to the purchase of the suit property stating that they entrusted the work only to D.W.3. D.W.3 has not stated anything in chief examination that he contacted the plaintiff before he went to Madras for the purchase of the property under Ex.B1. Admittedly there were prior court proceedings between the plaintiff and the second defendant and his wife in respect of purchase of another property and finally it ended in favour of the plaintiff as is evidenced from Ex.A14 which relates to the year 1965. Those proceedings were also admitted by the defendants and it is the case of the plaintiff that they were not on talking terms for the past 15 years. In view of the prior proceedings, the version of defendants 2 to 5 that they approached the plaintiff for the purpose of inspection of the suit premises some where in November, 1971 is also not probable. Further, as the plaintiff had the agreement of sale in the month of July 1971 and issued notice to the first defendant and had taken all steps to obtain the sale deed in pursuance of the agreement, it is too much to say that he did not inform the defendants of the agreement of sale in his favour and allowed him to inspect the suit premises. Therefore, it is clear that defendants 2 to 5, though were fully aware that the plaintiff is in possession of the suit property for about 20 years, did not make any enquiry regarding the character of the possession of the plaintiff of the suit property and as such, it cannot be said that they purchased the property in good faith. As held in the decision in *M.R.P. Yella Reddi v. Subbl Reddi* 67 L.W. 1057=A.I.R. 1954 Andhra 20=1954-2-M.L.J. Andhra 6, which was affirmed by a Division Bench of this court in *Veeramalai v. Thadikara* 81 L.W. 90=A.I.R. 1968 Mad. 383, when a person purchases property from the owner knowing that it is in the possession of another, he is under a duty to enquire into the nature of that possession and in the absence of such enquiry knowledge of the title under which possession is held should be attributed to the purchaser. It is to give effect to this statement of law that the amending Act 21 of 1929 of the Transfer of Property Act introducing Explanation II was enacted. It is thus clear that the doctrine of notice cannot be confined to actual notice but applies to constructive notice as well. In the instant case, defendants 2 to 5 did not admittedly obtain any encumbrance certificate nor any prior document of title in support of Ex.B1. Hence for the various reasons and circumstances discussed above, we have no

hesitation in holding that since defendants 2 to 5 failed to establish that before they purchased the property, they made enquiry of the plaintiff even though they had notice of the agreement in favour of the plaintiff, they are not bonafide purchasers for value without notice of the suit agreement of sale. Hence, we find this point against the appellant.

20. Point 4: Now, as regards the cross-objections filed by the first defendant, it is seen that the first respondent, against whom a compensation of Rs. 500 was awarded, did not prefer an appeal. Hence the question of filing cross-objections regarding compensation claimed by the plaintiff does not arise. The plaintiff has not filed any appeal against the order disallowing compensation so far as defendants 2 to 5 are concerned. In this connection, the learned counsel for the appellants drew our attention to the decision in *Jhandoo and Another Vs. Ramesh Chandra and Others*, where it is held: It seems to me to be obvious that this part of S.19 comes into play only when there is privity of contract between a party against which an order for compensation in lieu of damages for breach of contract can be passed. In fact the compensation here spoken of is really the damage incurred by a party because the other contracting party has broken it. It follows that it should be awarded only against the party which has broken it. A third party, which has not broken the contract, may place itself in such a position that the contract may be specifically enforced against it as though it had entered into the contract. Nevertheless, there is no corresponding provision which would transfer the damages to be paid as compensation for breach of contract from the shoulders of the party actually responsible for the breach on to those of the party which had merely taken the benefit of that breach. To make the subsequent purchasers liable to pay damages or compensation under S. 19 of the Special Relief Act would be nothing short of enforcing a charge upon the property purchased by them. This would, in my opinion, be illegal.

Since defendants 2 to 5 are not parties to the contract and since the plaintiff has not acquired title to the property by a valid document, he is not entitled to ask for a decree for mesne profits and damages as against defendants 2 to 5 who are not parties to the contract and who were the subsequent transferees. Hence the cross-objection is liable to be dismissed.

For all these reasons, we confirm the judgment and decree of the court below and dismiss the appeal with costs. The cross-objections filed by the first respondent is also dismissed with costs.