

(1976) 04 MAD CK 0047

In the Madras High Court

Case No : Appeal No. 622 of 1972 {Against decree of Sub-J., Cuddalore in O.S. No. 65 of 1967}

Sakku Bai Amman

APPELLANT

Vs

R. Babu Reddiar and Others

RESPONDENT

Date of Decision : 01-04-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : AIR 1977 Mad 223 : (1976) ILR (Mad) 317 : (1977) 90 LW 110

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—The plaintiff in O. S. No. 65 of 1967 on the file of the Court of the Subordinate Judge of Cuddalore, is the

appellant. The plaintiff sued for specific performance of an agreement of sale contained in Ex. A-1 dated 10-6-1965. Her case is that the first

defendant, who is the father of defendants 2 to 7, entered into such an agreement of sale to sell the suit properties for a sum and consideration of

Rs. 18,502. Under the said agreement, a sum of Rs. 8,001 was to be paid on the date of the registration of the agreement and the balance to be

paid on the date of the registration of the agreement and the balance to be paid at the time of the registration of the sale deed. A period of two

years for performance of the contract was provided for. The agreement also provided that in default by the first defendant to execute the

agreement in terms thereof, the plaintiff would be entitled to enforce the agreement by a suit and also recover damages from the first defendant.

Expressly it was provided that if the plaintiff committed default, she should forfeit a sum of Rs. 1,000 from the sum of Rs. 8,0001 and the balance

should be paid back by her (him?) with interest to the plaintiff. A separate agreement Ex. A-5 was also entered into almost contemporaneously

with Ex. A-1 with which we are not very much concerned in this case. According to the plaintiff, the first defendant defaulted. After causing the suit

notice Ex. A-6 to be issued to the first defendant and on the first defendant repudiating his obligation under the agreement of sale, the plaintiff came to court.

2. The case of the first defendant is that the properties which are the subject-matter of the agreement of sale are joint family properties of

defendants 1 to 7 and in that sense the agreement entered into by him is not enforceable. He would also contend that much against his wish the

plaintiff incorporated a recital in Ex. A-1 that the properties are his self-acquired properties and also complained that the default clause was

unconscionable and highly onerous. He would throw the blame on the plaintiff as a party, who was initially unwilling to implement the agreement

and would state that the plaintiff has come up with this suit, since the properties have risen considerably in value. Defendants 2, 3 and 6 to 11

adopted the written statement of the first defendant in respect of the nature of the suit properties and they would also add that the agreement is

unenforceable. Defendants 4 and 5 remained ex parte.

3. On the above material pleadings, the following issues were framed.

1. Whether the properties in Schedules A and B of the plaint schedule belong to the joint family of defendant and his sons?

2. Whether the suit agreement is not enforceable for all or for any of the reasons stated by the defendants?

3. Whether the plaintiff is entitled to a decree for declaration of 1st defendant's title to the suit properties?

4. Whether plaintiff is entitled to a decree for specific performance for sale of the A schedule properties and for possession and for a security over

the properties in Schedule B of the plaint schedule as provided in the suit agreement?

5. Whether defendant 2 and 5 are estopped from denying 1st defendant's title to the suit properties?

6. Whether the lease alleged in favour of defendants 8 to 11 is true and valid and binding on plaintiff?

7. Whether defendants 8 to 11 are tenants within the meaning of the Madras Cultivating Tenants Protection Act?

8. Whether in the event of the Court holding that 1st defendant has no title to the suit properties plaintiff is entitled to recover the sum of Rs. 8,001

and interest thereon with a charge on the suit properties and also Rs. 5,000 as damages as claimed in the plaint?

9. To what relief is plaintiff entitled?

4. The learned trial Judge gave a money decree in favour of the plaintiff for a sum of Rs. 8,001 with interest thereon at 6 per cent per annum from

the date of Ex. A-5 till payment and also passed a decree in the sum of Rs. 5,500 by way of damages for breach of the contract committed by the

first defendant. He effectively granted a relief to the plaintiff as desired by her since in this suit itself the plaintiff sought alternative reliefs, either for

specific performance of the contract as provided in Exs. A-1 and A-5 or in the alternative for damages.

5. The suit having been decreed in favour of the plaintiff in so far as the alternative relief was concerned, the plaintiff claims that she is an aggrieved

person and, therefore, has filed the present appeal stating that she ought to have been granted the relief for specific performance of the contract. In

effect, therefore, this appeal is by a party to a litigation, who has succeeded in the trial Court.

6. When the appeal was opened Mr. P.S. Ramachandran, learned counsel for the appellant, after taking us through the relative facts and merits of

the case and particularly, after bringing to out notice the findings rendered by the trial Court in plaintiff's favour in the matter of the breach of the

contract committed by the first defendant, would urge that in the circumstances, the plaintiff is entitled to a decree for specific performance and not

to decree of the alternative relief for damages, which the plaintiff asked for in the action. At this stage he was confronted with the question whether

such an appeal is maintainable at all. It was on this aspect of the case that this court was inclined initially to hear full arguments, and if the appeal is

not competent, it would not be necessary to go into the merits of the case for a reappraisal of the same to find whether the plaintiff would be

entitled to the other relief of specific performance asked for by her. Mr. Venkateswara Rao, learned counsel for the respondents would also urge

that the plaintiff having succeeded in the suit cannot file an appeal against such a judgment and decree, since it would be virtually giving a second

opportunity to the plaintiff to get a relief which she could not get in the trial Court, though she would however, persuade the Court below to accept

the alternative relief sought for by her.

7. We have heard counsel at length. In a civil litigation the plaintiff is the dominus litis and it is for him to patternise his reliefs and ask for them. He

has the liberty or indeed right to seek for more reliefs than one, one being independent of the other. Sometimes a relief asked for him may be a

consequential one to the primary relief asked for by him. There are also cases in which litigants specifically ask for reliefs in the alternative. The

grammatical meaning of the expression "alternative reliefs" is rather clear. Apart from the compelling provisions of certain statutes such as the

Specific Relief Act (Ss. 22 to 24 thereto) and the C.P.C. O. II, R. 2 there are instances where the architect of the litigation himself seeks for

alternative reliefs. In essence, therefore, that litigant would be content, if one or the other of the alternative reliefs asked for by him is granted by

Court. On his own volition, the plaintiff places such alternative reliefs on a par with each other and when he comes to Court with a request that one

or the other of such claims could be granted to him after the cause is fully adjudicated upon. then he makes an election even at the threshold leaving

entirely the grant of one or the other of the reliefs to the Court, who is the ultimate arbiter to decide whether the plaintiff should be granted one or

the other of the alternative reliefs. Reliefs in the nature of alternative reliefs are, therefore, to be treated as reliefs placed in the same plane and

sought for by the plaintiff as reliefs, which have equal force, the grant of one of which would suffice to satisfy the litigant, who has come to Court,

for a relief. Having so elected one of the alternative reliefs could be granted and having got one the plaintiff cannot at any stage later of the suit such

as the appellate stage to approbate and reprobate and seek to resale from it to further his own purpose and intentions. The plaintiff has to make up

his mind, when he comes to Court on the bundle of facts on which the cause of action is based to ask for a specific relief or more than one relief.

Concurrently he can ask for reliefs in the alternative also. If he adopts the last course. then he cannot, after the grant of one such alternative relief to

him complain that is still an aggrieved person who could carry the matter further to the higher hierarchy for the grant of that relief which was not given by the trial Court.

8. In a case where the litigant seeks for such alternative reliefs and obtains one from the trial Court, the question is, whether he could change his mind after having prompted the Court to act in the manner he wanted and pretend as if he is aggrieved or he has a complaint against the judgment of the Court and file an appeal against it. An appeal no doubt is a creature of statute. It is one of the stages in the suit itself. Therefore, even the appellate Court is also bound to look into the pleadings to appreciate and understand the relief which the parties to the litigation wanted from the Courts. Though the word "appeal" has not been iron jacketed in the shape of definition in the CPC, Yet it has been always understood by Courts to mean ""the removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior Court"".

It is also well established that the party appealing must have been adversely affected by any determination made by the trial Court. If, therefore, these are the primary limbs which constitute an appeal in the commonsense point of view, we are of the view that a person, who sought for alternative reliefs, and who obtained one of such reliefs from the trial Court, cannot be said to be a party adversely affected by it, nor is he in a position from any reasonable point of view to take up the decision of the trial Court to the higher Court in appeal for purpose of testing its correctness. What he wanted he got. He wanted one of two things. He got one out of them. But he suddenly changes his mind, wants to prefer an appeal and convince the appellate Court that it would be better if he gets the other relief. This would be giving a licence to litigants to change their boards from time to time according to their conveniences and advantage and press their reliefs by taking matters which are convenient to them, to the higher hierarchy so that they could persuade that higher Court to give them the relief not given by the lower Court and which relief he asked for only in the alternative.

9. Many decisions have been cited by Mr. P.S Ramachandran on the one hand and Mr. Venkateswara Rao on the other But we do not think that on a closer examination of the ratio in each of these cases, a principle that is

now sought to be propounded by Mr. P. S. Ramachandran is to be found in any of those decided cases. He would rely upon the decision in Bank of Behar Ltd. Vs. Madhusudan Lal and Another, . That was a case where a relief was asked for against two defendants. The trial Court granted a relief only against one. The plaintiff appealed against it stating that he was entitled on the merits to a decree against both the defendants. The plea that such an appeal was incompetent was rightly negatived. The plaintiff who is the domineering personality in a litigation, can as we said, ask for more reliefs than one, which are independent of each other. So long as there is no scope for one relief being telescoped with the other or being consequential to the other, they would be considered and treated as independent and separate reliefs. If, therefore, the trial Court grants him one of such separate reliefs, then the plaintiff, in such circumstances, can certainly be considered as an aggrieved person, since he can complain that all the independent reliefs asked for by him have not been granted. This is the principle, which we find in Bank of Behar Ltd. Vs. Madhusudan Lal and Another, .

10. The next decision relied on is Bariar Singh Vs. Durga Gir and Others, . That was again a case where the mortgagor came with a suit for

redemption and prayed for an alternative relief for damages. The latter relief was granted. The Court held that he was not estopped from filing an

appeal for getting a decree for redemption. The facts in that case are found in the head-note.

Where certain holding is sold for default of rent and other charges by the usufructuary mortgagees and was in fact purchased by rehandars

themselves, a subsequent purchaser from rehandars, to whom the original rehan bond was handed over and who could therefore see who was

liable to pay the rent for the default of which the holding had been sold, but who was made no enquiry as to the title of the transferor to the

property in suit, cannot resist the claim of the mortgagor, for redemption of the holding."" In the circumstances of this case, the relief for redemption

is totally separable and distinct from the relief for damages. Though the plaintiff claimed them in the alternative, yet in substance and in effect the

reliefs were treated as independent reliefs. It was, in those circumstances, the Court held that though the plaintiff in that case obtained a relief for

damages which was in the nature of an alternative relief, yet he could seek for a decree for redemption, which was a distinct relief asked for by him.

11. The case under consideration is entirely different.

12. In fact, a Division Bench of the Patna High Court in *Amir Mahton and Others Vs. Sheopujan Missir and Another*, which had occasion to consider the principle behind the proposition that is being argued before us, expressed the view thus:

It is doubtful whether a general rule can be laid down that in all cases where an alternative relief has been granted, the plaintiff has no right of appeal for getting a decree for the other relief which he had claimed in the plaint.

That was a case where a party claimed recovery of possession of rehandar property or in the alternative a mortgage decree by sale of the rehandar property. He was, however, granted a simple money decree. In those circumstances, the Division Bench, having regard to the circumstances of that case said:

It cannot be said that he has succeeded in getting one of the two reliefs which he had claimed, as he had not stated in the plaint that he would be satisfied with a simple money decree. Hence an appeal against the decree lies.

It is, therefore, clear that the Division Bench of the Patna High Court did not lay down as a matter of course that an appeal would lie, even if a

litigant succeeded in securing one of the alternative reliefs asked for by him, in so far as the other relief is concerned. We understand this decision

as to mean that if what was granted to the litigant was totally different from that which he had asked either in the main or in the alternative, then the

appellate Court can competently maintain an appeal against the decree, though the grant prima facie serves the purpose of the plaint. While dealing

with this case, the Division Bench of the Patna High Court in *Reajuddin Patwari and Others Vs. Syed Abdul Jobbar*, there the plaintiff preferred

his cross-objections and his claim therein was that he was entitled to khas possession on the ground that the defendants were trespassers. But in

the alternative he made a claim under the Bengal Tenancy Act for assessment of fair and equitable rent and the trial Court granted him the latter

relief under the Act. But in the cross-objections apparently, the plaintiff wanted the other relief for possession, which he sought for to be granted by

the appellate Court. The Division Bench observed thus:

It seems to me that he is not entitled say that he does not want that alternative relief which has been granted to him, and that he desires to have the

other relief which he claimed by way of ejectment. In effect, the plaintiff expressed that he would be satisfied with either of the two prayers which

he made in his plaint and he succeeded in getting one and, therefore, he has no real cause for complaint.

13. A reference in passing was made by the appellant's counsel to the decision of the Supreme Court in *R.C. Chandiok and Another Vs. Chuni*

Lal Sabharwal and Others, . Far from assisting the plaintiff-appellant, in our view, this decision is against him. The Supreme Court after accepting

the well known propositions to which we shall presently refer observed thus:

It is true that the appellant could not accept satisfaction of the decree of the trial Court and yet prefer an appeal against that decree. That many

well have brought them within the principle that when the plaintiff has elected to proceed in some other manner than for specific performance he

cannot ask for the latter relief. This is what Scrutton, L. J., said in *Dexters Ltd. v. Hill Crest Oil Co. (Bradford) Ltd.*, (1926) 1 KB 348:

So, in my opinion, you cannot take the benefit of a judgment as being good and then appeal against it as being bad.

14. It was further observed:

It startles me to hear it argued that a person can say the judgment is wrong and at the same time accept payment under the judgment as being right.

This illustrates the rule that a party cannot approbate and reprobate at the same time. These propositions are so well known that no possible

exception can be taken to them.

To a query posed by us to Mr. P. S. Ramachandran as to whether his client desires to take the benefit under the decree, he answered in the

affirmative. Therefore, this is a clear case where the plaintiff wants to keep the benefit granted for himself and try, if possible, to challenge the other

portion of the judgment, which is prejudicial to him. This, he cannot. Well known authors, who, while interpreting the significance of alternative

relief have also taken a similar view as that adopted by us. To quote Mulla, 13th Edition, pages 421 and 422:

Where however the plaintiff had sued for alternative reliefs and has been granted relief in respect of one such relief a question as to whether he can

appeal against the decree, which has refused the other relief, the trend of decision is that he cannot appeal.

In the AIR Commentaries on the C.P.C., 7th Edn. Vol. II, page 2296, the authors observed as follows:--

Where the plaintiff asks for one of two alternative reliefs and is granted one, he cannot in appeal contend that he should be given the other relief.

To some extent the ratio in the decision is *Somasundaram Chettiar Vs. Chidambaram Chettiar*, supports our view. There a Division Bench of our

High Court, presided over by Rajamannar C. J., stated thus:

It was open to the respondent to have abandoned his claim for specific performance and to have prayed for the alternative relief only before the

Court below. He certainly had the option of choosing one of the alternative claims. But he was evidently quite satisfied with pressing for the relief of

specific performance and he did obtain that relief. Till his learned counsel began his argument before us there was no mention that the respondent

wanted the alternative relief in lieu of specific performance. No authority was cited to us that the appellate Court is bound to accede to this demand

by the plaintiff even after the decree of the lower Court.

We may add that this was the case in which no alternative prayer was asked for at all.

15. It is, therefore, clear to us that as the choice of the reliefs is always with the plaintiff, who is the dominus litis in a litigation, he could seek for

more than one relief, seek for more than one independent relief or ask for alternative reliefs. If he asks for the last of such reliefs, then he is placing

the reliefs so sought for by him on a par with each other and if the Court trying the subject-matter grants him one relief, then it follows that he as the

benefit of the relief and he cannot throw over board such a benefit with a design or motive or to further his own cause by seeking umbrage in an

appellate Court and ask for the relief not granted to him, which as already stated, he only asked for in the alternative. "Alternative" is an

expression, which indicates a choice of the person and if that choice is exercised by him, then he cannot afterwards blow hot and cold and seek for

relief as he desires by throwing overboard the benefits which he has secured on

a full trial in the trial Court. This would be encouraging, as we said, the whims and fancies of a litigant. We are, therefore, of the view that having regard to the trend of decisions here and elsewhere and on the basic reasonable principle that a man cannot approbate and reprobate, this appeal is not maintainable.

16. In this sense, it is not necessary for us to go into the merits and Mr. Ramachandran has not taken us through such merits as he is also conscious

that it is unnecessary for him to do so, As in our view, the appeal is incompetent, it is dismissed on that ground, but there will be no order as to

costs in this appeal.

17. Appeal dismissed.