

(1969) 07 MAD CK 0001
In the Madras High Court
Case No : S.A. No. 1140 of 1965

S.G. Sivaram

APPELLANT

Vs

S. Thiruvengadam

RESPONDENT

Date of Decision : 16-07-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102
Transfer of Property Act, 1882 — Section 55(6)(b)

Citation : (1969) 07 MAD CK 0001

Hon'ble Judges : Ramamurthi, J

Bench : Single Bench

Advocate : K. Sarvabhauman and R. Nandakumar, for the Appellant; V. Krishnan, for the Respondent

Judgement

Ramamurthi, J.—It is simply startling how on the facts of the case the learned District Judge dismissed the plaintiff's suit, reversing the

decision of the learned District Munsif. The plaintiff entered into an agreement, Ex.A. 1, dated 4th October, 1961 to purchase an immovable

property from the defendant for a sum of Rs. 5,100 and a sum of Rs. 500 was paid on the date of the agreement. The agreement provides that the

sale transaction should be completed by 15th November 1961. The plaintiff gave a notice Ex.A. 4 on 9th November 1961 to the defendant

complaining that the defendant had not given inspection of the important title deeds to satisfy the plaintiff that the defendant has title to convey. But

this notice was returned unserved with the endorsement that in the address of the letter the defendant was described as a mirasdar and a nice mill

owner and that the defendant was neither a mirasdar nor a mill owner. Thereupon the plaintiff filed the suit on 26th November 1961 for recovery

of the sum of Rs. 500 the portion of the principal purchase price. The learned District Munsif found that the original title deed by which the defendant's father acquired the property as well as a will by the father, which are the crucial documents to prove that the defendant has title to the property, was not given to the plaintiff for inspection. What the defendant gave inspection of were two documents, Ex. A. 2 and A. 3. Ex. A. 3 is a document by which the defendant and his mother conveyed the suit property to one Kamalatchi Ammal. Ex. A. 3 is of the year 1959. Ex. A. 2 is of the year 1960 by which Kamalatchi Ammal executed a deed of release purporting to reconvey the property back to the defendant and his mother. The defendant has admitted in his evidence that he did not give inspection of the original title deeds, the sale deed in favour of his father and the will by the latter. There is the further fact that the two title deeds Ex.A. 2 and A.3 which were shown to the plaintiff, far from establishing the title of the defendant throw considerable doubt about his title, because as today Ex.A. 2 indicates that the property belongs to the defendant and his mother. Under these circumstances, it is clear that the plaintiff is entitled to recover the sum of Rs. 500. The lower appellate Court curiously enough accepted the plaintiff's case that the plaintiff has not been given inspection of the crucial documents of title, but yet it dismissed the plaintiff's suit holding that the only remedy of the plaintiff is first to file a suit to direct the defendant to give him inspection of the title deeds, and later on follow it up by another suit for specific performance. This view is simply startling and cannot be obviously sustained. The agreement of sub expressly provides that, if the records, i.e., the documents concerning the title of the defendant, are not satisfactory, the defendant should return the sum of Rs. 500. From what has been observed, it is obvious that the two documents Ex.A. 2 and A.3 of which inspection was given to the plaintiff are wholly insufficient and unsatisfactory and the defendant ought to have given inspection of the original title deeds. The excuse that the earlier title deeds comprise other properties also is untenable, because it is nobody's case that the plaintiff wanted the documents to be retained by him. But he only wanted them for inspection and scrutiny so as to satisfy himself about the title of the defendant.

2. Learned counsel for the respondent raised a preliminary objection that as the suit is for recovery of Rs. 500, the second appeal is barred under

S. 102, C.P.C. the contention being that the amount involved is less than Rs. 1000. I see no substance in this contention. The suit would come

under the exemption under Art. 15 of the second Schedule to the Provincial Small Cause Courts Act, "a suit for the specific performance or

rescission of a contract. Ex. A-1 contains a specific condition imposing an obligation on the part of the defendant to return the sum of Rs. 500 if the

documents are not satisfactory to make out his title, and the suit which is brought to enforce the covenant or obligation contained in Ex. A-1 is

certainly a suit for specific performance of a contract. Mr. Srinivasan, learned counsel for the appellant, relied upon the decision of

Gajendragadkar, J. (as he then was) in Pandurang Laxman Mohite Vs. Kaluram Bahiru Bhikule, . In that case, the suit was filed by the vendee for

recovery of the prepaid purchase price as stipulated in the agreement of sale, and the suit was filed in a court of Small causes. Despite the

objection raised, that court entertained the claim and decreed the suit. On revision the learned Judge held that the claim was clearly governed by

Art. 15 of the Second Schedule and that the trial court had no jurisdiction to entertain the suit on the small Cause side. The learned Judge observed

that reading the plaint in that case it was difficult to come to the conclusion that the claim was made apart from and independently of the contract

and that in view of the fact that the plaintiff wanted a decree on the basis that the contract had become void, the plaintiff was entitled to the refund

of the earnest money in pursuance of the terms of the contract itself. Here in the instant case too a perusal of the plaint shows that it is a suit to

enforce the obligation or the covenant undertaken by the defendant as provided in the agreement, and in every respect, therefore, the suit was for

specific performance of a contract. There is one other reason why the suit would not be cognisable by a court of Small Causes. Under Sec. 55 (6)

(b) of the Transfer of Property Act, the vendee is entitled to a charge upon the property for the prepaid purchase price in the event of the vendor

wrongfully declining to complete the transaction. 1/2vide, Mulla on Transfer of Property Act, 5th Edn. page 345, Jibhnoo Harising v. Ajabsing ILR

(1953) Bom. 253 C.M.V. Krishnamachari Vs. M.D. Dhanalakshmi Ammal and Others, . In this view also there is no substance in the objection

raised. My attention was drawn to a decision of this court in Sundara Thevan v. Ajanthan Kaladi (1930 Mad.) AIR (1924) in which Reilly, J. held

that the suit by vendee for recovery of purchase money on the failure of a contract by vendor to convey land is of a small cause nature. The facts of that case are easily distinguishable: In the instant case, there is a specific covenant on the part of the vendor to return the money, of which the plaintiff is claiming specific performance. Further, there is no discussion by the learned Judge about the vendee's right to a statutory charge under S. 55 (6) (b) or the Transfer of Property Act. For all these reasons the second appeal is allowed. The plaintiff's suit is decreed with costs in all the courts. The decree will be a charge upon the property agreed to be sold as set out in the schedule to the agreement Ex. A 1. Leave refused.