

(1911) 11 MAD CK 0018
In the Madras High Court

Subbiah Pillai and Others

APPELLANT

Vs

Vellappa Naicker and Others

RESPONDENT

Date of Decision : 16-11-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Trusts Act, 1882 — Section 91

Citation : (1912) 22 MLJ 124

Judgement

1. The suit is for specific performance of an agreement to sell certain land entered into between the plaintiff and the first defendant. "The latter subsequently sold the land to the second to fourth defendants. The plaintiff asked for a declaration that the sale in favour of defendants 2 to 4 was void as against him and for a direction that the first defendant do execute a conveyance of the land in the plaintiff's favour, and this is the decree that has been passed by the District Court. We accept the finding of the Judge that the plaintiff is entitled to specific performance. The sale to defendants 2 to 4 is good in law subject to the plaintiff's right. Section 91 of the Trusts Act enacts that in such a case the subsequent purchaser is a trustee of the property in law for the person who has a prior agreement for sale. The proper course in such a case would be to direct a reconveyance to be executed by the subsequent purchaser. We believe that the practice generally in the mofussil courts is to declare the subsequent sale void and to direct the vendor to execute a conveyance. We are not prepared in the face of the existing practice to accede to the appellant's contention that the suit should be dismissed on the ground that there is no prayer in the plaint for the execution of a conveyance by defendants 2 to 4. We have the power, if necessary, to direct the subsequent

purchaser to execute the conveyance. See Order XLI, Rule 33, of the Code of Civil Procedure. We, however, consider it unnecessary to do so in this case, as there are difficulties arising from the particular facts of the case.

2. We dismiss the second appeal with costs.