
(1919) 02 MAD CK 0048
In the Madras High Court

Velayuda Chetty

APPELLANT

Vs

Kumaraswami Chettiar and Others

RESPONDENT

Date of Decision : 03-02-1919

Acts Referred:

Citation : 52 Ind. Cas. 700 : (1919) 10 LW 201

Hon'ble Judges : Spencer, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. We think this is a perfectly clear case. The evidence entirely supports the finding of the learned trial Judge that the defendants Nos. 1 to 4 had agreed to sell the land in dispute to the plaintiff on the 10th August 1916 for Rs. 7,000 and that they actually sold the land to the 5th defendant, the appellant before us, on the 23rd August 1916, for Rs. 10,000 but that, before the execution of the sale-deed, the plaintiff, having some to know of the contemplated sale, went to the Sub-Registrar's office when the sale deed was actually being written on the 23rd August 1916, and read out his agreement Exhibit B. The evidence in the case and the probabilities all bear out the finding of the learned District Judge.

2. The appeal must be dismissed with costs.

3. The memorandum of objections must be allowed. The 5th defendant was undoubtedly a necessary party to the suit, having attempted to purchase the property with notice and knowledge of the agreement to sell in favour of the plaintiff. The learned Judge has passed a decree directing the 5th defendant also to join in the execution of the sale-deed. That portion of the decree has not been objected to in appeal and it is not necessary for us to express any opinion as to whether that is the proper form of decree in such cases. He has not, however, given a decree for possession to the plaintiff and we think that he is entitled to such a decree. The Full Bench ruling in Rangayya Reddy v. Subramanya Aiyar 40 Ind. Cas. 429 : 40 M.P 365 : 32 M.L.J. 575 : 5 L.W. 797 : 21 M.L.T. 385 does not apply, inasmuch as the 5th defendant was a necessary party to the suit when he obtained possession of the property with the knowledge that there was a prior

agreement for sale in favour of the plaintiff. But the learned Chief Justice observes there: ""It may, I think, be taken as the settled and salutary practice of this and other Courts in India, where parties properly sued for specific performance of a contract for sale of land are in possession of the land, to allow a prayer for possession to be added to the prayer for specific performance, thereby obviating the necessity for filing a fresh suit for possession to which there could be no defence." In Bugata Appala Naidu v. Chengalvala Jogirau 32 Ind Cas. 237 : (1916) 1 M.W.N. 77 the same proposition is laid down and we may add, also in Krishnasami v. Sundarappayar 18 M.P 415 : 5 M.L.J. 164 : 6 Ind. Dec. (N.S.) 638.

4. The result is the lower Court's decree will be modified by directing possession of the property in discuss to be given to the plaintiff. The plaintiff will have his costs from the appellant.