

(1932) 08 MAD CK 0026
In the Madras High Court

Venkatachalam Pillai

APPELLANT

Vs

Sethuram Rao alias Lakshmikantha Sastriar and Another

RESPONDENT

Date of Decision : 22-08-1932

Acts Referred:

Transfer of Property Act, 1882 — Section 14

Citation : AIR 1933 Mad 322 : (1933) ILR (Mad) 433 : (1933) 37 LW 340 :
(1933) 64 MLJ 354

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—This Second Appeal arises out of a suit filed by the plaintiff (1st respondent) for specific performance of an

agreement to re-sell the plaintiff-mentioned site. The plaintiff's case is, that the suit site belonged to his adoptive father, that it was sold during the

minority of the plaintiff by his natural father as his guardian to 1st defendant's father on 14th December, 1912, under a registered sale deed, that

there is a stipulation in the sale deed for the reconveyance of the property to the plaintiff and his heirs for the original price itself, that in violation of

that contract the 1st defendant sold the property to the 2nd defendant on 6th December, 1923, that this sale is not binding on the plaintiff and that

he is entitled to enforce specific performance of the agreement to re-sell on tendering the purchase money and get a conveyance in his favour. The

defendants attacked the plaintiff's claim on several grounds and contended that he was not entitled to specific performance of the alleged

agreement. The first Court gave a decree in plaintiff's favour, which was confirmed by the lower appellate Court.

2. In this Second Appeal preferred by the 2nd defendant, three main contentions

have been raised on his behalf in order to show that the plaintiff could not claim specific performance of the plaintiff-mentioned agreement. The first is, that the agreement contained in the sale deed, Exhibit A, was not a completed contract but only an offer by the vendee to re-sell the property to the vendor, which could become a completed contract only on acceptance of the offer by payment of the price and that the offer having been at an end by the sale of the property to the 2nd defendant, there was no subsisting offer for acceptance by the plaintiff and as such there was no contract of which specific performance could be claimed on the date of the suit. The second is, that even if it should be held that there was a completed contract on the date of Exhibit A itself, it was not competent for the guardian of the minor-plaintiff to bind him by a contract for the purchase of the site and as the minor was not bound by that contract, there was no mutuality and consequently specific performance of such a contract is unenforceable in law. The third is, that the stipulation for re-sale-as contained in Exhibit A is void as it is obnoxious to the rule against perpetuities as laid down in Section 14 of the Transfer of Property Act.

3. The covenant in question contained in the sale deed, Exhibit A, is substantially as follows:

If it happens that you or your heirs have to sell the property to others, then you must sell it to the plaintiff or his heirs for the above price and also

for such price as may be determined by arbitrators in respect of any building that may be constructed upon the land.

4. There is some dispute as regards the construction of this clause. It may be understood to mean that on the happening of the contingency,

namely, the determination of the vendee or his heirs to sell the property and thus part with it, the vendee must sell it to the plaintiff or his heirs and

that the latter must also purchase it as per the terms of the covenant. In the absence of any words to signify that the repurchase was only optional

with the plaintiff or his heirs, it would not be unreasonable to hold that under this contract the vendee was bound to make the offer for re-sale and

the vendor was equally bound to buy it, and we are prepared to hold accordingly. The learned District Judge, however, construed this clause in a

different way and was of opinion that though there was an obligation on the part of the vendee to re-sell, the vendor's was only an option to

repurchase. It is on the basis of this construction that the learned Advocate for the appellant contends that the agreement in question was not a

completed contract, but only a standing offer on the part of the vendee. The decision in *Papa Naidu v. Munisamy Aiyar* ILR (1922) 46 Mad. 30 :

42 M.L.J. 432 would be on all fours with the present case and doubtless supports his contention. Following the English decisions in *Helby v.*

Mathews (1895) A.C. 471 and *Dickinson v. Dodds* (1876) 2 Ch. D. 463 the learned Judges held that there was a binding offer to re-sell on the

part of the vendee and no agreement to buy on the part of the vendor but only an option to repurchase. The view expressed in *Helby v. Mathews*

(1895) A.C. 471 that until acceptance of the offer there was no completed contract was adopted. It is also said that an offer would be at an end

by the death of the promisor or by the promisor selling it to a third party the sale being known to the promisee before acceptance. A similar

question arose for consideration in the case reported in *Alagarsami Naidu v. Kathia Goundan* 1931 M.W.N. 957. This case was decided by

Ramesam, J., sitting as a single Judge, and he was also a party to the decision in *Papa Naidu v. Munisamy Aiyar* ILR (1922) 46 Mad. 30 : 42

M.L.J. 432. The learned Judge seems to have adopted the same view by construing the contract as one consisting of an undertaking by the vendee

to make the offer for re-sale whenever he thought of selling the property, and by stating that the vendor, who had only an option to repurchase,

cannot sue for specific performance of the contract but may sue for damages if there was consideration for the contract. But the soundness of this

view seems to be shaken by the pronouncement of their Lordships of the Privy Council in an almost similar case reported in AIR 1928 174 (Privy

Council) . In that case, the counterpart to the sale deed provided that the vendee should reconvey the property to the vendor after a period of 30

years from that date, in case the vendor wished to have the property again and upon his paying a sum of Rs. 10,000. It is thus clear that the vendor

had the option of repurchasing the property or not. Their Lordships have held that it was not a case of a mere standing offer by the vendee which

could ripen into a contract to buy and sell only on the acceptance of that offer by the vendor by tender of the purchase money.

5. On the other hand, it was distinctly held that there was a completed contract between the parties even on the date of the counterpart document

(27th January, 1891) and that the right of the vendee under that contract was assignable to a stranger. This decision of the Privy Council was given

in an appeal against the decision in *Munuswami Nayudu v. Sagalaguma Nayudu* ILR (1925) 49 Mad. 387 : 51 M.L.J. 229 to which Ramesam, J.,

was a party. It looks as if this decision of the Privy Council was not brought to the notice of the learned Judge when hearing the case reported in

Alagarsami Naidu v. Kathia Goundan 1931 M.W.N. 957. We should now take it that the matter is concluded by the decision of the Privy

Council, and on the strength of that authority, it must be held that there was a completed contract between the parties on the date of Exhibit A

itself, even adopting the construction put upon the covenant in Exhibit A by the lower appellate Court and urged for acceptance by the learned

Advocate for the appellant. The plea that the stipulation in question was not a completed contract and therefore specific performance could not be

enforced is unsustainable. This disposes of the first point raised by the appellant.

6. Coming now to the second point, the contention put forward on behalf of the appellant appears to rest on a much firmer ground. The leading

authority on this point is the decision of the Privy Council reported in (1911) L.R. 39 I.A. 1 (Privy Council) . In that case, the guardian of a minor

entered into an agreement with another for the purchase of certain immovable property by the minor. The minor after attaining majority sued for

specific performance of that contract. Their Lordships have laid down the principle of law in the following passage found on page 237:

They are, however, of opinion that it is not within the competence of a manager of a minor's estate or within the competence of a guardian of a

minor to bind the minor or the minor's estate by a contract for the purchase of immovable property, and they are further of opinion that as the

minor in the present case was not bound by the contract, there was no mutuality, and that the minor who has now reached his majority cannot

obtain specific performance of the contract.

7. The present case is in our opinion governed by the aforesaid decision. The agreement for re-sale contained in Exhibit A being an executory

contract without mutuality, it is unenforceable by either party in a suit for specific performance. An attempt has been made by the learned

Advocate for the 1st respondent to get over the effect of this decision, by urging

that the first Court has found that this contract was for the benefit of the minor and therefore this fact should enable him to enforce specific performance of the contract. But in the case dealt with by their Lordships of the Privy Council, it was found that the contract was validly entered into and was for the benefit of the minor and was even ratified by him. Still, their Lordships held that there was no mutuality and on that ground declared the contract to be invalid and unenforceable. The validity or the enforceability of such a contract does not therefore depend upon the question whether it was conducive to the benefit of the minor or not. That being so, the argument on the 1st respondent's side is unacceptable.

8. It is urged on behalf of the 1st respondent, that inasmuch as there was an undertaking on the part of the vendee to re-sell with only an option on the part of the plaintiff to repurchase, the contract may be deemed to be a unilateral contract with no reciprocal obligations and only in favour of the minor plaintiff. Reference was made to the Full Bench decision of this High Court in *Raghava Chariar v. Srinivasa Raghava Chariar* ILR (1916)

40 Mad. 308 : 31 M.L.J. 575. The specific question decided in that case is that a mortgage executed in favour of a minor who has advanced already the whole of the mortgage money is enforceable by him. It has also been held that a sale to a minor under similar circumstances is quite

good. But on a careful perusal of that decision, it is clear that the mere fact that a sale or a mortgage is in favour of a minor is not enough to hold

that it is valid and enforceable. Where a mortgage or sale has been effected as a completed transaction in favour of the minor and it does not

involve the performance of any onerous act by the minor by reason of any contractual obligation in respect of the sale or mortgage, such a sale or

mortgage would not be invalid. This is clearly indicated in the following passage on page 313 in the judgment of Wallis, C.J.:

The question then is whether it makes any difference that the transfer in favour of the minor by way of sale or mortgage is made in consideration of

a price paid or a loan advanced by the minor. No doubt, according to their Lordships' decision, in such a case, the minor could not bind himself

by contract to pay the price or advance the mortgage money; but, when he has done so and the vendor or mortgagor has executed a registered

conveyance in his favour, is there any reason why the transfer in his favour

should not take effect.

9. It is also said by Srinivasa Aiyangar, J., that the transfer in favour of the minor cannot be void, unless the transfer is conditional on the passing of

consideration and the consideration did not pass (page 336). If the test laid down in that decision is adopted, the position in the present case is this.

In the first place, this is not a case where a registered conveyance has been executed in favour of the plaintiff in pursuance of the original contract.

On the strength of that contract, the plaintiff seeks to get a conveyance by specifically enforcing that contract. Even granting that under the contract

an option to repurchase was reserved to him, want of mutuality must be judged as on the date of that contract. On exercising his option in favour of

the repurchase, he has to pay the price mentioned in Exhibit A and also pay such price as may be determined by arbitrators in respect of any

building constructed on the land. That being so, how can it be said that under this contract the vendee should simply execute a reconveyance in

favour of the plaintiff who has no sort of corresponding obligation ? It is true that no building was constructed upon the land and the necessity for

payment of the price as fixed by arbitrators has not arisen, but still the plaintiff has to pay the original price for the site. That being so, the Full

Bench decision in *Raghava Chariar v. Srinivasa Raghava Chariar* ILR (1916) 40 Mad. 308 : 31 M.L.J. 575 is of no avail to the plaintiff. On the

authority of the Privy Council decision in (1911) L.R. 39 I.A. 1 (Privy Council) it must be held that the contract in question is void for want of

mutuality and specific performance of such a contract is unenforceable by either party.

10. The plaintiff's claim must fail on the aforesaid short ground, and it is therefore unnecessary to discuss the third point raised on behalf of the

appellant. If the contract embodied in Exhibit A does not create an interest in immovable property, as is clear from the statutory provision in

Section 54 of the Transfer of Property Act, the case cannot come u/s 14 thereof. There is some conflict of judicial opinion on this point and several

decisions have been cited at the bar. As the decision on the second point is sufficient for the disposal of this appeal, it is unnecessary to discuss this

question.

11. In the result, the Second Appeal should be allowed as the plaintiff is not

entitled to sue for specific performance of the plaint-mentioned agreement, and his suit is therefore dismissed with costs of the 2nd defendant in all the Courts.