
(1949) 02 MAD CK 0040
In the Madras High Court

Yajju Adinarayana

APPELLANT

Vs

Gurala Jagannadha Rao

RESPONDENT

Date of Decision : 15-02-1949

Acts Referred:

Citation : (1949) 62 LW 377 : (1949) 1 MLJ 557

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—The first defendant is the appellant in this second appeal On the 11th February, 1943, defendants 1 to 4, the owners

of the suit property agreed to sell the same to the plaintiff for Rs. 380 under an agreement for sale marked as Ex P-1, On the date of the said

agreement a sum of Rs. 50 was paid as advance and the balance was made payable at the time of the execution of the sale deed Time for

performance was fixed at six months. Shortly after the agreement defendants 3 and 4 sold their moiety of the property to the fifth defendant" under

Ex. D-2 dated x 11th March, 1943. On the same day, the fifth defendant purported to purchase from D.W. 2, in the case, a quarter share of the

property under Ex D-I It is found by the lower appellate Court that D.W. 2 had no title to the and that the purchase by the fifth defendant was

merely a make believe affair On 24th November, 1943, defendants 1 and 2 purported to sell a fourth share of the property to the fifth defendant.

The plaintiff has brought the present suit for specific performance of the contract of sale, Ex. P-I alleging that defendants 1 to 4 have committed

default in the performance of their part of the contract and have sold the property to the fifth defendant with a view to-deprive the plaintiff of the

benefit of the agreement in his favour. The fifth defendant denies the truth of the contract set up by the plaintiff, Ex. P-I and further pleads that he is

a bona fide purchaser for value without notice. It is found by the Courts below that Ex P-I is a true and valid agreement supported by

consideration and therefore capable of specific performance. On, the question whether the fifth defendant is a bona fide purchaser for value

without notice the Courts below have differed the lower appellate Court holding that he was not. It lies upon the party seeking to defeat a prior

contract for the sale of land to prove that he is a purchaser for value bona fide and without notice of the previous contract. The initial burden is

upon the purchaser. It may be that very little evidence on the part of the purchaser is sufficient to discharge the onus in a particular case. But here,

we have the express statement of P.W. 2 whose evidence has been accepted by both the courts that on the day after the execution of the

agreement (Ex P-I) he informed the fifth defendant of the contract of sale. Further, it is found from the document (Ex. 2) admitted as additional

evidence on appeal by the learned Subordinate Judge, that at the time of the registration of Exs. I and D-2 as well, as at the time of registration of

Ex. D-3, the plaintiff raised an objection to the registration of the sale deeds on the ground that there was a valid and subsisting contract for the

sale of the property in his favour and therefore the deeds should not be registered. It is therefore clear on the evidence and on finding of the lower

appellate Court that the fifth defendant was not a purchaser for value without notice and has no valid defence to the suit for specific performance.

2. I therefore agree with the conclusion of the lower appellate Court and dismiss the second appeal with costs.

3. No leave.