

Madras High Court

Manicka Goundan vs Elumalai Goundan And Ors. on 16 August, 1956

Equivalent citations: AIR 1957 Mad 78

Author: Rajamannar

Bench: Rajamannar, P Ayyar

JUDGMENT Rajamannar, C.J.

1. This appeal raises an interesting question of law on which there is no direct authority. The facts necessary for discussing this Question are briefly these. Defendants 2 and 3 executed a sale deed, Ex. P. 1, on 2-8-1942, conveying the suit properties to plaintiff 1. Defendant 2 by a sale deed dated 1-7-1942 purported to convey the same properties to defendant 1. It has now been found by the Courts below that this sale deed was antedated and that it was actually executed subsequent to the execution of the sale deed in favour of plaintiff 1.

After the execution of the sale deed in favour of plaintiff 1, evidently in view of the sale deed executed by defendant 2 in favour of defendant 1, defendant 3 added the following at the end of the sale deed: "Should any dispute arise in aspect of this it shall not concern us." Though the plural is used, only defendant 3 made this endorsement.

When the document was presented for registration defendant 3 accepted execution; but defendant 2 refused to join in the registration on the ground that there had been a material alteration in the sale deed, referring to the endorsement made by defendant 3 above mentioned. An application was made to the District Registrar by plaintiff 1 for compulsory registration. But the application was rejected. Thereupon he filed a suit in the Court of the District Munsif, Ami, O. S. No. 167 of 1943, for setting aside the order of the Registrar refusing registration.

The suit was dismissed. An appeal filed against the decree in the suit was also dismissed. On 21-7-1944, during the pendency of the appeal, plaintiff 1 filed a suit for a declaration of his title to the suit property and for an injunction and in the alternative, for possession of the entire property or for partition and possession of a half share. Subsequently, after certain proceedings which it is not necessary to mention, the plaint was amended and an alternative relief for specific performance was added and it was prayed that defendant 2 may be directed to execute a fresh sale deed in respect of half share.

Meanwhile plaintiff 1 died and plaintiffs 2 to 5 were brought on record "as his legal representatives. The learned District Munsif held that because the plaintiffs had not performed their part of the contract and had not expressed their willingness, and readiness to pay the share of the consideration to defendant 2, the plaintiffs were not entitled to 'obtain specific performance. He therefore granted a decree declaring the plaintiffs' right to a half share in the suit properties belonging to defendant 3 and directed a partition.

On appeal by the plaintiffs, the learned District Judge held that the plaintiffs were entitled to specific performance in respect of the share of defendant 2 and directed defendants 1 and 2 to execute a deed of conveyance in favour of the plaintiffs of the moiety in the suit properties which

belong to defendant 2 & to put the plaintiffs in possession of the same- Defendant 1 filed a second appeal against the said decision of the District Judge (S. A. No. 271 of 1949) which was disposed of by Subba Rao J.

Two questions of law only were raised before the learned Judge, namely, (1) that the suit for specific performance was not maintainable as a sale deed had already been executed both by defendants 2 and 3 and in view of Section 77, Registration Act, and (2) that specific performance could not be granted to the plaintiffs as they had not expressed their readiness and willingness to perform their part of the contract.

The learned Judge decided both the questions against defendant 1 and held that the suit for specific performance was maintainable as against defendant 2 and dismissed the second appeal but granted leave to file an appeal under the Letters Patent.

2. Mr. A. Sundaram Aiyar, learned counsel for defendant 1 appellant confined his arguments before us to the first question only. His contention in short was that once a sale deed had been executed by defendants 2 and 3, a suit for specific performance was not maintainable. The only remedy which plaintiff 1 had was that provided by the Registration Act. In support of this contention he relied on certain rulings of this Court.

The first of them is the decision in Venkata-sami v. Kristayya, ILR 16 Mad 341 (A). In that case, in pursuance of an agreement between the plaintiff and the defendant for the transfer of a mortgage the defendant duly executed a deed but it was not registered. The plaintiff brought a suit praying for a decree directing execution and registration of a fresh deed to effectuate the original agreement. It was held by Muttusami Aiyar and Handley JJ, that the suit was not maintainable.

The learned Judges were of the opinion that independently of the provisions of Section 77, Registration Act no suit to compel registration of a document would lie. They found that the plaintiff who had possession of the document could have presented it for registration within the time allowed and if the defendant had appeared and admitted the execution, the document would have been registered but if he had appeared and denied execution and registration had been refused, the plaintiff would have been entitled to an enquiry, before the Registrar under Sections 73 to 76.

If the defendant did not appear, the plaintiff might have proved execution of the document, and on such proof would have been entitled to registration. If the registering officer refused to register the document, an appeal would have lain to the Registrar under Section 72, and if the decision of the Registrar was also adverse to the plaintiff, he would have a remedy by suit under Section 77 of the Act. They observed:

"Plaintiff had therefore a complete remedy under the Act, and; not having chosen to follow it, has only himself to blame that the efficacy of the document has not been completed by registration.... The agreement to transfer the mortgage was so far carried out that the deed of transfer was executed and no suit will lie to compel defendant to do that which he has already done. The only act wanting on his part to complete the contract was to register the deed of transfer, and this act, as we have

shown, he could only be compelled to do by the proper proceedings under the Registration Act, followed by suit under Section 77. It plaintiff failed to obtain his rights by such proceedings.

3. This decision was followed in *Palani Goundan v. Paramasiva Goundan*, 6 Mad LJ 263 (B). It was there held that where the Registrar refused under Section 34, Registration Act to register a Kale deed on the ground that it had not been presented for registration within the four months allowed by law, the proper course for the party presenting the deed was to bring a suit to compel its registration on account of the refusal of the Registrar to register it, and that a suit for execution by the vendor of a fresh registered document did not lie.

The decision on which the appellant's counsel most relied on is that in *Satyanarayana v. Chinna Venkatarao*, ILR 49 Mad 302 : (A.R 1926 Mad 530) (C). What was actually decided in that case was that on denial of execution by the vendor and refusal by the Registrar to register the sale deed presented by the purchaser for registration, the sole remedy of the purchaser was to file a suit as provided by Section 77 of the Registration Act and not a suit for specific performance of the contract by the execution of a new sale deed and delivery of possession.

In that case one of the contracting parties to an agreement to sell objected to the registration of the document and the registration authorities after an enquiry refused to order registration as against, her. The plaintiffs brought a suit for specific performance without filing a suit under Section 77, Registration Act within thirty days of the refusal by the Registrar. Defendant 3 pleaded that she did not execute the sale deed. It was in these circumstances that it was held that the suit was not maintainable. The learned Chief Justice, Coutts Trotter C. J. referring to Section 77, Registration Act said:

"That is a statutory remedy given to a person who stands in the position that he is entitled to have a document registered by somebody else, that that somebody else has refused and the Registrar has upneid tne refusal and he want to have that compulsority registered as against the other person."

The learned Chief Justice stressed on the fact that Section 77 prescribed a limitation period of thirty days. He observed:

"The undertaking of a person who enters Into a contract for the sale of real property is to do everything whereby an operative agreement in law can be effected. He has not done everything if he failed in an instrument where the obligation is cast upon him to obtain its registration and, therefore, a step in the creation on the legal relation of purchaser and vendor being wanting, you can compel the person who has not taken that step to take it. The answer appears to me to be very simple Section 77, Registration Act not only tells you how you are to do that, but says that if you want to effect that purpose of having' registration forcibly carried out by a decree of the Court, you must do it within 30 days."

The learned Chief Justice in the concluding portion of his judgment made certain observations which we think are very important. After stating that the remedy of specific performance, though, provided by statute in this country, was nevertheless "simply a crystallisation into statutory iorm of

an equitable remedy", pointed out that laches was an answer to a claim for specific performance. He observed:

"How it can be said that a man who is given an express statutory remedy by an Act of, Legislature under Section 77, Registration Act and has failed to take advantage of it, has not been guilty of laches and is entirely free from blame, passes my comprehension. It appears to me that a man who has failed to adopt the remedy expressly provided by the statute cannot come to this Court and ask for an exercise in his favour of a discretionary and equitable remedy."

4. One difference between that case and the present case which appeals to us to be of great significance is that in that case the plaintiffs, who alleged that there was wrongful refusal by the Registrar to register the deed, did not file a suit under Section 77, Registration Act, whereas in the present case plaintiff 1 did resort to such a suit - indeed he even went up on appeal - but failed to obtain compulsory registration.

The ratio decidendi of the decision in ILR 49 Mad 302 : (AIR 1926 Mad 530) (C) is emphasised in a subsequent decision of a Division Bench of this Court in Venkatasubbayya v. Venkataratnamma, (D). There when the document was presented for registration, one of the executants alone admitted execution and the Sub-Registrar refused to register it against the other executant.

On appeal the District Registrar confirmed the order of the Sub Registrar. The person in whose favour the document was executed thereupon filed a suit for specific performance. It was held that the proper procedure to be adopted was to file a suit for enforcing the registration of the document before resort could be had to a suit for specific performance. At page 786 (of ILR) : (at p. 685 of AIR) the ratio decidendi of ILR 49 Mad 302 : (AIR 1926 Mad 530) (C) is thus set out;

"When a contract was entered into in favour of a party and in pursuance thereof a deed of transfer was executed, and when that party has already set in motion the machinery for enforcing the registration of that deed of transfer, the next step which the party should have legitimately taken was the institution of the suit for enforcing the registration as contemplated by Section 77, Registration Act.... In our opinion, when once this machinery has been set in motion, the logical conclusion should be that action should be taken under Section 77, Registration Act and it was incumbent upon the party to file a suit to enforce the registration before she could think of a suit for specific performance."

The conclusion of the learned Judge is thus summed up:

"We hold that the proper procedure to be adopted by the respondent in the present case is to file a suit for enforcing the registration of the document executed in her favour before she could resort to a suit for specific performance."

This again was a case where a suit under Section 77, Registration Act had not been filed.

5. Reference was made by Mr. M. S. Venkata-rama Aiyar, learned counsel for the respondent, to the view taken by other Courts which are not exactly ad idem with the view expressed in 49 Mad 302 : (AIR 1926 Mad 530) (C) namely, Jhaman v. Amrit ILR 24 Pat 325: (AIR 1946 Pat 62) (E) & Balkrishen-das v. Bechan Pandey, ILR 54 All 68": (AIR 1932 AH 96) (P), but we do not think it necessary to deal with them for the purpose of this case.

But reference must be made to two other decisions of this Court before we proceed to state our conclusion. One is in Nynakka Rowthen v. Vavana Mahomed Naina Rowthen, 5 Mad HCR 123 (G). There the document in question was, after execution, destroyed by fire before it could be registered. It was held that the plaintiff was entitled to ask the Court to compel the defendant to execute a fresh document, that is, to specific performance of the agreement.

The other is Chinna Krishna Reddi v. Dorai-sami Reddi, ILR 20 Mad 19 (H), where a document of conveyance was executed but before registration the defendant-vendor got hold of the document fraudulently by stealing it from the plaintiff and concealed it for the purpose of preventing registration from taking place. It was held that the plaintiff was entitled to specific performance and to have a fresh document executed and registered. Both these decisions were cited to the Division Bench which, decided ILR 49 Mad 302 : (AIR 1926 Mad 530) (C), and the learned Chief Justice who delivered the judgment of the Bench did not express dissent from either.

6. On a consideration of all the authorities It appears to us that there is no need to subscribe to either of two extreme propositions. One is that a party to an agreement has no right whatever in any circumstances to seek specific performance of the agreement once a document has been executed in pursuance of the agreement but the document is not registered. The other is that a party to an agreement is entitled to compel the other party who has duly executed a document in pursuance of the agreement to go on executing fresh documents by resorting to a suit or suits for specific performance so long as no document has been registered.

The decisions in 5 Mad HCR 123 (G) and ILR 20 Mad 19 (H), clearly demonstrate the untenability of the first proposition. The acceptance of the second proposition would mean that a party can take advantage of his own negligence or laches. In our opinion, the correct "view to take, which also seems to us to be just and equitable, is this.

Taking the case of an agreement to sell, it cannot be said that the contract has been fully performed till there is a properly executed document which is also registered. It cannot (N. P.) (Feb.) 1957 Mad. P.P./6 be said that the moment a document is executed the contract ceases to be in force. The purchaser is always entitled to insist upon his right to have a proper registered instrument, j Every vendor is bound to do all that is necessary to perfect the title of the purchaser, which in-: eludes the execution and registration of a proper conveyance.

It is true that the purchaser can resort to proceedings under the Registration Act and the special statutory remedy under Section 77 of that Act to obtain registration of the executed document. But if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act, then

undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not however mean that every such suit should be decreed.

Being an equitable remedy, a Court is not bound to grant specific performance in every case in which an agreement has not been carried out in its entirety. Well established equitable considerations would justify a Court refusing to grant the relief of specific performance.

To take an obvious case, if the vendor duly executes a Sale deed and hands it over to the vendee and the vendee neglects to present it for registration within the time prescribed and, therefore, loses his rights to have it registered, a Court may well say that the plaintiff has only to blame himself for not securing registration and therefore he would not be entitled to any relief because of his own negligence. Or if a vendee after the execution of the sale deed fraudulently makes alterations in the document to the detriment of the vendor and therefore registration is refused he cannot obtain the relief of specific performance because of his fraudulent conduct. It is this principle that is adverted to by the learned Chief Justice in the concluding paragraph of his judgment in ILR 49 Mad 302 : (AIR 1926 Mad 530) (C), which has already been extracted earlier on.

7. Subba Rao J. was inclined to follow the ruling in ILR 49 Mad 302 : (AIR 1926 Mad 630) (C), and was apparently of the opinion that it would govern the present case but for the amendment to Section 49, Registration Act and the insertion of the following proviso:

"Provided that an unregistered document, affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered, may be received as evidence of a contract in a suit for specific performance under Ch. II, specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A. Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

We fail to see how that provision can have any bearing on the question which we have been discussing, namely, as to the maintainability of a suit for specific performance in circumstances such as have been found in this case. That provision deals with a rule of evidence. It says that an unregistered document, in spite of the prohibition contained in Section 49, can in certain cases be received as evidence.

A rule of evidence cannot certainly enlarge or alter substantive law. A rule of evidence cannot confer rights if there are none under the general law. The only thing which follows from the proviso is that if a suit for specific performance is maintainable, then in such a suit an unregistered document can be received in evidence. But whether a suit for specific performance would or would not lie in given circumstances must be decided on other considerations and on legal principles.

How far the observations of Coutts-Trotter C. J. in ILR 49 Mad 302 : (AIR 1926 Mad 630) (C), that it was a "very vicious method of construction" to say that a document, which purports to be one thing can be allowed to be treated when it is found imperfectly to contain what it purports to be as a valid document of a different kind or order altogether, can be sustained after the above amendment to Section 49, Registration Act is a different matter; but that does not arise in this case as Mr.

Sundaram Aiyar did not contend that Ex. P. 1 was not admissible as evidence of an agreement to sell.

8. Applying the above principles to the facts of the present case what we have is this- After the execution of the sale deed by defendants 2 and 3, when it became known that defendant 2 had executed another sale deed in favour of defendant 1 and trouble might ensue on that account, defendant 3, apparently with the consent of plaintiff 1, made the endorsement to which reference was made at the opening of the judgment, providing that he would not be liable if there was any dispute as to title.

Plaintiff 1 by consenting to such an endorsement was really releasing defendant 3 from his obligation under the law. If anyone was affected by it, it was only plaintiff 1. Defendant 2 was not a party to the endorsement and any rights inter se between defendants 2 and 3 could not be affected by it. Defendant 2 himself was in no manner injured by the endorsement. It may be that the registration authorities were right in refusing registration because there was a material alteration.

But in our opinion, we cannot say that plaintiff 1 was guilty of such conduct as to preclude him from obtaining the relief of specific performance to which he was certainly entitled on the findings of the Courts below. If plaintiff 1 had made any alteration fraudulently calculated to injure the vendors or any of them, then, of course, he would not be entitled to the equitable relief of specific performance. But he was not guilty of any such fraud.

We therefore come to the conclusion that the plaintiffs were entitled to a decree. In this we agree with Subba Rao J. though not on the same reasoning of the learned Judge. In the result this Letters Patent appeal is dismissed; but we make no order as to costs as we have not entirely accepted the reasoning of Subba Rao J.