

Narayanan Chetty Vs. Muthiah Chetty (Dead) and ors.

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Court : Chennai

Decided On : Mar-06-1924

Reported in : (1924)46MLJ575

Appellant : Narayanan Chetty

Respondent : Muthiah Chetty (Dead) and ors.

Judgement :

Ramesam, J.

1. Appeal No. 25 of 1917: This appeal arises out of a suit for specific performance of an agreement to sell. The Subordinate Judge decreed the suit. The defendants appeal.

2. Narayana Chetti, father of 4th defendant and his younger brother, Muthiah Chetti, father of defendants 1 to 3 were carrying on business at Rangoon under the style of M. P. M. Rm. In the course of the business, one Veerappa Chettiar of the PL R. M. Firm, became indebted to the firm to the extent of Rs. 3,000, but was unable to pay the debt. The 2nd plaintiff advised the agent (Alagappa) of the defendants through P. W. 6 of the connected suit O.S. No. 90 of 1916 (examined on commission at Rangoon), to buy the suit site and that he (the and plaintiff) would 'take it off him afterwards,' so that defendants' firm who are not in need of the site need not lose interest (Fide, Ex. G-2). The defendant's father purchased the site for Rs. 5,000, the consideration consisting partly of cash and partly of the

debt due by Veerappa (Ex. A). Before it could be re-conveyed to plaintiffs, it was found that, out of Veerappa's two brothers, while one attested the sale deed, the other Murugappa Chetti was disputing the validity of the sale. The plaintiffs and defendant's father discussed the best method of satisfying him and ultimately (vide, Ex. G-1), the plaintiffs paid Rs. 1,000 to buy him off, and obtained a release deed, Ex. D, at Rangoon. Meanwhile, before the payment and execution of Ex. D were known to the parties, the defendant's father executed Ex. C in favour of plaintiffs. The document has been proved to be genuine. All the evidence oral and documentary supports it. The plaintiffs agreed to pay Rs. 4,500 besides the Rs. 1,000 paid to Murugappa for executing Ex. D. They issued a Hundi (Ex. B) and it was cashed, (Exs. F and K). The incorrect date in Ex. F (an account book of the defendants) cannot affect the plaintiff's case.

3. Thus, the plaintiffs have proved the suit agreement, the payment of consideration and that the transaction was beneficial to the defendants' firm who were anxious to part with the site to the plaintiffs who, by offering to purchase, diminished the defendants' loss. Assuming that the proper price of the site at the time was Rs. 5,000, the defendants, if they wanted to keep the site, would have had to pay Rs. 1,000 to Murugappa. The plaintiffs by intervening and paying Rs. 5,500 (i. e., Rs. 1,000 to Murugappa and Rs. 4,500 to the defendants' firm) reduced the defendant's loss from Rs. 1,000 to Rs. 500.' In this sense, it was beneficial to the family of the defendants Who were a trading firm in need of money rather than the suit property which was not situate in the defendant's village.

4. The point strongly pressed by the Vakil for the appellants is that, the defendants 2 and 3 being minors, there can be no decree for specific performance against them. There is no general rule that no decree for specific performance can be passed against minors. For instance, in the simplest and obvious case where a contract is entered into by a Hindu in respect of property which is not joint family property and the property devolved by inheritance on heirs, some or all of whom are minors, it cannot be contended that no decree for specific performance can be made and this is conceded by the appellant. The next case is where a Hindu, who is a member of a joint family, enters into contract to sell his own share and die-and

the property descends by survivorship to other members of the family some or all of whom may be minors. In *Bhagwan v. Krishnaji* : (1920)22BOMLR997 it was held that it can be enforced against the undivided sons of the deceased. I think this decision is not in conflict with the opinions of Wallis, C. J. and Sadasiva Aiyar, J. in *Rangayya Reddi v. Subramania Aiyar* : (1917)32MLJ575 ; nor with the actual decision in *Bappu v. Annamalai Chettiar* (1922) 44 MLJ 226, which is not a case of a member contracting to sell his own share. If the point arises for decision, I would perhaps hold that the case in *Bhagwan v. Krishnaji* (1930) 32 Bom LR 997 is correctly decided on grounds which need not be stated. The case when the contract is made on behalf of a minor or minors, is settled by the decision in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhury* ILR (1911) C 232 : 1911 21 MLJ 1156. Mr. Srinivasa Aiyangar contends that, all that the Judicial Committee decided was that such a contract cannot be specifically enforced only when it was not for purposes of necessity, binding on the minors and the contract in that case which was one for the purpose of immoveable property was not for the benefit of the minors. I cannot agree with this narrow interpretation of the decision. Their Lordships say at p. 237: 'They are, however, of opinion that it is not 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 immoveable property. ' There is no reference here to ' necessity ' nor is any distinction drawn between a contract being merely' advantageous ' to a minor as opposed to its being for necessary purposes binding on the minor though, earlier in the Judgment, their Lordships accept the assumption that the purchase was an advantageous ' purchase for the minor.' I think this decision also covers this case where a joint family consists of minors only and therefore has no manager and a guardian of all the minors who is, ex hypothesi not manager, not being member of the family but is merely their guardian enters into a contract on behalf of some or all of the minors, whatever the nature of the contract may be.

5. The present is a case where the contract is entered into by the manager of a family on behalf of the whole family for purposes binding on the family. The decision in *Bappu v. Annamalai Chettiar* (1922) 44 MLJ 226 does not help the appellant for the contract in that case was not for purposes binding on the family and the remarks at page 228 are against him. The remarks in *Krishna Aiyar v.*

Shamanna : (1912)23MLJ610 are against the appellant and in favour of the respondent. The observations in both these cases are obiter, not being necessary for the decisions. In Narayana Rao v. Venkatasubba Rao (1919) 38 MLJ 77 Spencer, J., conceded that a contract made by a manager on behalf of the family may be enforced against the manager and where it is for the benefit of the family, the completed contract will certainly bind the minor members. Should the accident of the death of the manager before completion in such a case make any difference? Where a contract is by a manager on behalf of a family, and for the benefit of the family and the manager dies, it can be enforced against the survivors when they are all majors, Venkateswara Aiyar v. Raman Nambudripad (1916) 3 LW 435. Should it make any difference that some of the survivors are minors, and does the case in Mir Sarwarjan v. Fakhruddin Mahomed Chowdhury ILR (1911) C 233 : 21 MLJ 1156 support such a distinction? The matter is res Integra and, I am inclined to answer the above queries in the negative. I agree with Phillips, J.'s remarks in Bappu v. Annamalai Chettiar (1922) 44 MLJ 228 where he refers with approval to Ramachandra Aiyar v. Sundaramurthi Mudali (1893) 4 MLJ 9 and the obiter dicta in Krishna Aiyar v. Shamanna : (1912)23MLJ610 . The result is, we are of opinion that a decree for specific performance may be passed against the minor defendants 2 and 3. The pleadings and the allegations in I. A. No. 728 of 1914 (in O.S. No. 90 of 1914) show that 4th defendant is not divided from defendants 1 to 3 and no separate argument can be adduced for him.

6. The suit is not barred by limitation as it does not appear that the specific performance of the contract was refused more than three years prior to suit [Venkanna v. Venkatakrishnayya ILR (1917) M 18]. The words 'on demand' in Ex. C show, in a case like this, the cause of action arises only after request (See 19 Halsbury, Section 65, p. 43).

7. The result is, the appeal fails and is dismissed with costs. It is conceded that A.S. No. 26 of 1917 follows. It is also dismissed with costs.

Jackson, J.

8. I agree.

