

WHITE, C.J., *Kharag Prasad Bhagat v. Durdhari Rai*(1), *Brojo Soondur Gossamee v. Juggut Chunder Day*(2), and *Balvant Ramachandra RAHM, J. Natu v. The Secretary of State*(3).

SUBBA
LAKSHMA-
MMA
v.
VENKATA-
RAYADU.

It was contended that it was open to us in second appeal to go into the question as to whether the remand order made by Mr. Venugopaul Chetty was right. In our opinion section 591 of the Code of Civil Procedure does not empower us to do this.

We must set aside the decree of the lower Appellate Court and remand the case for disposal on the merits. Costs will abide the event.

APPELLATE CIVIL.

Before Mr. Justice Sankaran-Nair and Mr. Justice Pinhey.

SRINIVASA REDDI (FIRST DEFENDANT), APPELLANT,

v.

SIVARAMA REDDI (PLAINTIFF), RESPONDENT.*

1908.
November
30.
December 1.

Specific Relief Act I of 1877, ss. 15, 17—Sec. 15 does not apply where undivided father, without concurrence of his sons, agrees to sell—Decree in such cases in suit for specific performance against the father and son.

An undivided father has an interest in, and under certain circumstances a power of disposal over, every portion of the undivided property. Section 15 of the Specific Relief Act will not apply where an undivided father contracts to sell undivided property without the concurrence of his undivided son.

Where such an agreement is sought to be enforced in a suit in which the father and son are joined as defendants, the proper decree to be passed is one directing the sale by the father of the entire property on payment of the whole consideration, without determining whether the sale will be binding on the son, and not one directing the father to sell his one half share on payment of one half of the purchase money.

Kosuri Ramaraju v. Ivalury Ramalingam [(1903) I.L.R., 36 Mad., 74], followed.

SECOND APPEAL presented against the decree of F. H. Hamnett, District Judge of South Arcot, in Appeal Suit No. 79 of 1905, presented against the decree of V. S. Narayana Aiyar, District Munsif of Villupuram, in Original Suit No. 22 of 1904.

Suit to compel the defendants to execute in favour of plaintiff a registered deed of sale conveying the plaint properties for Rs. 135.

(1) (1892) I.L.R., 14 All., 348.

(2) (1874) 21 W.R., 199.

(3) (1908) I.L.R., 32 Bom., 432.

* Second Appeal No. 249 of 1906.

The first defendant was the undivided father of the second. The plaintiff's case was that first defendant as managing member made an agreement to sell the suit lands to plaintiff for Rs. 135, and that second defendant subsequently ratified the contract.

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AND
PINEY, JJ.

The Court of first instance found that the second defendant was not bound by the contract and passed a decree directing the first defendant to execute in favour of plaintiff a sale-deed of his one half share on receipt of a moiety of Rs. 135.

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This decree was confirmed on appeal.

The first defendant appealed to the High Court.

R. Kuppuswami Ayyar for appellant.

T. Rangachariar for respondent.

JUDGMENT.—The suit was for specific performance of a contract for the sale of land. The plaint alleges that the first defendant, as the managing member of a family consisting of himself and his son, the second defendant, entered into a contract to sell the land to the plaintiff and agreed to obtain the consent of his son to the sale and to induce him to join in the execution of the deed of conveyance. Accordingly he placed the plaintiff in possession of the land. The plaint also alleges subsequent ratification by the second defendant.

It is found that the second defendant had not authorized the first defendant to enter into the contract and that he has not ratified it. The suit against him was rightly dismissed.

The lower Courts have however passed a decree directing the first defendant to sell his share, *i.e.*, half the land, on payment to him of half the purchase money. The first defendant appeals against this decree.

Under section 17 of the Specific Relief Act the Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections, and it is the appellant's contention that under section 15 the plaintiff is entitled to obtain a decree for half the land only on payment of the entire purchase money. If he is unwilling to pay it, the suit must be dismissed.

The case of *Kasuri Ramaraju v. Ivalury Ramalingam*(1) is on all fours with the present case. There, it was held by the learned judges that the plaintiff was clearly entitled to a

(1) (1903) I.L.R., 26 Mad., 74.

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NAIR
AND
FINNEY, JJ. decree for specific performance against the first defendant therein, without determining whether the sale by him would or would not bind the interest of any other member of the family in the property agreed to be sold. It is urged by the pleader for the appellant that the effect of section 15 and illustrations (a) and (b) were not then considered and the ruling is opposed to that section. We do not agree with the appellant's contention. Section 15 would be applicable only if the first defendant had no interest in any portion of the property agreed to be conveyed as in illustration (a) or is unable to convey such portion as in illustration (b) to that section. In this case it cannot be said that the first defendant is not interested in any portion of the land. He is entitled as managing member to convey it for certain purposes or the land may be allotted to him on partition between himself and his son and he has already put the plaintiff in possession of the entire property.

Following therefore the decision in *Kosuri Ramaraju v. Ivalury Ramalingam*(1), we direct the decree of the lower Court to be modified as therein by decreeing specific performance of the contract to sell the whole of the plaint land against the first defendant, without determining whether such sale would bind the second defendant. The respondent's pleader consents to this modification. The appellant will pay the respondent's costs.

The time is extended to 30 days from this date.

(1) (1903) I.L.R., 26 Mad., 47.