

Begam(1) that the plaint ought to be liberally construed and relief should be given him on the basis of a tenancy in common. I do not think we shall be justified in putting this liberal construction. For in the circumstances of this case where the plea of limitation has been raised by the defendant and made good by him, on the case set up by the plaintiff, the plaintiff's allegation of exclusive title to the suit properties is what he should be confined to.

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In respect of the alternative case which the plaintiff wants us to accept I am not inclined to put the liberal interpretation which the plaintiff asks us to give to the plaint.

As regards the question which has been argued at considerable length as to the effect of a partition decree which gives the plaintiff a share in property for which it is necessary to determine the shares of the other members, namely, whether these other members are to be treated as tenants in common subsequent to the partition decree or as joint tenants, it is unnecessary for us to determine it in this case.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Krishnaswami Ayyar.*

PORAKA SUBBARAMI REDDY (PLAINTIFF), APPELLANT,

v.

VADLAMUDI SESHACHALAM CHETTY AND OTHERS
(DEFENDANTS), RESPONDENTS.*

1909.
November
28, 30.

Specific Relief Act I of 1877, ss. 14, 15, 16, 17—Contract entered into by a person on his behalf and on behalf of minors—Form of decree in suit for specific performance of such contract, when contract found not to be binding on minors.

Where a contract of sale entered into by a person on his own behalf and on behalf of minors is found not to be binding on the minors, no decree for specific performance can be passed against the interest of such minors in the properties.

Sections 14—16 of the Specific Relief Act do not enable such contract to be separated as regards the adult person who entered into the contract; and section 17 of the Act precludes the passing of a decree against the share of such party alone or a decree for the whole against such person.

(1) (1906) I.L.E., 28 All., 482.

* Second Appeal No. 1287 of 1907.

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The purchaser in such a case will be entitled, on offering to pay the whole purchase money, to a decree directing the adult party to convey all his interest in the properties.

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SECOND APPEAL against the decree of T. M. Rangachariar, District Judge of Nellore, in Appeal Suit No. 3 of 1907, presented against the decree of G. Kothunda Ramanujalu Nayudu, District Munsif of Nellore, in Original Suit No. 327 of 1905.

Suit to enforce specific performance of a contract for the sale of land.

The fourth defendant, and the first defendant for himself and as guardian of the minor defendants Nos. 2 and 3, agreed to sell the suit lands to the plaintiff for Rs. 1,400 on 14th July 1904 and gave a letter to that effect after receiving Rs. 4 from the plaintiff as earnest money. The defendants put plaintiff in immediate possession of the suit lands and agreed to execute the sale-deed within ten days from that date. The defendants, however, failed to execute the sale-deed and receive the balance of purchase money. Plaintiff called upon the defendants to execute a sale-deed, but defendants failed to do so.

The District Munsif found that the contract was not binding on the minors and that the plaintiff was not entitled to a decree against the interests of the first and fourth defendants alone and he accordingly dismissed the suit. On appeal his decree was confirmed.

T. Narasimha Ayyangar for *S. Subramania Ayyar* for appellant.

T. V. Seshagiri Ayyar for first respondent.

E. V. Muthukrishna Ayyar for second and third respondents.

K. Narasimha Ayyar for fourth respondent.

JUDGMENT.—The defendants Nos. 1 to 4 entered into a contract with the plaintiff to sell him certain lands for Rs. 1,400. He brings the suit to enforce specific performance. The Courts below have dismissed the suit. Defendants Nos. 2 and 3 were minors and the contract was entered into on their behalf by the first defendant as their guardian. It is found that the contract was not for purposes binding on the minors and therefore no specific performance could be decreed against their interests in the properties. The contract being one and indivisible the Courts below have dismissed the suit even against defendants Nos. 1 and 4. In second appeal the plaintiff asks for a decree against the

shares of the first and fourth defendants at least. This we think he cannot have. Section 17 of the Specific Relief Act is against him. Sections 14, 15 and 16 of the Act do not enable the contract to be separated as regards the first and fourth defendants in this case. The plaintiff relies on the decision in *Gurusami v. Ganapathia*(1); the contract in that case was before the Specific Relief Act. The decree therefore which the Court felt itself competent to make at page 344 of the report would appear to be justifiable under the law as it stood before the Act (see *Burrow v. Scammell*, 2). Such a course does not appear to be warranted by the proviso to section 15. Collet remarks in his book on the Specific Relief Act "Probably the proviso in section 15 was framed to meet the difficulties which have thus arisen in English cases." If the contract is indivisible under section 17 of the Act what then is the relief to which the plaintiff is entitled? We are asked by the appellant to give him a decree for the whole against the first and fourth defendants on the authority of *Srinivasa Reddi v. Siva Rama Reddi*(3). This we are unable to do. That was a case in which the contract was entered into with the manager of a Hindu family. It was sought to be enforced against him and another member not a party to the contract. Although it was found that it was not binding on the person who was not a party to the contract, the Court passed a decree against the contracting party for specific performance, leaving the question open as regards the binding character of such conveyance as between the purchaser and the junior member who was no party to the contract. It is unnecessary for us to express an opinion as to the correctness of the observations in that case as regards the true interpretation of section 15 of the Specific Relief Act. It is enough for us to say that the present case is different because the contract is one entered into on behalf of minors as well and the suit is therefore properly brought for enforcement of the contract against them also. We cannot therefore treat the finding that the contract is not binding on defendants Nos. 2 and 3 as uncalled for. The decision in *Kosuri Ramaraju v. Tealury Ramalingam*(4) recognizes this distinction. It follows that no decree can be passed compelling conveyance of the interests of the second and third defendants

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(1) (1882) I.L.R., 5 Mad., 337.

(3) (1909) I.L.R., 32 Mad., 320.

(2) (1881) I.L.R., 19 Ch. D., 175.

(4) (1903) I.L.R., 26 Mad., 74.

WHITE, C.J., as well by the first and fourth defendants. The appellant
 AND however expresses his willingness to take a conveyance by the first
 KRISHNA- and fourth defendants of all their interests in the suit properties
 SWAMI and fourth defendants of all their interests in the suit properties
 AYYAR, J. for the purchase money agreed upon without abatement or
 ——— compensation. We think he is entitled to this decree. In
 PURAKA reversal therefore of the decrees of the Courts below, we direct
 SUBBARAMI that on payment within three months from this date of the
 I EDDY balance of the purchase money by the plaintiff, the first and the
 V. fourth defendants do execute a conveyance of their interests in
 VADLAMUDI the suit properties in favour of the plaintiff. As the plaintiff did
 SESH- not agree to this course in the Courts below we direct him to pay
 CHALAM the costs of the respondents.
 CHETTY.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

1909. VENKATARAMA IYER AND ANOTHER (PLAINTIFFS), APPELLANTS,
 November 18, 19, 23, 30. v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL,
 REPRESENTED BY THE COLLECTOR OF TANJORE
 AND ANOTHER (DEFENDANTS), RESPONDENTS.*

*Adverse possession, title by, against Crown—Burden of proof—What facts prove
 adverse possession—Entry as poramboke not sufficient to prove title of Crown.*

In mirasi tracts, the gathering of wild flowers and fruits from poramboke lands and the gathering of fish from small tanks will not indicate ownership, as such acts are permitted by Government. It is otherwise where large sums are spent on tanks by mirasidars in clearing silt and in constructing masonry dams. Such acts are indicative of ownership; and when they are proved to have been done for 30 or 40 years, the presumption will be that they have been done for more than the statutory period, and the burden will be on the Crown to explain such acts and prove possession within the statutory period. Mere entry as poramboke in the pynash and settlement registers is insufficient to prove the title of Government without proof of acts of ownership.

SECOND APPEAL against the decree of V. Subramanya Pantulu, Subordinate Judge of Tanjore, in Appeal Suit No. 1382 of 1905, presented against the decree of J. S. Gnaniar Nadar, District Munsif of Tiruvalur, in Original Suit No. 347 of 1904.

* Second Appeal No. 7 of 1907.