independently of that for possession, *Zinnatunnessa Khatun v. Girindra Nath Mukerjee*(1) is clear authority against the defendant's contention.

But in fact we agree with the learned District Judge that the two prayers cannot be regarded separately. As he observes, the plaintiffs' failure to insert a prayer for a combined valuation is not conclusive, the Court's duty being to see whether they are connected. We think that they were so. Possession is not asked for on any other ground than that the decree, in execution of which it was lost, should be declared invalid; and it is therefore asked for consequently on the grant of declaration.

It is conceded that unless the two reliefs claimed can be valued independently and the prayer for declaration can be valued *ad valorem*, the petition must fail. Deciding against both these contentions we dismiss the petition with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Spencer.

DAVVUR SUBBA REDDI (PLAINTIFF), APPELLANT,

v.

KAKUTURI VENKATRAMI REDDI *alias* VENKA REDDI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1914, September 15, 16, 18 and 24.

Hindu Law—Contract by father to sell family lands—Suit for specific performance against father—Son added subsequently as defendant—No necessity for contract—Contract not binding on son—Plaintiff's right to conveyance from father of his share only—Partial performance, meaning of—Specific Relief Act (I of 1877), sec. 15—Contract by a co-parcener to sell his share in family property, and contract to sell specific family property, distinction between.

The plaintiff sued for specific performance of a contract for the sale of certain lands and for possession. The contract was entered into by the first defendant, the undivided father of the second defendant who was subsequently added as a party to the suit. The first defendant pleaded that the contract was vitiated by undue influence and was a hard bargain that ought not to be enforced against him. The second defendant pleaded that the contract was entered into by the first without any legal necessity and was not enforceable in

(1) (1903) I.L.R., 30 Calc., 788.

* Appeal No. 240 of 1911.

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law. It was found that there was no undue influence or hard bargain and that there was no necessity to enter into the contract. The plaintiff offered to pay the full consideration for a conveyance of the lands which were the separate property of the first defendant and of his interest in the family lands.

Held, that the plaintiff was not entitled to a decree for specific performance of the contract against the first defendant or the second defendant.

Per SANKARAN NAIR, J.—A person is entitled to specific performance of a contract by a member of a Hindu family to sell his share of the family property.

If a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree cannot be passed against him to sell his share of that specific property.

Kosuri Ramaraju v. *Ivalury Ramalingam* (1903) I.L.R., 26 Mad., 74, *Srinivasa Reddi* v. *Sivarama Reddi* (1909) I.L.R., 32 Mad., 328, and *Poraka Subbarami Reddy* v. *Vadlamudi Seshachalam Chetty* (1910) I.L.R., 33 Mad., 359, referred to.

Nagiah v. *Venkatarama Sastrulu* (1914) I.L.R., 37 Mad., 387, dissented from.

Nanjaya Mudali v. *Shanmuga Mudali* (1914) 15 M.L.T., 186, followed.

Maharaja of Bobbili v. *Venkataramanjulu Naidu* (1914) 16 M.L.T., 181, referred to.

APPEAL against the decree of E. L. VAUGHAN, the District Judge of Nellore, in Original Suit No. 10 of 1909.

T. V. Venkatarama Ayyar and *T. V. Muthukrishna Ayyar* for the appellant.

P. Venkataramana Rao for the first respondent.

T. Prakasan for the second respondent.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—This is an appeal from a decree of the District Judge of Nellore dismissing the plaintiff's suit for specific performance of a contract entered into between himself and the first defendant. The plaintiff's case is that the first defendant who had brought a suit for partition against his co-parceners for his two-sevenths share of the family properties, was in embarrassed circumstances and in order to get rid of his debts agreed to sell the plaint properties to him for a sum of Rs. 8,429 on 14th April 1904 (Exhibit I). The properties were to be sold soon after the disposal of the suit and after he had obtained his lands on partition. This agreement was renewed on 1st August 1907. The plaintiff states that after the decree was passed in favour of the defendant he was placed in possession of some of the lands but has not obtained possession of the rest. He accordingly prays for specific performance and for possession of the rest of the lands. The suit was originally brought only against the first defendant. His plea was that the agreement was really

entered into between him and the plaintiff's father-in-law, one Ramachandra Reddi, as a consideration for the latter giving evidence in the partition suit which was then pending. He also pleaded that Ramachandra Reddi threatened to place obstacles in the way of his obtaining a decree, that he was thus coerced into entering into this transaction and that it is, therefore, not binding on him. He pleaded that the sale price is inadequate and that there was no necessity for him into this agreement to sell his property. His son the second defendant was subsequently made a party to the suit. In addition to the pleas advanced by his father, he said that as there was no necessity to sell the lands the agreement is not binding on him and cannot be enforced against him under the Hindu Law.

The District Judge found that there was no necessity to sell the lands and that there was no pressure by any of the creditors. He found also that the plaintiff was in debt himself and is not a person likely to be in possession of funds for the purchase of lands. It was also found by the District Judge that the plaintiff was not placed in possession of the lands but that the defendant's co-parcener who was in possession of these lands delivered them to the plaintiff's relative, plaintiff's first witness, who is now in possession. He was apparently of opinion that the real beneficiary under the agreement was not the plaintiff himself but Ramachandra Reddi. Whether Rs. 8,429 was a fair value for the land agreed to be sold he does not find. On these findings the suit was dismissed.

On appeal it is contended that the Judge is wrong in all his findings. It is argued that he does not find that there was coercion and the evidence does not support that plea. It is pointed out by the appellant's pleader that when Exhibit I was executed, the plaintiff was not the son-in-law of Ramachandra Reddi and when Exhibit II was executed, Ramachandra Reddi had already given his evidence. It is quite possible that the desire to secure the assistance of Ramachandra Reddi may have materially influenced the defendant in entering into this agreement. But if the consideration is not inadequate it is difficult to say that this fact will vitiate the transaction. The evidence as to the value of the lands is very meagre. The defendant's first witness, who is the first defendant's own son-in-law, states that the wet land is worth about Rs. 500 an acre and that the dry land

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is worth Rs. 450 an acre. According to this evidence the va of the lands will be about Rs. 20,000. On the other hand, own second witness, who appears to be a comparatively wealt man, admits that the lands in 1911 sold at Rs. 250 an acre a at the time of Exhibit I only at Rs. 150 an acre, and t plaintiff's first witness states that the price for which t plaint lands were to be sold is reasonable. Exhibit VIII sho that other lands in the vicinity sold at about Rs. 100 an acr In these circumstances I am not prepared to say that th consideration has been proved to be inadequate. I mus accordingly hold that so far as the first defendant is concerne there is no evidence of undue influence and that he has no proved that it was a hard bargain. But it is also quite clea that there was no necessity to sell the lands. The fact that fo more than three years after the date of Exhibit I no creditor sue to enforce his claim, is itself strong evidence, and the defen evidence is that the first defendant has succeeded in paying of the other debts by selling other lands. The plaintiff's firs witness admits that the defendant's family had about 200 o 240 acres of land, dry and wet put together. There is no evi dence that any creditors were demanding payment of their debts There is no evidence given by the plaintiff to show why it wa necessary to enter into this agreement to sell the property at a future uncertain date while the lands were rising in value There is absolutely no evidence, therefore, that it was necessary to enter into this agreement to sell. I must, therefore, hold that it is not binding on the second defendant.

It is argued before us on behalf of the appellant that he is entitled to obtain a decree for specific performance against the first defendant. A contract can be enforced against any person who was a party to it. The plaintiff was therefore right in bringing the suit only against the first defendant and if he alone had been a party to the suit he might have been entitle to get a decree against him without the question whether it wa binding on the family of the first defendant being gone into This was pointed out in *Kosuri Ramaraju* v. *Ivalury Rama lingam*(1) and in *Srinivasa Reddi* v. *Sivarama Reddi*(2). In

(1) (1903) I.L.R., 26 Mad., 74. (2) (1909) I.L.R., 32 Mad., 320.

Kosuri Ramaraju v. *Ivalury Ramalingam*(1), the suit was dismissed against persons other than the first defendant therein who alone was a party to the contract. In *Srinivasa Reddi* v. *Sivarama Reddi*(2) the son was not a party to the second appeal. In either case, therefore, was the question, whether the agreement was binding on the family or not considered. Nor was the question decided whether, if the agreement was not binding on the family, the plaintiff was not entitled to get a decree for the managing member's share of the property on payment of the entire purchase money. That he was so entitled was conceded on behalf of the managing member in *Poraka Subbarami Reddy* v. *Vadlamudi Seshachalam Chetty*(3). In fact the argument was that he was entitled only to that relief. But in the case before us, the son has been made a party to the suit and I am not prepared to hold that after the trial of the case, we shall be justified in dismissing him from the suit, without a consideration of the pleas advanced by him. Moreover, the fact that the agreement is not binding on the family has been proved by the evidence let in to prove undue influence and the unconscionable nature of the bargain. On the finding, therefore, that the agreement is not binding on the family, the suit for a decree directing the first defendant to sell these lands must be dismissed. The plaintiff offers to pay the full amount for a conveyance to him of the lands which are the separate property of the first defendant and of the first defendant's interest in the family lands. This requires a determination of the question whether any of these lands form the separate property of the first defendant; and such a decree will only lead to litigation between the same parties to determine their rights. We think we should not be justified in passing such a decree in this suit. He is therefore not entitled to a decree for part performance. In this view it is unnecessary to consider certain *dicta* in *Nagiah* v. *Venkatarama Sastrulu*(4). But as the question has been argued before us I shall briefly refer to them.

A person is entitled to specific performance of a contract by a member of a Hindu family to sell his share of the family property. But there is no question of part performance in that

(1) (1903) I.L.R., 26 Mad., 74. (2) (1909) I.L.R., 32 Mad., 320.
(3) (1910) I.L.R., 33 Mad., 359. (4) (1914) I.L.R., 37 Mad., 387 at p. 389.

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case. If the learned Judges intended to go further and lay down that if a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree may be passed against him to sell his share of that specific property, I am unable to agree with that view. Because the junior member is unable to perform the whole of his part of the contract of conveying the entire property agreed to be sold and for the same reason that he is not entitled to claim any specific property till partition, conveyance of a portion, is not a part of the contract "as he can perform" in the terms of section 15 of the Specific Relief Act. On the view that a co-parcener cannot alienate any specific property, no specific performance can be decreed. The opposite view rests on the principle laid down in some of the cases that a co-parcener is entitled to alienate any particular property. BAKEWELL, J., and myself have dissented from those cases in *Nanjaya Mudali* v. *Shanmuga Mudali*(1) and our judgment has been followed by the OFFICIATING CHIEF JUSTICE and KUMARASWAMI SASTRI, J., in *Maharaja of Bobbili* v. *Venkataramanjulu Naidu*(2). This question, however, does not arise in the appeal. I would dismiss the appeal with costs.

SPENCER, J.

SPENCER, J.—I concur.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Spencer

1914. July 27 and 28.

VENKATESHA MALIA (PLAINTIFF), APPELLANT,

v.

B. RAMAYA HEGADE AND TWELVE OTHERS (DEFENDANTS NOS. 1, 3 TO 5, 7, 8, 11 TO 17), RESPONDENTS.*

Religious Endowments Act (*XX of* 1863), *ss.* 14 *and* 18—*Sanction to two persons jointly—Whether suit by one competent.*

Where sanction to sue is given to two persons under section 18 of Religious Endowments Act, one of them cannot sue alone.

Mahomed Athar v. *Ramjan Khan* (1907) I.L.R., 34 Calc., 587, explained. Sanction granted under section 18 of the Act is a condition precedent to the exercise of the right of suit.

(1) (1914) 15 M.L.T., 186. (2) (1914) 16 M.L.T., 181.

* Appeal No. 132 of 1910.