RANGASWAMI PILLAI v. SANKARALINGAM AYYAR. — SESHAGIRI AYYAR, J.

It follows from this that the endorsement in favour of the ourth defendant was properly made. The District Judge has found that his action was bona fide and that he was a holder in due course. I see no reason for not accepting this finding of fact. I am, therefore, of opinion that the conclusion come to by the learned District Judge is right and that this appeal should be dismissed.

Civil Suit No. 483 of 1916 was rightly brought by the fourth defendant as plaintiff, because the action of the appellant in instituting Civil Suit No. 52 of 1916 necessitated his suing to have his rights secured as against him and in the alternative against the first and second defendants. But we think that the fourth defendant was not justified in preferring Appeal No. 97 of 1918 to the lower Appellate Court, in paying court fees, and as if the claim was one for recovery of the money. In the first Court, court fee was paid on the declaration prayed for. In this Court also, court fee was paid only on the declaration. Therefore, in directing the appellant in Second Appeal No. 838 of 1919 to pay the costs of the respondent (fourth defendant) the excess court fee paid by him in the lower Appellate Court should not be charged against him. In other respects, both the Second Appeals are dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, March 29.

THAYARAMMAL (PLAINTIFF), APPELLANT,

v.

LAKSHMI AMMAL AND KUMARASWAMI REDDI (DEFENDANTS), RESPONDENTS.*

Specific performance—Sale of land—Sale-deed, not registered—Vendee in default in paying purchase-money—Sale-deed, whether can be regarded as an agreement to sell—Suit by vendee for specific performance, whether maintainable.

Where a sale-deed, purporting to be a conveyance of some lands, was executed and delivered to the vendee, but was not registered, and the omission was not due to act of God or fraud on the part of the executant, it is not open to the vendee to treat the unregistered document as an agreement to sell and to sue for specific performance of such agreement.

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* Second Appeal No. 940 of 1919.

Venkatasami v. *Kristayya*, (1893) I.L.R., 16 Mad., 341, followed.
Surendranath Nag Chowdhury v. *Gopal Chunder Gosh*, (1910) 12 C.L.J., 464, dissented from.

SECOND APPEAL against the decree of T. M. FRENCH, the Temporary Subordinate Judge of Vellore, in Appeal Suit No. 13 of 1918, preferred against the decree of A RAMANATHA AYYAR, the District Munsif of Ranipet, in Original Suit No. 470 of 1916.

The material facts appear from the Judgment.

P. R. Srinivasa Ayyangar for the appellant.

C. V. Anantakrishna Ayyar for the respondents.

The JUDGMENT of the Court was delivered by

OLDFIELD, J.

OLDFIELD, J.—Exhibit A was executed by the first defendant to the plaintiff and he was given possession of it. It is in terms a sale-deed, but it was not registered. The finding is that the plaintiff made default in the payment of the purchase money and the document was not therefore registered. He now sues to enforce specific performance of an agreement which according to him is implied in the sale-deed A. The question for consideration is whether it is open to the plaintiff to regard Exhibit A, which has become inoperative by reason of non-registration, as an agreement to sell. In our opinion this remedy is not open to the plaintiff. He could have presented the document for registration under section 32 of the Registration Act and could have enforced the attendance of the first defendant to admit execution under section 36 of the same Act. If there was a refusal to register he could have enforced his further remedies in this behalf under the Act. If he failed to take advantage of these provisions of the law, it is not open to him to ignore the plain terms of the document and to read into it an agreement to sell which was superseded by the conveyance itself. It is true that Courts of Equity would assist a plaintiff to effectuate an incomplete title, if the default is due to act of God or conduct amounting to fraud on the part of the executant. But here no default is attributable to the first defendant. On the other hand, it is the default of the plaintiff in not paying the consideration that led to the document remaining unregistered. This case is within the principle of *Venkatasami* v. *Kristayya*(1). There, it was held that when the

(1) (1893) I.L.R., 16 Mad., 341.

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OLDFIELD, J.

plaintiff did not avail himself of the remedies provided by the Registration Act, he was not entitled to ask either that the document should be registered or that a new document should be executed and registered.

This decision has not been dissented from in this Court hitherto. The *obiter dictum* in *Venkata Seetharamayya* v. *Venkataramayya*(1), that such a document can be treated as an agreement to sell was pronounced without adverting to *Venkatasami* v. *Kristayya*(2). In Calcutta, there are direct authorities against the Madras view. But with all deference, we fail to find the principle on which the contrary view can be based. The learned judges apparently misunderstood the view taken in *Chinna Krishna Reddi* v. *Dorasami Reddi*(3), in saying that *Venkatasami* v. *Kristayya*(2) was dissented from. We are, therefore, not prepared to follow *Surendra Nath Nag Chowdhury* v. *Gopal Chunder Gosh*(4), in preference to *Venkatasami* v. *Kristayya*(2). In *Amer Chand* v. *Nathu*(5), it is not shown who had the document and whether there was a suppression of it. On the whole it seems to us that there is no ground for not acting on the principle of the decision in *Venkatasami* v. *Kristayya*(2). The Second Appeal should be dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Krishnan.

1920, January 8 and March 31.

SUBBARAMI REDDI (MINOR BY MOTHER AND GUARDIAN KANAKAMMA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

RAMAMMA (PLAINTIFF), RESPONDENT*.

Hindu Law—Joint family—Will by a father bequeathing some family properties for maintenance of his wife, validity of.

A will made by a Hindu father who is joint with his infant son, bequeathing certain family properties to his widow for her maintenance, is invalid and inoperative as against the son, although it would have been a proper provision if made by the father during his lifetime.

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(1) (1914) I.L.R., 37 Mad., 413. (2) (1893) I.L.R., 16 Mad., 341.
(3) (1897) I.L.R., 20 Mad., 19. (4) (1910) 12 C.L.J., 464.
(5) (1910) 7 A.L.J., 887.

* Appeal No. 167 of 1919.