

Court and it may be reasonably inferred that he can be trusted to behave honourably hereafter. In spite of all this I should have hesitated to take too lenient a view of the case as the offence is such a serious one. But the learned Chief Justice has taken a lenient view of the case and in a matter like this of the exercise of our disciplinary jurisdiction I do not feel called upon to differ from his Lordship and to insist on more drastic action being taken. I therefore concur in the order proposed by my Lord the Chief Justice.

*In re* AN  
ADVOCATE.  
—  
KRISHNAN, J.

N.R.

## APPELLATE CIVIL--FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,  
Mr. Justice Coutts Trotter and Mr. Justice  
Krishnan.*

VIZAGAPATAM SUGAR DEVELOPMENT COMPANY,  
LTD., AND ANOTHER (APPELLANTS), DEFENDANTS,

1923,  
August 2.

v.

MUTHURAMAREDDI AND TWO OTHERS (RESPONDENTS),  
PLAINTIFF AND ADDITIONAL RESPONDENTS.\*

*Part-performance—Contract to sell land worth more than Rs. 100  
—Payment of consideration and delivery of possession—Suit  
by vendor to eject purchaser for want of conveyance—Part-  
performance and right to specific performance, good  
defences—Section 54, Transfer of Property Act (IV of 1882)  
—‘Sale’ and ‘Price,’ meaning of.*

A agreeing to sell his lands worth more than Rs. 100, to B, received the consideration and put B in possession but did not execute a conveyance. In a suit by A to eject B from the lands, based on the want of a conveyance;

\* Appeal No. 106 of 1921.

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*Held* by the Full Bench, that part-performance by way of delivery of possession and an enforceable right on *B*'s part to specific performance are each good defences to the action; *Venkayamma Rao v. Appa Rao* (1916) I.L.R., 39 Mad., 509 (P.C.), *Mahomed Musa v. Aghore Kumar Ganguli* (1915) I.L.R., 42 Calc., 801 (P.C.), followed. *Ramanathan v. Ranganathan* (1917) I.L.R., 40 Mad., 1134 and *Kurri Veerareddi v. Kurri Bapireddi* (1906) I.L.R., 29 Mad., 336 (F.B.), overruled.

*Held*, by the Division Bench (PHILLIPS AND DEVADOSS, JJ.), (a), that the plea of part-performance is not limited to cases where the right to sue for specific performance is not barred on the date of the subsequent suit; *Meher Ali Khan v. Arutunnessa Bibi* (1919) 25 C.W.N., 905, followed.

APPEAL against the decree of P. NARAYANA RAO NAYUDU Garu, Subordinate Judge of Vizagapatam, in Original Suit No. 19 of 1919.

The facts are given in the Order of Reference.

Defendants against whom a decree was given by the Subordinate Judge preferred this appeal.

This Appeal coming on for hearing on Tuesday, the 1st day of March 1923, the Court (PHILLIPS and DEVADOSS, JJ.), made the following

#### ORDER OF REFERENCE TO A FULL BENCH.

In this case one Basivi Reddi, of whose property plaintiff is the receiver, agreed to take 200 shares in first defendant's company, and in lieu of paying cash put them in possession of certain lands and godowns. The plaintiff now sues to recover this property on the ground that title had not passed to first defendant as no registered document was executed by Basivi Reddi, and the lower Court has decreed the suit and has given a personal decree against second defendant, the Secretary of the Company. This personal decree is clearly wrong and must be set aside.

Defendants appeal and raise various contentions, the chief of which is that the case is governed by the

doctrine of part-performance, as laid down by the Privy Council in *Mahomed Musa v. Aghore Kumar Ganguli*(1) and *Venkayamma Rao v. Appa Rao*(2). Before dealing with this, some preliminary objections may be considered. In the first place, we agree with the Subordinate Judge on the question of limitation. It is then contended that the document relating to the purchase of the shares and the sale of the lands and godowns does not require registration by reason of section 17, 2 (ii) of the Indian Registration Act, XVI of 1908. We, however, agree with the learned Subordinate Judge that this contention is not valid. No doubt in so far as the document relates to the purchase of shares it does not require registration, but it also contains a contract for sale of immoveable property worth over Rs. 100 and as such must be registered.

It is next argued that the transaction does not come within the definition of sale in section 54, Transfer of Property Act IV of 1882, as the immoveable property was to be transferred in consideration of the allotment of shares and consequently it was not a transfer for a price. The correspondence, especially second defendant's letter of 7th June 1907 (Exhibit XVII), shows that the price of the property was fixed at Rs. 10,000, whereas the cost of the shares was Rs. 10,200, of which the Rs. 200 was paid in cash. The fact that the defendants accepted the immoveable property in lieu of Rs. 10,000 cash does not prevent the transaction being one of sale, for the price of the latter was clearly fixed at Rs. 10,000. The transaction was therefore one to which the provisions of the Transfer of Property Act apply. If, then, we apply the Full Bench ruling in *Kurri Veerareddi v. Kurri Bapireddi*(3), followed in *Ramanathan*

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(1) (1915) I.L.R., 42 Cal., 801 (P.C.). (2) (1916) I.L.R., 39 Mad., 509 (P.C.).

(3) (1906) I.L.R., 29 Mad., 336 (F.B.).

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v. *Ranganathan*(1), it is clear that plaintiff is entitled to succeed and that the doctrine of part-performance cannot be relied on by defendants. The Full Bench ruling in *Kurri Veerareddi v. Kurri Bapireddi*(2), was delivered before the pronouncements of the Privy Council in *Mahomed Musa v. Aghore Kumar Ganguli*(3) and *Venkayamma Rao v. Appa Rao*(4) and it is contended that the latter have overruled the former. This contention was found against in *Ramanathan v. Ranganathan*(1), where the decision was that of a majority of three Judges in a Letters Patent Appeal, when two Judges had already differed. This case was followed in *Subramania Iyer v. Kalyanasundaram Iyer*(5). Since then the question has been considered by the other High Courts in India, and Calcutta, Allahabad, Bombay and Patna have all held the view opposed to the decision in *Ramanathan v. Ranganathan*(1)—(vide *Khagendra Nath Chatterjee v. Sonatan Guha*(6), *Syamkisor v. Dines Chandra*(7), *Shafikul Huq Chowdhury v. Krishna Gobinda Dutt*(8), *Meher Ali Khan v. Arutunnessa Bibi*(9), *Salamat-uz-zamin Begam v. Mazha Alla Khan*(10), *Bapu Apaji v. Kashinath Sadoba*(11), *Hiralal Ramnarayan v. Shankar Hirachand*(12) and *Deb Lal Jha v. Baldeo Jha*(13).

In view of the fact that the decision of this Court is only that of three Judges out of five, in view also of the unanimity of the other Courts, and as we also feel some doubt as to the correctness of the Madras decision, we refer the following question for decision by a Full Bench :—

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| (1) (1917) I.L.R., 40 Mad., 1134.        | (2) 1906) I.L.R., 29 Mad., 336 (F.B.).  |
| (3) (1915) I.L.R., 42 Calc., 801 (P.C.). | (4) (1916) I.L.R., 39 Mad., 509 (P.C.). |
| (5) (1919) 53 I.C., 283.                 | (6) (1915) 20 C.W.N., 149.              |
| (7) (1920) 31 C.L.J., 75.                | (8) (1918) 23 C.W.N., 284.              |
| (9) (1919) 25 C.W.N., 905.               | (10) (1918) I.L.R., 40 All., 187.       |
| (11) (1917) I.L.R., 41 Bom., 438 (F.B.). | (12) (1921) I.L.R., 45 Bom., 1170.      |
| (13) (1920) 56 I.C., 277.                |   |

“Do the provisions of the Transfer of Property Act or of the Registration Act preclude the application of the doctrine of part-performance laid down by the Privy Council in *Mahomed Musa v. Aghore Kumar Ganguli*(1) and *Venkayamma Rao v. Appa Rao*(2) ?”

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#### ON THIS REFERENCE

*A. Krishnaswami Ayyar* (with *K. Aravamudu Ayyangar* and *P. V. Rangaram*) for appellants (defendants).—The suit must fail on either of my two following defences; (a) my subsisting right to enforce specific performance of the contract to sell and (b) even if on account of bar by limitation I am not entitled to specific performance, on the doctrine of part-performance. Defendant can get a registered sale-deed if his right to specific performance is not barred by time and his defence can be viewed as a suit for specific performance.

*Bapu Apaji v. Kashinath Sadoba*(3), *Shyam Kishore Dey v. Umesh Chandra Bhattacharjee*(4), *Davud Beevi Ammal v. Radhakrishna Aiyar*(5), *Ramkishore Kedarnath v. Jainarayan Ramrachhpal*(6), *Salamat-uz-zamin Begam v. Musha Allah Khan*(7), *Khagendra Nath Chatterjee v. Sonatan Guha*(8), and *Immudipattam Thirugnana Kondama Naik v. Periya Dorasami*(9). *Kurri Veerareddi v. Kurri Bapireddi*(10), is wrong as being opposed to this last decision of the Privy Council.

Part-performance by itself is a good defence; *Mahomed Musa v. Aghore Kumar Ganguli*(1) and *Venkayamma Rao v. Appa Rao*(2). The judgment of the majority in *Ramanathan v. Ranganathan*(11), is wrong; he relied also on *Khagendra Nath Chatterjee v. Sonatan Guha*(8),

(1) (1915) I.L.R., 42 Calc., 801 (P.C.). (2) (1916) I.L.R., 39 Mad., 509 (P.C.).

(3) (1917) I.L.R., 41 Bom., 483 (F.B.). (4) (1919) 24 C.W.N., 463.

(5) (1923) 44 M.L.J., 309 at 312.

(6) (1913) I.L.R., 40 Calc., 966 (P.C.).

(7) (1918) I.L.R., 40 All., 187.

(8) (1915) 20 C.W.N., 149.

(9) (1901) I.L.R., 24 Mad., 377 (P.C.).

(10) (1906) I.L.R., 29 Mad., 386 (F.B.).

(11) (1917) I.L.R., 40 Mad., 1134.

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*Meher Ali Khan v. Arutunnessa Bibi*(1), *Deb Lal Jha v. Baldeo Jha*(2), *Hiralal Ramnarayan v. Shankar Hirachand*(3) and *Shafikul Huq Chowdhury v. Krishna Gobinda Dutt*(4).

*P. Narayanamurti* (with *D. Appa Rao* and *B. Satyanarayana*) for respondents (plaintiffs).—Only one question, viz., the propriety of the defence on the ground of part-performance has been referred to the Full Bench and the other defence is not referred. Part-performance is no good defence; mere possession does not confer a title to the lands under the law. It is no better than a mere right to specific performance. The policy of the law is that title to lands worth Rs. 100 and more should be acquired only by registered conveyances; see *Ramanathan v. Ranganathan*(5) and *Kurri Veerareddi v. Kurri Bapireddi*(6). As the Division Bench has not given its findings on the question whether there is now a right to specific performance, it must be left open.

### JUDGMENT.

The facts relevant to the answer of the question propounded to us in this case can be very briefly stated. The predecessor-in-title of the plaintiff, in return for the allotment to him of a number of shares in the Vizagapatam Sugar Development Company, Limited, handed over certain lands, theretofore his property, to the company for the purposes of their business in the year 1907. No registered sale-deed was ever executed embodying the transaction, but the company has been in possession of the lands ever since that date. It is now sought to recover these lands on

(1) (1916) 25 O.W.N., 905.

(3) (1921) I.L.R., 45 Bom., 1170.

(5) (1917) I.L.R., 40 Mad., 1134.

(2) (1920) 56 I.C., 277.

(4) (1918) 23 C.W.N., 284.

(6) (1906) I.L.R., 29 Mad., 336 (F.B.)

the ground that no title passed to the company in the absence of a registered document. Two main answers were made; first, that as the defendant company had a valid contract enforceable by specific performance, they could rely upon that by way of defence to the suit; secondly, that they could rely on their possession as such part-performance of the contract as would take it out of the operation of the statute. There can be no doubt that the latter question has been directly referred to us; as to the former, it is more doubtful, though the reference of the learned Judges to *Kurri Veerareddi v. Kurri Bapireddi*(1), would seem to suggest that it was in their minds.

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On the question of part-performance, there can be no doubt that there is an express authority of this Court in *Ramanathan v. Ranganathan*(2), to the effect that section 54 of the Transfer of Property Act (IV of 1882) by implication excludes any right to set up an equity, such as possession in pursuance of a subsisting and enforceable contract of sale, against a registered title, even as between the parties to such contract.

With respect, we think that such a construction involves a confusion of thought between two essentially different conceptions. What the statute enacts is that a document of title to land—a conveyance in short—can only acquire validity, can only in fact be provable, on registration. So far from forbidding unregistered contracts for the sale of land, it expressly recognizes their existence, denying to them only the creation of an interest in or charge upon the land itself—and therefore leaving their contractual effect as between the parties to the contract unimpaired. Were there no other guide to us we should be prepared on principle to

(1) (1906) I.L.R., 29 Mad., 336 (F.B.).

(2) (1917) I.L.R., 40 Mad., 1134.

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hold that the decision of the majority of the learned Judges in *Ramanathan v. Ranganathan*(1) was erroneous. In fact our opinion is fortified by two other considerations. In the first place without saying that the decision under review is definitely and necessarily in conflict with the two rulings of the Privy Council that have been cited to us (*Mahomed Musa v. Aghore Kumar Ganguli*(2), and *Venkayamma Rao v. Appa Rao*(3), it is clearly contrary to the indicated trend of their Lordships' opinion. In the next place, every other Court in India has taken the opposite view and we cannot but attach great weight to that fact.

It is unnecessary to set out the cases, which are all cited in the Order of Reference. Our answer to the question propounded to us is therefore in the negative, and it is so because we are satisfied that *Ramanathan v. Ranganathan*(1), was wrongly decided.

We have already intimated that we do not feel clear whether the question has been definitely referred to us as to whether the possession of a proved right to specific performance would afford a good defence to a suit such as the present. Here again, there is an express ruling of a Full Bench of this Court in *Kurri Veerareddi v. Kurri Bapireddi*(4), to the effect that it cannot. Notwithstanding our view that the two defences, though sometimes they may coincide, are in essence logically distinct, and that only one has been categorically referred for our opinion, it falls to be observed that the learned Judges who referred this case to us conceived *Kurri Veerareddi v. Kurri Bapireddi*(4), to be an authority on the question referred, unless it was to be supposed to be overruled by the subsequent pronouncements of the Privy Council. Moreover, the learned

(1) (1917) I.L.R., 40 Mad., 1184.

(2) (1915) I.L.R., 42 Cal., 801 (P.C.).

(3) (1918) I.L.R., 39 Mad., 509 (P.C.).

(4) (1906) I.L.R., 29 Mad., 336 (F.B.).



Judges who gave the prevailing opinions in *Ramanathan v. Ranganathan*(1), expressed themselves as following the Full Bench decision and treated it as a relevant authority. We, therefore, think it right to say that the learned Judges who decided the earlier case laboured under the same misconception as those whose opinion prevailed in the later one. They treated a prohibition of unregistered conveyances as being a prohibition of unregistered contracts, and neglected a very clear expression of opinion to the contrary in the Privy Council in the case of *Immudipattam Thirugnana Kondama Naik v. Periya Dorasami*(2), as being an *obiter dictum*. Strictly speaking, that may be so; it is sufficient for us to say that we respectfully agree with it, and consider that the case in *Kurri Veerareddi v. Kurri Bapireddi*(3) was wrongly decided. We desire to add that if the learned referring Judges are to be taken as having impliedly referred this point to us, we are not clear whether they have determined that the facts exist which would make good that plea, or whether they are only inviting an expression of our opinion as to whether if substantiated by the facts such plea would in law be a good answer to the suit. If the latter course was intended to be adopted, we deprecate the practice of submitting a hypothetical question of law to a Full Bench before the Divisional Bench has satisfied itself that the facts really exist which would necessarily raise that question. That would no doubt entitle us to refuse to consider this matter without a direct finding that on the facts the plea, if valid in law, is established. However, the inconvenience caused to the parties by a fresh reference back is very great, and Mr. Narayana-murti was content to argue the point before us, provided

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(1) (1917) I.L.R., 40 Mad., 1134. (2) (1901) I.L.R., 24 Mad., 377 (P.C.).

(3) (1906) I.L.R., 29 Mad., 336 (F.B.).

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it was left open to him to contend before the Divisional Bench that the facts do not show that the Appellant Company now possess an enforceable equity to specific performance. On this understanding we have no hesitation in saying that in our opinion the decision in *Kurri Veerareddi v. Kurri Bapireddi*(1) is contrary both to principle and authority and should no longer be followed in this Court.

This Appeal coming on for hearing after the expression of the Opinion of the Full Bench, the Court (PHILLIPS and DEVADOSS, JJ.) delivered on the twelfth day of September 1923 the following Judgment:—

It is now contended by Mr. Narayanamurthi that the applicability of the doctrine of part-performance is limited to cases where the right to sue for specific performance is not barred on the date of the subsequent suit and he relies on *Gajendra Nath Dey v. Moulvi Ashraf Hossain*(2) and *Syamkisor v. Dines Chandra*(3).

In neither case was this proposition specifically considered, whereas in *Meher Ali Khan v. Arutunnessa Bibi*(4), there is a decision of a single Judge to the contrary. We can find no such limitation in any of the judgments of the Privy Council cited, and to impose such a limitation would, in effect, confine the equity to cases in which the party had a subsisting legal right which he could enforce, and consequently be a denial of justice in other cases. This is hardly consistent with the doctrines of equity and we are not prepared to accept this plea.

In the result this appeal is allowed and plaintiff's suit dismissed with costs throughout.

N.R.

(1) (1906) I.L.E., 29 Mad., 336 (F.R.).

(3) (1920) 31 C.L.J., 75.

(2) (1922) 27 C.W.N., 159.

(4) (1919) 25 C.W.N., 905.