

## APPELLATE CIVIL.

*Before Mr. Justice Ramesam and Mr. Justice Jackson.*1924,  
March 6.NARAYANAN CHETTY AND TWO OTHERS (DEFENDANTS  
2, 3 AND 4), APPELLANTS,

v.

MUTHIAH CHETTY AND FOUR OTHERS (PLAINTIFFS 1 TO 4  
AND FIRST DEFENDANT), RESPONDENTS.\**Specific performance—Advantageous agreement to sell joint family lands by father and manager of the family—Suit for specific performance even against minor members of the family, maintainability of.*

Where in return for balance due from a customer, a joint Hindu family of traders consisting of two brothers, the elder of whom had one major and two minor sons, had to purchase some lands from the customer at some loss and in order to reduce the loss the father and manager of the family agreed to sell the lands to the plaintiff at a certain price ;

*Held* that the plaintiff was entitled to enforce specific performance of the contract to sell against the minor members also.

APPEALS against the decrees of K. A. KANNAN, Acting Subordinate Judge of Sivaganga, in Original Suits Nos. 84 of 1915 and 90 of 1914.

The facts are given in the Judgment of RAMESAM, J.

*A. Krishnaswami Ayyar* (with *T. V. Muttukrishna Ayyar* and *N. Muthuswami Ayyar*) for appellants.—There cannot be any specific performance against a minor. No necessity or benefit to the family is proved so as to bind minor coparcener. *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri*(1), *Rangayya Reddy v. Subramania Ayyar*(2), *Baluswami Aiyar v. Lakshmana Aiyar*(3) and *Bappu v. Annamalai Chettiar*(4).

\* Appeals Nos. 25 and 26 of 1917.

(1) (1912) I.L.R., 39 Cal., 232 (P.C.). (2) (1917) I.L.R., 40 Mad., 365 (F.B.).  
(3) (1921) I.L.R., 44 Mad., 605 (F.B.). (4) (1923) 44 M.L.J., 226.

*S. Srinivasa Ayyangar* (with *K. Raja Ayyar* and *R. Srinivasa Ayyangar*) for respondents.—*Rangayya Reddy v. Subramania Ayyar*(1), *Baluswami Aiyar v. Lakshmana Aiyar*(2), *Bappu v. Annamalai Chettiar*(3) are really in my favour. Section 27 (c) of Specific Relief Act can be applied even against minor coparceners where the manager's contract to alienate is necessary or beneficial for the family and it can be enforced, even after the death of the person who contracted just as against ordinary legal representatives; *Hari Charan Kaur v. Kaula Rai*(4), *Bhagwan v. Krishnaji*(5), *Krishna Aiyar v. Shamanna*(6), *Babu Ram v. Said-un-nissia*(7). In trading families, trading purpose is family purpose; hence minors also are bound. All powers incidental to business are vested in the manager. *Raghunathji Tarachand v. The Bank of Bombay*(8), *Pahalwan Singh v. Jivan Das*(9) *Kishan Prasad v. Har Nurain Singh*(10).

NARAYANAN  
CHETTY  
v.  
MUTHIAH  
CHETTY.

RAMESAM, J.—Appeal No. 25 of 1917 :—

RAMESAM, J.

This appeal arises out of a suit for specific performance of an agreement to sell. The Subordinate Judge decreed the suit. The defendants appeal.

Narayana Chetti, father of fourth defendant, and his younger brother, Muthiah Chetti, father of defendants 1 to 3, were carrying on business at Rangoon under the style of M. P. M. Rm. In the course of the business one Veerappa Chettiar of the Pl. R. M. Firm became indebted to the firm to the extent of Rs. 3,000 but was unable to pay the debt. The second plaintiff advised the agent (Alagappa) of the defendants through P.W. 6 of the connected suit O.S. No. 90 of 1914

(1) (1917) I.L.R., 40 Mad., 365 (F.B.).

(2) (1921) I.L.R., 44 Mad., 605 (F.B.).

(4) (1917) 2 P.L.J., 518 (F.B.).

(6) (1912) 23 M.L.J., 610.

(8) (1910) I.L.R., 34 Bom., 72.

(3) (1923) 44 M.L.J., 226.

(5) (1920) 22 Bom. L.R., 997:

(7) (1918) I.L.R., 35 All., 499.

(9) (1920) I.L.R., 42 All., 109.

(10) (1911) I.L.R., 33 All., 272 (P.C.).

NARAYANAN  
CHETTY  
v.  
MUTHIAH  
CHETTY.  
RAMESAM, J.

(examined on commission at Rangoon) to buy the suit site and that he (the second plaintiff) would "take it off him afterwards," so that defendants' firm who are not in need of the site need not lose interest (vide Exhibit G-2). The defendant's father purchased the site for Rs. 5,000 the consideration consisting partly of cash and partly of the debt due by Veerappa (Exhibit A). Before it could be reconveyed to plaintiffs, it was found that, out of Veerappa's two brothers, while one attested the sale deed, the other, Murugappa Chetti, was disputing the validity of the sale. The plaintiffs and defendants' father discussed the best method of satisfying him and ultimately (vide Exhibit G-1) the plaintiffs paid Rs. 1,000 to buy him off and obtained a release deed (Exhibit D) at Rangoon. Meanwhile, before the payment and execution of Exhibit D were known to the parties, the defendants' father executed Exhibit C in favour of plaintiffs. The document has been proved to be genuine. All the evidence, oral and documentary, supports it. The plaintiffs agreed to pay Rs. 4,500 besides the Rs. 1,000 paid to Murugappa for executing Exhibit D. They issued a Hundi (Exhibit C) and it was cashed (Exhibits F and K). The incorrect date in Exhibit F (an account book of the defendants) cannot affect the plaintiff's case.

Thus, the plaintiffs have proved the suit agreement, the payment of consideration and that the transaction was beneficial to the defendants' firm who were anxious to part with the site to the plaintiffs who, by offering to purchase, diminished the defendants' loss. Assuming that the proper price of the site at the time was Rs. 5,000, the defendants, if they wanted to keep the site, would have had to pay Rs. 1,000 to Murugappa. The plaintiffs by intervening and paying Rs. 5,500 (i.e., Rs. 1,000 to Murugappa and Rs. 4,500 to the defendants'

firm) reduced the defendants' loss from Rs. 1,000 to Rs. 500. In this sense, it was beneficial to the family of the defendants who were a trading firm in need of money rather than the suit property which was not situate in the defendants' village.

NARAYANAN  
CHETTY  
v.  
MUTHIAH  
CHETTY.  
RAMESAM, J.

The point strongly pressed by the vakil for the appellants is that, the defendants 2 and 3 being minors, there can be no decree for specific performance against them. There is no general rule that no decree for specific performance can be passed against minors. For instance, in the simplest and obvious case where a contract is entered into by a Hindu in respect of property which is not joint family property and the property devolved by inheritance on heirs, some or all of whom are minors, it cannot be contended that no decree for specific performance can be made and this is conceded by the appellant. The next case is where a Hindu, who is a member of a joint family, enters into a contract to sell his own share and dies and the property descends by survivorship to other members of the family some or all of whom may be minors. In *Bhagwan v. Krishnaji*(1) it was held that it can be enforced against the undivided sons of the deceased. I think this decision is not in conflict with the opinions of WALLIS, C.J., and SADASIVA AYYAR, J., in *Rangayya Reddy v. Subramania Ayyar*(2) nor with the actual decision in *Bappu v. Annamalai Chettiar*(3) which is not a case of a member contracting to sell his own share. If the point arises for decision, I would perhaps hold that *Bhagwan v. Krishnaji*(1) was correctly decided on grounds which need not be stated. The case when the contract is made on behalf of a minor or minors is settled by the decision in *Mir Sarwarjan v. Fakhrudin Mahomed Chowdhuri*(4). Mr. Srinivasa Ayyangar

(1) (1920) 22 Bom. L.R., 997.

(2) (1917) I.L.R., 40 Mad., 365 (F.B.).

(3) (1923) 44 M.L.J., 226.

(4) (1912) I.L.R., 39 Calc., 232 (P.C.).

NARAYANAN  
CHETTY  
v.  
MUTHRAH  
CHETTY.  
—  
RAMBHAM, J.

contends that, all that the Judicial Committee decided was that such a contract cannot be specifically enforced only when it was not for purposes of necessity binding on the minors and the contract in that case which was one for the purchase of immoveable property was not for the benefit of the minors. I cannot agree with this narrow interpretation of the decision. Their Lordships say at page 237 :—

“They are, however, of opinion that it is not within the competence of a guardian of a minor to bind the minor or the minor’s estate by a contract for the purchase of immoveable property.”

There is no reference here to “necessity” nor is any distinction drawn between a contract being merely “advantageous” to a minor as opposed to its being for necessary purposes binding on the minor, though, earlier in the judgment, their Lordships accept the assumption “that the purchase was an advantageous purchase for the minor.” I think this decision also covers the case where a joint family consists of minors only and therefore has no manager, and a guardian of all the minors who is, *ex hypothesi*, not manager, not being a member of the family but is merely their guardian, enters into a contract on behalf of some or all of the minors, whatever the nature of the contract may be.

The present case is where the contract is entered into by the manager of a family on behalf of the whole family for purposes binding on the family. The decision in *Bappu v. Annamalai Chettiar*(1) does not help the appellant, for the contract in that case was not for purposes binding on the family and the remarks at page 228 are against him. The remarks in *Krishna Aiyar v. Shammanna*(2) are against the appellant and in favour of the

(1) (1923) 44 M.L.J., 226.

(2) (1912) 23 M.L.J., 610.

respondents. The observations in both these cases are *obiter* not being necessary for the decisions. In *Narayana Row v. Venkatasubba Row*(1), SPENCER, J., conceded that a contract made by a manager on behalf of the family may be enforced against the manager and where it is for the benefit of the family, the completed contract will certainly bind the minor members. Should the accident of the death of the manager before the completion in such a case make any difference? Where a contract is by a manager on behalf of a family, and for the benefit of the family and the manager dies, it can be enforced against the survivors when they are all majors; *Venkateswara Aiyar v. Raman Nambudri*(2). Should it make any difference that some of the survivors are minors, and does the case in *Mir Sarwarjan v. Fakhrudin Mahomed Chowdhuri*(3) support such a distinction? The matter is *res integra* and I am inclined to answer the above queries in the negative. I agree with PHILLIPS, J.'s remarks in *Bappu v. Annamalai Chettiar*(4) where he refers with approval to *Ramachandra Aiyar v. Sundaramurthi Mudali*(5) and the *obiter dicta* in *Krishna Aiyar v. Shamanna*(6). The result is, we are of opinion that a decree for specific performance may be passed against the minor defendants 2 and 3. The pleadings and the allegations in I.A. No. 728 of 1914 (in O.S. No. 90 of 1914) show that fourth defendant is not divided from defendants 1 to 3 and no separate argument can be adduced for him.

The suit is not barred by limitation as it does not appear that the specific performance of the contract was refused more than three years prior to suit; *Venkanma v. Venkatakrishnayya*(7). The words "on demand" in

NARAYANAN  
CHETTY  
v.  
MUTHIAH  
CHETTY  
RAMESAM, J.

(1) (1920) 38 M.L.J., 77.

(2) (1916) 3 L.W., 435.

(3) (1912) I.L.R., 39 Cal., 232 (P.C.).

(4) (1923) 44 M.L.J., 226 at p. 228.

(5) (1894) 4 M.L.J., 9.

(6) (1912) 23 M.L.J., 610.

(7) (1918) I.L.R., 41 Mad., 18.

NARAYANAN  
CHETTY  
v.  
MUTHIAH  
CHETTY.

Exhibit C show, in a case like this, that the cause of action arises only after request (see 19 Halsbury, section 65, page 43).

RAMESAM, J.

The result is the appeal fails and is dismissed with costs. It is conceded that A.S. No. 26 of 1917 follows. It is also dismissed with costs.

JACKSON, J. JACKSON, J.—I agree.

N.R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao.*

YADAVENDRA BHATTU (PLAINTIFF), APPELLANT,

1924,  
February 19.

v.

SRINIVASA BABHU AND OTHERS (DEFENDANTS NOS. 1 TO 3),  
RESPONDENTS.\*

*Mortgage—Non-payment by the mortgagee of part consideration due to the mortgagor—Condition, not fulfilled by mortgagor—Assignment by mortgagor of the amount not paid—Suit by assignee to recover the amount from mortgagee, whether maintainable—Suit for damages, whether maintainable by assignee—Transfer of Property Act (IV of 1882), sec. 6 (e).*

A suit to enforce an agreement to lend money on a mortgage is not maintainable.

*Anakaran Kasmī v. Saidamadath Avulla*, (1879) I.L.R., 2 Mad., 79; *Rajagopala Aiyar v. Sheik Davood Rowther*, (1918) 34 M.L.J., 342; and *Sheikh Gulim v. Sadurjan Bibi*, (1916) I.L.R., 43 Cal., 59, referred to.

Though it is open to the mortgagor to sue the mortgagee for damages for the breach of the agreement to lend money, a right to obtain damages cannot be transferred under section 6 (e) of the Transfer of Property Act; consequently an assignee from the mortgagor of a part of the consideration due for a mortgage, which was not paid by the mortgagee, is not entitled to recover it in a suit against the mortgagee.

---

\* Second Appeal No. 968 of 1921.