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observation is only an *obiter dictum*. The case is not otherwise applicable. *Patent Castings Syndicate, Limited* v. *Etherington*(1) referred to excess profits duty which stands on a different footing altogether; as pointed out by the learned Judge there, it was declared by statute to be an admissible deduction. Furthermore, the case was one of net profits of the company on which dividend was payable to the manager and not an income-tax case.

For the above-mentioned reasons we have come to the conclusion that the amount of profession tax paid is not a proper deduction for assessment of income-tax and we answer the question submitted in the negative. The assessees will pay the Commissioner's costs and Vakil's fee Rs. 200.

T. D. Narasayya, Attorney for assessees.

N.R.

APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, and Mr. Justice Reilly.*

1925, September 16.

K. SATYANARAYANA (SECOND DEFENDANT), APPELLANT,

v.

Y. CHINNA VENKATARAO AND FIVE OTHERS (PLAINTIFFS AND DEFENDANTS 3, 8, 7 AND 9), RESPONDENTS.*

Sec. 77 of Indian Registration Act (XVI of 1908)—Plaintiff (purchaser) tendering sale-deed for registration—Denial of execution—Refusal to register—Plaintiff's only remedy, suit under sec. 77 of the Registration Act and not suit for specific performance.

If, on denial of execution by the vendor, a Registrar refuses to register a sale-deed presented by the purchaser for registration, the sole remedy of the purchaser is to a file a suit as provided by section 77 of the Registration Act for registration

(1) [1919] 2 Ch., 254.

* Appeal No. 68 of 1922.

of the deed within 30 days of the refusal and not a suit for specific performance of the contract, such as the execution of a new sale-deed, and delivery of lands sold, etc., *Venkatasami* v. *Kristayya*, (1893) I.L.R., 16 Mad., 341, followed. *Amer Chand* v. *Nathu*, (1910) 7 A L.J., 887 ; *Surendra Nath Nag Chowdhury* v. *Gopal Chunder Ghosh*, (1910) 12 C L.J., 464 and *Nasiruddin Midda* v. *Sidhoo Mia*, (1918) 44 I.C., 361 not followed.

APPEAL against the decree of C. RANGANAYAKALU NAYUDU, Additional Subordinate Judge of Cocanada, in O.S. No. 10 of 1920.

The contesting defendants in this suit, viz., defendants 1 to 3 formed members of a joint Hindu family, the second and third defendants being respectively the son and widow of two deceased brothers of the first defendant. The fourth and fifth defendants were relatives of this family claiming some interest in some of the suit lands. The plaintiff alleged that, defendants 1, 3, 4 and 5 and the mother and guardian of the second defendant executed in his (plaintiff's) favour on 20th January 1917 an agreement promising to execute in his favour within a month, a sale-deed of certain family lands for Rs. 6,000 for the purpose of discharging debts binding on defendants 1 to 3 and that they accordingly executed a sale-deed on 31st January 1917 and handed over the same to the plaintiff. The plaintiff further alleged that when he presented it for registration the third defendant denied execution and the Sub-Registrar registered it only as regards others and refused registration as regards the third defendant and that his appeal to the Registrar for enquiry and registration as regards the third defendant was unsuccessful. Without filing a suit under section 77 of the Registration Act within 30 days of the Registrar's refusal, the plaintiff later on filed this suit for specific performance of the contract, viz., for the execution of a sale-deed by all the defendants as agreed and for possession of the lands sold, alleging that he had fully discharged the whole of the consideration of Rs. 6,000 as agreed. The first defendant was *ex-parte*. The second defendant pleaded that the 1st defendant was not a joint owner at all of the suit properties having been adopted in another family, that he himself was solely entitled to them, that at the time of the agreement and execution of the sale-deed he was a major, that the debts were not binding on him, that his mother's execution of the agreement and sale-deed were not true and binding on him and that the third defendant was entitled only to maintenance. The third defendant pleaded that she did not execute the sale-deed.

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The following were the first four issues framed in the suit by the Subordinate Judge:—

(1) Whether the suit agreement is genuine ?

(2) Whether the second defendant was a major on the date of the agreement and the agreement is not valid for that reason ?

(3) If the second defendant was a minor, whether the agreement was for his benefit and is binding on him ?

(4) Whether by reason of execution of a sale-deed, which the third defendant has refused to register, the plaintiff lost his rights to ask for specific performance by a suit, and his only remedy lay by suing for registration under section 77 of the Indian Registration Act.

On the first issue the Subordinate Judge held that the suit agreement was genuine. On the second issue he held that on the date of the suit agreement the second defendant was a minor. On the third issue he held that the agreement was for the 2nd defendant's benefit and was binding on him. On the fourth issue he held that as the defendants failed to execute and give a duly registered document binding on all the parties to the agreement, the plaintiff was entitled to sue for specific performance and that a suit under section 77 of the Registration Act was not his only remedy. He relied on *Arumalu* v. *Meenakshi*(1) and *Nasiruddin Midda* v. *Sidhoo Mia*(2). He accordingly allowed the suit. Thereupon the second defendant filed this appeal in which he urged all his contentions as before including the one based on section 77 of the Indian Registration Act.

A. Krishnaswami Ayyar with *P. C. Venkataramayya* for appellant.—The sale-deed was in this case with the plaintiff and was presented by him for registration. On the Registrar's refusal to register, his only right was to file a suit under section 77 of the Registration Act. The agreement to sell having merged in the sale-deed, plaintiff cannot sue for specific performance of the contract and again ask for a new sale-deed, as if the agreement is still unexecuted and in force; an agreement to sell cannot be read into an executed conveyance. Not having filed a suit within 30 days as required by section 77, the plaintiff has lost his remedy and this suit is incompetent. This is the view consistently taken by our High Court; See *Venkatasami* v. *Krishtayya*(3), *Thayarammal* v. *Lakshmiammal*(4)

(1) (1912) 12 M.L.T., 301.
(2) (1918) 44 I.C., 361.
(3) (1893) I.L.R., 16 Mad., 341.
(4) (1920) I.L.R., 43 Mad., 822.

Subbaraya Pillay v. *Devasahayam Pillai*(1). He referred to *Chinna Krishna Reddi* v. *Dorasami Reddi* (2), *Subba Reddiar* v. *Visvanatha Reddiar*(3). The Allahabad and Calcutta High Courts take a different view and this High Court refused to follow them in the two latest of the above cases.

G. Lakshmanna (with *A. Satyanarayana* and *C. Rama Rao*), for respondents.—The plaintiff (i. e., the purchaser), has done everything he was bound to do and hence, the sellers are ordinarily and also by the terms of the contract in this case, bound to give the buyer a proper *registered* conveyance by *all* the parties to the contract and to put him in possession; that they have not done. Hence a suit for specific performance for *all* such reliefs lies. The remedy under section 77 of the Registration Act is nowhere specified as the only remedy. It is only an optional and summary remedy and the section gives only one of the several reliefs to which the plaintiff is entitled, viz. that relief of getting the document registered. That is the view taken in *Tripoora Soonduree* v. *Russick Chunder Kanoongoe* (4), *Amer Chand* v. *Nathu*(5), *Surendra Nath Nag Chowdhury* v. *Gopal Chunder Ghosh*(6), *Nasiruddin Midda* v. *Sidhoo Mia* (7). A joint sale-deed by all the executants was intended and sale-deed by some alone will not do; *Arumalu* v. *Meenakshi*(8). In some of the Madras cases quoted by the appellant the plaintiff was at fault and his suit was therefore dismissed. In others where the Courts held that it was through the fault of the defendant that the documents were not registered, the Courts directed specific performance.

A. Krishnaswami Ayyar replied.

JUDGMENT.

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—This is an appeal from a decree of the Subordinate Judge of Cocanada wherein he gave certain remedies by way of specific relief to the plaintiffs. The plaintiffs' case was that sums of money were due to them as debts from various people. It is not material for the purposes of our decision to know

(1) (1922) M.W.N., 70.
(2) (1897) I.L.R., 20 Mad., 19.
(3) (1914) 22 I.C., 941.
(4) (1871) 15 W.R., 189.
(5) (1910) 7 A.L.J., 887.
(6) (1910) 12 C.L.J., 464.
(7) (1918) 44 I.C., 361.
(8) (1912) 12 M.L.T., 301.

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how those debts were alleged to have come into existence, what was their nature or what were the relations to the plaintiffs of the various parties to the transactions in question. The transaction was that an agreement was entered into for the sale of certain property in extinguishment of the plaintiffs' claims. The agreement that was entered into by the contracting parties was this: "We shall execute the sale-deed for this as per your draft and give it to you registered within three months from this date"; so that undoubtedly under that document it was part of the obligation of the defendants to get the deed that was in contemplation by this agreement drawn up, executed, and registered. A deed was drawn up and in due course it came to the stage of registration. One of the persons who executed the agreement, the third defendant in this case, when the time came for registration, objected to the registration of the document and the registration authorities after an enquiry into the matter refused to order registration of the document as against the recalcitrant third defendant, plaintiffs' case of course being throughout that she was a person against whom the deed ought to have been registered (and that is their case here to-day) and that the registration authorities were in error in giving effect to her refusal. In these circumstances they brought this suit for specific performance of the agreement against all the parties to it. We are not really called upon to decide in this case whether this is a matter in which the contemplation of the parties was that all should sign or that the signatures of what I may call the operative persons should be regarded as sufficient, it apparently being the fact that the signatures of others including the recalcitrant third defendant were added *ex majori cautela* in case they should raise objections and claims thereafter. Speaking for myself, I think that even in such a

case it must most probably be held that it was the intention that they should execute for the very purposes that I have mentioned. However, in the view that we take, it is unnecessary to decide the matter. And if the other view were to prevail that the signature of this person was otiose and unnecessary, then of course the plaintiffs' case would fail equally because the whole agreement would be completed sufficiently to satisfy the contract and there would be nothing for the suit to operate upon. But taking it that the signature of the third defendant was necessary, what is the position in law?

By section 77 (1) of the Registration Act it is enacted as follows:—

> "Where the Registrar refuses to order the document to be registered, any person claiming under such document may within 30 days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office."

That is a statutory remedy given to a person who stands in the position that he is entitled to have a document registered by somebody else, that that somebody else has refused and the Registrar has upheld the refusal and he wants to have that compulsorily registered as against the other person. It should be observed, and I think this is a most important thing to notice about the section, that it provides a limitation of a short period of 30 days, the object no doubt being to ensure that matters of this kind should be gone into when the evidence is fresh in everybody's mind and in all human probability all of it available, whereas if left to an ordinary suit some people might be dead who could throw light on the matter and others might have let it fade from their recollection. I should have thought that looking at the

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statute alone it is clear that the object of the legislature was to provide a remedy of a very short period of limitation for putting right a wrongful refusal to register, and that must be held to be the remedy and the only remedy given by law. But unfortunately the matter is covered with conflicting authority. The authorities in Madras appear to differ from the authorities in other parts of India. In a matter which is open to divergence of view, my opinion is that this Court should follow its own *cursus curiæ* unless it is of opinion that the former decisions of the Court are clearly wrong. I do not think, if it agrees with those decisions, that it ought to harass the parties with any argument before a Full Bench merely because of different views in other Courts.

An authority which is directly in favour of the respondents is *Amer Chand* v. *Nathu*(1) a decision to which that very distinguished Judge STANLEY, C.J., was a party. A sale-deed was executed, a lady refused to register it, but no suit was brought for compulsory registration; nevertheless it was held that the plaintiff was entitled to a remedy by way of specific performance; and the learned Judge says this:—

"His (plaintiff's) grounds of appeal are that the substantial relief sought by him was the specific performance of the contract for sale and for possession of the property. We see no answer to this appeal. No defence to the action was disclosed by the defendants and in view of all the facts the Court of first instance as well as the lower appellate Court ought, in our opinion, to have granted a decree for specific performance. The Court of first instance was wrong in passing an order (that is no doubt true) for registration of the sale-deed which was executed by the guardian of the defendants in view of the provisions of the Registration Act. But it appears to us that the Court has jurisdiction to direct performance of the contract and to require that the defendants should do all necessary acts for the purpose of fulfilling the obligation into which through their guardian

(1) (1910) 7 A.L.J., 887.

they had entered, and that the plaintiff is entitled to have a fresh sale-deed executed by all necessary parties and to have the document so executed registered."

And then they quote *Chinna Krishna Reddi* v. *Dorasami Reddi*(1), a case which I shall show presently is really no authority for the proposition laid down by the Allahabad High Court at all. The next direct authority in Mr. Lakshmanna's favour is a case in *Surendra Nath Nag Chowdhury* v. *Gopal Chunder Ghosh*(2), a decision of MUKERJEE and CARNDUFF, JJ. There the decision was that

"although a document, which has been executed, is inoperative in law and wholly ineffectual to create title in the intended lessee, it is nevertheless evidence of a valid agreement to execute a lease and may consequently form the foundation of an action for specific performance."

That really entails another doctrine as well as the one we are directly concerned with here, namely, that though a lease has for some reason or other become, or was from the first, legally inoperative, yet for the purpose of bringing a suit for specific performance it is open to the Court to treat it as a mere agreement of lease. I should have thought it a very vicious method of construction to say that a document, which purports to be one thing, is to be allowed to be treated when it is found imperfectly to contain what it purports to be as a valid document of a different order altogether. The reasoning of the learned Judges of the Calcutta High Court appears to be this. The undertaking of a person who enters into a contract for the sale of real property is to do everything whereby an operative agreement in law can be effected. He has not done everything if he failed in an instrument where the obligation is cast upon him to obtain its registration and, therefore, a step in the creation of the legal

(1) (1897) I.L.R., 20 Mad., 19. (2) (1910) 12 C.L.J., 464.

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relation of purchaser and vendor being wanting, you can compel the person who has not taken that step to take it. The answer appears to me to be very simple. Section 77 of the Registration Act not only tells you how you are to do that, but says that if you want to effect that purpose of having registration forcibly carried out by a decree of the Court, you must do it within 30 days. It seems to me that these decisions in Calcutta and Allahabad in effect take upon themselves by a side wind to get rid of the period of limitation strictly imposed by the express words of the statute. To my mind no judicial decision has any right to tamper with a thing directly enforced and enjoined by a statute whose construction is free from possible doubt. The most that can be said is that the remedy given by the statute is not intended to be the only one. It is almost impossible to believe that the legislature can have intended that there should be a direct and an indirect way of effecting the same thing and that the period of limitation applicable to them should be entirely different. That is the view that has been taken in more than one case in this Court. But before I deal with them I want to refer to one other case of the Calcutta High Court, *Nasiruddin Midda* v. *Sidhoo Mia*(1), because that is an instructive case. What appears to me to be the policy underlying the Calcutta trend of decisions is, I think, well illustrated by that case decided by MUKERJEE and BEACHCROFT, JJ., in 1917. In that case the plaintiff claimed two things in the alternative. He first put in a claim asking in terms to have the registration of a document enforced and an alternative claim along with it for specific performance. The document was in the same stage as the document here. It had been executed

(1) (1918) 44 I.C., 361.

but one of the parties had refused to acknowledge the right to have it registered. The learned Judges say this :

"As regards the claim to enforce registration of the document executed in his favour by his vendors he was, no doubt, bound to follow strictly the procedure prescribed by the Indian Registration Act before he could institute a suit under section 77 to compel registration. But as regards the alternative claim to enforce specific performance of the agreement to sell there was really no answer to the suit. Although the vendors had executed the document, they could not be deemed to have completely performed their part of the agreement. The agreement in essence was not merely to execute a conveyance which until registered would be inoperative in law but to transfer the full title from themselves to the plaintiff as purchaser. Such title could be transferred only by means of a registered instrument; consequently the execution of the conveyance not followed by registration could not be regarded as fulfilment of the contract."

So that what is taken away by the right hand is immediately replaced by the left and where the statute has forbidden a special means, another means is promptly devised in order to get round the words of the Act.

In Madras the decisions have been different and having considered them all, I am of opinion that they are quite consistent. The leading case and the most direct authority is *Venkatasami* v. *Kristayya*(1). There the plaintiff sued for specific performance and a decree had been passed in the lower Court directing the defendant to execute and register a deed of transfer. That judgment was upset by MUTTUSWAMI AYYAR and HANDLEY, JJ., and the reasoning that is directly in point is to be found on the second page of the judgment. It is an interesting case because the judgment contemplates the case not merely of failure by the defendant to procure registration but the case where the plaintiff

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

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does not pursue the remedy given him under section 72 or 76. The learned Judges say this :

"If defendant had appeared and admitted execution, the document would have been registered. If he had appeared and denied execution, registration would have been refused and plaintiff would have been entitled to an enquiry before the Registrar under sections 73 to 76. If defendant did not appear, plaintiff might have proved execution of the document, and on such proof would have been entitled to registration. If the registering officer was not satisfied with the evidence of execution and refused to register, an appeal would have lain to the Registrar under section 72. If the decision under section 72 or 76 had been adverse to plaintiff, he would have a remedy by suit under section 77 of the Act. Plaintiff had therefore a complete remedy under the Act, and not having chosen to follow it, has only himself to blame that the efficacy of the document has not been completed by registration."

Then they go on to dispose of the other doctrine that you can treat an incomplete conveyance as a complete agreement for a conveyance and negative that. The learned vakil who appeared for the respondents in this case said,

"There is a distinction. The plaintiff was disentitled there, because it was through his own negligence that he failed to get the document registered."

I may point out in passing that in terms part of that negligence was considered by the learned Judges to be his failure to adopt the remedy given him under the Registration Act including the remedy by suit under section 77. But says Mr. Lakshmanna,

"If you look at some of the later cases you will find that a distinction is drawn and you find that in cases where it has been proved that the defendant was the person to blame, the remedy by the Specific Relief Act has been allowed."

When examined, those cases appear to me not in the least to support his contention. In *Chinna Krishna Reddi* v. *Dorasami Reddi*(1), there had been a document of conveyance executed, but before registration the

(1) (1897) I.L.R., 20 Mad., 19.

defendant in the suit got hold of the document fraudulently, stole it from the plaintiff and concealed it for the purpose of preventing registration from taking place, because obviously the Registrar cannot register a document which for his purpose is non-existent, and therefore the learned Judges say that the plaintiff was clearly entitled to have a fresh document executed and registered just as he would be so entitled if after execution the document had been accidentally lost or destroyed. That no doubt is quite true. And it follows a much older decision of this High Court in *Nynakka Routhen* v. *Vavana Mahomed Naina Routhen*(1). In that case, soon after execution, the document in question was destroyed by fire before it had been registered. It was held that the plaintiff was entitled to ask the Court to compel the defendant to execute a fresh document. The principle of the decisions in the last two cases is perfectly intelligible but it does not appear to me to touch the present case. Mr. Lakshmanna says,

> "All those were cases where it had been shown that the defendant was at fault. No doubt on his own showing the Court ought to give specific performance as a remedy for the plaintiff."

It is not in my opinion the true line of reasoning at all. The plaintiff there was entitled to have a decree which no doubt included a direction that he should be given an executed and registered instrument, because as things stood at the time of the suit he had nothing whatever to register. In the one case the document had been destroyed and in the other case it had been abstracted and he could not go to the Registrar and say, "Compel my conveyor to register a document in my favour," because the document to be registered was non-existing. The cases appear to have no bearing on

(1) (1869) 5 M.H.C.R., 123.

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this case. And it must be remembered that although in this country the remedy of specific performance is a statutory remedy, it nevertheless is simply a crystallization into statutory form of an equitable remedy to which laches was, as it is to all equitable claims, an answer. How it can be said that a man who is given an express statutory remedy by an Act of Legislature under section 77 of the Registration Act and has failed to take advantage of it, has not been guilty of laches and is entirely free from blame, passes my comprehension. It appears to me that a man who has failed to adopt the remedy expressly provided by the statute cannot come to this Court and ask for an exercise in his favour of a discretionary and equitable remedy. I ought to add that the decision in *Venkatasami* v. *Kristayya*(1) has been followed in several later decisions of this Court of which I need only instance two, *Thayarammal* v. *Lakshmiammal*(2) and *Subbaraya Pillai* v. *Devasahayam Pillai*(3). This is sufficient to dispose of this appeal because it is not pretended that unless the respondent can get over this stile there is anything arguable in the appeal. That being so, the appeal must be allowed with costs of second defendant throughout and the suit dismissed.

Memorandum of objections is dismissed. No costs.

RE ILLY, J.

REILLY, J.—I entirely agree.

N.R.

(1) (1893) I.L.R., 16 Mad., 341. (2) (1920) I.L.R., 43 Mad., 822.
(3) (1922) M.W.N., 70.