

A HANUMAPPA CHANNAPPA HULLUR (D) BY LRS.

v.

SHIVAMARUTHAPPA PARAPPA KALLI & ORS.

(Civil Appeal Nos.411-412 of 2004)

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AUGUST 21, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

*Specific performance:*

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*If vendor-father agrees to sell a property without disclosing that it is a joint property and the fact that he had only one-third share in the said property and enters into the agreement without the concurrence of the other sharers then suit for specific performance cannot be enforced against the other sharers – Sale agreement enforced against vendor-father to the extent of his 1/3<sup>rd</sup> share in the suit property – The impugned judgment of the High Court dismissing the suit seeking for specific performance is liable to be set aside to that extent.*

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*English law on grant of specific performance to the extent of ownership/interest in joint property – Discussed.*

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*Specific performance of contract in piecemeal – Permissibility – Held: The Court will not as a general rule compel specific performance of a contract unless it can execute the whole contract – This principle is based on the general law that the Court cannot specifically perform the contract in piecemeal, but it must be performed in its entirety if performed at all – But in the absence of misrepresentation or misconduct, the general rule is that where a person is jointly interested in an estate with another person and purport to deal with the entirety, the specific performance will not be*

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granted against him as to his share.

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*Specific Relief Act, 1963: s.12 – Partial relief of specific performance – The present case is not a case of the performance of a part of the contract but the whole of the contract insofar as the vendor is concerned, since he had agreed to sell the property in its entirety but it later turned out that he had only 1/3<sup>rd</sup> share in the property – The sale agreement is binding on the vendor as it is without being fractured – s.12 is not attracted.*

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*Specific Relief Act, 1877: ss.14 to 17 – Under the old Act, the party seeking specific performance under the corresponding provision of s.15 had to pay the entire amount of consideration stipulated in the agreement even where he was seeking enforcement of a part of the contract but under the present Act he has to pay only part of consideration after abatement in the amount of consideration as mentioned in the section – Specific Relief Act, 1963 – ss.12, 14 to 17.*

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**Disposing of the appeals, the Court**

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**HELD:**

**Per C. Nagappan, J.:**

**1. It is not in dispute that the suit property is the joint family property belonging to father and two sons namely defendants 1 to 3. Exh. P-1 is the Sale Agreement executed by the first defendant father in favour of the plaintiff. There is no mention therein that the first defendant father was executing the agreement for himself and on behalf of the defendants 2 and 3, who are his major sons. There is no averment in the agreement that the suit property is joint family property and it is being sold for the benefit of joint family. The joint family members who jointly owned the property have not**

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A executed the said agreement to enable them to purchase another property in the neighbouring village. Neither the plaintiff nor the first defendant have produced evidence in the case to show that pursuant to Exh. P-1 sale agreement, any property was purchased by the first defendant for the benefit of the estate of the joint family. B The High Court has rightly held that the agreement entered into by the first defendant father without the concurrence of the other sharers namely defendants 2 and 3 to sell the joint family property is not legal and valid. C The terms of the sale agreement show that the vendor-father represented to the vendee that he was the absolute owner of the property and he would come along with his children on the day fixed for the registration of the sale deed and he is putting the vendee in physical D possession of the land. In fact, the High Court has confirmed the findings of the courts below that the plaintiff-vendee is in possession of the suit property. The present case is not a case of the performance of a part E of the contract but the whole of the contract insofar as the vendor is concerned, since he had agreed to sell the property in its entirety but it later turned out that he had only 1/3<sup>rd</sup> share in the property. The sale agreement is binding on the vendor as it is without being fractured. F This is not a case which is covered by Section 12 of the Specific Relief Act. There is no impediment for enforcement of the sale agreement against vendor-father to the extent of his 1/3<sup>rd</sup> share in the suit property. The judgment of the High Court dismissing the suit seeking G for specific performance is liable to be set aside to that extent. [Paras 9 to 12, 15] [805-E-H; 806-A-G; 808-A-B]

A.Abdul Rashid Khan (Dead) and others v. P.A.K.A. Shahul Hamid and others (2000) 10 SCC 636; Kammana H Sambamurthy (Dead) by LRs. v. Kalipatnapu Atchutamma

*(Dead) and others* 2010 (12) SCR 772: (2011)11 SCC 153; A  
*Kartar Singh v. Harjinder Singh* (1990) 3 SCC 517 – relied  
on.

*HPA International v. Bhagwandas Fateh Chand Daswani  
and others* 2004 (3) Suppl. SCR 31: (2004) 6 SCC 537 – B  
distinguished.

**Per M.Y. Eqbal, J.: (supplementing)**

1. Under the old Specific Relief Act 1877, Sections 14 C  
to 17 laid down different circumstances of the performance  
of granting relief for specific performance of a part of the  
contract. Under the Specific Relief Act, 1963, Sections 14  
to 17 of the old Act has been amalgamated and new Section  
12 has been enacted. However, the principle contained D  
under Sections 14 to 17 has not been changed while  
enacting Section 12 of the Act. The vital departure from the  
old Act and the new Act is that under the old Act, the party  
seeking specific performance under the corresponding  
provision of Section 15 had to pay the entire amount of E  
consideration stipulated in the agreement even where he  
was seeking enforcement of a part of a contract, but under  
the present Act he has to pay only a part of consideration  
after abatement in the amount of consideration as  
mentioned in the section. [Para 7] [810-B-E] F

*Jenkins vs. Hiles* 6 Ves. 646; *Mortlock vs. Buller* 10 Ves.  
315; *Rutherford vs. Acton Adams*, AIR 1915 PC 113 –  
referred to.

*Book "Fry on Specific Performance"*, 6<sup>th</sup> Edition (1921) G  
page 582 para 1257 – referred to.

**Case Law Reference**

**In the judgment of C. Nagappan, J.:**

(2000) 10 SCC 636                      relied on.                      Paras 7,13,14 H

A    **2010 (12) SCR 772**            **relied on.**            **Paras 7, 14**  
       **2004 (3) Suppl. SCR 31** **distinguished.** **Para 8**  
       **(1990) 3 SCC 517**            **relied on.**            **Para 14**

B            **In the judgment of M.Y. Eqbal, J.:**

**AIR 1915 PC 113**            **referred to.**            **Para 8**

C            **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.**  
       **411-412 of 2004**

      From the Judgment and Order dated 11.03.2002 of the High Court of Karnataka at Bangalore in RSA Nos. 63/1999 and 64/1999.

D            **Rajesh Mahale for the Appellants.**

**Girish Ananthamurthy (for Vijayanthi Girish) for the Respondents.**

E            **The Judgments of the Court were delivered by**

F            **C. NAGAPPAN, J. 1. These two appeals are directed against common judgment and decree dated 11.3.2002 made in RSA No.63/99 and 64/99 made by the High Court of Karnataka at Bangalore, by which the High Court has allowed the Second Appeals filed by the respondents herein.**

G            **2. The suit in OS 133/82 was filed by deceased Hanumappa Channappa Hullur for seeking decree for specific performance of contract on the strength of agreement of sale dated 15.10.1981 executed by defendant No.1 in his favour in respect of the suit land RS 80/1-2/A measuring 11 acres and 24 guntas situated in Adavisomapur village in Gadag Taluk restraining the**

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defendants from interfering in their possession and enjoyment of the suit land and alternatively for refund of earnest money of Rs.53,000/- received by defendant No.1 with interest and damages. The suit in OS 136/82 was filed by defendants 2 and 3 in OS 133/82 against the plaintiff-Hanumappa Channappa Hullur for seeking decree of declaration that the agreement of sale dated 15.10.1981 said to have been executed by their father-Paramma is not binding on them and their one-third share in the suit land and for grant of consequential relief of permanent injunction restraining Hanumappa Channappa Hullur from interfering in their possession and enjoyment of the suit land.

3. It is the case of Hanumappa Hullar, that the suit land belongs to Parappa as it is his self acquired property and he for the sake of legal necessity, i.e. for purchasing the land at Kanavi village offered to sell the land to him. Hence he agreed to purchase the same for Rs. 72,000/- and paid a sum of Rs. 53,000/- as earnest money and Parappa received the same and executed an Agreement on 15.12.1981 and on the same day delivered possession of the land and since then he is in possession and enjoyment of the same. But the said Parappa failed to receive balance consideration amount of Rs. 19,000/- and execute sale deed as agreed before the end of May 1982, along with his two sons. So, he gave notice on 24.5.1982 calling upon them to perform their part of contract, since he was ready and willing to perform his part of contract. Sons of Parappa gave reply to that notice and did not perform their part of contract.

4. It is the case of Parappa and his two sons that there is no agreement of sale, as contended by Hanumappa Hullar, but it was a loan transaction and Parappa never received the sum of Rs.53,000/- and he did not put Hanumappa Hullar in possession of the land, but his signature was taken on a blank

A stamped paper and it was misused. It is also contended that the suit land is not the self acquired property of Parappa and it is not his exclusive ownership. It is the joint family property and his two sons have got equal one third share in it. There is no legal necessity for sale of land and as such, the alleged sale agreement is not binding on them. Hanumappa Hullar, was never put in possession of the land. They have filed the suit for decree for declaration that the alleged sale agreement is not binding on them and also for consequential permanent injunction against Hanumappa Hullar.

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5. Both the suits were tried together and on a consideration of oral and documentary evidence the trial court decreed the suit in O.S No.133/1982 and dismissed the suit O.S No.136/1982. Aggrieved by the same the defendants 2 and 3 in D O.S.No.133/1982 and the plaintiffs in O.S. No.136/1982 preferred appeals in RA No.55/1990 and 56/1990 respectively. The lower appellate court by common judgment dated 17.10.1998 dismissed both the appeals and challenging the same the said appellants preferred RSA Nos.63/1999 and E 64/1999 in the file of the High Court. The High Court allowed both the Second Appeals by impugned common judgment and dismissed the suit in O.S.No.133/1982 and decreed the suit in O.S. No.136/1982 as prayed for. Challenging the same the F present civil appeals are preferred.

6. For the sake of convenience in this judgment the parties are referred to as arrayed in the suit in OS No.133 of 1982 on the file of the trial court.

G 7. The learned counsel appearing for the appellants contended that the sale agreement was entered into by the vendor-father after receiving substantial part of consideration for the benefit of the estate and the High Court erred in reversing the concurrent findings of the courts below, and hence the H impugned judgment is liable to be set aside. It is his further

contention that the deceased appellant sold his only piece of property to purchase the suit land and in any case, the sale agreement could be enforced against the vendor-father to the extent of his 1/3<sup>rd</sup> share and he is bound to execute the sale deed. In support of his submission he relied on the decisions of this Court in **A. Abdul Rashid Khan (Dead) and others Vs. P.A.K.A. Shahul Hamid and others** [(2000) 10 SCC 636] and **Kamma Smbamurthy (Dead) by LRs. Vs. Kalipatnapu Atchutamma (Dead) and others** [(2011) 11 SCC 153].

8. The learned counsel appearing for the respondents contended that the plaintiff did not exercise the option under Section 12(3) of the Specific Relief Act for claiming lesser share viz. 1/3<sup>rd</sup> share of vendor-father at the available opportunity and in view of non compliance of the said provision even partial relief of specific performance cannot be granted. Reliance was placed on the decision of this Court in **HPA International Vs. Bhagwandas Fateh Chand Daswani and others** [(2004) 6 SCC 537].

9. It is not in dispute that the suit property is the joint family property belonging to father and two sons namely defendants 1 to 3. In fact the courts below held so. Exh. P-1 is the Sale Agreement dated 15.10.1981 executed by the first defendant father in favour of the plaintiff. There is no mention therein that the first defendant father was executing the agreement for himself and on behalf of the defendants 2 and 3, who are his major sons. There is no averment in the agreement that the suit property is joint family property and it is being sold for the benefit of joint family. The joint family members who jointly owned the property have not executed the said agreement to enable them to purchase another property in the neighbouring village. Neither the plaintiff nor the first defendant have produced evidence in the case to show that pursuant to Exh. P-1 sale

A agreement, any property was purchased by the first defendant for the benefit of the estate of the joint family. The High Court has rightly held that the agreement entered into by the first defendant father without the concurrence of the other sharers namely defendants 2 and 3 to sell the joint family property is not legal and valid.

10. The terms of the sale agreement show that the vendor-father represented to the vendee that he was the absolute owner of the property and he would come along with his children on the day fixed for the registration of the sale deed and he is putting the vendee in physical possession of the land. In fact, the High Court has confirmed the findings of the courts below that the plaintiff-vendee is in possession of the suit property.

11. The contention of the learned counsel for the respondents that Section 12 of the Specific Relief Act, 1963 is attracted to the facts in the present case is devoid of merit and the decision relied on in *HPA International* (supra) is not applicable. In the agreement of sale in *HPA International* case, full interest in the property i.e. life interest of the vendor and *spes successionis* of the reversioners with sanction of the court was agreed to be sold. The reversioners were not parties to the sale agreement and the parties were conscious that the vendor had only life interest in the property. The present case is not a case of the performance of a part of the contract but the whole of the contract insofar as the vendor is concerned, since he had agreed to sell the property in its entirety but it later turned out that he had only 1/3<sup>rd</sup> share in the property. The sale agreement is binding on the vendor as it is without being fractured.

12. We are, therefore, of the view that this is not a case which is covered by Section 12 of the Act.

13. This Court in the decision in *A. Abdul Rashid Khan's*

case while considering the grant of relief for specific performance pertaining to the contract to sell property held jointly, laid down thus : A

14. Thus we have no hesitation to hold, even where any property is held jointly, and once any party to the contract has agreed to sell such joint property by agreement, then, even if the other co-sharer has not joined, at least to the extent of his share, he is bound to execute the sale deed. However, in the absence of the other co-sharer, there could not be any decree of any specified part of the property to be partitioned and possession given. The decree could only be to the extent of transferring the share of the appellants in such property to other such contracting party. In the present case, it is not in dispute that the appellants have 5/6<sup>th</sup> share in the property. So, the plaintiff's suit for specific performance to the extent of this 5/6<sup>th</sup> share was rightly decreed by the High Court which requires no interference." B  
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14. In ***Kamma Sambamurthy Vs. Kalipatnapu Atchutamma*** case (supra) this Court was concerned with a case where vendor-husband and his wife had each half share in the suit property and the agreement for the sale was executed by the vendor-husband concerning the entire suit property. The question arose as to whether the agreement be enforced against the vendor-husband to the extent of his half share in the property. This Court relying on the decision in ***Kartar Singh Vs. Harjinder Singh*** [(1990) 3 SCC 517] and the decision in ***A. Abdul Rashid Khan's*** case (supra) held that the vendee is not entitled to seek specific performance of the agreement to the extent of half share of the vendor's wife and there is no impediment for enforcement of the agreement against the vendor-husband to the extent of his half share in the property. E  
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15. In view of the above decisions of this Court and the H

- A facts and circumstances which have already been noticed by us, we are of the considered opinion that there is no impediment for enforcement of the sale agreement against vendor-father-first defendant to the extent of his 1/3<sup>rd</sup> share in the suit property. The impugned judgment of the High Court dismissing the suit
- B seeking for specific performance is liable to be set aside to the extent indicated above.

16. In the result Civil Appeal No.411 of 2004 is partly allowed and the suit in OS No.133 of 1982 is partly decreed to
- C the extent of 1/3<sup>rd</sup> share of the first defendant in the suit property is concerned. Civil Appeal No.412 of 2004 is dismissed. No order as to costs.

- M.Y. EQBAL, J.** I have had the advantage of going through
- D the order proposed by my esteemed Brother C. Nagappan, J. While I entirely agree with the conclusion that the appellant must succeed to the extent indicated in the order, I wish to add a few lines of my own.

- E 2. The Court will not as a general rule compels specific performance of a contract unless it can execute the whole contract. This principle is based on the general law that the Court cannot specifically perform the contract in piecemeal, but it must be performed in its entirety if performed at all. In a
- F case where he had held himself contracted out as the owner of the whole, the case would have been different. But in the absence of misrepresentation or misconduct, the general rule is that where a person is jointly interested in an estate with another person and purport to deal with the entirety, the specific
- G performance will not be granted against him as to his share.

3. English law on grant of specific performance to the extent of ownership/interest in joint property has been elaborately dealt with in a number of cases. In **Jenkins vs.**
- H **Hiles**, 6 Ves. 646, the Court of Chancery observed as under:-

"I also agree, if a man, having partial interests in an estate, chooses to enter into a contract, representing it, and agreeing to sell it, as his own, it is not competent to him afterwards to say, though he has valuable interests, he has not the entirety; and therefore the purchaser shall not have the benefit of his contract. For the purpose of this jurisdiction, the person contracting under those circumstances, is bound by the assertion in his contract; and, if the vendee chooses to take as much as he can have, he has a right to that, and to an abatement; and the Court will not hear the objection by the vendor, that the purchaser cannot have the whole."

4. The Rule of the Court and the principle upon which it is founded are very distinctly reiterated by *Lord Eldon* in *Mortlock vs. Buller*, 10 Ves. 315.

5. The principle of law so stated by Lord Eldon has been several times adverted to in subsequent cases, but never questioned and now treated as a settled rule.

6. The Author of the Book "Fry on Specific Performance", 6<sup>th</sup> Edition (1921), page 582 para 1257, says:- "There is no reason why an innocent person who gives consideration for the promise of a charge on the whole should not be in a position equivalent to that of a purchaser and thus secure an order of partial performance. The Doctrine of Partial Performance has been discussed in the book "Fry on Specific Performance" at page 588 paragraph 1270. The Author says :-

"It is well established principle of equity that where, in the course of concluding a contract, a person has represented that he can grant a certain property, or is entitled to a certain interest in that property, and it later appears that there is a deficiency in his title or interest, the other party can obtain an order compelling him to

A grant what he has got, and in an appropriate case, to submit to a reduction of the consideration for the grant: (See Fry on Specific Performance (6<sup>th</sup> Edition) paragraph 1257 and 1259 and the case there cited). We will call this "the doctrine of partial performance."

B 7. Under the old Specific Relief Act 1877, Sections 14 to 17 laid down different circumstances of the performance of granting relief for specific performance of a part of the contract. Under the Specific Relief Act, 1963, Sections 14 to 17 of the old Act has been amalgamated and new Section 12 has been enacted. However, the principle contained under Sections 14 to 17 has not been changed while enacting Section 12 of the Act. The vital departure from the old Act and the new Act is that under the old Act, the party seeking specific performance under the corresponding provision of Section 15 had to pay the entire amount of consideration stipulated in the agreement even where he was seeking enforcement of a part of a contract, but under the present Act he has to pay only a part of consideration after abatement in the amount of consideration as mentioned in the section.

E 8. Section 12, sub-section (2) of the Specific Relief Act, is based on the English Law on the subject. The Privy Council in ***Rutherford vs. Acton Adams***, AIR 1915 PC 113, observed:-

G "In exercising its jurisdiction over specific performance, a Court of Equity looks at the substance and not merely at the letter of the contract. If a vendor sues and is in a position to convey substantially what the purchaser has contracted to get, the court will decree specific performance with compensation for any small and immaterial deficiency, provided that the vendor has not, by misrepresentation or otherwise, disintitiled himself to his remedy. In a suit by purchaser another possible case

arises where a vendor claims specific performance and the court refuses it, unless the purchaser is willing to consent to a decree on terms that the vendor will make compensation to the purchaser, who agrees to such a decree on condition that he is compensated. If it is the purchaser who is suing, the court holds him to have and even larger right. Subject to considerations of hardship, he may elect to take all he can get and to have a proportionate abatement from the purchase money." A  
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9. In the instant case in view of the findings that the appellant had 1/3<sup>rd</sup> share in the property contracted to be sold will not bind the sons, the defendant respondent being co-owner and the property being divisible, a decree for specific performance to the extent of his share can be enforced on the doctrine of partial performance. C  
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10. Having regard to the discussion made above, I fully agree with the view taken by Brother C. Nagappan, J. that the plaintiff-appellant is entitled to the decree for specific performance in respect of 1/3<sup>rd</sup> share in the property and to that extent the impugned judgment and decree is liable to be set aside. E

Devika Gujral

Appeals disposed of.