

**SUPREME COURT OF INDIA**

A. Maria Angelena

Vs.

A. G. Balkis Bee

C.A.Nos.6241-6242 of 1998

(V. N. Khare and B. N. Agrawal JJ.)

11.09.2001

**ORDER**

1. These are the appeals by the defendant-appellants.

2. The predecessor-in-interest of defendant-appellants Nos. 1-7 executed an agreement for sale of a house situate at Royapuram in the city of Madras for a sum of Rs. 1,20,000/-. The plaintiff-respondent paid a sum of Rs. 5,000/- as earnest money. The agreement stipulated that the vendor shall give the vacant possession of the house to the vendee. It appears that in the year 1980, the vendor was successful in evicting the tenant from the first floor of the house. Immediately thereafter the plaintiff-respondent sent a notice to the vendor for executing the sale deed in pursuance of the agreement dated 6th April, 1979. It appears that the vendor evaded to execute the sale deed. In between time, the vendor died and is now represented by his legal representatives. Since the sale deed was not executed, the plaintiff-respondent brought a suit on the original side of the High Court of Madras for specific performance of agreement to sell. While the suit was pending, the legal representatives of the vendor sold the said house to Ansari and Rahima Ansari, who are appellants Nos. 8 and 9 herein. The subsequent purchasers were also impleaded as defendants in the suit. The trial Court found that the plaintiff-respondent was always ready and willing to perform his part of the contract and, therefore, decreed the suit. The defendant-appellants thereafter preferred a Letters Patent Appeal before a Division Bench of the Madras High Court. The High Court dismissed the appeal. It is against the said judgment the defendant-appellants have preferred these appeals by way of special leave petitions.

3. Learned counsel appearing for the defendant-appellants stated that in view of the subsequent events, if the relief for specific performance is granted, appellants Nos. 8 and 9 shall be put to a great hardship inasmuch as they have already invested a sum of Rs. 50,000/- for improvement of the house and, therefore, it is a case where the plaintiff-respondent could be compensated in terms of money. Learned counsel urged that the subsequent purchasers, who are appellants before us, are even prepared to pay a sum of Rs. 10 lacs in lieu of the decree for specific performance. Learned counsel appearing for the plaintiff-respondent

stated that plaintiff agreed to purchase the house as he has no house to live and, therefore, the offer made by the appellants is not acceptable to him.

4. Learned counsel for the appellants relied upon a decision in the case of *Damacherla Anjaneyulu v. Damacherla Venkata Seshaiyah*<sup>1</sup>, in support of his submission. In the said case, it was found that the decree for specific performance would put the defendant to a great hardship and, therefore, in lieu of the decree for specific performance, the Court granted a sum of Rs.1,25,000/- to the vendee. This case appears to be decided under Art. 142 of the Constitution of India as no principle of law has been laid down therein and, therefore, has no application in the present case. In any event of the matter, no hardship as now stated was pleaded in the written statement. Further, no issue was framed that plaintiff-respondent could be compensated in terms of money in lieu of the decree for specific performance. In the absence of such a plea and issue, we are not inclined to entertain the argument of the learned counsel for the appellants raised for the first time. We find that the plaintiff was always and is ready and willing to perform his part of the contract and a concurrent finding of fact to that effect has been recorded by the Court below and there is no reason to interfere with the said finding. AIR 1987 SC 1641

5. In view of above, the appeals fail and are dismissed. There shall be no order as to costs.  
Appeal dismissed.

<sup>1</sup>1987 (Supp) SCC 75