

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2015

CORAM:

THE HON'BLE **MS. JUSTICE K.B.K.VASUKI**

Rev.Appln.No203 of 2011

in SA.No.97 of 1996

and

Rev.Appln.No.204 of 2011

in SA.No.997 of 1996

Rev.Appln.No.203 of 2011

Shanthammal

.. petitioner

Vs

1. E.Narayanaswamy

2. Ganga Reddiar

.. Respondents

Rev.Appln.No.204 of 2011

Shanthammal

..petitioner

V.

1.E.Narayanaswamy

2.Ganaga Reddiar

3.Sumathi

.. Respondents

Review applications are filed under Order 47 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 15.02.2006 allowing the SA.Nos.97 and 997 of 1996 passed by this Court.

For Petitioners : M/s.N.R.Anantha Ramakrishnan

For Respondents : M/s.S.Viswanathan

COMMON ORDER

All the four Second Appeals in SA.Nos.872 & 873 of 1995 and 97 & 997 of 1996 are arising out of two suits in OS.Nos.33 of 1987 and 139 of 1992.

2.While OS.No.33 of 1987 is filed by one Narayanasamy for specific performance of the suit agreement against the owner of the property and subsequent purchasers by name Ganga Reddy, Santhammal and Sumathi arraying them as defendants 1 to 3, OS.No.139 of 1992 is filed by Santhammal, who is one of the subsequent purchasers and the second defendant in OS.No.33 of 1987 for the relief of injunction. The trial court decreed the suit for specific performance and dismissed the suit for injunction. Aggrieved against the same, Santhammal who is the second defendant in OS.No.33 of 1987 and the plaintiff in OS.No.139 of 1992 filed AS.No.1 of 1994 and 2 of 1994. The owner of the property who is the first defendant in OS.No.33 of 1987 filed AS.No.18 of 1994 against the decree for specific performance granted in OS.No.33 of 1987. The lower appellate court allowed the appeals in AS.Nos.1 and 2 of 1994 filed by the second defendant in specific performance suit and the plaintiff in injunction suit and dismissed AS.No.18 of 1994 filed by the owner in specific performance suit and in injunction suit. Aggrieved against the same all the four second appeals came to be filed.

3.SA.No.872 of 1995 is filed by the first defendant/owner against the judgment and decree made in AS.No.1 of 1994 thereby decreeing

the injunction suit in OS.No.139 of 1992. SA.No.873 of 1995 is filed by the owner against the dismissal of his appeal in AS.No.18 of 1994 arising out of OS.No.33 of 1987. SA.Nos.97 and 997 of 1996 are filed by the plaintiff in specific performance suit in OS.No.33 of 1987 against the judgment and decree made in AS.Nos.1 and 2 of 1994 thereby dismissing the suit for specific performance and allowing the suit for injunction.

4.The Substantial Questions of Law arose for consideration before this court in the SA.Nos.97 of 1996; 872 & 873 of 1995 and 997 of 1996 are as follows :

SA.No.97 of 1996

“Whether the lower appellate court erred in law in holding that the sale deed in favour of the plaintiff is a true and valid document without considering whether the sale deed was supported by consideration and that the purchaser was a bonafide purchaser for value without notice of the sale agreement?”

SA.Nos. 872 & 873 of 1995

“Whether in the absence of evidence establishing possession of the suit properties, the first respondent plaintiff would be entitled to permanent injunction?”

SA.No.997 of 1996

“When the first defendant has not proved that Ex.A2 was obtained under collusion and undue influence, whether the lower appellate court erred in not holding the Ex.A2 is a true and valid document?”

5.The learned single judge of this court by judgment dated 15.02.2006 answered all the questions relating to bonafide nature of subsequent sale of the suit property and possession and regarding the plea of fraud, coercion and collusion and decided the same in favour of the plaintiff in specific performance suit in OS.No.33 of 1987, thereby decreed the suit in OS.No.33 of 1987 and dismissed the injunction suit OS.No.139 of 1992.

6.The present two review applications are filed in SA.Nos.97 and 997 of 1996 by the plaintiff in injunction suit which is dismissed and the second defendant in the specific performance suit which is allowed by this Court.

7.The parties are referred to in these review applications as per their rank in the specific performance suit in OS.Nos.33 of 1987.

8.The grounds raised in these review applications are as follows :

Ex.A1 sale agreement dated 23.08.1983 entered into between the plaintiff and the first defendant is a conditional one and the right to seek enforcement of agreement will accrue to the plaintiff only in the event of the failure of the first defendant to pay mortgage amount within the period of four years from 10.03.1983 i.e, on or before 10.03.1987. The first defendant has right to redeem the mortgage till 10.03.1987, as such, the suit filed on 05.03.1987 is not maintainable. The plaintiff, having received back the sum of Rs.15,000/- from the first defendant under Ex.B1, is deemed to have abandoned his right under the sale agreement. The plaintiff was not in possession of the suit property even as per his own evidence. It is contended before this court that the grounds as raised above which are vital for deciding the appeals, were not advanced during the hearing of the second appeal and were not brought to the notice of this court and were not considered by this Court and the same has resulted in erroneous judgment in favour of the plaintiff in specific performance suit OS.No.33 of 1987.

9.This court is not inclined to entertain the review applications on the following grounds. First of all whatever the grounds raised herein

in the review applications are not based on new facts and are all within the knowledge of the parties throughout the proceedings. The second defendant though participated in the proceedings before this court through her counsel by name M/s.S.Viswanathan failed to at the time of hearing of the second appeal, bring it to the notice of this court regarding the omission if any in framing the substantial question of law. There is absolutely no explanation forth coming from the second defendant/respondent in the proceedings herein, for her failure to do so and the same will disentitle her to raise new grounds, so as to reopen the entire case, which was already discussed and decided against the review applicant, that too, at this length of time. Though the delay in filing the review application was considered and ordered, the same will not absolve their liability to raise the grounds available to her on the basis of the evidence already adduced by the parties and the relief claimed herein can be summarily rejected on this sole ground.

10. Even otherwise, the relief of specific performance is based on Ex.A2 sale agreement dated 23.08.1983 and it is not based on the conditional mortgage deed dated 10.03.1983. The terms and condition of Ex.A2 are such that the enforcement of the same is not subject to

right of redemption of mortgage dated 10.03.1983. This Court, having accepted the findings of the trial court, the genuineness and validity of Ex.A2 decreed the suit for enforcement of sale agreement dated 23.08.1983, as such, the second defendant cannot be now permitted to question the correctness of such findings in these review applications. As far as the finding regarding the possession is concerned, the same is again based on appreciation of evidence and the same cannot be permitted to be re opened and reagitated by way of review applications.

11.Viewing from any angle, this Court finds no ground much less valid ground to entertain the review applications and the review applicants are hence disentitled to get any relief in these review applications.

12.In the result, the review applications are dismissed. No costs.

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Index : Yes/No

Internet : Yes/No

K.B.K.VASUKI, J.

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