

Reserved on : 20.01.2016

Delivered on : 22.01.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.4789 of 2015
and M.P.No.1 of 2015

1.Ponniah

2.Sumathi

... Petitioners

Vs.

1.Savithri Ammal

2.Rani

3.Saraswathy

4.Rahman Beevi

5.M.V.Buhari

6.Darisha

7.Janura

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order made in E.A.No.131 of 2004 in E.P.No.11 of 2004 in O.S.No.386 of 1983 on the file of the District Munsif Court, Chengalpattu dated 13.10.2015.

For Petitioners : Mr.R.Muthukumaraswamy, Senior Counsel
for Mr.G.Rm.Palaniappan

For Respondents : Mr.J.Hariharan
for Mr.V.Nicholas (R2 & R3)

ORDER

Challenging the fair and final order passed in E.A.No.131 of 2004 in E.P.No.11 of 2004 in O.S.No.386 of 1983 on the file of the District Munsif Court, Chengalpattu, the revision petitioners, who are 3rd parties have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.386 of 1983 for declaration, permanent injunction or in the alternative for declaration and recovery of possession.

3.The defendants filed their written statement disputing the averments stated in the plaint. However, subsequently, the defendants remained absent and therefore, the trial Court decreed the suit exparte on 12.11.2002. Though, originally the suit was decreed for declaration and permanent injunction, subsequently, it was amended on 09.12.2013 for declaration and recovery of possession.

4.Pursuant to the decree for recovery of possession, the plaintiffs filed an Execution Petition in E.P.No.11 of 2004. In the said Execution

Petition, the revision petitioners, who had purchased the suit property from the defendants under two Sale Deeds dated 14.10.1991 and 18.09.1991 respectively, had filed an application under Section 47 of the Civil Procedure Code in E.A.No.131 of 2004. According to the revision petitioners, they are the absolute and exclusive owners of the suit property and therefore, the plaintiffs cannot execute the decree obtained in O.S.No.386 of 1983. The application filed by the revision petitioners was contested by the plaintiffs stating that in spite the defendants 3 to 6 filed the written statement, subsequently, they did not appear before the trial Court from 22.10.1983 to 22.11.2002 and hence, they were set exparte and an exparte decree was passed on 12.11.2002. Further, the plaintiffs contended that the purchase made by the revision petitioners during the pendency of the suit are not valid under law. The Execution Court, taking into consideration the case of both parties, dismissed the petition. Aggrieved over the same, the purchasers have filed the above Civil Revision Petition.

5.Heard Mr.R.Muthukumaraswamy, learned senior counsel appearing for the petitioners and Mr.J.Hariharan, learned counsel appearing for the respondents 2 & 3.

6.Mr.R.Muthukumaraswamy, learned senior counsel appearing for the petitioners submitted that the revision petitioners, who had purchased the property during the pendency of the suit can maintain an application under Section 47 of the Civil Procedure Code since they are the representatives of the defendants 3 to 6, who are their vendors. Further, the learned senior counsel submitted that since the revision petitioners are the exclusive and absolute owners of the suit property, the decree granted against the defendants cannot be executed as against the revision petitioners. Further, the learned senior counsel submitted that the plaintiffs should have sought the relief to set aside the Sale Deeds made in favour of the revision petitioners and without setting aside the sale made in favour of the revision petitioners, the decree granted in favour of the plaintiffs cannot be executed.

7.In support of his contention, the learned senior counsel relied upon a judgment reported in ***AIR 2000 Karnataka 298 [Ramachandra Deshpande Vs. Laxmana Rao Kulkarni]*** wherein a Division Bench of Karnataka High Court held that a decree holder can maintain an application for execution of decree in question against the transferee judgment debtor.

8. Countering the submissions made by the learned senior counsel for the petitioners, Mr. J. Hariharan, learned counsel for the respondents submitted that the purchase made by the revision petitioners are hit by Section 52 of the Transfer of Property Act and that the revision petitioners have no right to claim any right over the suit property. Further, the learned counsel submitted that after having purchased the property in the year 1991, they kept quiet till 2004 for filing an application under Section 47 of the Civil Procedure Code.

9. In support of his contention, the learned counsel relied upon a judgment reported in **2010-1-L.W.193 [T.G. Ashok Kumar Vs. 1. Govindammal 2. Kanagavalliammal]** wherein this Court held that when the plaintiff purchased the property during the pendency of the partition suit, he could only be taken as a person who stepped into the shoes of the 2nd defendant and whatever decree passed in the partition suit as against the 2nd defendant is binding on the plaintiff and he cannot try to wriggle out of his position as that of a person who merely stepped into the shoes of the 2nd defendant.

10. On a perusal of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that originally the plaintiffs filed the suit in O.S.No.386 of 1983 for declaration and permanent injunction or in the alternative for declaration and recovery of possession. The defendants, though, filed their written statement in the year 1984 itself, subsequently, they remained absent till 12.11.2002. In the mean time, under Exs.P1 & P2 Sale Deeds dated 14.10.1991 and 18.09.1991, the defendants 3 to 6 sold the suit property to the revision petitioners. In spite of purchasing the property under Exs.P1 & P2 Sale Deeds dated 14.10.1991 and 18.09.1991, the revision petitioners chose to remain silent till 2004. In the year 2004, the revision petitioners filed an application in E.A.No.131 of 2004 in E.P.No.11 of 2004 under Section 47 of the Civil Procedure Code. Pursuant to the decree granted in O.S.No.386 of 1983, the plaintiffs filed an Execution Petition in E.P.No.11 of 2004 and in that Execution Petition, the revision petitioners filed an application under 47 of the Civil Procedure Code in the year 2004. The petitioners contended that they were not aware of the pendency of the suit when they purchased the property in the year 1991. The petitioners cannot take this stand for the reason that the principle of caveat emptor is against them. When they purchased the property in the year 1991, they should have

verified and only after verification they should have purchased the property. It is also unbelievable that the petitioners came to know about the Civil Suit pending between the plaintiffs and defendants only after a lapse of 13 years. In order to support their contention, the petitioners have not examined any independent witness. When the plaintiffs have filed the suit for declaration and recovery of possession, the purchases made by the revision petitioners are hit by Section 52 of the Transfer of Property Act. In spite of the pendency of the suit in respect of the suit property, the defendants 3 to 6 sold the property in the year 1991. The alienation made by the defendants during the pendency of the suit is hit by the doctrine of lis pendens. At the time of filing of the suit in the year 1983, the dispute was only between the plaintiffs and the defendants. Even according to the revision petitioners, they came into picture only in the year 1991, when they purchased the suit property from the defendants 3 to 6. Therefore, there was no necessity for the plaintiffs to seek for the cancellation of the Sale Deeds.

11. That apart, the fact with regard to the purchase of the property by the petitioners was also not brought to the notice of the plaintiffs. When they were not informed about the alienation of the suit property in favour of the petitioners, the plaintiffs had no reason to seek for cancellation of

the Sale Deeds. That apart, the purchase made by the petitioners itself is hit by Section 52 of the Transfer of Property Act. Having purchased the suit property during the pendency of the suit, the petitioners have taken the risk and for that purpose the plaintiffs cannot be penalized. Having purchased the suit property during the pendency of the suit, only the petitioners can be blamed for the fault. When the petitioners have purchased the property in the year 1991, they could have filed an application before the trial Court and got themselves impleaded in the suit and contested the suit in a proper manner. But for the reasons best known to them, they remained silent spectators and filed the application under Section 47 in the year 2004. Even after their purchase in the year 1991, the suit was pending for more than 11 years thereafter. Even during that time, the petitioners have not taken any steps to get themselves impleaded and contest the suit. The suit is pending from 1983 and even after a lapse of 32 years, the plaintiffs have not recovered the possession from the defendants. Taking into consideration all these aspects, the Execution Court has rightly dismissed the petition.

12. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision

Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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22.01.2016

To

The District Munsif Court,
Chengalpattu.

M.DURAIWAMY,J.
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Order made in
C.R.P.(NPD).No.4789 of 2015
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