

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-03-2016

Pronounced on : 01-04-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.389 of 2016 & C.M.P.No.2096 of 2016

1.K.Chandran

2.Mrs.C.Meena

3.C.Jayaraj

4.M/s.Kgeyes Residency Private Limited
Rep. by its Managing Director Mr.P.V.Shanmugam
No.10, Sruthissthal 2nd Cross Street
Raja Annamalaipuram
Chennai - 600 028

... Petitioners

vs.

1.Mrs.R.Shanbagavalli

2.Mrs.Nirmala

3.G.Indira

4.V.Punitha

5.Mrs.Indhumathi

6.P.Karthi

7.N.Shanthi

8.Minor Anupriya
Rep. by its natural guardian father Mr.Natesan

9.The Sub-Registrar Office
Saidapet
Chennai - 600 015

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of the II Assistant Judge, City Civil Court, Chennai dated 19.01.2016 made in I.A.No.15606/2014 in O.S.No.5710/2014.

For Petitioners : Mr.N.Anand Venkatesh
For Respondent : Mr.L.Rajendran for R1
R2 to R9 given up

ORDER

This revision arises out of an order dated 19.01.2016 passed by the learned Second Assistant Judge, City Civil Court, Chennai in I.A.No.15606/2014 in O.S.No.5710/2014 pending on the file of the said court. The above said suit came to be filed by R.Shanbagavalli, the first respondent herein, against the revision petitioners and respondents 2 to 9 for permanent injunction restraining the revision petitioners herein (defendants 1 to 4) from alienating, mortgaging or otherwise encumbering the suit property through the 12th defendant, namely the 9th respondent herein (Sub Registrar, Saidapet, Chennai) and for a permanent injunction restraining the revision petitioners herein/defendants 1 to 4 from carrying on further construction activities in the plaint properties.

2. The revision petitioners herein/defendants 1 to 4 preferred an application under Order VII Rule 11 CPC praying for the rejection of the plaint on the ground that no valid cause of action had been spelt out by the first respondent herein/plaintiff in the above said suit. The application was resisted by the first respondent herein/plaintiff and after enquiry, the learned trial Judge, by the impugned order dated 19.01.2016 dismissed the said application filed by the revision petitioners herein/defendants 1 to 4. The said order of the trial court is challenged in the present civil revision petition.

3. Narrating the facts leading to the filing of the application in which the impugned order came to be passed will be helpful to understand the case. Admittedly, the suit property originally belonged to one Balakrishnan and on his death, his wife Dhanalakshmi, son Purushothaman and daughters Nirmala, Bhuvana, Indira and Punitha became entitled to the property. On 16.11.2000, they entered into an agreement with Shanbagavalli, the first respondent herein/plaintiff for the sale of the suit property to her for a sale consideration of Rs.7,00,000/-, out of which a sum of Rs.10,000/- was paid as advance and the balance amount of Rs.6,90,000/- was agreed to be paid in six months from the date of agreement. A clause was also incorporated therein to the effect that the vendors under the said agreement shall withdraw the second appeals pending on the file of the High Court, but the numbers of the second appeals have not been noted and the years of the second appeals also have not been correctly noted. On the other hand, it has been noted as 1998 or 99.

4. One Vasudevan filed a suit in O.S.No.7972/1983 on the file of the XII Assistant Judge, City Civil Court, Chennai against the above said Dhanalakshmi and her children for the relief of specific performance, based on an agreement for sale dated 21.12.1971 confirming an earlier agreement dated 11.02.1970, both allegedly executed by Balakrishna Naicker. He also claimed that Balakrishna Naicker had delivered possession of the land to the Purchaser under the agreement in part performance of the agreement for sale with the purpose of filling up a pit found in S.No.103/1. The said suit came to be filed in 1990. The suit was resisted based on the contention that the suit as filed was not maintainable in law or on facts of the case; that the suit was hopelessly barred by Law of limitation and that there was no cause of action

for the plaintiff therein against the defendants therein to sustain the prayer made in the suit. Besides denying the execution of the Agreement for sale by Balakrishna Naicker and receipt of the amounts allegedly paid to him, it was also contended therein that Balakrishna Naicker was insane since 1970 and his mental faculty was not proper even before 1970 and that he had no occasion to sell the lands to third parties as he was under constant medical treatment and was suffering from intermittent mental disorder. It was also contended that since the suit came to be filed after 12 years from the date of alleged execution of the sale deeds, the suit was speculate in nature and hence the same should be dismissed.

5. After trial, the trial court in the said suit granted the relief of specific performance as prayed for. As against the decree for specific performance dated 30.04.1985 granted by the learned XII Assistant Judge, City Civil Court, Chennai in O.S.No.7972/1983, the defendants therein filed an appeal in A.S.No.677/1988 on the file of the VII Additional Judge, City Civil Court, Chennai. The VII Additional Judge, City Civil Court, Chennai dismissed the said appeal on 17.04.1990 confirming the decree of the trial court dated 30.04.1985. Aggrieved by the said judgment and decree of the first appellate court, defendants 1 to 6 in the said suit preferred a second appeal in S.A.No.1115/1990. The respondents 2 to 6 in the first appeal, who derived title through the defendants 1 to 6 in the said suit, filed a separate second appeal in S.A.No.1119/1990. Both the second appeals were heard by a learned single Judge of this court and by a common judgment dated 17.10.2001, the second appeals came to be allowed with the result that the decree granting specific performance passed by the trial court, which was confirmed by the first appellate court, was set aside and the suit for specific performance, namely

O.S.No.7972/1983 came to be dismissed. The plaintiff therein, namely K.Vasudevan, preferred Special Leave Petitions in S.L.P.(C) Nos.12514-12515/2002 before the Hon'ble Supreme Court and the same were dismissed at the stage of admission. Thereafter the said Vasudevan preferred Review applications in Review SR.Nos.52689/2006 and 66230/2007 to review the judgment in the second appeals. The said review applications came to be rejected by orders dated 05.02.2007 and 07.12.2007.

6. Meanwhile Shanbagavalli, the first respondent herein filed the suit O.S.No.5710/2014 on the file of the Second Assistant Judge, City Civil Court, Chennai, for the relief of bare injunction restraining the defendants therein from putting up construction and restraining them from alienating or mortgaging or in any manner encumbering the suit property. Before ever filing the said suit, the first respondent filed a suit on the file of the High Court on its Original Side in an unnumbered Civil Suit bearing Diary No.7106/2005 praying for:

(1) a declaration that the sale deeds dated 17.06.2002 registered as Document No.2944 of 2002, 2945 of 2002 and 2947 of 2002 executed by the defendants 1 to 5 through the 11th defendant in favour of defendants 8 to 10 and power of attorney dated 31.12.2003 executed by the defendants 1 to 5 in favour of 6th defendant vide document No.1643/2003 dated 31.12.2003 and sale deed dated 18.10.2004 registered as document No.6922 of 2004 executed by defendants 1 to 5 through 6th defendant in favour of 7th defendant and subsequent mortgage deed dated 24.01.2005 (Doc. NO.316/05) as void ab initio, illegal, invalid, improper and inoperative in law; and the same not bind on the plaintiff in any manner or whatsoever;

(2) specific performance by directing the defendants 1

to 5 to execute and register a sale deed in favour of the plaintiff herein pursuant to the Agreement of sale dated 16.11.2000 and 18.12.2002 entered between the plaintiff and defendants 1 to 5 in respect of schedule A property failing which this Hon'ble court may be pleased to appoint court officer to execute sale deed in favour of the plaintiff;

(3) a permanent injunction restraining the defendants herein, their men, agents, subordinates or anybody else claiming under or through them from alienating, encumbering or dealing with the schedule A property or carry with the Schedule A property or carry construction activities or in any other mode, more fully described in the schedule A hereunder and

(4) cost.

The same was filed with a petition for leave to file the suit on the original side of the High Court. According to the first respondent/plaintiff, the leave application was allowed, but the plaint is yet to be numbered and listed before the court. According to the revision petitioners, the same was never numbered and it was kept lying idle without being pursued. Under the said circumstances, the present suit, namely O.S.No.5710/2014 came to be filed for injunction.

7. In the affidavit filed in support of the application for rejection of plaint (I.A.No.15606 of 2014), the defendants 1 to 4 (revision petitioners) have stated as follows: "Balakrishna Naicker was the absolute owner of the suit property. He was missing since 1982 and was not traceable and not heard of for over seven years and that he should be presumed to be dead under Section 108 of the Indian Evidence Act. His wife and children executed three separate sale deeds bearing Document Nos.1303, 1304 and 1305 of 1985 registered on the file of the District Registrar, South Chennai in favour of K.Chandran,

namely the first defendant, K.Varadhan and Mrs.Meena (the second defendant) and from the said date, they are in possession and enjoyment of the suit property. "

8. Of course the said sales came to be made during the pendency of the earlier suit for specific performance filed by K.Vasudevan against Dhanalakshmi and others and after the said suit came to be decreed for the relief of specific performance. The said decree passed by the trial court was challenged before the first appellate court and of course, the first appellate court dismissed the appeal and confirmed the decree passed by the trial court. However, two second appeals came to be filed, one by Dhanalakshmi and others and the other by K.Chandran and others, against K.Vasudevan. Both the second appeals were allowed and the decree passed by the trial court came to be set aside with the result that the suit for specific performance was dismissed. The SLPs filed against the decrees made in the second appeals also came to be dismissed. The review applications filed were also rejected. Under the said circumstances, the first respondent/plaintiff seems to have filed present suit not for specific performance, but for mere injunction. The above said facts are not disputed and they are admitted by the first respondent/plaintiff.

9. However, the first respondent/plaintiff claims to have got an agreement for sale from Dhanalakshmi and others, based on which she claims a right to get an injunction against the revision petitioners/defendants 1 to 4 not to develop the property and not to alienate or encumber the property. The agreement relied on by the plaintiff is dated 16.11.2000. On the other hand, the revision petitioners/defendants 1 to 4 had purchased the property from

Dhanalakshmi and others on 06.05.1985 itself. After such sale in favour of revision petitioners/defendants 1 to 4, the vendors of the plaintiff under the said agreement had no transferable right in the suit property. The first respondent/plaintiff, knowing fully well that she had not derived title to the suit property under the said agreement for sale, has cautiously omitted to sue for specific performance and on the other hand, chose to file the suit for injunction. Though the first respondent/plaintiff might have filed a suit for specific performance in 2005, it is yet to be numbered. Having chosen to obtain a sale agreement from the persons, who have parted with title long back, namely on 06.05.1985 itself, the first respondent/plaintiff has chosen to file the suit for injunction only in order to harass the revision petitioners/defendants 1 to 4 and try to bring them to come to terms.

10. A meek attempt has been made on behalf of the first respondent to contend that since the sale deeds in favour of the revision petitioners were executed after the trial court passed a decree for specific performance in favour of Vasudevan in O.S.No.7972/1983, the said sales will not be valid in law and they are null and void. The above said contention is not tenable for the simple reason that any transaction pending disposal of the case shall be subject to doctrine of *lis pendens*, meaning that the transaction will be subject to the result of the suit. The pendency of the *lis* does not automatically nullifies the transaction made during the pendency of the suit. On the other hand, it makes the transaction subject to result of the suit. An appeal against the decree passed in the suit and a second appeal against the decree passed in the first appeal are nothing but continuation of the proceedings in the suit. The mere fact that sale deed came to be executed after the trial court passed a decree

and before the appeal challenging the decree came to be filed, will not make the transaction as not one to which the doctrine of *lis pendens* gets attracted, as the appeal filed thereof came to be taken on file, heard and disposed of. Ultimately in the said suit, the plaintiff therein, namely Vasudevan failed and his suit for specific performance came to be dismissed by this court in second appeal Nos.1115 of 1990 and 1119 of 1990. The same was also confirmed by the Supreme Court in SLPs. Review applications filed were also rejected. Hence the agreement relied on by the first respondent/plaintiff shall be an agreement obtained from a person, who had already parted with the title of the property in favour of the revision petitioners. Hence the first respondent/plaintiff shall have no cause of action against the revision petitioners herein, either for filing a suit for specific performance or for filing a suit for injunction. The said position shall be clear from the very averments made in the plaint itself. Therefore, the contention of the revision petitioners that the plaint does not reveal a cause of action as against the revision petitioners has got to be countenanced.

11. The learned trial Judge, without properly appreciating the facts and without properly applying the principles of law regarding the rejection of plaint, chose to arrive at an erroneous conclusion that the revision petitioners failed to substantiate their case that the plaint was liable to be rejected on the ground of absence of cause of action against the revision petitioners as found from the plaint averments. The suit has been filed for mere injunction to restrain the persons holding title from developing the property and alienating or encumbering the property. The suit has been filed by a person, who has no privity of contract with the revision petitioners after obtaining a sale agreement

from persons, who had already parted with title in favour of the revision petitioners. There cannot be a better case than the present suit to be an abuse of process of court, which can be checked by this court under its power of superintendence under Article 227 of the Constitution of India for even striking off the plaint.

12. For all the reasons stated above, this court comes to the conclusion that the order of the trial court cannot be sustained and the same deserves to be interfered with and set aside.

In the result, the civil revision petition is allowed. The order of the trial court dated 19.01.2016 made in I.A.No.15606/2014 in O.S.No.5710/2014 dismissing the said interlocutory application is hereby set aside. I.A.No.15606/2014 is allowed and the plaint in O.S.No.5710 of 2014 shall stand rejected. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

01-04-2016

Index : Yes
Internet : Yes
asr

To

The II Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.
asr/-

C.R.P (PD) No.389 of 2016
and
C.M.P.No.2096 of 2016

Dated : 01 -04-2016