

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.34 of 2015

JUDGMENT:

This appeal is preferred by the claim petitioner aggrieved by the dismissal of her claim petition—E.A.No.70 of 2012 in E.P.No.169 of 2006 in O.S.No.363 of 2004 by I Senior Civil Judge, City Civil Court, Hyderabad in its order dated 19.01.2015.

2) Factual matrix of the case is thus:

a) The R1/DHR/plaintiff filed a suit—O.S.No.363 of 2004 against respondents 2 and 3 for specific performance of agreement to sell dated 21.09.2003 in respect of the property described below:

<i>North</i>	<i>: Neighbour's property</i>
<i>South</i>	<i>: Lane</i>
<i>East</i>	<i>: House of Narahari & Satyanarayana</i>
<i>West</i>	<i>: House No.4-1-175.</i>

b) R3 remained ex-parte.

c) R2/JDR No.1 who is the owner of the suit property, filed his written statement admitting the agreement to sell dated 21.09.2003 and also admitting his willingness to receive the balance sale consideration and execute a registered sale deed in favour of the plaintiff.

d) The trial Court was pleased to pass a judgment and decree dated 23.08.2006 directing R1 to deposit the

balance sale consideration of Rs.8,50,000/- within one month from the date of judgment and R2 shall execute the sale deed within two months.

3a) The case of appellant/claim petitioner is that she is unaware of suit proceedings, as she was residing in USA and she came to know about the execution of the decree over phone when the decree-holder came along with bailiff to take delivery of possession of suit property on 24.04.2012 which in fact is appellant's property. In fact, the bailiff returned the warrant as boundaries are different from the physical site. The appellant and her husband who were in USA requested her brother—Ameet Singh to take steps to protect their property and on their advise, the said Ameet Singh—GPA holder of appellant filed claim petition—E.A.No.70 of 2012 in E.P.No.169 of 2006 in O.S.No.363 of 2004 under Order XXI Rule 58 r/w Section 151 CPC claiming right over the property bearing House No.4-1-175/A admeasuring 54.03 sq. yds. situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad having purchased the same for a valid consideration under registered sale deed bearing document No.2746/2007 dated 08.10.2007 from Mohd. Jaleel Khan and Nusrath Jaleel.

b) The main contention of the appellant/claim petitioner was that the property purchased by R1/DHR/plaintiff from R2/JDR No.1 was a different property, but during execution

R1 mischievously introduced a map/plan to the sale deed showing the boundaries of the property purchased by claim petitioner from Jaleel Khan etc. by playing fraud on the Court as the said plan do not contain the signature of the Presiding Officer and obtained registration of the sale deed through Court and tried to get delivery of the possession of claim petitioner's property. Hence, the claim petition to protect the right of the claim petitioner.

c) R1/DHR filed counter opposing the claim petition mainly contending that R2/JDR No.1—Ch.Ashok Kumar owns only one house bearing No.4-1-175/A which was gifted to him by his aunt—Saroja and he sold the said house in favour of R1/DHR under an agreement to sell dated 21.09.2003 and thereafter, R2 had no alternative house to live in and stayed with his father—Narahari in H.No.4-1-175/B. When he failed to honour the agreement to sell, R1/DHR was forced to file suit—O.S.No.363 of 2004 for specific performance of agreement to sell and along with suit she also filed IA.No.49 of 2004 seeking interim injunction restraining R2/JDR No.1 from alienating the suit property to third parties. But inspite of the same, R2 sold the suit property to one Jaleel Khan under a registered sale deed dated 30.08.2005 and thereafter the said Jaleel Khan having come to know about the Court proceedings sold the said property to claim petitioner—Harkirtan Kaur. Whereas, R1/DHR obtained decree and also deposited the balance sale consideration of Rs.8,50,000/- on 20.09.2006 in the

Court and in these circumstances, the claim petition is not maintainable under law.

d) It is further contended that in fact R2/JDR No.1 sent compromise proposal to R1/DHR stating that he wants to compensate her with another property especially his father's property bearing House No. 4-1-175/B, but the R1/DHR refused such offer. It is contended that since R2/JDR No.1 sold the property pending suit to Jaleel Khan and the said Jaleel Khan knowing about the Court proceedings sold the property to appellant/claim petitioner, she is not entitled to any relief from the Court and the claim petitioner has to seek refund of the amount from her vendor as well as R2/JDR No.1—Ch.Ashok Kumar and also take criminal action against them.

e) R2/JDR No.1 filed counter opposing the claim petition. In his counter he admitted that the claim petitioner purchased the house bearing No.4-1-175/A admeasuring 54.03 sq. yds. situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad bearing document No.2746 of 2007 from Mohd. Jaleel Khan etc. and this respondent sold the said property to Mohd. Jaleel Khan.

f) R3/JDR No.2 filed the counter and opposed the claim petition stating that R2/HDR No.1 took housing loan of Rs.3 lakhs from R3 by depositing his title deeds on 31.12.2002 and thereafter, on 09.09.2005 he paid the entire loan

amount and housing loan account was closed and this respondent was not concerned with the claim petition.

g) During enquiry PW1 was examined and Exs.P1 to P8 were marked for claim petitioner. RWs.1 and 2 were examined and Exs.R1 to R8 were marked.

h) The Executing Court observed that the sale deed obtained by the claim petitioner from Jaleel Khan etc. is hit by Section 52 of Transfer of Property Act inasmuch as R2/JDR No.1 had no better title to convey to Jaleel Khan and in turn Jaleel Khan to the claim petitioner as R2/JDR No.1 had already executed an agreement to sell dated 21.09.2003 in favour of R1/DHR which was prior to the sale deed dated 08.10.2007 obtained by the claim petitioner from the Jaleel Khan. The Court observed that sale deed obtained by the claim petitioner is hit by doctrine *lis pendens* and further, the property in question was not attached in execution of decree and so claim petition was not maintainable and accordingly dismissed the claim petition.

Hence the instant appeal by the claim petitioner.

4) The parties in the appeal are referred as they were arrayed in the court below.

5) Heard arguments of Sri Manik Rao, learned counsel for appellant and Sri Y.Mallik, learned counsel for R1/DHR. Notice sent to R2 and R3 not yet returned.

6) Reiterating the same arguments put-forth before the Executing Court, learned counsel for appellant/claim petitioner argued that R1/DHR purchased a different property from R2/JDR No.1 in an agreement to sell dated 21.09.2003 and filed a suit—O.S.No.363 of 2004 for specific performance of agreement and obtained decree and while obtaining a registered sale deed through Court, fraudulently introduced a plan/map in the sale deed showing the boundaries of property of the appellant/claimant petitioner which was purchased by her from Jaleel Khan etc. and got registered the sale deed along with plain. The fraud played by R1/DHR is manifest from the fact that the said plan was not signed by the Honourable Judge of the Executing Court though he signed on other papers of the sale deed. Further, the plan was attested by notary advocate (CW1) on 08.11.2011 whereas the sale deed is dated 03.12.2011 which shows the plan has nothing to do with the sale deed. Further, there is manipulation in the word 'vendee' as the two letters "EE" were interpolated. He argued that the sale deed boundaries are different from plan mentioned boundaries, as the plan mentioned boundaries relate to the house purchased by appellant/claim petitioner. With the strength of manipulated plan which was surreptitiously introduced into the sale deed, R1/DHR tried to get delivery of the property belonging to claim petitioner. When the boundaries in the sale deed and plan are different to each other and when the sale deed mentioned boundaries are

not tallying on ground, the Executing Court ought to have refused to deliver the property. Since the entire execution proceedings are vitiated by fraud, the Executing Court ought to have allowed the claim petition by dismissing the EP. However, without having proper perspective on the facts and evidence placed by the claim petitioner exposing the fraud played by R1/DHR, the Executing Court erroneously dismissed the claim petition. He thus prayed to allow the appeal and set aside the impugned order. He relied upon a number of decisions on the principle that Court cannot execute the decree which was obtained by fraud and also showing the role of Executing Court in the matter of execution of decrees.

7a) Per contra, opposing the appeal, learned counsel for R1/DHR vehemently contended that the house property bearing No.4-1-175/A consisting of ground floor and first floor is the only property that was owned by R2/JDR No.1 which he got by way of gift deed from his paternal aunt —Saroja and he sold the same under agreement to sell dated 21.09.2003 to R1/DHR and when he failed to execute the sale deed R1 filed O.S.No.363 of 2004 for specific performance of the agreement and R2 appeared and filed written statement admitting the agreement and agreed to execute the sale deed and thereby a decree was passed in favour of R1/DHR. When the suit was pending, R1/DHR filed I.A.49 of 2004 seeking injunction restraining R2/JDR No.1 from alienating the suit property pending suit. But in

spite of the same, R2/JDR No.1 clandestinely alienated the suit property to one Jaleel Khan under a registered sale deed dated 30.08.2005 and having come to know about the suit filed by R1/DHR, Jaleel Khan get rid of the property by selling away to appellant/claim petitioner under a registered sale deed 08.10.2007. So, the property purchased by R1/DHR from Ashok Kumar and the property sold by Ashok Kumar to Jaleel Khan and Jaleel Khan to appellant/claim petitioner is one and the same property which is evident from the description of the property mentioned in respective sale deeds. He thus sought to submit that the contention of appellant/claim petitioner that R1/DHR purchased a different property from Ashok Kumar under an agreement to sell but fraudulently tried to obtained delivery of the property purchased by appellant/claim petitioner is false.

b) With regard to the alleged fraud played by R1/DHR in clandestinely introducing map/plan into the registered sale deed, learned counsel argued that for better description of the property, the registering authorities required plan under Section 21 of Registration Act, 1908 and therefore, the plan was attached to the registered sale deed but not with an intention to deceive anybody much less the Court. He admitted that there was no signature of the Presiding Officer of the Executing Court on the plan. Learned counsel submitted that the northern and western boundaries in the plan were mentioned as on the date for proper identification

and not with an intention to cheat anybody. On the other hand, the property originally purchased under sale agreement and the property which is shown in the plan is one and the same, as it is a house property consisting of ground and first floor covered by H.No.4-1-175/A situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad. This description is same both in the agreement to sell, plaint and sale deed executed by the Court and also in the plan. The only difference is in respect of northern and western boundaries as mentioned in the plan. He vehemently contended that R1/DHR did not commit any fraud to usurp the property of the appellant/claim petitioner. Even as per the evidence of RW2—Ashok Kumar, he is having only one house which he obtained from his aunt—Saroja through gift deed and the property which he sold to Bramarambha (DHR) and the house purchased by the claim petitioner is one and the same. Since the property owned by R2/JDR No.1 is only one property, the question of R1/DHR purchasing a different property from him and later trying to get delivery of the property purchased by claim petitioner does not arise. So, merely because R1/DHR showed correct and latest boundaries on northern and western side in the plan attached to the registered sale deed that does not amount to playing fraud on the Court. In essence, the claim petitioner is the subsequent purchaser from the vendee of Ashok Kumar pending the suit for specific performance filed by R1/DHR and therefore, her sale

transaction is hit by doctrine of *lis pendens* as rightly observed by the Executing Court. She has to seek remedy against her vendor and Ashok Kumar in different proceedings but not by way of claim petition. He further argued that the claim petition under Order XXI Rule 58 CPC is not maintainable when there is no attachment of the property. He thus prayed to dismiss the appeal.

8) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the appeal to allow?”

9a) **POINT:** The crux of the case of the appellant/claim petitioner is that R1/DHR might have purchased a different property from R2/JDR No.1 under agreement to sell dated 21.09.2003 but while obtaining a registered sale deed through the Court in enforcement of specific performance decree, R1/DHR fraudulently introduced a plan in the sale deed showing the boundaries of the house purchased by the appellant/claim petitioner from Jaleel Khan etc. who in turn purchased from Ashok Kumar and having introduced the said plan, R1/DHR tried to obtain delivery of house property of appellant/claim petitioner and therefore the entire proceedings are vitiated by fraud. The appellant placed on record the following judgments to buttress his argument that judgment and decree obtained by fraud shall be treated as nullity.

1. S.P.Chengal Varaya Naidu v. Jagannath^[1]

2. T.Vijendradas v. M.Subramanian^[2]

b) Per contra, the contention of R1/DHR is that the property owned by R2/JDR No.1 is only one house consisting of ground and first floor bearing Municipal No.4-1-175/A situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad which he obtained by way of gift deed from his paternal aunt—Saroja and he at first sold the same to R1/DHR by way of agreement to sell and when the suit filed by her for specific performance was pending, he later sold the same property to Jaleel Khan who knowing about the Court proceedings sold the very same property to the claim petitioner and therefore, the subsequent sale obtained by the claim petitioner is hit by doctrine of *lis pendens*.

c) In the light of above rival claims, the crucial aspect to be considered is whether R2/JDR No.1 owns only one house property i.e. H.No.4-1-175/A consisting of ground and first floor situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad or he is having more than one property so as to sell one property to R1/DHR and another to Jaleel Khan.

10) In this context, it is worthwhile to peruse the evidence of RW2—Ashok Kumar. He deposed that his father had two brothers and during partition, the house bearing No.4-1-175/A in an extent of 54.03 sq. yds. situated in Troop Bazar

fell to the share of his junior paternal uncle and his father got a separate property to his share and his junior paternal uncle gifted the property to his wife—Saroja under Ex.R8 and she in turn gifted the said property to him under Ex.R7. He further deposed that the property which he acquired through aforesaid gift was sold by him under an agreement to sell in favour of R1/DHR. He further stated that as he did not execute the sale deed, R1/DHR filed suit for specific performance and he appeared and filed written statement agreeing to execute registered sale deed. Prior to that, he sold the house to Jaleel Khan, as he was in need of money for performing his daughter's marriage. He further reiterated that the house purchased by Brahmaramba (DHR) and house property purchased by claim petitioner is one and the same. In the cross-examination of the claim petitioner he denied the suggestion that the property sold to Jaleel Khan and property sold to DHR is not one and the same. He denied the further suggestion of the claim petitioner that he intended to sell the property fell to the share of his father to Brahmaramba but not the property gifted to him by his paternal aunt.

a) So, as per the above evidence of RW2, he got only one house bearing No.4-1-175/A by way of gift from his paternal aunt which he at first sold to DHR and later to Jaleel Khan. Ex.R8 is the gift deed dated 01.07.1999 by Ch.Venkateswarlu in favour of his wife—Ch.Saroja in respect of house property bearing No.4-1-175/A

admeasuring 54.03 sq. yds. situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad with the following boundaries.

North	:	Neighbour's house
South	:	Lane
East	:	House of Narahari & Satyanarayana
West	:	House No.4-1-175

Then, Ex.R7 is the copy of gift deed dated 11.10.2000 executed by Ch.Saroja in favour of Ch.Ashok Kumar (R2/JDR No.1) in respect of house property which she obtained under Ex.R8. Then, the plaint schedule in O.S.No.363 of 2004 shows that the very same property covered by Exs.R7 and R8 was sought to be sold by R2/JDR No.1 in favour of R1/DHR. Then, the copy of registered sale deed dated 30.08.2005 executed by R2/JDR No.1 in favour of Mohd. Jaleel Khan and Nusrat Jaleel (copy filed by appellant) shows that the very same property which R2/JDR No.1 earlier sold under agreement to sell to R1/DHR was again sold to Jaleel Khan, as the description of the property in both these documents is one and the same, except the difference in northern and western boundaries. Since the subsequent sale deed was in the year 2005 the latest boundaries might have been mentioned in that sale deed. Be that it may, Jaleel Khan and his wife sold the same property to appellant/claim petitioner under Ex.P1 sale deed dated 08.10.2007. So, a perusal of oral evidence of RW2 coupled with the above documents would give a clear

understanding that R2/JDR No.1 obtained only one house through gift deed from his aunt which he first sold under agreement to sell to R1/DHR and again sold the same property to Jaleel Khan under a sale deed and Jaleel Khan in turn sold the same to claim petitioner. The only difference between the sale agreement of R1/DHR on one hand and the sale deed of Jaleel Khan and claim petitioner on the other is the description of northern and western boundaries. Except this minor difference *the property is one and the same*. Therefore, the contention of appellant/claim petitioner that R1/DHR might have purchased a different property from R2/JDR No.1 and tried to usurp her property cannot be accepted. The contention of appellant that R2/JDR No.1 might have sold his father's share of house property to R1/DHR but R1/DHR tried to usurp her property by changing the boundaries also cannot be accepted for the reason that as per the plaint schedule the property of Narahari—father of Ashok Kumar (R2) is shown as eastern boundary to the plaint schedule property. It clarifies that the property purchased by R1/DHR from R2/JDR No.1 is not the property of R2's father.

11) Now, coming to the contention of appellant that R1/DHR played fraud on Court by surreptitiously introducing plan to the sale deed with the boundaries of appellant's property without the knowledge of the Court, it is true that the said plan does not contain signature of Presiding Officer

of the Executing Court though his signature is available on the other pages of the sale deed. However, the point is whether on that ground it can be said that R1/DHR played fraud on the Court. As per the evidence of CW2—Sub Registrar, map/plan is required for registration of immovable property as per Section 21 of Registration Act, 1908 and it is in this context, it appears, R1/DHR produced an attested plan. In the plan no doubt, the northern and western boundaries are different from the sale deed boundaries and these boundaries are equivalent to the boundaries mentioned in the sale deed of the appellant. However, the description of the property mentioned in the plan and other pages of the sale deed is one and the same i.e. H.No.4-1-175/A situated at Subba Rao Lane, Hanuman Tekdi, Troop Bazar, Hyderabad. So, when the description of the property is one and the same in all the pages of the sale deed including the plan, mere mentioning the latest boundaries on the northern and western side by R1 cannot be treated as playing fraud on the Court. It appears the appellant/claim petitioner tries to take advantage and harp as if R1/DHR played fraud, which is not correct. It must be reiterated that the property mentioned in the sale agreement, plaint and registered sale deed executed by Court including the plan is one and the same and therefore, R1/DHR cannot be attributed with any fraud. Hence, the contention of appellant/claim petitioner cannot be accepted and consequently the citations presented by her will have no

application. So, the facts and evidence would show that R2/JDR No.1 at first sold the property to R1/DHR under sale agreement and while pending suit he sold the same property to Jaleel Khan and his wife who in turn sold the same to appellant/claimant petitioner. Therefore, as rightly observed by the Executing Court, the sale transaction of the appellant/claim petitioner is hit by doctrine of *lis pendens*.

The Executing Court rightly held claim petition is not maintainable. Further, as there is no attachment of the subject property the claim petition is not maintainable. The appellant/claim petitioner being subsequent purchaser is bound by the judgment and decree in O.S.No.363 of 2004 and she has to work out her remedies against her vendors and R2/JDR No.1 in a separate proceeding if she is so advised.

12) So, on a conspectus of facts and evidence on record, I find no merits in the appeal. Accordingly, C.C.C.A.No.34 of 2015 is dismissed without costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 21.01.2016

Murthy

[\[1\]](#) (1994) 1 SCC 1

[\[2\]](#) (2007) 8 SCC 751