

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:30.1.2017

DATE OF DECISION:24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Rev.Appln.No.1 of 2015

A.M.Adhil Badusha

... Applicant

Vs

1.Sucharitha Anand

2.K.Satish Kumar

... Respondents

This Review Application is filed under Order 47 Rule 1 r/w Section 114 of Civil Procedure Code against the judgement and decree dated 05.10.2012, made in A.S.No.701 of 2009 by His Lordship Justice G.Rajasurya.

For Applicant : Mr.V.Raghavachari

J U D G E M E N T

The appellant whose appeal against the dismissal of the suit for specific performance in O.S.No.2 of 2008 was partly allowed has come by way of this

review application. The facts that led to the filing of the above review application are as follows:

2. The appellant, as the plaintiff had filed the suit in O.S.No.2 of 2008 on the file of the District Court Nilgiris, Udthagamandalam seeking specific performance of the agreement of sale dated 03.07.2006.

3. According to the plaintiff, the defendants had agreed to convey an extent of 1 acre and 10 cents of land in R.S.No.248/1 at Ootacamund Rural Village. The said suit was resisted by the defendants contending that the agreement was executed as security for certain borrowings.

4. The Trial Court had accepted the plea of the defendants and had dismissed the suit in toto. Aggrieved by the said dismissal, the plaintiff had preferred the appeal in A.S.No.701 of 2009 before this Court. The appeal came to be disposed of on 05.10.2012 by this Court. While concluding that the agreement is true and valid and that the plaintiff is entitled to specific performance, this Court had decreed the suit in respect of the remaining property after excluding portions of the property which were sold away by the defendants anterior to the filing of the suit. Sub-Paragraph 1 of paragraph-35 of the judgement of this Court dated 05.10.2012 reads as follows:

“ Ex.A1 is held to be an agreement to sell in stricto sensu. By virtue of Section 12(3) (d) of the Specific Relief Act, the Court is

enjoined to enforce specific performance in respect of the part of the suit property available for specific performance excluding the portions already sold by the defendants anterior to the filing of the suit.”

The exclusion of the portion of the property which was sold prior to the filing of the suit, has triggered the present review petition.

5. I have heard Mr.V.Raghavachari, learned counsel appearing for the applicant. According to the learned counsel, this Court having found that the suit agreement is an agreement of sale and it could be specifically enforced ought not to have excluded the property that was sold by the defendants after the agreement, prior to the filing of the suit. Pointing out that, this Court had remitted the appeal for enabling the Trial Court to carry out the mandate of Section 12 of the Specific Relief Act by appointing a Commissioner to find out the extent of the property that was sold anterior to the suit, the learned counsel would contend that, the Court should have given the appellant liberty to file applications for impleading the subsequent purchaser and test their bonafides. The question that would arise is what are the rights of alienees from the defendants after the agreement before the filing of the suit. Section 54 of the Transfer of Property Act, makes it clear that the agreement by itself does not create any interest or charge over the property. Therefore, the title to the

property remains with the vendor and he is capable of transferring the said title. However, such transfer will be subject to the right of the purchaser, who claims specific performance.

6. The above position of law was clarified by the Hon'ble Supreme Court in *Lala Durga Prasad and another vs. Lala Deep Chand and others* reported in *AIR 1954 SC 75*, wherein the Hon'ble Supreme Court while considering the form of decree to be passed in a suit for specific performance where there are alienations between the date of the agreement and the date of the suit, taking note of the principle law, that an agreement of sale by itself does not confer title in the immovable property, observed as follows:

“ The proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff” (emphasis supplied)

7. Thus it could be seen that subsequent purchaser is a necessary party to the suit for specific performance. The subsequent purchaser will only mean the purchaser after the agreement but prior to the suit. As far as pendente lite purchaser, does not get any protection and the decree is binding

on him. The Specific Relief Act also confers certain rights of subsequent purchaser. A suit for specific performance will have to fail, if the subsequent purchaser is able to show that he is a bonafide purchaser for value without notice of the subsisting agreement.

8. From the records, it can be gathered that the plaintiff was aware of the alienation made by the defendants atleast during the trial of the suit. He however, did not seek to implead the alienee either in the suit or in the appeal. He would prosecute the suit against the defendant namely, the agreement vendor alone. This Court could not grant a decree against the subsequent purchasers in their absence. Therefore, the appeal was allowed restricting the relief of specific performance only to the properties that remain in the hands of the defendants on the date of the suit. The alienations that had taken place after filing of the suit have not been excluded. Therefore, from the reading of the judgement and analysis of the law relating to the specific performance, it is clear that the learned Judge who disposed of the appeal has conciously excluded the property that were sold by the defendants prior to the suit and after the agreement.

9. In order to invoke the Provision of Order 47 C.P.C., the applicant must show that there is an error apparent on the face of the record. I do not

find any error much less any error apparent on the face of the record. Hence, the review application fails and is dismissed. No costs

24.02.2017

Index : Yes/No
Internet: Yes/No
vk

To

The District Judge Nilgiris, Udthagamandalam.

R.SUBRAMANIAN,J

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Predelivery judgement
in
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