

7IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2017

PRONOUNCED ON: 21.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.425 of 2002

S.K.Komarasamy Gonder

... Appellant /Defendant

Vs.

1. Soundari

2. Selvaraj

3. Somu

4. Karuppayal (Deceased)

... Respondents 1 to 4/Plaintiffs

5. Nanjappa Gounder

6. Chellayammal

7. P.T.Subramaniam

8. Senthamilselvan

9. Ponnusamy

...

Respondents 5 to 9

(RR5 to 9 brought on record
as Lrs of the Deceased R4
vide order of Court dated
18.02.2016 made in
CMP.Nos.1212 to 1214/2010
in S.A.NO.425/2002)

Prayer:- Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated 16.08.2001 made in
A.S.No.48 of 2000 on the file of the Second Additional
Subordinate Court, Gobichettipalayam, reversing the Judgment and
decree dated 09.08.2000 made in O.S.No.447 of 1996 on the file
of the District Munsif Court, Sathyamangalam.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.T.Murugamanickam

Senior Advocate

Nos.1 to 4 for M/s.P.Sendhilkumar

For Respondents : Mr.R.T.Doraisamy

Nos.5 to 9

J U D G M E N T

Challenge in this second appeal is made to the judgment and Decree dated 16.08.2001 made in A.S.No.48 of 2000 on the file of the Second Additional Subordinate Court, Gobichettipalayam, reversing the Judgment and decree dated 09.08.2000 made in O.S.No.447 of 1996 on the file of the District Munsif Court, Sathyamangalam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Declaration and Permanent Injunction.

4. The case of the plaintiffs, in brief, is that the suit properties originally belonged to one Madhakuravan and he had leased out the suit properties to Perumal gounder, who is the husband of the first plaintiff, father of the plaintiffs 2 and 3 and son of the plaintiff 4 and the above said lease arrangement was oral and in continuation of the same, Perumal Gounder had been in possession and enjoyment of the suit properties as a lessee from 1976 onwards and subsequently, Madhakuravan executed an agreement for sale dated 11.06.1981 in respect of the suit properties in favour of Perumal gounder agreeing to sell the suit properties to him for a sum of Rs.15,000/- and received an advance of Rs.5,000/- and pursuant to the above said agreement for sale, he executed a registered sale deed in favour of Perumal gounder on 20.08.1981, after receiving the balance sale price and since then, Perumal Gounder till his lifetime and thereafter, his legal heirs viz., the plaintiffs have been in possession and enjoyment of the suit properties as absolute owners. Perumal Gounder died on 28.07.1995 and accordingly, the deceased Perumal gounder and the plaintiffs had been enjoying the suit properties by obtaining patta, paying kist etc. While so, on 24.07.1995, the defendant along with VAO and Ameen of the Court came to the suit properties and proclaimed that the same belonged to him by virtue of a Court decree dated 25.11.1981 and that, the Court had ordered delivery of the suit properties in his favour and subsequent to the same, on verification, the plaintiffs came to know that the defendant has obtained an ex parte decree against Madhakuravan in O.S.No.1879 of 1981, on the basis of an alleged agreement for sale dated 25.06.1981 said to have been executed by Madhakuravan in favour of the defendant and the defendant had, pursuant to the decree obtained in the said suit, filed execution proceedings and obtained the order of delivery of possession of the suit properties and neither Perumal gounder nor the plaintiffs knew anything about the suit filed in O.S.No.1879 of 1981 and the decree passed therein and also execution proceedings levied thereupon and Perumal gounder

was never informed about the alleged agreement for sale dated 25.06.1981 nor he was impleaded as a party in O.S.No.1879/1981 and hence, the decree obtained in the above said suit is not binding on Perumal Gounder and the plaintiffs and much earlier to the alleged agreement for sale dated 20.06.1981, Perumal Gounder had entered into an agreement for sale in respect of the suit properties with Madhakuravan on 11.06.1981 itself and by virtue of the same, the deceased Perumal Gounder had also obtained the legal conveyance of the suit properties in his favour as above stated and the defendant, who owns lands to the north - west of the suit properties, knew about the sale agreement dated 11.06.1981 and also the possession and enjoyment of the suit properties by Perumal Gounder and despite the same, ventured to enter into an agreement for sale with Madhakuravan in respect of the suit properties and not even took steps to implead Perumal Gounder in the suit proceedings in O.S.No.1879 of 1981 and in any event, the plaintiffs, on account of their open, continuous and uninterrupted possession of the suit properties from the days of Perumal Gounder, have perfected title to the suit properties by way of adverse possession and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the deceased Madhakuravan had leased out the suit properties in favour of Perumal Gounder and also entered into an agreement for sale with him in respect of the suit properties on 11.06.1981 and the above said sale agreement is not true, valid and binding on the defendant. It is a created document and the plaintiffs have also, so far, not produced the alleged sale agreement and the defendant also has not admitted that pursuant to the alleged sale agreement, Madhakuravan had sold the suit properties to Perumal Gounder on 20.08.1981 and the sale deed dated 20.08.1981 is not true, valid and binding on the defendant and the deceased Madhakuravan executed an agreement of sale on 25.06.1981 in favour of the defendant and received a sum of Rs.1,000/- as advance and as he did not turn up to comply with the terms of the sale agreement, after issuing lawyer's notice to him and as Madhakuravan did not respond to the same, the defendant levied the suit in O.S.No.1879 of 1981 on 18.08.1991 for specific performance and despite Madhakuravan entering appearance in the suit did not contest the suit and left the suit go for exparte on 25.11.1981 and thereafter, the petition filed by Madhakuravan to set aside the exparte decree came to be dismissed and the defendant levied Execution Proceedings, however, the Legal representatives of the deceased Madhakuravan did not contest the Execution proceedings and therefore, the plaintiffs are bound by the decree passed in O.S.No.1879 of 1981 as they had stepped into shoes of their vendor and the defendant

has filed a petition to remove the obstruction caused by the plaintiffs and the sale deed dated 20.08.1981 in favour of the plaintiffs is hit by doctrine of lis pendens and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, Pws1 to 3 were examined and Exs.A1 to A8 were marked. On the side of the defendant, Dws 1 & 2 were examined and Exs.B1 to B14 were marked. Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submission made, the trial Court was pleased to dismiss the suit filed by the plaintiffs. On appeal, the first appellate Court, on a consideration of the materials placed, was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the plaintiffs, decreed the suit in their favour and challenging the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the lower appellate court is justified in holding that though the sale Ex.A1 is subsequent to the suit O.S.No.1879 of 1981 filed by the appellant against the original owners, the same is not hit by Section 52 of Transfer of Property Act?

(ii) Whether the lower appellate court is correct in accepting the alleged agreement of sale dated 11.06.1981 as true and valid overlooking that the same was neither produced before Court nor proved by plaintiffs?" सत्यमेव जयते

9. The plaintiffs are the legal representatives of the deceased Perumal Gounder. It is not in dispute that the suit properties originally belonged to Madhakuravan. According to the plaintiffs, Perumal Gounder took the suit properties on lease from Madhakuravan and accordingly, on the basis of oral lease arrangement, he had been in possession and enjoyment of the suit properties right from 1976 onwards and thereafter, the deceased Madhakuravan and Perumal gounder entered into a sale agreement on 11.06.1981 in respect of the suit properties and pursuant to the same, according to the plaintiffs, Madhakuravan alienated the suit properties in favour of Perumal Gounder by way of a sale deed dated 20.08.1981 and thus, according to the

plaintiffs, the deceased Perumal Gounder and after his demise, the plaintiffs are enjoying the suit properties as absolute owners thereof and inasmuch as the defendant, under the guise of the decree obtained in O.S.No.1879 of 1981 against Madhakuravan, attempted to take possession of the suit properties from the plaintiffs through the Court process and inasmuch as it is contended on behalf of the plaintiffs that the defendant is not entitled to disturb their possession and enjoyment of the suit properties and the plaintiffs have also claimed title to the suit properties by way of adverse possession on account of their long, continuous and uninterrupted enjoyment for more than the statutory period, according to them, they had been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that he had entered into a sale agreement in respect of the suit properties with Madhakuravan on 25.06.1981 and despite the readiness and willingness on the part of the defendant to complete the sale transaction, inasmuch as Madhakuravan did not come forward to execute the sale deed, despite the issuance of notice by the defendant, according to the defendant, he has levied O.S.No.1879 of 1981 against him for specific performance and Madhakuravan did not contest the said suit and resultantly, the suit ended in a decree in favour of the defendant and based on the decree, the sale deed had been executed in favour of the defendant and accordingly, the defendant levied execution proceedings for obtaining possession of the suit properties and hence, it is contended that the plaintiffs cannot lay a valid claim to the suit properties based upon the sale agreement dated 11.06.1981 and the sale deed dated 20.08.1981 and according to the defendant, the above said documents are not true, valid and binding on him and the sale deed above said is hit by the doctrine of lis pendens and the plaintiffs are not entitled to obstruct the delivery of possession of the suit properties in favour of the defendant and hence, the suit is liable to be dismissed.

11. The defendant has challenged the truth, validity and the binding nature of the sale agreement dated 11.06.1981 projected by the plaintiffs. Despite the above defence of the defendant, the plaintiffs, for the reason best known to them, had not endeavoured to produce the alleged sale agreement dated 11.06.1981, whereunder, according to the plaintiffs, the deceased Madhakuravan and the deceased Perumal gounder entered into an agreement in respect of the sale of the suit properties. In the absence of the above sale agreement, it is not made out clearly as to what were the terms incorporated in the said document between the parties thereto as regards the purchase of the suit properties. However, it is contended by the plaintiffs

that there is a reference about the sale agreement dated 11.06.1981 in the sale deed dated 20.08.1981, which has been marked as Ex.A1 and therefore, from the above said document Ex.A1, the Court could infer that only pursuant to the sale agreement dated 11.06.1981, Ex.A1 sale deed has come to be executed. However, it is found that the sale agreement dated 11.06.1981 is not a registered document. Further, it is also seen that apart from reciting that by virtue of the above sale agreement, a sum of Rs.5,000/- has been paid towards sale consideration, the other particulars with reference to the same having not been incorporated in Ex.A1, it is not clear as to for what sale price, the parties had agreed to enter into the said agreement and what was the time fixed for the completion of the transaction etc., and in such view of the matter, merely on the stray recital about the sale agreement dated 11.06.1981 as found in Ex.A1 would not lead to the conclusion that the above said sale agreement had really come to be entered into between the deceased Madhakuravan and the deceased Perumal Gonder as projected by the plaintiffs. It is not even pleaded by the plaintiffs that the sale agreement dated 11.06.1981 is not available with them for production. It is not even established that the sale agreement has been destroyed and when seen in the context of the case projected by the respective parties, it is found that Madhakuravn was well aware of the sale agreement dated 25.06.1981 entered into in respect of the suit properties between him and the defendant as put forth by the defendant. In such view of the matter, when it is found that Madhakuravan was well aware of the sale agreement dated 25.06.1981 marked as Ex.B1, which had come into existence much prior to the sale deed dated 20.08.1981 Ex.A1, it is seen that Madhakuravan would have informed about the said sale agreement to Perumal Gounder at the time of the execution of the sale deed Ex.A1. In this connection, it is to be noted that as per the case of the defendant, inasmuch as Madhakuravan did not come forward to execute the sale deed in terms of the sale agreement Ex.B1, according to him, he has levied the suit proceedings in O.S.No.1879 of 1981 against him for specific performance. Prior to the institution of the suit, it is found that the defendant has issued the lawyer's notice dated 05.08.1981 to Madhakuravan, which has been marked as Ex.B2 and it is seen that the suit notice has been received by Madhakuravan on 06.08.1981 and it is therefore seen that Madhakuravan is put on notice about the intention of the defendant and his readiness and willingness to purchase the suit properties from him pursuant to the sale agreement marked as Ex.B1. Despite the above position, the case of the plaintiffs that Madhakuravan had endeavoured to execute the sale deed in respect of the suit properties in favour of Peruma Gounder on 20.08.1981 under Ex.A1 would itself go to show that Madhakuravan has suppressed the material facts as to the existence of the sale agreement dated 25.06.1981 Ex.B1

and proceeded to execute the sale deed dated 20.08.1981 in faovur of Perumal Gounder. Accordingly, it is seen that Perumal gounder would have been apprised of the sale agreement Ex.B1 and despite being aware of the same, it is seen that Perumal gounder had ventured to purchase the suit properties under Ex.A1 and therefore, it is found that both Madhakuravan and Perumal Gounder are very well put on notice about the sale agreement Ex.B1 much prior to the sale deed Ex.A1.

12. The above discussion stems on the facts, as above seen, prior to the institution of O.S.No.1879 of 1981, the defendant has issued the pre-suit notice to Madhakuravan under Ex.B2 and the same had been received by Madhakuravan vide Ex.B3 acknowledged card. Further, as above seen, Madhakuravan had been put on notice about the intention of the defendant in initiating appropriate legal proceedings against him, in case of his failure to comply with the terms of the sale agreement dated 25.06.1981. Despite the above position, it is found that Madhakuravan had chosen to execute a sale deed in respect of the suit properties in favour of Perumal Gounder and it is thus found that as rightly put forth by the defendant's counsel, when prior to the execution of the sale deed dated 20.08.1981 in favour of Perumal gounder, inasmuch as the defendant had levied the suit proceedings in O.S.No.1879 of 1981 on 18.08.1981 itself, it is found that the sale transaction dated 20.08.1981 marked as Ex.A1 is hit by the doctrine of lis pendens. It is further seen that Madhakuravan had entered appearance in O.S.No.1879 of 1981 through an advocate, however, did not contest the suit and resultantly, the suit has come to be decreed exparte in favour of the defendant on 25.11.1981. It is also seen on the materials placed that Madhakuravan attempted to set aside the exparte decree passed against him in O.S.No.1879 of 1981. However, the said attempt did not fructify and the same had been dismissed. It is further seen that pursuant to the decree passed in O.S.No.1879 of 1981, the defendant had levied execution proceedings to realize the fruits of the decree and in the said execution petition, the legal heirs of the deceased Madhakuravan entered appearance and however, their attempt to resist the execution proceedings did not yield the desired result and accordingly, further proceedings had been initiated in the execution proceedings. It is also found that Madhakuravan attempted to set aside the exparte decree by filing the petition to condone the delay and all had ended in vain as the petitions with reference to the same had been dismissed as abated on the failure of the Legal representatives of the deceased Madhakuravan to prosecute the matter as per law. It is further seen that in the execution proceedings levied by the defendant, as Madhakuravan or his legal heirs had failed to execute the sale deed in compliance of the decree passed in O.S.No.1789 of 1981, the Court had executed the sale deed in favour of the defendant and accordingly, based on the same, the defendant had

moved the executing Court for obtaining the possession of the suit properties and after the Court had ordered the delivery, the Court ameen proceeded to deliver the possession and it is found that at that point of time, the plaintiffs had resisted the delivery and one year thereafter, they have chosen to file the present suit for the reliefs of declaration and permanent injunction.

13. It is argued by the defendant's counsel that inasmuch as the sale deed Ex.A1 has come into existence after the institution of O.S.No.1879 of 1981, the same is hit by the principles of lis pendens and in this connection, the defendant's counsel placed reliance upon the decision reported in (2008) 7 Supreme Court Cases 144 (Usha Sinha Vs. Dina Ram and Others). A perusal of the above said decision would go to show that a purchaser of the suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court and the doctrine of lis pendens prohibits the said party from dealing with the property, which is the subject matter of the suit and lis pendens itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit and Order 21 Rule 102 of the Civil Procedure Code, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite and it has also been declared in the said decision that if the resistance or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rules 98 or 100 of Order 21. Applying the principles above enunciated, when it is found that Madhakuravan had knowledge of the suit proceedings in O.S.No.1879 of 1981 and had, despite the same, failed to contest the suit and the said suit also ended in a decree in favour of the defendant on 25.11.1981 and meanwhile, the sale deed Ex.A1 having come to be executed in favour of Perumal gounder on 20.08.1981, cumulatively, it is found that inasmuch as Perumal gounder had claimed title to the suit properties only by stepping into the shoes of the deceased judgment debtor Madhakuravan, it is found that Perumal gounder also had knowledge about the suit proceedings in O.S.No.1879 of 1981 and thus, it is found that despite having knowledge about the same, Perumal Gounder had ventured to purchase the suit properties pendente lite and in such view of the matter, it is found clearly that the sale transaction marked as Ex.A1 is hit by the doctrine of lis pendens. Accordingly, it is found that though Madhakuravan had pendente lite executed the sale deed in favour of perumal Gounder on 20.08.1981 marked as Ex.A1, even thereafter, he had attempted to set aside the decree passed against him in the above suit and however, his attempts to set aside the same ended in vain as the above steps had come to be rejected as they had not been prosecuted in accordance with law. In such view of the

matter, when the defendant had obtained a valid decree against Madhakuravan and the same has become final, as above seen, Perumal gounder being a purchaser pendente lite, his legal heirs would not be entitled to resist the delivery of possession of the suit properties in favour of the defendant, pursuant to the Court decree and it is found that as per the above said decision, the legal heirs of Perumal Gounder i.e. the plaintiffs are not entitled to thwart the execution proceedings as per law by way of the present suit and on the above ground itself, it is found that the plaintiffs are not entitled to obtain the reliefs claimed in the suit.

14. The counsel for the plaintiffs contended that the defendant being owner of the lands situated near to the suit properties and therefore being well aware of the enjoyment of the suit properties by Perumal Gounder as a lessee under Madhakuravan would also be in the know of things about the sale agreement entered into between Perumal Gounder and Madhakuravan in respect of the suit properties on 11.06.1981 and despite the above position, inasmuch as the defendant had ventured to purchase the suit properties from Madhakuravan on 25.06.1981 under Ex.B1, it is contended that the defendant cannot be termed as bona fide agreement holder in respect of the suit properties and therefore, according to him, the levy of the suit subsequent thereto and the decree obtained by the defendant in the said suit proceedings i.e. O.S.No.1879 of 1981 would not in any manner alter the position and turn the scales in favour of the defendant to resist the purchase of the suit properties by Perumal Gounder under Ex.A1 and therefore, it is contended that the decree obtained by the defendant, pursuant to the sale agreement dated 25.06.1981, is not binding upon the plaintiffs as their predecessor in title viz., Perumal Gounder had in anterior point of time entered into a sale agreement dated 11.06.1981 in respect of the suit properties and therefore, further according to him, Ex.A1 sale transaction would be binding on the defendant. However, the above contentions do not merit acceptance. At the foremost, there is no material placed worth acceptance on the part of the plaintiffs that Perumal Gounder had been enjoying the suit properties as a lessee from 1976 onwards. With reference to the same, nill material is placed. It is further seen that there is no valid material to hold that Perumal Gounder and Madhakuravan had entered into a sale agreement on 11.06.1981 in respect of the suit properties. If that be so, as above seen, the said agreement of sale would have been marked in the present proceedings and as further seen the reference of the sale agreement dated 11.06.1981 in Ex.A1 by itself would not lead to the conclusion that such an agreement of sale had been entered into between Perumal Gounder and Madhakuravan, when the particulars of the agreement of sale are not found to be fully incorporated in Ex.A1 and when the same is

silent as to what is the sale price agreed to between the parties, what is the time limit, within which, they had agreed to complete the sale transaction etc., are found to be missing and when there is no valid reason offered by the plaintiffs for not marking the sale agreement dated 11.06.1981 to buttress their case, it is found that the defendant cannot be imputed with the knowledge of the sale agreement dated 11.06.1981 and also the fact that Perumal Gounder had entered into such a agreement with his lessor Madhakuravan in respect of the suit properties. Merely because the defendant was a nearby land owner by itself would not automatically lead to the conclusion that he is all aware about the happenings, which had occurred between Perumal gounder and Madhakuravan. Particularly, in the absence of any material placed on the side of the plaintiffs to hold that Perumal gounder was a lessee in respect of the suit properties from 1976 onwards and that, he had in fact entered into a sale agreement with Madhakuravan in respect of the suit properties on 11.06.1981, when the materials pointing to the same are completely not available and on the other hand, when it is found that Madhakuravan had been put on notice about Ex.B1 sale agreement and thereby, Perumal Gounder would also have had knowledge about the same, it is found that the defendant cannot be attributed with any knowledge about the sale deed dated 11.06.1981 as put forth by the plaintiff's counsel.

15. With reference to the non production of the sale agreement dated 11.06.1981, it is contended by the defendant's counsel that when the plaintiffs have come forward with the lis claiming specific reliefs only on the basis of the above said sale agreement followed by the execution of sale deed dated 20.08.1981 marked as Ex.A1 and when the defendant is not admitting the truth, validity and binding nature of the sale agreement dated 11.06.1981 or the sale deed marked as Ex.A1, according to him, the plaintiffs having failed to establish that the sale agreement dated 11.06.1981 is not available for production, it is his contention that the non production of the material document viz., the above said sale agreement would itself amount to playing fraud on the Court and on the above score alone, the suit laid by the plaintiffs is liable to be dismissed. In this connection, the defendant's counsel placed strong reliance upon the decision reported in (1994) 1 SCC 1 (S.P.Chengalvaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs and others). A perusal of the above said decision would go to show that when the plaintiffs have based their case mainly on the plea of the sale agreement dated 11.06.1981, it is found that the non production of the same and also the failure of the plaintiffs in not placing acceptable and reliable cause for the non production of the same would be nothing short of playing fraud on the Court as per the above said dictum of the apex Court.

16. However, it is urged by the plaintiffs' counsel that the defendant has failed to establish the truth of the sale agreement dated 25.06.1981 marked as Ex.B1 and therefore, his defence version should not be accepted. In this connection, it is contended by the plaintiffs' counsel that a perusal of Ex.B1 sale agreement would go to show that the stamp papers, on which the sale agreement has been inscribed, had been purchased from a stamp vendor at Salem and when there is no plausible explanation given by the defendant as to the reason for purchasing the stamp papers as above stated from the stamp vendor at Salem. it is contended that a doubt has arisen about the genuineness of the above said sale agreement and in this connection, he placed reliance upon the decision reported in 2013 (1) MWM (Civil) 695 (Garre Mallikharjuna Rao (D) by L.Rs & Others Vs. Nalabothu Punniah). No doubt, the stamp paper, on which Ex.B1 sale agreement, has come to be inscribed, had been purchased from the stamp vendor at Salem and with reference to the same, there is no explanation offered by the defendant and on that score alone, in my considered opinion, we cannot safely accept that the plaintiffs' case is true. Similarly, the contention of the plaintiffs' counsel that inasmuch as the defendant owns lands nearby the suit property, he would have been aware of the enjoyment of the suit properties by Perumal Gounder as a lessee and equally, he would have been also aware of the sale agreement dated 11.06.1981 entered into between Madhakuravan and Perumal Gounder and therefore, the defendant should be held to be aware of the title of Perumal Gounder in respect of the suit properties flowing from the sale agreement dated 11.06.1981 cannot be readily acceptable. In this connection, he placed reliance upon the decision reported in (2000) 3 MLJ 192 (S.C.) (R.K.Mohammed Ubaidullah and others Vs. Hajee C.Abdul Wahab (Dead) By Lrs and others). However, as above seen, there is no material placed on behalf of the plaintiffs that Perumal Gounder had been in possession and enjoyment of the suit properties as a lessee under Madhakuravan from 1976 onwards. Equally, even admitting that the defendant owns lands nearby to the suit properties that by itself cannot be held to hold that the defendant would have knowledge about the alleged sale agreement entered into between Perumal Gounder and Madhakuravan as put forth by the plaintiffs on 11.06.1981. If the above case of the plaintiffs is true, it does not stand to reason as to why the plaintiffs should feel shy in producing the best document viz., the sale agreement dated 11.06.1981 in support of their case. The plaintiffs having failed to produce the best evidence cannot be allowed to pick holes in the defence version and thereby, endeavour to succeed in their case without any basis or foundation. Equally, it is argued by the plaintiffs' counsel that there is no material placed on behalf of the defendant that pursuant to the sale agreement Ex.B1, he has always been ready

and willing to perform his part of the contract and complete the sale transaction and therefore, the readiness and willingness on the part of the defendant with reference to Ex.B1, having not been established by him, it is contended that the defendant cannot be held to be entitled to the suit properties on the basis of the exparte decree obtained by him against Madhakuravan in O.S.No.1879 of 1981. In this connection, reliance is placed upon the decision reported in (2017) 7 MLJ 81 (B.Vijaya Bharathi Vs. P.Savitri and others). However, as rightly argued by the defendant's counsel, the suit in O.S.No.1879 of 1981 has been preceded by a pre suit notice marked as Ex.B2 and the same having been acknowledged by Madhakuravan and despite the same, Madhakuravan had chosen to execute the sale deed in favour of Perumal Gounder on 20.08.1981, however, after the levying of the suit by the defendant in O.S.No.1879 of 1981 on 18.08.1981 itself, such being the position, when the sale deed, under which, the plaintiffs claim title to the suit properties is found to be hit by the principle of lis pendens and considering the facts and circumstances of the case, Perumal gounder cannot be described as a bona fide purchaser for value without notice of the sale agreement Ex.B1 and further, when it is also seen that Madhakuravan had failed to contest the defendant's suit and left the suit to go exparte and his further attempts initiated subsequently to set aside the exparte decree having ended futile, it is seen that the plaintiffs cannot be allowed to contend that the defendant has not established his readiness and willingness for seeking the entitlement of the relief of specific performance granted in his favour in O.S.No.1879 of 1981. Till date, it is found that the decree passed in favour of the defendant in O.S.No.1879 of 1981 has not been set aside in the manner known to law. Even in the present plaint, the plaintiffs have not asked for any declaration that the decree passed in O.S.No.1879 of 1981 is null and void or liable to be set aside on any specific ground. Such being the position, when the defendant has already been granted the relief of specific performance in the above said suit, it is too late on the part of the plaintiffs to contend that the defendant has failed to establish his readiness and willingness to get the sale conveyance in respect of the suit properties in his favour pursuant to the sale agreement Ex.B1.

17. With reference to the above contentions put forth by the plaintiffs counsel, it is argued by the defendant's counsel that the cardinal principle in a civil action being that the plaintiffs have to stand or fall on the strength of their own case, it is his contention that the plaintiffs having failed to establish that they are entitled to have precedence to the sale agreement marked as Ex.B1, which had culminated in a decree in favour of the defendant in O.S.No.1879 of 1981 and when the said decree had become final and not set aside till date, it is found

that the said decree binds upon the defendant therein viz., Madhakuravan and when it is found that the plaintiffs claim source of title to the suit properties only from Madhakuravan and accordingly, when it is seen that the sale deed relied upon by the plaintiffs marked as Ex.A1 being hit by the principles of lis pendens, it is found that despite the certain short comings in the defendant's case that by itself would not lead to the conclusion that the plaintiffs are entitled to the reliefs as prayed for without they establishing their entitlement to claim the same. In this connection, the defendant's counsel placed reliance upon the decision reported in (2014) 2 Supreme Court Cases 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others) for the proposition that in a suit for declaration of title, the plaintiffs could succeed only on the strength of their own title and that could be done only by adducing sufficient evidence to discharge the onus on it irrespective of the question whether the defendant has proved his case or not. It is also seen that it has been held in the said decision that even if the title set up by the defendant is found against, in the absence of the establishment of the plaintiffs' own title, the plaintiffs must be non suited. Following the above position, it is found that the plaintiffs cannot be allowed to point out defects in the defence version and thereby succeed in their lis without establishing their case with acceptable and reliable materials.

18. The plaintiffs' have also taken a plea that they have perfected their title to the suit properties by way of adverse possession on account of continuous and long enjoyment. As rightly argued defence counsel, the above plea cannot be taken by the plaintiffs for seeking relief of declaration when it is found that the said plea can be used only as a shield and not as a sword and in this connection, the following decisions are relied upon by the defendant's counsel reported in (2014) 1 Supreme Court Cases 669 (Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another) and 2014 (3) CTC 146 (R.Riyaz Ahmed and three others Vs. J.G.Glass Industries Pvt. Ltd.,). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. The first appellate Court, without any basis, had accepted the sale agreement dated 11.06.1981 as true and valid, even after coming to know that the same had been not placed before the Court by the plaintiffs nor the plaintiffs having established the truth and validity of the same. Equally, it is found that the first appellate Court has erred in not considering the application of Section 52 of the Transfer of property Act as regards the sale transaction marked as Ex.A1,

when it is found that the above said sale transaction having come into existence after the institution of O.S.No.1879 of 1981, as rightly argued, it is clearly hit by the principles of lis pendens. In the light of the above discussions, it is found that the judgment and decree of the first appellate Court in upholding the plaintiffs' case cannot be allowed to sustain any further. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiffs and in favour of the defendant.

In conclusion, the judgment and Decree dated 16.08.2001 made in A.S.No.48 of 2000 on the file of the Second Additional Subordinate Court, Gobichettipalayam, are set aside and the Judgment and decree dated 09.08.2000 made in O.S.No.447 of 1996 on the file of the District Munsif Court, Sathyamangalam, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

sms

To

- 1.The II Additional Subordinate Judge,
Gobichettipalayam.
- 2.The District Munsif, Sathyamangalam.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Manoharan, Advocate SR.No.91839
+1cc to Mr.T.Doraisamy, Advocate SR.No.91600
+1cc to Mr.P.Senthil Kumar, Advocate SR.No.91621

S.A. No.425 of 2002

VD(CO)
GN(06/02/2018)