



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (NPD)No.2410 of 2016

and

C.M.P. (MD)No.11348 of 2016

1.Parvathi

2.Murugaiah Thevar

...Petitioners / Petitioners /
Respondents / Defendants

/Vs./

Chitrakannu Nadar (Died)

...Plaintiff

1.Selvasaroja

2.Poongothai

...Respondents 1 &2 / Respondents 1&2 /
Petitioner

3.Kuthalingam

...3rd Respondent / 3rd Respondent / 3rd
Respondent

Prayer: Civil Revision Petition - filed Section 115 of the Civil Procedure Code, to set aside the order and decreetal order passed in E.A.No.127 of 2014 in E.P.No.70 of 2013 in O.S.No.471 of 1994 dated 05.10.2016 on the file of the Principal District Munsif, Tenkasi and allow the civil revision petition.

For Petitioners

: Mr.S.R.A.Ramachandhran

For R-1 & R-2

: Mr.Meenakshi Sundaram

for Mr.D.Nallthambi

For R-3

: Mr.R.Subramanian

ORDER

One Chitrakannu Nadar filed O.S.No.471 of 1994 on the file of the District Munsif Court, Tenkasi, for declaration, permanent injunction and recovery of possession in respect of the suit property. The filing of the said suit became necessary, because Kurtralingam, son of the plaintiff, namely, Chitrakannu Nadar, had executed a sale deed dated 26.09.1994 in favour of the revision petitioners herein. By means of the said sale deed dated 26.09.1994, 70 cents of land that was allotted to the share of the Chitrakannu Nadar vide Registered Partition deed dated 22.06.1992, was conveyed to the revision petitioners. The suit was decreed on 30.10.2000. Questioning the same, A.S.No.1 of 2001 was filed before the Principal Sub Court, Tenkasi. The first appellate Court dismissed the appeal filed by the revision petitioners herein on 01.08.2001. Challenging the same, S.A.No.1450 of 2001 was filed before the High Court.

2. During the pendency of the second appeal, Chitrakannu Nadar died on 24.12.2006, leaving behind his wife Seeniammal, daughters namely, Selvasaroja, Poongothai and son Kutralingam as his legal heirs. They were brought on record. Then, the second appeal itself



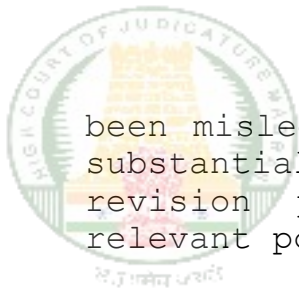
came to be withdrawn by the revision petitioners herein on 16.04.2012. Following the dismissal of the second appeal, the decree passed in favour of Chitrakannu Nadar in O.S.No.471 of 1994 became final.

3. To execute the same, E.P.No.70 of 2013 came to be filed. In the said E.P., the revision petitioners herein filed E.A.No.127 of 2014, questioning the very maintainability of the EP. The stand of the revision petitioners is that since Chitrakannu Nadar passed away, 2/3rd share in the property devolved on the respondents 1 and 2 herein, 1/3rd share devolved on Kutralingam. Since Kutralingam has already sold the entire property including his share in favour of the revision petitioners, the revision petitioners contended that they are entitled to 1/3rd share in the suit property. On that basis, they questioned the authority of the respondents 1 and 2 herein to prosecute the E.P.No.70 of 2013. The Court below by an order dated 05.10.2016 dismissed the said E.A.No.127 of 2014. The correctness of the said order is questioned in this civil revision petition.

4. The learned counsel appearing for the revision petitioners reiterated the contentions set out in the memorandum of grounds. He contended that admittedly, the entire suit property measuring 70 cents of land was part of what was conveyed in their favour vide sale deed dated 26.09.1994. Chitrakannu Nadar in whose favour the suit property was allotted the said portion two years earlier vide Register Partition Deed, dated 22.06.1992 impeached the sale deed executed by Kutralingam insofar as the suit property is concerned. But Chitrakannu Nadar, after securing the decree in his favour, passed away. He died intestate. Therefore, the property in question devolved in equal measure to all the three surviving legal heirs, one of them, being Kutralingam. Section 43 of the Transfer of Property Act, 1882, therefore comes into play.

5. This Court intends to dispose of the contentions raised by the revision petitioners herein with regard to the maintainability of E.P.No.70 of 2013 filed by the respondents 1 and 2 herein. Admittedly, the respondents 1 and 2 herein are the legal heirs of Chitrakannu Nadar having inherited 2/3rd of share of his rights and interest. Atleast to this extent, they are entitled to proceed in the matter. Therefore, the revision petitioners herein, who are judgment debtors cannot question the locus standi of the respondents 1 and 2 to file E.P.No.70 of 2013 and take it to its logical conclusion. That leaves us with the contentions raised by the learned counsel appearing for the revision petitioners that 1/3rd share that devolved on Kutralingam will go to them.

6. As rightly pointed out by the learned counsel appearing for the third respondent, Section 43 of the Transfer of Property Act, 1882, can be invoked by the revision petitioners, only if they are bona fide purchasers. The essential ingredient of Section 43 of the Transfer of Property Act, 1882, is that the purchaser must not have



been misled by the representations of the vendor. In this case, a substantial finding has been given by the trial Court that the revision petitioners herein are not bonafide purchasers. The relevant portion of the trial Court judgment reads as under:

"First defendant cannot be considered to be a bonafide purchaser because the earlier partition deed is a registered one that is within 2 years of the sale in favour of the first defendant. Any encumbrance certificate would have revealed it. The defendants and the plaintiff belong to the same place. The 2nd defendant who has deposed as D.W.1 has admitted that he knows it to be a joint family property. He has also admitted that he got the encumbrance certificate before purchasing the property. In which case he would have found out that the property belongs to the plaintiff. So the sale deed in favour of the first defendant is a fraudulent one as it is executed & purchased with the knowledge that the vendor does not have right over the suit property. The purchaser is also beware of this."

7. This finding given by the trial Court has now become final. The learned counsel for the third respondent placed strong reliance on the decision of the Hon'ble Supreme Court reported in AIR 1962 Supreme Court 847 [Jumma Masjid, Mercara vs. Kodimaniandra Deviah and others], Paragraph No.15 of the said decision reads as under:

"15. This reasoning is open to the criticism that it ignores the principle underlying S.43. That Section embodies, as already stated, a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bonafide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of S.43 were "where a person erroneously represents", and now, as amended by Act 20 of 1929, they are "where a person fraudulently or erroneously represents", and that emphasises that for the purpose of the Section it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have



WEB COPY

acted on it when taking a transfer. Section 43 would then have no application, and the transfer will fail under S.6(a). But where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in S.43, however fraudulent the act of the transferor might have been."

8. Bearing in mind the aforesaid principles, in the light of the findings given by the trial Court that the revision petitioners are not bonafide purchasers, this Court is of the view that the revision petitioners cannot invoke Section 43 of the Transfer of Property Act in their favour.

9. The learned counsel for the third respondent gives an undertaking before this Court that the third respondent would file an affidavit that he will convey his 1/3rd share in the suit property in favour of his wife and children and that he will not stake any claim. The undertaking given by the third respondent is recorded. The order impugned in this civil revision petition is sustained. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Munsif, Tenkasi.

+1cc to Mr.D.Nallthambi, Advocate, SR.No. 82068

+1cc to Mr.S.R.A.Ramachandhran, Advocate, SR.No.82125

+1cc to Mr.R.Subramanian, Advocate, SR.No. 82062

C.R.P. (MD) (NPD) No.2410 of 2016
03.09.2018

sm

KK/SKN/SAR-2/12.10.2018/4P-5C