

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.01.2019

DATED : 29.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1348 of 1999

And

C.M.P.No.17790 of 2005

1. Ganesan
2. Nagappan ... Plaintiffs/Appellants/Appellants

Vs.

1. Muniappa Reddy
2. Shanmugam
3. Durai
4. Lakshmi
5. Margabandhu Chetty
6. Eganthammal
7. Loganathan ... Defendants/Respondents/Respondents

PRAYER:

This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment dated 10.03.1999 passed in A.S.No. 22 of 1993 on the file of Sub Court, Ranipet, Vellore District confirming the Decree and the Judgment dated 27.08.1992 passed in O.S.No. 74 of 1986 on the file of the District Munsif Court, Arakonam.

For Appellants : Mr.P.B.Balaji

For RR 2, 4, 6 & 7 : No appearance

R1, 3 and 5 : Died

JUDGMENT

The plaintiffs in O.S.No. 74 of 1986 are the appellants herein.

2. O.S.No. 74 of 1986 had been filed by the plaintiffs Ganesan and Nagappan, who are both brothers, seeking permanent injunction restraining the defendants from interfering with their peaceful possession and for specific performance of an agreement of sale by the first defendant and also for costs.

3. The suit property had been described in the plaint as follows:-

"North Arcot District Arakonam Sub-District Arakonam Taluk Pudikesarasam Village:

1. Dry S.No. 48/1 Ac. 5.30 in this the land situated to the South of the land belonging to Segayathottam, to the Northwest of the land of Radhammal and Balaraman Reddy to the North of Radhamma's land and the East of the land is S.No. 108/2 with the except of Ac.1.74 kist Rs.2.75.

2. Dry S.No. 108/2 Ac.1.48 in this the land situated to the South of the land belonging the Sahayathottam, to the west of the land S.No. 48/1 to the North of the lands of sibramaniya Reddy and Srinivasalu Naidu and to the west easter of Ganapathy 'Reddy's land with extent of Ac.0.80 cents kist Rs.1.53.

The lands with the well, well - mound with an electric service connection S.No. 108/2."

4. According to the plaintiffs, the suit property belonged to them and to their father. They had obtained a loan of Rs.600/- from the sixth defendant Margabandhu Chetty. They then executed a sale deed dated 04.06.1955 in favour of the sixth defendant. He executed an agreement on the same day to re-convey the property. The plaintiff claimed that they had discharged the loan amount received from the sixth defendant. The plaintiffs then executed a sale deed in favour of Ramalinga Reddy, who was the father of the third defendant Shanmugham and

the fifth defendant Lakshmi. This was on 13.11.1958. They also executed an agreement in favour of the plaintiff. The plaintiff then borrowed a sum of Rs.500/- from the second defendant Dasaratha Reddy and executed a sale deed dated 27.04.1964 in his name. The first defendant is said to have purchased the property from the second defendant. The first defendant had filed O.S.No. 106 of 1977 against the plaintiffs seeking injunction. That suit was dismissed. The plaintiff claimed to be in possession. The plaintiff therefore filed the suit for re-conveyance of the suit property.

5. This suit came up for consideration before the District Munsif Court, Arakonam and by Judgment dated 27.08.1992 the relief of re-conveyance was rejected. However, an injunction was granted protecting the possession of the plaintiff. The District Munsif Court specifically found that the plaintiffs were not entitled for the relief of specific performance. However, since it was held that the plaintiffs were in possession, injunction was granted protecting the possession. The plaintiffs then filed A.S.No. 22 of 1993 before the Sub Court, Ranipet. The First Appeal came up for consideration before the learned Special Judge on 10.03.1999. By Judgment of even date, the learned Special Judge dismissed the appeal and confirmed the findings of the trial Court. It was specifically found that the agreements dated 04.06.1955, 13.11.1958 and 27.04.1964 were not valid agreements and would not bind the first defendant. It was specifically found that the plaintiffs were not entitled for specific performance of the said agreements. Both the Courts below rejected the contentions of the plaintiffs in so far as specific performance was concerned. The agreements were found to not valid in law and no right can flow from the same. The said finding being a finding on fact cannot be interfered with by this Court. However, both the Courts below also found as a fact that the plaintiffs were in possession and consequently, granted injunction.

6. The Second Appeal had been admitted on the following substantial questions of law:-

"1. When there is a sale coupled with a condition of repurchase are not titles of the purchasers kept in animated suspension and what passed was only and such limited interest subject to the agreement of re-conveyance?

2. Has not the lower appellate Court erred in holding that the first respondent is a bona fide purchaser without knowledge of the existence of the agreement to re-convey when the first respondent is a close

relation of the appellants resident of the same village and neighbour of the appellants and therefore, must have held to have made enquiries or atleast aware of the existence of the agreement to re-convey?

3. When a person has acquired a property with a deemed knowledge that another person entered into an existing condition affecting that property of which specific performance could be enforced is not the person acquiring the property hold it for the benefit of the other person to the extent necessary to give effect to the contract under Section 21 of Specific Relief Act?;"

7. With respect to the first substantial question of law, I hold that no right was conveyed under the agreements for re-conveyance and the title of the purchasers were not kept in animated suspension. With respect to the second substantial questions of law, I hold that the first respondent was the bona fide purchaser without knowledge of the existence of the agreement to re-convey. This was a finding on fact by both the Courts below and consequently, it would be highly inappropriate for this Court to re-examine the said fact. With respect to the third substantial questions of law, I hold that the specific performance cannot be enforced and both the Courts below had found as a fact that the agreements relied on by the plaintiffs are not valid. Both the Courts have protected the possession of the plaintiffs.

8. I am not prepared to interfere of the finding of fact by both the Courts below. Consequently, the Second Appeal is dismissed however without costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Sub Court, Ranipet.
2. The District Munsiff Court, Arakonam.
3. The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.7152

S.A.No.1348 of 1999
And
C.M.P.No.17790 of 2005

MR(CO)
CS/24/05/2019



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