

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.7 of 2010 and
M.P.No.1 of 2010

Venkatappa Gounder

.. Appellant / Appellant/
Respondent - 1/Decree Holder/
Plaintiff

vs.

1. Ramesh
2. Nanjappa Gounder
3. Chinnasamy
4. Nagamani
5. Prakash
6. Velusamy
7. Thambi
8. Rathina
9. Devi
10. Angammal

.. Respondents

Civil Miscellaneous Second Appeal filed under Section 100 of C.P.C. read with Order 21 Rule 58 of CPC against the judgment and decree of the Additional District Judge (Fast Track Court-II), Gobichettipalayam dated 8.12.2009 in CMA No.11 of 2007 confirming the fair and final order of the District Munsif Court, Gobichettipalayam in E.A.No.104/2000 in E.P.No.13/2000 in O.S.No.226/1999, dated 20/06/2005.

For Appellant : Mr.R.T.Doraisamy

For 1st respondent : Mr.R.Balasubramanian

For R2 to R10 : Given up

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JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant/plaintiff Venkatappa Gounder, challenging the judgment and decree passed in CMA.No.11 of 2007 dated 08.12.2009 by the learned Additional District Judge (Fast Track Court-II), Gobichettipalayam holding that Venkatappa Gounder is not

entitled to get any relief, thereby confirming the fair and final order of the District Munsif, Gobichettipalayam in E.A.No.104/2000 in E.P.No.13/2000 in O.S.No.226/1999 dated 20.06.2005.

2. The brief facts of the case are as follows:

Mr.Venkatappa Gounder, the appellant herein has filed a civil suit in O.S.No.226/1999 on 15.06.1999 before the learned District Munsif, Gobichettipalayam, seeking a decree for declaration, declaring that the Settlement Deed dated 26.4.1976 thereby settling the suit property in favour of the 1st respondent Marakkal by one Dasappa Gounder is null and void, for permanent injunction restraining the respondents from selling the suit property to third parties and for dividing the suit property in 8 equal shares and also to allot 5/8 shares to the plaintiff and for other reliefs. The said suit was decreed ex-parte on 09.08.1999 and an ex-parte decree was also passed on that date. Thereafter, when E.P.No.13/2000 was filed by the appellant herein on 10.01.2000, one Ramesh, Obstructor filed E.A.No.104/2000 on 22.03.2000 taking a ground that prior to the filing of the suit in O.S.No.226/1999, on 15.6.1999, he has purchased the suit property under Ex.A.1 Sale Deed dated 27.5.1999 from one Marakkal, wife of Dasappa Gounder. Hence, it cannot be held that the transfer of the suit property was pending litigation in this proceedings. It was also claimed by the plaintiff/Decree Holder that there was a litigation between the parties in O.S.No.393/1998 filed by one Marakkal against the present Decree Holder Vengadappa Gounder and two others seeking for the relief of declaration and for permanent injunction restraining the defendants therein from interfering with her peaceful possession and enjoyment in respect of the same suit property and that suit was filed as early as on 12.10.1998 and thereafter, the suit in O.S.No.393/1998 came to be dismissed on 05.06.2003. The Obstructor has also filed E.A.No.104/2000 on 23.3.2000 taking a clear stand that when a Sale Deed was executed on 27.5.1999 which is much prior even filing of the suit in O.S.No.226/1999 on 15.6.1999, the property sold cannot become a suit property. Therefore, the suit property cannot be stated as pending litigation in the proceeding.

3. After filing the Counter Affidavit by the 1st respondent therein/appellant herein, the Execution Court passed an order, allowing the E.A.No.104/2000 on 20.06.2005 holding that the ex-parte decree holder in O.S.No.226/1999 is not at all entitled to the delivery of possession as sought for because the subject matter of the suit had already been sold in favour of the 3rd party under a Sale Deed dated 27.05.1999 which is prior to the filing of the suit in O.S.No.226/1999 on 15.06.1999 and as such, the transfer of the suit property had not even pending

litigation in the proceedings. Aggrieved by the said order dated 20.06.2005 passed in E.A.No.104/2000, the appellant herein has also filed CMA.No.11/2007 before the learned Additional District Judge, Fast Track Court-II, Gobichettipalayam. The same was also dismissed by judgment and decree dated 08.12.2009. Aggrieved over the same, the present Civil Miscellaneous Second Appeal has been filed.

4. On 21.4.2010, when the Civil Miscellaneous Second Appeal was called, while admitting the same, the following substantial questions of law were framed:

1. Whether the transfer under Sale Deed dated 27.5.1999 in favour of the 1st respondent/Obstructor by Marakkal is affected by the principles of Lis Pendens, since Marakkal transferred larger interest in the suit property pending disposal of the suit;

2. Is the Sale Deed dated 27.5.1999 in favour of the 1st respondent executed by Marakkal still valid after declaring the Settlement Deed dated 26.4.1976 in favour of Marakkal from which she traced her title, is invalid by the Competent Court in O.S.No.226 of 1999;

3. Whether the Courts below committed error in holding that the Claim Petition in E.A.No.104/2000 is not barred by limitation; and

4. Whether the 1st respondent/Obstructor is entitled to obstruct the delivery of possession of the suit house property against which he has no right as per the Sale Deed Ex.A.1 dated 27.5.1999.

5. Learned Counsel appearing for the appellant submitted that when there was a Sale Deed dated 27.5.1999 selling the suit property in favour of the Obstructor 1st respondent herein, by one Marakkal, the principles of Lis Pendens will not apply is wholly unacceptable. The learned Counsel further submitted that the suit in O.S.No.393/1998 filed by Marakkal against the decree holder/appellant herein as well as against her other sons claiming the very same suit properties of her husband as ancestral properties, seeking for a decree of declaration and permanent injunction, the said suit was dismissed for non-prosecution. Therefore, prays to allow the present Civil Miscellaneous Second Appeal.

6. Learned Counsel appearing for the 1st respondent contended that the 1st respondent has purchased the suit property under a Sale Deed dated 27.5.1999 from one Marakkal and after knowing the decree passed by the learned District Munsif, Gobichettipalayam in O.S.No.226/1999 in favour of the appellant herein for the very same property he purchased, he filed an Obstruction Petition in E.A.No.104/2000 stating that the

principles of Lis Pendens will not apply and the same was allowed. Therefore, the present appeal has to be dismissed.

7. Heard the rival submissions made on either side and I have also perused the materials available on record carefully.

8. Originally, according to the 1st respondent Ramesh, the suit property was purchased from the judgment debtor/Marakkal/the 1st defendant for a sale consideration of Rs.18,000/- and since then, he has been residing with his family in the suit property as an exclusive and absolute owner of the same by virtue of a Sale Deed dated 27.05.1999. While so, the appellant herein/plaintiff filed a Civil Suit in O.S.No.226/1999 on the file of the learned District Munsif, Gobichettipalayam on 15.06.1999 seeking a decree for declaration, declaring that the Settlement Deed dated 26.4.1976 settling the suit property in favour of the 1st respondent by one Dasappa Gounder is null and void, for permanent injunction restraining the respondents from selling the suit property to third parties and to divide the suit property in 8 equal shares and also to allot 5/8 share to the plaintiff and for other reliefs. The said suit was decreed ex-parte on 09.08.1999. After obtaining the ex-parte decree, the plaintiff/decreed holder wantonly omitted to add the purchaser of the suit property, namely, Ramesh as a party to the suit and thereupon attempted to grab the suit property, filed E.P.No.13/2000. Further, the Decree Holder Venkatappa Gounder/petitioner in E.P.No.13/2000 is said to have claimed in the village that he has obtained a decree in his favour and this was informed to the 3rd party Ramesh on 21.3.2000 by the villagers. On coming to know about the same, the third party Ramesh has also filed E.A.No.104/2000 on 23.3.2000 stating that when a Sale Deed was executed on 27.5.1999 which is much prior to even filing of the suit in O.S.No.226/1999 on 15.6.1999, the property sold cannot become subject matter of suit property. The said E.A.No.104/2000 on 20.06.2005 was allowed holding that the ex-parte decree holder/appellant herein/plaintiff in O.S.No.226/1999 is not at all entitled to the delivery of possession as sought for. Aggrieved by the same, the appellant herein filed CMA.No.11 of 2007 before the Additional District Judge, Fast Track Court II, Gobichettipalayam who has also confirmed the fair and decreetal order of the learned District Munsif, Gobichettipalayam. Hence the present appeal has been filed by the appellant herein.

9. Under such circumstances, it is interesting to see that the sale deed was executed on 27.5.1999, but the plaint was filed only on 15.06.1999 and as such, it is highly improper on the part of the appellant herein to execute the ex-parte decree which has no property for execution for the simple reason that the suit property was sold away prior to the suit in

O.S.No.226/1999 was filed on 15.6.1999. Therefore, it is highly unjustifiable and unacceptable on the part of the appellant to say that the principles of Lis Pendens will apply. It is not known how the principles of Lis Pendens will apply, when the suit property was not even alienated during the pendency of the suit and the said sale of the suit property was much prior to the filing of the suit. Therefore, the transfer under sale deed dated 27.5.1999 in favour of the obstructor/first respondent by Marakkam cannot be considered as sale by principles of Lis Pendens. Accordingly, the substantial question of law is answered against the appellant.

10. In the result, the Civil Miscellaneous Second Appeal is dismissed by confirming the judgment and decree of the Additional District Judge (Fast Track Court-II), Gobichettipalayam dated 8.12.2009 in CMA No.11 of 2007. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

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Sub Assistant Registrar

To

1. The Additional District Court (Fast Track Court II), Gobichettipalayam,
2. The District Munsif, Gobichettipalayam.
3. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to M/s.R.T.Doraisamy, Advocate, S.R.No.51611

+1 cc to M/s.P.R.Balasubramanian, Advocate, S.R.No.52050

C.M.S.A.No.7 of 2010

BS (CO)
SSM(15/11/2019)

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