

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.36 of 2003

Ganesan

.. Appellant/1st Respondent

1.Arasan

Vs

..1st Respondent/ Appellant

2.Anbalagan

..2nd Respondents/2nd respondents

Prayer : Civil Miscellaneous Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 23.10.2002 made in C.M.A.No.15 of 2001 on the file of the Principal Sub-Judge, Villupuram, reversing the well considered judgment and decree dated 09.03.2001 made in E.A.No.527 of 2000 in E.P.No.254 of 1999 in O.S.No.55 of 1996 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellant : Mr.V.Girishkumar
For Respondents : No Appearance

JUDGMENT

This Appeal is directed against the judgment and decree dated 23.10.2002, passed in C.M.A.No.15 of 2001 by the learned Principal Sub-Judge, Villupuram, reversing the judgment and decree dated 09.03.2001, passed in E.A.No.527 of 2000 in E.P.No.254 of 1999 in O.S.No.55 of 1996, by the learned Principal District Munsif Court, Ulundurpet.

2. While admitting the case on 05.08.2003, this Court framed the following substantial question of law for consideration;

"Whether the sale in favour of the first respondent, executed by the second respondent, having regard to the date on which the suit was instituted; the date on which the sale was effected and the date on which the order of attachment came to be passed, would be hit by Section 53 of the Transfer of Property Act?"

3. Learned counsel appearing for the appellant/plaintiff/decreed holder filed the suit for recovery of money to the tune of Rs.25,175/- on 28.03.1994. Besides, he has also moved an Interlocutory Application(IA) for passing an order of attachment before the judgment. Accepting the prima-facie case made out by the appellant/plaintiff/decreed holder, an order of attachment was passed on 24.06.1994, pending the suit. When the suit was pending from 28.03.1994, along with an application seeking an order of attachment before the judgment, the second respondent herein/defendant had cleverly sold the suit property on 31.03.1994 to his own brother-in-law/first respondent herein only for the purpose of defeating the effort taken by the plaintiff and also to make the pending suit infructuous. After the order of attachment was passed on 24.06.1994, the suit was also subsequently decreed in favour of the appellant/plaintiff on 17.04.1997 and thereafter, no further appeal was filed by the second respondent/defendant.

4. Whiles, when E.P.No.254 of 1999 was filed, third party/first respondent herein moved an application in E.A.No.527 of 2000 taking a ground that even before the order of attachment was passed on 24.06.1994, he had purchased the property on 31.03.1994 through a registered sale deed. Thereafter, the learned trial Court, accepting the case of the decree holder that since the suit was filed along with IA seeking an order of attachment before the judgment, the subject matter of the suit property should not have been alienated as it is hit by lis-pendens, dismissed the said application filed by the third party/first respondent herein in E.A.No.527 of 2000, dated 09.03.2001. As against that when appeal was filed, the same was allowed by the learned first appellate Court on the ground that the principles of lis-pendens will not apply. The said reasoning given by the learned first appellate Court is contrary to Sections 52 and 53 of the Transfer of Property Act, 1882, more particularly, when the suit was filed on 28.03.1994 along with IA seeking an order of attachment before the judgment, the subject property has been seized by the Court, therefore, it cannot be alienated as it is hit by the principles of lis-pendens. On this count, learned counsel sought for setting aside of the judgment and decree passed by the learned first appellate Court.

5. Despite ordering notice through Court as well as privately to the respondents on 05.08.2003, 14.11.2003, 13.12.2018, 04.01.2019 and 29.01.2019, no one has represented on behalf of the respondents. Therefore, since this appeal is of the year 2003, this Court is constrained to dispose of this appeal based on the available materials before it.

6. From the available materials placed before this Court, it is seen that on 28.03.1994, the appellant herein/plaintiff/decreed holder filed O.S.No.55 of 1996 seeking recovery of money to the tune of Rs.25,175/-, along with an Interlocutory Application(IA) seeking an order of attachment before the judgment. Pending the suit, the learned trial Court, vide order dated 24.06.1994, granted the prayer as sought for by the plaintiff requesting an order of attachment before the judgment. However, the defendant, in collusion with his own brother-in-law/first respondent herein, sold the subject property on 31.03.1994, therefore, in my considered view, it is a clear case of alienating the property with fraudulent transaction only with an intent to defeat the decreed holder/plaintiff/appellant herein.

7. In this context, it is relevant to extract Sections 52 and 53 of the Transfer of Property Act, 1882, which are quoted below:-

52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

53. Fraudulent transfer.— (1) Every transfer of immovable property made with

intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

A mere reading of Section 52 says that during the pendency of the suit, the property questioned in the suit cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party. Section 53 says that every transfer of immovable property made with an intent to defeat or delay the creditors of the transferor shall be voidable. In the present case, as stated above, the suit was filed on 28.03.1994 seeking recovery of money to the tune of Rs.25,175/- and in the pending suit, IA was also filed seeking an order of attachment before the judgment and the same was also granted on 24.06.1994, therefore, the plea taken by the defendant that on 31.03.1994 itself, the property was purchased with bonafide intention is wholly unacceptable, as it is hit by the principles of lis-pendens as adumbrated under Section 52 of the Transfer of Property Act, 1882, which is a clear and complete statutory bar. Accordingly, the substantial question of law is answered in favour of the appellant.

8. In fine, for the reasons stated above, the judgment and decree passed by the learned first appellate Court is set aside and the judgment and decree passed by the learned trial

Court is restored. Consequently, this Civil Miscellaneous Second Appeal is allowed with costs throughout.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub-Judge, Villupuram.
- 2.The Principal District Munsif,
Principal District Munsif Court, Ulundurpet.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.T.Gandhi , Advocate SR.No. 60933

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A.SK(04/12/2019)



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