

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.302 of 2010 and
M.P.No.1 of 2010,
M.P.No.6572 of 2019

1.V.S.Mothilal Udhayakumar

2.A.P.Balakrishnan

... Appellants

Vs.

1.N.Maruthachalam

2.M.Muthukumar

Nagamuthu Gounder (died)

3.M.Subbian

4.R.Leelavathy

5.Meenakshi

6. P.S.Valliammal

T.N.Pavalayee (died)

7.Sumathi

8. Gurumani

Maruthathal (died)

9.Velumani

10.Ramanayagi

11.Sampathkumar

12.Palanisamy

13.N.Sivagami

14. K.2058 Saravanampatti Primary
Agricultural Co-operative Bank,
Saravanampatti, Coimbatore-35

15.P.I.Thiyagarajan
16. V.T.Venkatachalam
(R16 impleaded as party respondent vide order dated
26.10.2019 in M.P.No.1 of 2012 in S.A.No.302/2010)

17.Ravindran Nedungadi

18.Santha Ravindran

19.Ms.Deepalakshmi Ravindran

20.Priyadarshini Ravindran

21.K.Udayam

22.K.Vijayan

23.C.P.Vijayaraghavan

24.Usha Raghavan

25.Vinod Raja
(R17 to R25 impleaded vide order dated 26.10.2018
made in CMP No.6680 of 2018 in S.A.No.302 of 2010)
..... Respondents

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the decree and judgment dated 31.12.2007 passed in A.S.No.78 of 1996 by the Additional District Judge, Fast Track Court No.2, Coimbatore confirming the fair and decreetal order dated 15.09.1995 passed in I.A.No.156/1993 in O.S.No.832 of 1980 by the III Additional District Munsif, Coimbatore.

For Appellants : Mr.N.Damodaran
For Respondents 1 to 3 : Mr.Thiyagarajan
For Respondent 9 & 10 : Mr.M.Vijayaraghavan
For Respondents 11 & 12: Mr.T.Pappaiah Dharmarajan
For Respondent 16 : Mr.V.Anandamoorthy
For respondents 17 to 25 : Mr.K.P.Jotheeswaran
For Respondents 4 to 8 : No appearance
For Respondents 14 & 15 : No appearance

JUDGMENT

This second appeal has been filed against the decree and judgment passed by the first appellate court in A.S.No.78 of 1996, confirming the final decree passed by the trial court in I.A.No156/1993 in O.S.No.832/1980..

2. The brief facts leading to file the present second appeal are as follows. Originally the suit in O.S.No.832 of 1980 had been filed by the plaintiffs namely one Marudachalam and his son Muthukumar against the defendants for declaration and partition. In the above suit, preliminary decree was passed on 26.04.1990 for division of the properties into three equal shares and to allot one such share to the plaintiffs. It appears that the above decree was challenged in A.S.No.31 of 1991 and A.S.No.121 of 1991 and both the appeals were dismissed and the matter had reached finality. Thereafter, an application in I.A.No.156 of 1993 has been filed under Order XXVI Rule 13, in which final decree was passed on 15.09.1995. Against which, the first appeal in A.S.No.78 of 1996 had been filed by the subsequent purchasers/ appellants herein, who stated to have purchased the property during the year 1986, to set aside the said fair and decreetal order and also claimed allotment of the property in favour of them on the basis of equity right. The first appellate court has dismissed the appeal on the ground that since the appellants/ subsequent purchasers are lis pendens transferees, they cannot claim any equity and further since no appeal has been preferred by the appellants against the preliminary decree, and the preliminary decree and final decree reached finality, they cannot file any appeal. Against which, the present second appeal has been filed.

3. The learned counsel appearing for the appellants would contend that though the appellants have purchased the property in the year 1986 with specific boundaries, they were not impleaded as parties either in the suit or in the final decree proceedings by the plaintiffs, whereas, the above properties were allotted to the share of the plaintiffs in the final decree proceedings. He would further submit that on the basis of equity right, the first appellate court ought to have allotted the properties to the appellants, however, the first appellate court has not discussed the contention of the appellants properly and dismissed the appeal, which needs interference by this court.

4. The learned counsel appearing for the respondents would contend that the appellants are the lis pendens purchasers and they neither impleaded themselves in the suit or in the final decree proceedings and only after final decree proceedings, they challenged the final decree by way of first appeal, claiming right of equity. He would further contend that the first appellate court has rightly decided that the appeal is not maintainable and dismissed the same.

5. While admitting the second appeal, the following substantial questions of law were framed.

1. Whether the lower appellate court has committed an error in law in holding that the appellants, who are purchasers of specific items of suit property from one of the parties to the suit, were not entitled to the allotment of that particular property in equity to the share of the vendor of the appellants?

2. Whether the lower appellate court has erred in misconstruing the appeal filed by the appellant to be one against the preliminary decree, whereas the same happened to be an appeal against the final decree claiming allotment of particular properties in equity to the share of the vendor of the appellants?

6. Admittedly, the suit has been filed in the year 1980 by the plaintiffs claiming a share in the property and the same was decreed on 26.04.1990 and preliminary decree was passed to divide the suit property into three equal shares and allot one such share to the plaintiffs. Against which, two appeals in A.S.No.31 of 1991 and A.S.No.120 of 1991 were filed and the same were dismissed and hence, the matter reached finality. Thereafter, on the basis of the preliminary decree, final decree was passed on 15.09.1995. These facts are not disputed by both the parties.

7. The appellants claimed that they purchased the property on 12.11.1986 from the first and second defendant vide two sale deeds with specific boundaries. Admittedly, the appellants have purchased the property during the pendency of the suit and hence they are the lis pendense purchasers. Though there is no bar under law to transfer the undivided share of the co-owner, that purchase is always subject to the rights of the vendor and since the appellants are pendente lite purchaser, their right is always subject to the final outcome of the decree and judgment of the concerned suit. As already stated, the preliminary decree passed in the suit in O.S.No.832 of 1980 reached finality and in the final decree proceedings, specific share has been allotted to the plaintiffs. Though the appellants contended that they have no knowledge about the suit proceedings, to construe a person is a lis pendense purchaser, attributing the knowledge is not necessary. Pendency of the suit, on the date of purchase, alone is a matter. Admittedly, the appellants have purchased the suit property in the year 1986, i.e. during the pendency of the suit. Thereafter, they have not made any attempt to implead themselves in the suit proceedings or in the final decree proceedings. Only when the final decree proceedings reached finality, they filed an appeal claiming allotment of share, on the basis of equity. The first appellate court has rightly found that since the appellants are

lis pendense purchasers, there is no question of pleading equity and dismissed the appeal. As rightly pointed out by the lower appellate court, the appellants neither impleaded themselves in the suit nor in the final decree proceedings. Once final decree is passed, the same cannot be challenged on the ground of claiming equity by the subsequent purchaser that too pendentialite purchaser. Hence, I do not find any merits in this appeal and the substantial questions of law are answered against the appellants.

8. It is pertinent to note that since the property purchased by the appellants is subject to the share of their vendor, it is always open to them to file a separate suit against their vendor or his representative, who are holding the share of the vendor, to claim right over the property, but not in this second appeal.

9. With the above observation, the second appeal is dismissed. No costs. The connected civil miscellaneous petition are closed. The decree and judgment of the first appellate court as well as the trial court are confirmed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

mst

To

1. Additional District Judge, Fast Track Court No.2, Coimbatore
2. The III Additional District Munsif, Coimbatore.

+1 CC to Mr.K.P.Jotheeswaran, Advocate sr 28777.

+1 CC to Mr.V.Anandamoorthy, Advocate sr 29009

+1 CC to Mr.N.Damodaran, Advocate sr 29444.

+1 CC to Mr.G.Ponnambala Thiagarajan, Advocate sr 30572

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RR(CO)
SP(27/06/2019)