IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.((NPD) No.2851 of 2015 and
M.P.No.1 of 2015

Karuppanna Gounder ... Petitioner

v.

1. Tamil Nadu Mercantile Bank Limited
Thiruppur Branch
6 (1st Floor), Chikkanna Chettiar Street
Post Box No.432, Thiruppur

2. Anthony Ammal

3. Rita Mary Vasanthy

4. Anthony Akilan

5.Sibi Surya ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.03.2015 made in R.A.No.113 of 2013 on the file of Debt Recovery Appellate Tribunal at Chennai confirming the order dated 28.09.2007 made in T.A.No.115 of 2002 on the file of Debts Recovery Tribunal at Coimbatore.

For Petitioner	:	Mr. Srinath Sridevan
For Respondents	:	Mr.V.Chandrasekar - for R1 Not Ready in Notice - R2 to R5

ORDER

(Order of the Court was made by M.DURAISWAMY,J.)

Challenging the order passed in R.A.No.113 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai, confirming the order passed in T.A.No.115 of 2002 on the file of the Debts Recovery Tribunal, Coimbatore, the 2nd defendant in T.A.No.115 of 2002, has filed the above Civil Revision Petition.

2. The Debts Recovery Tribunal, by order dated 28.09.2007, decreed the application in T.A.No.115 of 2002 by holding that the defendants 2 to 6 are jointly and severally liable to pay a sum of Rs.12,95,140/- [Rupees twelve lakhs ninety five thousand one hundred and forty only] together with future interest and also granted other reliefs.

Challenging the order passed by the Debts Recovery Tribunal, the petitioner preferred an appeal in R.A.No.113 of 2013 before the Debt Recovery Appellate Tribunal, Chennai. The Appellate Tribunal, also confirmed the order passed by the Debts Recovery Tribunal and dismissed the appeal. Aggrieved over the same, the petitioner has filed the above Civil Revision Petition.

3.1 It is the case of the petitioner that he had entered into an agreement of sale dated 06.07.1994 in respect of the suit property with one Mounagurusamy and Ashokan for a consideration of Rs.56,000/- [Rupees fifty six thousand only] and the sale agreement had to be acted upon before 16.09.1994. Since the said Mounagurusamy and Ashokan did not come forward to execute the sale deed in favour of the petitioner, he filed a suit for specific performance in O.S.No.380 of 1995 on the file of the Sub Court, Dindigul. Subsequently, the suit was transferred to the file of Sub Court, Palani and renumbered as O.S.No.172 of 1996. A decree was also passed by the Trial Court on 10.04.2000 in favour of the petitioner. Pursuant to the decree passed in O.S.No.172 of 1996, the petitioner filed an Execution Petition and got the sale deed executed on 19.04.2002 in his favour. Thus, the petitioner has become the absolute owner of the property by virtue of the registered sale deed executed by the Subordinate Judge, Palani in Document No.606 of 2002 registered in the office of the Sub Registrar, Palani.

3.2 While so, the petitioner received a notice from the 1st respondent-bank, impleading him as a party to the proceeding pending before the Debts Recovery Tribunal, Coimbatore in T.A.No.115 of 2002. Later, the petitioner came to know that the 1st respondent-bank has filed the said application against Amaldas Balu for the loan availed by him from the 1st respondent-bank. Subsequently, the petitioner also learnt that the said Amaldas Balu had purchased the subject property by way of a sale deed dated 11.06.1998 during the pendency of the suit for specific performance filed by the petitioner in O.S.No.172 of 1996 on the file of the Sub Court, Palani from V.Mounagurusamy and his two sons and created a mortgage over the said property in favour of the 1st respondent on 23.06.1998. According to the petitioner, he was no way connected either to the borrowal or the default and was a third party to the entire proceedings. During the pendency of T.A.No.115 of 2002, Amaldas Balu has died and his legal heirs were impleaded as party to the proceedings. However, the legal heirs remained absent and they were set *ex parte* on

26.09.2007. Thereafter, *ex parte* order was also passed in T.A.No.115 of 2002 on 28.09.2007 rejecting the contention of the petitioner. Challenging the said order, the petitioner preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai and the Appellate Tribunal also confirmed the order of the Debts Recovery Tribunal and dismissed the appeal.

4. The learned counsel appearing for the petitioner submitted that Amaldas Balu, who is the borrower, had purchased the said property from Mounagurusamy during the pendency of the suit in O.S.No.172 of 1996 and the transaction is hit by *lis pendens*. Further, the learned counsel submitted that Amaldas Balu is *a pendent lite* transferee and in view of the sale deed being executed during the pendency of the specific performance suit, the *lis pendent lite* transferee will not have any right whatsoever over the property and consequently, the sale deed will not confer any right in favour of Amaldas Balu and consequently, the alleged mortgage in favour of the 1st respondent is nullity and not binding on the schedule mentioned property. That apart, the learned counsel also submitted that the right of the petitioner over the property will not be affected on account of the alleged encumbrance created by Amaldas Balu.

5. The learned counsel appearing for the petitioner, in support of his contentions, relied upon the following judgments:-

(i) **1973 (2) SCC 705 [Rajender Singh & Ors v. Santa Singh & Ors]** wherein the Hon'ble Hon'ble Apex Court held as follows:-

> "14 The background of the provision set out above was indicated by one of us (M.Hameedullah Beg, J.) in **Jayaram Mudaliar v. Ayyaswami & Ors. 1973(1) SCR 139 (1).** There, the following definition of lis pendens from Corpus Juris Secundum (Vol. LIV, p. 570) was cited :
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> > "*Lis pendens* literally means a pending suit, and the doctrine of *lis pendens* has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein".
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> 16. The doctrine of *lis pendens* was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute of frustrate its decree.
>
> Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine,

by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of Its pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."

(ii) **1997 (II) CTC 617 [S.P. Padmavathi v. State of Tamil Nadu and others]** wherein the Division Bench of this Court held as follows:-

"22. It is not in each and every case, the Registering Officer is expected to deal with the instrument under Section 47-A of the Act, but it is only when the Registering Officer has reason to believe that the instrument has been undervalued or has not been truly set forth in the instrument. In the case of instrument executed pursuant to the decree, there is no scope for doubting the *bona fides* of the parties. Of course, we do not rule out the possibility of unscrupulous persons, with a view to evade payment of proper stamp duty, creating agreements to sell for a very low sum and then approaching the Court for specific performance and obtaining a decree for specific performance by mutual consent or without much contest, and thereafter presenting the documents for registration pursuant to the decree passed for specific performance. In such cases, under valuation would be apparent and it would also be open to the Registering Officer, after being satisfied as to lack of *bona fides* and fraudulent attempt on the part of the panics to undervalue the subject of transfer, to invoke the power under Section 47A of the Act. But such a process or proceedings cannot, in the normal course, be pursued in all cases. It is only if the Registering Officer has reason to believe that the consideration amount has not been truly set forth in the document.

23. We have already pointed out that, in the instant case, there is no such plea raised by the respondents or even by the Registering Officer, who had passed the order under Sec. 47A of the Act. There is no finding recorded that there was lack of bona fides or any reason to believe that there was tinder-valuation. The Registering Officer has purported to exercise his power in the instant case under Sec. 47A of the Act to determine the market value only on the ground that there is a time-gap between the agreement of sale and the date of execution of the sale deed and in the meanwhile the value of the properly has gone up, without there being no lack of bona fides on the part of the parties to the document and no attempt on their part to fraudulently evade payment of proper stamp duty."

(iii) **MANU/WB/0269/1921 [Johar Mull Bhutra And Ors. v. Bhupendra Nath Basu And Ors]** wherein the Division Bench of Calcutta High Court held as follows:-

> "3. As regards the second question, it is plain that the defendants did not, under their conveyance from the Santras, dated the 2nd February 1910, acquire a title which could prevail over that of the plaintiffs. It appears that on the 15th February 1907 two of the Santras granted a mourasi mokarari lease to the plaintiffs in respect of all their properties in the village of Santragachi, for a premium of Rs. 17,800 at an annual rent of Rs. 1,200. Eighty-five parcels were specified in the Schedule and it was expressly stated that if there after any other parcel of land, was discovered to have been omitted by mistake a supplementary deed would be executed in respect thereof. The contingency contemplated happened. It was discovered that the tenancy now in dispute had been left out by mistake from the list of mourasi mokarari tenancies in the Schedule to the lease. The Santras, however, failed to execute the requisite supplementary deed in the terms of their agreement. The result was that on the 8th July 1909, the plaintiff sued the Santras to enforce specific performance of the agreement. That suit was decreed on the 20th April 1910. It was during the pendency of this litigation that the Santras gold away their interest on the 2nd February 1910 to the present defendants, it is manifest that the defendants were

purchasers pendente lite and the interest they purchased was bound by the decree in the suit for specific performance. It was ruled by this Court in the case of **Moti Lal Pal v. Preo Nath Mittra [3 Ind. Cas. 696 : C.L.R.J. 96 : 13 C.W.N. 226]** that a suit for specific performance of a contract for transfer of immovable property operates as *lis pendens*, in other words, in a suit against the vendor of real estate for specific performance, his conveyance of the legal title after suit was brought would not suspend the proceeding or defeat the title under the decree of the Court, The obvious reason for this is that if when the jurisdiction of the Court has once attached, it could be ousted by the transfer of the defendant's interest, there would be no end to litigation and justice would be defeated. Consequently, when such a suit for specific performance is ended by a final decree transferring the title, that title relates back to the date of the agreement on which the suit is based, and the Court will not permit its decree to be rendered nugatory by intermediate conveyances. The same view was adopted in the case of **Pramatha Nath Roy v. Jagannath Kishore Lal Singh [16 Ind. Cas. 359 : 17 C.L.J. 427].** There is consequently no escape from the position that the title of the plaintiffs which was established by the decree made in their favour in the suit for specific performance relates back to the 15th February 1907, the date of the mourasi mokarari lease granted to them by the Santras. The inference follows that the conveyance taken by the

> defendants from the Santras on the 2nd February 1910, does not afford them effective protection against the claim of the plaintiffs based on their leasehold title dated the 15th February 1907."

6. So far as the judgments relied upon by the learned counsel for the petitioner, there cannot be any dispute with regard to the ratio laid down in those judgments.

7. The Debt Recovery Appellate Tribunal, while dismissing the appeal, has not considered the contention of the petitioner. In fact, there is no discussion with regard to the case of the petitioner at all in the order passed by the Appellate Tribunal. The Appellate Tribunal has not considered the contention of the petitioner that the purchase made by Amaldas Balu is hit by the doctrine of *lis pendens* for the reason that he has purchased the property during the pendency of the suit in O.S.No.172 of 1996.

8. It is an admitted fact that the petitioner filed the suit for specific performance before the Sub Court, Dindigul in the year 1995 and Mounagurusamy had also contested the suit. Thereafter, the suit was

transferred to the file of Sub Court, Palani and renumbered as O.S.No.172 of 1996. During the pendency of the suit, Amaldas Balu had purchased the property in June 1998 from Mounagurusamy and his two sons. Whether the purchase made by Amaldas Balu in June 1998 is hit by *lis pendens* or not has not been considered by the Appellate Tribunal. In these circumstances, we are of the considered view that the order passed by the Debt Recovery Appellate Tribunal, is liable to be set aside and the matter should be remitted back to the Appellate Tribunal for fresh consideration.

9. Accordingly, the order passed in R.A.No.113 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai is set aside and the matter is remitted back to the Appellate Tribunal for fresh consideration. The Debt Recovery Appellate Tribunal is directed to decide the matter afresh on merits and in accordance with law as expeditiously as possible.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(V.K.T., CJ.) (M.D., J.)
21.03.2019

Index : Yes/No
Speaking Order/Non Speaking Order
Rj

To

1. The Debt Recovery Appellate Tribunal
   Chennai.

2. Tamil Nadu Mercantile Bank Limited
   Thiruppur Branch
   6 (1st Floor), Chikkanna Chettiar Street
   Post Box No.432, Thiruppur

THE HON'BLE CHIEF JUSTICE
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