

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019

PRONOUNCED ON : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.267 of 2016

M.C.Chinnappan

...Appellant

Vs.

1. Rajendiran
2. Mahendiran
3. Jamuna
4. Lalitha

...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 01.07.2015 made in A.S.No.22 of 2013 on the file of the Principal District Judge, Vellore, Vellore District reversing the judgment and decree dated 31.08.2012 made in O.S.No.28 of 2008 on the file of the Subordinate Judge, Gudiyattam, Vellore District.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.A.Rajesh Kanna

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 01.07.2015 passed in A.S.No.22 of 2013 on the file of the Principal District Court, Vellore, Vellore District, reversing the judgment and decree dated 31.08.2012 passed in O.S.No.28 of 2008 on the file of the Subordinate Court, Gudiyattam, Vellore District.

2. The second appeal has been admitted on the following substantial questions of law.

"1. Whether the suit is barred by Limitation?

2. Whether the plaintiff is entitled to a decree as prayed for in the suit?"

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. Suffice to state that the plaintiff has levied the suit for the recovery of the amount, being the sale consideration, as per the sale deed dated 17.04.2002 executed by the defendants in his favour with interest.

6. Briefly stated, according to the plaintiff, he had purchased the suit property from the defendants by way of the sale deed dated 17.04.2002 and enjoying the same and it is stated by the plaintiff that the suit property was purchased by one Ravi Varma in a court auction sale conducted in E.P. No.185 of 2000 in O.S.No.942 of 1996 on the file of the District Munsif Court, Gudiyattam and the plaintiff came to know about the proceedings only on 13.02.2008 and on verification noted that the defendants had suppressed the prior attachment effected with reference to the suit property and had fraudulently alienated the same to the plaintiff and thereby as the defendants had alienated the suit property to the plaintiff suppressing the earlier encumbrance, it is the case of the plaintiff that he is entitled to obtain the sale consideration passed by him for the sale deed dated 17.04.2002 and hence the suit.

7. The case projected by the defendants is that the suit laid by the plaintiff is not maintainable either factualwise or legalwise and admitted the execution of the sale deed in respect of the suit property in favour of the plaintiff on 17.04.2002 and further according to the defendants, as against the order passed in the execution petition No.185 of 2000, Civil Revision Petition has been levied in the High Court and the same is pending and further it is stated that the plaintiff has not issued any pre-suit notice for claiming the suit amount and also further contended that the other legal heirs of the deceased Kannaiya Naidu had not executed the sale deed in favour of the plaintiff and therefore, the sale deed in favour of the plaintiff is invalid and in this connection, the other legal heirs of Kannaiya Naidue had also levied the Civil Suit in O.S.No.401 of 2005 on the file of the District Munsif Court, Gudiyattam and the same is pending and further it is pleaded by the defendants that the suit laid by the the plaintiff is barred by limitation and the plaintiff had not levied the suit within three years from the date of the court auction sale held on 27.01.2004 in the abovesaid Execution Petition and the plaintiff is very well aware of the proceedings in the execution petition as well as the factum of the suit property being brought to sale by way of the

court auction and hence prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case P.W.1 was examined and Exs.A1 and A2 were marked. On the side of the defendants, D.Ws. 1 to 3 were examined and Exs.B1 to B4 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiff is entitled to recover the sale consideration of Rs.1,10,000/- along with future interest at the rate of 12% per annum and 6% interest per annum from the date of plaint till the date of decree and accordingly disposed of the suit in favour of the plaintiff. Impugning the same, the defendants preferred the first appeal. The first appellate court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit levied by the plaintiff. Challenging the same, the present second appeal has been preferred.

10.The only point that is involved in the appeal is whether the suit levied by the plaintiff is barred by limitation, as the suit levied by the plaintiff had come to be dismissed by the first appellate court only on the point of limitation. It is not in dispute that the defendants had executed the sale deed dated 17.04.2002 in favour of the plaintiff in respect of the suit property for a sum of Rs.1,10,000/-. Now according to the plaintiff, thereafter, he had come to know that the suit property had been purchased by one Ravi Varma by way of the court auction sale in E.P. No.185 of 2000 in O.S.No.942 of 1996 on the file of the District Munsif Court, Gudiyattam. On coming to know of the abovesaid facts on 13.02.2008, inasmuch as the defendants had suppressed the earlier attachment made in respect of the suit property and had fraudulently sold the same in favour of the plaintiff, contending that he is entitled to recover the sale consideration paid by him with interest, the plaintiff has levied the suit against the defendants.

11. The defendants interalia mainly contended that the suit levied by the plaintiff is barred by limitation as the plaintiff is fully aware of the court auction sale and also aware of the execution proceedings initiated before the conduct of the auction sale and therefore, according to the defendants, the suit having been laid by the plaintiff beyond the period of three years from the date of court auction sale, the suit is barred by limitation and hence contending that the plaintiff is not entitled to seek the reliefs sought for, the defendants prayed for the dismissal of the plaintiff's suit.

12. As above noted, as regards the sale of the suit property in favour of the plaintiff by the defendants by way of the sale deed dated 17.04.2002, the same is not in issue between the parties. The plaintiff has come forward with the suit seeking the refund of the sale consideration on the footing that the suit property had come to be subjected to court auction sale on 27.01.2004 and hence, it is stated that the defendants are liable to refund the sale consideration paid by him. As could be seen from the materials placed on record, particularly, Ex.A2 sale certificate, the court auction sale had been confirmed in favour of the auction purchaser on 17.12.2004. Now according to the plaintiff, he had purchased the suit property on 17.04.2002. Though the plaintiff would claim that he had been in the possession and enjoyment of the suit property subsequent to the purchase, with reference to the same, there is no material on the part of the plaintiff. In addition to the same, the plaintiff has admitted that after the court auction sale, he has not enjoyed the suit property. Furthermore, the plaintiff examined as D.W.1, during the course of cross examination, has admitted that he had come to know about the court auction sale from the villagers and therefore, as rightly found and determined by the first appellate court, when the sale certificate Ex.A2 is found to be dated 17.12.2004 and when the sale certificate would be issued only after the completion of the auction proceedings, it is seen that as determined by the first appellate court, the court auction sale would have been held much prior to 17.12.2004. When it has been admitted by the plaintiff, as abovenoted, that he has become aware of the court auction proceedings from the villagers and when it is seen that before the court auction sale, the sale proclamation would have been fixed and tom-tom also been effected in and around the suit property, when according to the plaintiff he has been in the possession and enjoyment of the suit property from the date of sale deed dated 17.04.2002 and the plaintiff has also admitted that he is aware of the court auction proceedings through the villagers, in such view of the matter, when it is seen that the court auction was actually held on 27.01.2004, in all, it is found that when the plaintiff is aware of the court auction sale and in such view of the matter, when according to the plaintiff, the defendants are liable to refund the sale consideration paid by him for the sale deed dated 17.04.2002, they having suppressed the attachment and the court auction sale to him, in such view of the matter, the cause of action for the plaintiff's suit would arise from the date of court auction sale and knowledge of the same on the part of the plaintiff. When as above discussed, the plaintiff has been put on notice about the court auction sale on 27.01.2004 itself, in such view of the matter, as rightly determined by the first appellate court, the plaintiff should have levied the suit within three years from the date of court auction sale and on the other hand, the suit laid by the plaintiff having been instituted only

on 15.04.2008, it is evident that the suit laid by the plaintiff is hopelessly barred by limitation and in such view of the matter, the plaintiff is not entitled to seek the reliefs prayed for in the suit as put forth by him.

13. The first appellate court is found to have analysed the issues involved between the parties, particularly, on the point of limitation and rightly held that the suit levied by the plaintiff is barred by limitation and thereby, the plaintiff is not entitled to obtain the reliefs prayed for in the suit and in such view of the matter, the first appellate court is found to be wholly justified in setting aside the judgment and decree of the trial court granting the reliefs in favour of the plaintiff. In my considered opinion, no reason is warranted to interfere with the judgment and decree of the trial court. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendants and against the plaintiff.

14. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1. Principal District Court,
Vellore, Vellore District.
2. Subordinate Court,
Gudiyattam, Vellore District.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.55360
+1cc to Mr.A.Rajesh Kanna, Advocate, S.R.No.55226

S.A.No.267 of 2016

SSV(CO)
CS/23/09/2019