

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.3092 of 2019
and
C.M.P.No.20077 of 2019

Anusuya

... Petitioner

Vs.

1.D.Selvaraj
2.Sivanantham

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 18.07.2019 passed by the Hon'ble District Munsif Court, Thiruthuraipoondi in the above I.A.No.301 of 2019 in O.S.No.72 of 2013.

For Petitioner : Mr.S.Arivazhagan

For Respondents : Mr.P.Dinesh Kumar

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.301 of 2019 in O.S.No.72 of 2013 on the file of the learned District Munsif Court, Thiruthuraipoondi, by order dated 18.07.2019.

2.Before the trial Court, the revision petitioner/plaintiff filed a suit for specific performance against the 1st respondent.

3.Subsequently, after coming to know the fact that, the 1st respondent/1st defendant sold the property to the 2nd defendant by a sale deed, by thus, a third party right has been created on the property, which is in question, the plaintiff chosen to file an application to implead the 2nd respondent/2nd defendant as one of the defendant in the suit and the said petition was allowed on 10.01.2017. Thereafter, the present application, of course belatedly, filed on 03.07.2019 by the revision petitioner/plaintiff to amend the prayer, so as to enabling the plaintiff to seek the remedy of declaration against the sale in favour of the 2nd defendant by the 1st defendant *pendente lite* as null and void, so that comprehensively the suit for specific performance to enforce the contract between the plaintiff and the 1st defendant without the hindrance of the 2nd defendant can be sought to be enforced.

4.The said application i.e., I.A.No.301 of 2019 filed for amendment since has been rejected by the Court below through the impugned order, the plaintiff/revision petitioner has filed the present revision.

5. Heard Mr.S.Arivazhagan, learned counsel appearing for the revision petitioner, who would submit that, admittedly the subsequent sale taken place between the defendants 1 and 2 is during the pendency of the suit, therefore, it covers under the principle of *pendente lite*. However, to get an executable decree of specific performance in respect of the suit property, which is the subject matter in the suit, it is incumbent on the plaintiff/revision petitioner to set aside the sale or declare the sale taken place between defendants 1 and 2 as null and void. Unless such a declaration is made, it may not be possible for the revision petitioner/plaintiff to straight away seek for specific performance against the 1st defendant alone as on the present date, the third party right by way of sale between defendants 1 and 2 had already been created and the 2nd defendant claimed to be the bona fide purchaser. Therefore, the said amendment was necessitated. Accordingly, the said application was filed under Order VI Rule 17 of the Code of Civil Procedure which has been erroneously dismissed by the learned Judge through the impugned order, hence, it requires interference from this Court, he contended.

6.Per contra, Mr.P.Dinesh Kumar, learned counsel appearing for the 2nd respondent would contend that, the very written statement itself was filed by the 1st respondent in 2013, immediately after the suit summon served on him and thereafter, without taking any steps to file necessary petition to implead this respondent i.e., the 2nd respondent as defendant, the plaintiff/revision petitioner chosen to file the said petition only in the year 2016 and which was allowed on 10.01.2017 and even thereafter, the plaintiff/petitioner did not come forward to file necessary petition for the present amendment immediately. In this regard, more than 2 ½ years, the plaintiff/petitioner has taken to file the present application i.e. only in July 2019, thereby seeking this present amendment, which, according to the learned counsel for the 2nd respondent, is not at all necessary.

7.In this context, relying upon a decision of the Hon'ble Apex Court reported in **1954 SCF 360 : AIR 1954 SC 75** in the matter of ***Lala Durga Prasad and another V. Lala Deep Chand and others***, the learned counsel appearing for the 2nd respondent would submit that, even if ultimately the plaintiff/petitioner succeeds in the suit for specific performance, then, he would be entitled to seek for execution

of sale deed in his favour both by vendor and vendee i.e., defendants 1 and 2 herein jointly, thereby the property in question if he ultimately succeeded to get back by way of sale deed, would get cured by executing a joint sale deed both by vendor and vendee of the subsequent transaction, here in the case, it is the respondents 1 and 2. When that being the position, there is absolutely no necessity to make an amendment, as has been sought for by the revision petitioner/ plaintiff. Therefore, the learned Judge of the trial Court has rightly decided the said issue and rejected the said application, of course, rightly, in the impugned order, hence, the same does not require any interference, he contended.

8.I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

9.It is an admitted case that, after the suit for specific performance was laid by the petitioner/plaintiff, the alleged sale taken place between the respondents 1 and 2, therefore, it can be construed, without any hesitation that, it is *pendente lite* and therefore, out of

which, even though the 2nd respondent claimed to be the bonafide purchaser, that would not confer any special right on him. Therefore, the issue as to whether the plaintiff is entitled to get a decree for specific performance on the property in question can be independently decided. However, once such a decision is made by the trial Court for specific performance for the execution of the decree, where, the sale taken place already between respondents 1 and 2, should be declared as null and void, as a pre-requisite for execution of the decree for specific performance, is yet another question where, there has been divergent views.

10. In this context, Section 19 of the Specific Relief Act, 1963 (the Act) has been relied upon by the learned counsel for the 2nd respondent, especially Section 19(b). For the sake of convenience, the relevant portion of Section 19 of the Act is extracted hereunder:

"19. Relief against parties and persons claiming under them by subsequent title

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto;*
- (b) any other person claiming under him by a title*

arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.

(c)

(d)

(e)"

11. On reading of Section 19(a) and (b), it provides that, specific performance of contract can be enforced against either party thereto i.e., the parties to the contract, between them specific performance of contract can be enforced and against any other person claiming under him the title arising subsequently to the contract also, such a specific performance of contract can be enforced. It means, those who claimed title through the original owner or vendor by way of settlement, sale, inheritance etc., against whom also the contract for specific performance can be enforced within the meaning of Section 19(b) of the Specific Relief Act. But at the same time, the following words viz., "*except a transferee for value who has paid his money in good faith and without notice of the original contract*", disclose that, for the such general rule of person claiming under him by a title arising, as referred to above, there is an exception, under which, a transferee for value who paid money in good faith, that too, without notice of the original

contract, against whom the contract for specific performance cannot be automatically enforced.

12.On plain reading of the aforesaid Section 19(a) and (b) would disclose only this meaning, therefore it can be construed that, the person who claimed title arising subsequently to the contract and the person/transferee who got transfer of the property by paying money for the value in good faith without notice to the original contract, cannot be treated as one, therefore against the latter contract cannot be enforced. In other words, they should not be placed in a same platform and same pedestal along with other category of people mentioned in Section 19(b).

13.There is a difference between those who claimed title arising through subsequent development and those claimed title for valued money paid in good faith without notice of earlier contract.

14.In the present case, the 2nd respondent can only come as transferee for value paid in good faith without the knowledge of the earlier contract, because, this is a stand taken by the 2nd respondent throughout the proceedings and even before this Court.

15. When that being the position, it cannot be stated that, merely because a suit for specific performance is decreed in favour of the revision petitioner/plaintiff, it cannot *ipso facto* automatically be enforced against the 1st respondent as well as the 2nd respondent jointly without having a declaration of the validity or otherwise of the sale deed, even though it is a subsequent development taken place during the pendency of the suit. Therefore, it becomes obligatory on the part of the revision petitioner/plaintiff to seek for such a prayer of declaration to declare the sale taken place between respondents 1 and 2 herein, who are the defendants 1 and 2 in the suit and such prayer, in the considered opinion of this Court, ought to have been allowed by the trial Court.

16. In that view of the matter, this Court has no hesitation to hold that, the impugned order of the trial Court, rejecting the plea made by the petitioner/plaintiff in this regard to seek amendment of the prayer to declare the sale taken place between respondents 1 and 2, is erroneous and unsustainable.

17. In view of the aforesaid facts and circumstances and discussions made above, this Court is of the view that, the impugned order is liable to be interfered with. Accordingly, this Civil Revision Petition is allowed. However, since this application, though could have been filed early, for whatever reason, had been filed only in 2019, hence it should be allowed only on terms. Therefore, the revision petitioner shall pay a sum of Rs.5,000/- (Rupees five thousand) as cost for the belated application before the trial Court to the respondent and the said cost shall be paid within a period of 30 days from the date of receipt of a copy of this order. It is also made clear that, it is open to the respondents/defendants to file additional written statement, if any, where they can raise the issue of limitation also.

18. With these observations and directions, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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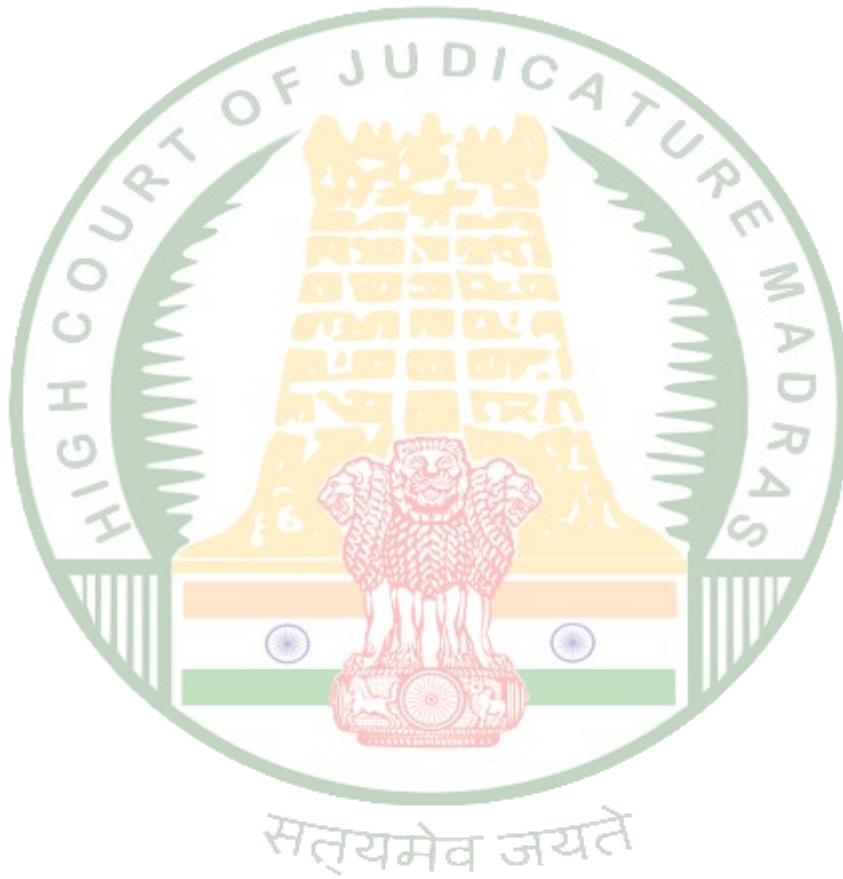
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Index : Yes
Speaking Order : Yes
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10/12

To

The District Munsif Court,
Thiruthuraipoondi.



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C.R.P.(PD).No.3092 of 2019

R.SURESH KUMAR, J.

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C.R.P.(PD).No.3092 of 2019

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13.11.2019