IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Review Application No.170 of 2018
in C.M.P.No.10652 of 2018

1.Krishnaveni
2.Thulasimani
3.Rajamani
4.M.Mohan ...Petitioners

Vs.

1.Muthumanickam
2.V.K.Nagarajan
3.P.Muthupalaniappan
4.K.V.Jayaraman ... Respondents

Prayer:- Review Application is filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908, to review the judgment and decree made in A.S.No.319 of 2017 dated 30.11.2017.

For Petitioners : Mr.N.Manoharan for
Mr.S.Vinoth Kumar

For respondents : Mr.S.Parthasarathy, S.C., for
Mr.C.Veeraraghavan for R1to R3

ORDER

M.M.Sundresh,J.

Seeking to review the judgment and decree rendered in A.S.No.319 of 2017 dated 30.11.2017 confirming the decree of the trial Court in O.S.No.842 of 2008 dated 10.02.2015, the present review application has been filed.

2. The petitioners are the defendants in the suit. The suit has been filed for specific performance and for a direction to the defendants to execute the registered sale deed. Petitioners 1 to 3, who are the owners of the suit property, sold the property in favour of the fourth petitioner, the purchaser by virtue of a sale deed dated 18.09.2008.

3. It is the case of respondents 1 to 3 being the plaintiffs, an agreement for sale was entered into between them and petitioners 1 to 3 on 02.07.2008 under Ex.A1 fixing the valuation of one cent of the land at

Rs.1,22,000/- with the total valuation of Rs.44,22,500/-. A sum of Rs.6 lakhs has also been paid as an advance. The time limit for payment has been fixed as a period of four months from the date of an agreement.

4. As the petitioners 1 to 3 were not willing to execute the sale deed, the respondents/plaintiffs sent a telegraphic notice on 31.10.2008 asking them to come for registration on 03.11.2008. However, the defendants did not accede to the said request made. A reply notice was sent denying the very agreement itself. Incidentally, an agreement of sale was entered into between petitioners 1 to 3 and the fourth petitioner on 19.02.2008 followed by sale deed dated 18.09.2008. Strangely, the value of the suit property was mentioned only as Rs.6 lakhs as per Ex.B3 sale agreement. The sale deed, which was executed subsequently on 18.09.2008 and stands in the name of the fourth petitioner, has been marked as Ex.B1, in which the sale consideration was mentioned as Rs.2,26,000/-. Under those circumstances, impleading the subsequent purchaser as a party defendant, the suit has been laid.

5.Petitioners 1 to 3 filed a written statement denying the execution. According to them, there was no such sale agreement but only a loan transaction. The blank papers signed by the defendants were misused by the respondents by creating the sale agreement. They have also executed a sale deed in favour of the fourth petitioner for total sale consideration of Rs.6 lakhs. Similar stand was also been taken by the second petitioner. The trial Court, upon hearing the parties, decreed the suit. Factual findings have been given by the trial Court holding that there was no reference in Ex.B1 sale deed about Ex.B3 sale agreement. Ex.B1 says the sale consideration as Rs.2,26,000/- only. Under Ex.A1, the value per cent itself was fixed at Rs.1,22,000/-, which would mean the total valuation is at Rs.44,22,500/-. Therefore, it is not possible to accept the contentions of the petitioners. These documents have been created to defeat the rights of the respondents. Even the market value of the suit property is Rs.1,22,000/- per cent. From Exs.A5 to A8, one could see the readiness and willingness on the part of the respondents. Thus, based upon the abovesaid findings, the suit must be decreed.

6. This Court, extensively considered the scope of Sections 16(c) and 19(b) of the Specific Relief Act, 1963,(hereinafter referred to as "the Act") in the appeal filed by the petitioners before us and it has been accordingly held that the respondents have averred and proved the readiness and willingness in tune with Section 19(b) of the Act, the subsequent purchaser has been made as a party and therefore, any one claiming title through the title holder would also be bound by the decree.

7.This Court, after considering Ex.A1 on the one hand and Ex.B3 on the other hand, was pleased to hold that the fourth petitioner was not a bonafide purchaser for value and therefore, the protection available under Section 19(b) of the Act would not be available to him. On the contentions raised that the suit is not maintainable without setting aside or laying a challenge to the sale deed, it was accordingly rejected by placing reliance upon the judgment of the Larger Bench of the Apex Court in **Durga Prasad Vs. Deep Chand (AIR 1954 Supreme Court 75)**. A further finding has been given on fact that Exs.B1 and B3 were the documents created to defeat the rights of the respondents. Incidentally, it was also held that the respondents have been ready and willing to perform their part of the contract and therefore, due compliance of Section 16(c) of the Act has been made. Challenging the judgment and decree rendered, the present review petition has been filed.

8.Mr.N.Manokaran, learned counsel appearing for the petitioners raised two contentions. The first contention is to the effect that there is no specific pleading with reference to the readiness and willingness. The trial Court has also not framed the issues on this. Compliance of Section 16(c) of the Act is mandatory. Secondly, the suit ought to have been dismissed as not maintainable without a prayer to set aside the sale deed. In support of his contentions, the learned counsel has made reliance on the following judgments:

(1) J.P. Builders and another Vs. A.Ramadas Rao and another ((2011) 1 Supreme Court Cases 429);
(2) I.S.Sikandar (dead) By LRs. V. K.Subramani and others ((2013) 15 Supreme Court Cases 27);
(3) Padmakumari and others V. Dasayyan and others ((2015) 8 Supreme Court Cases 695);
(4) Jaswinder Kaur (now deceased) through her legal representatives and others V. Gurmeet Singh and others ((2017) 12 Supreme Court Cases 810);
(5) M.Jayaprakash Narayanan V. Santhammal (2018 (1) CTC 701(Mad); and
(6) Leela Rajagopal and others V. Kamala Menon Cochran ((2014) 15 SCC 570).

9.The learned counsel appearing for respondents 1 to 3 submits that what the petitioners seek is a rehearing, which is impermissible in law. There is a specific averment in the plaint with respect to the readiness and willingness. Factual findings have been given on the nature of documents created under Exs.B1 and B3. There is no need to set aside the subsequent sale deed. The Division Bench has considered the decision of the Larger Bench of the Apex Court in **Durga Prasad Vs. Deep Chand (AIR 1954 Supreme Court 75)**. In any case, applying the decision cannot be a ground for review. In support of his contention, he relied on the decision of Apex Court in **Vijay A.Mittal and others Vs. Kulwant Rai and another ((2019) 3 Supreme Court Cases 520)**.

10. We are conscious of the fact that we are dealing with a review petition. On the first submission made, we do find the existence of sufficient averments in the plaint. In fact, it is a specific case of the petitioners that Ex.A1 sale agreement is a created one. The trial Court, did consider the issue of readiness and willingness while giving a factual finding. The question of readiness and willingness will have to be considered from the facts of each case. The documents filed under Exs.A5 to A8 were taken note of on the financial capacity of the respondents. Incidentally, the conduct of the petitioners coupled with the creation of Exs.B1 and B3 were also taken into consideration. In clear terms, it has been held by the trial Court that it is very difficult to comprehend that a sale deed can be executed for the paltry sum than the one mentioned in the sale agreement in favour of the respondents. Needless to state that sale deed has been executed in favour of the fourth petitioner by the petitioners 1 to 3. The sale consideration under Ex.A1 is Rs.44,22,500/-, whereas Ex.B1, which is the sale deed in favour of the fourth petitioner merely mentions a sum of Rs.2,20,000/-. Curiously, there is no reference in Ex.B1 about the so called agreement under Ex.B3. Even Ex.B3 sale agreement refers the sale consideration only at Rs.6 lakhs.

11. This Court, while disposing of the appeal, has given a clear finding on Exs.B1 and B3 and the fact that the fourth petitioner not being the bona fide purchaser for value. The compliance of Section 16(c) of the Act was also found satisfactory. On the question of not seeking to set aside the sale deed also, a finding has been given to the effect that on the facts of the case, the same is not required. Reliance has been made on the judgment of the Apex Court in **Durga Prasad Vs. Deep Chand (AIR 1954 Supreme Court 75)**, wherein it has been held that the subsequent transferee merely passes on his title. The decision relied upon by the learned counsel appearing for the petitioners, thus are not applicable to the case on hand. As stated, factual findings have been given on appreciation of the evidence and on the genuinity of the sale agreement Ex.A1 as against Exs.B1 and B3 sale deed and sale agreement respectively. In such view of the matter, we do not find any reason to review the judgment and decree of this Court made in A.S.No.319 of 2017 dated 30.11.2017 Accordingly, the review petition stands dismissed. Consequently, connected civil miscellaneous petition is also dismissed.

(M.M.S.,J.) (K.R.,J.)
24.01.2020

Index:Yes

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M.M.SUNDRESH,J
AND
KRISHNAN RAMASAMY,J

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Pre-delivery order in
Review Appln. No.170 of 2018

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