

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.12.2020

Pronounced on :22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.3206 of 2019

Vijayashanthi Builders Ltd.,
No.3, Blackers Roads,
Anna Salai,
Chennai-600 002

...Petitioner

1.P.Sundaram

Vs

2.P.Samuel

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.02.2019 in I.A.No.1688 of 2017 in O.S.No.219 of 2012 on the file of the learned District Munsif Court, Chengalpattu.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.M.Nandhakumar

ORDER

This Petition has been filed to set aside the order dated 06.02.2019 in I.A.No.1688 of 2017 in O.S.No.219 of 2012 on the file of the learned District Munsif Court, Chengalpattu.

2.The respondents herein filed the suit in O.S.No.219 of 2012 and the revision petitioner is a builder and he filed the I.A.No.1688 of 2017 in O.S.No.219 of 2012.

3.The plaintiffs, P.Sundaram and P.Samuvel are respondents in the I.A.No.1688 of 2017.

4.The plaintiffs/respondents filed the suit against the revision petitioner/1st defendant and other 13 defendants, with a prayer to declare the sale deeds executed by the 1st defendant/revision petitioner as illegal, void, *ab-initio* and does not bind the plaintiffs/respondents.

5.In the above said suit, the revision petitioner filed the I.A.No.1688 of 2017 for rejection of plaint on the ground that in E.A.No.101 of 2013 in E.P.No.14 of 2013 in O.S.No.173 of 2010, the Hon'ble Additional Sub-Court has already declared that the Judgment and Decree passed in O.S.No.173 of 2010 is null and void. The revision

petitioner filed the above said E.A and the executive Court accepted the contention of the petitioner as per the finding of the E.B. Court in the above said E.A.No.101 of 2013. The plaintiffs has no cause of action for the above said suit and pleaded for rejection of the plaint. Further the plaintiffs filed counter. The trial Court after considering the arguments of the counsel for the parties, dismissed the petition on the ground that the cause of action is a bundle of facts, which is required to be pleaded and proved for the purpose of obtaining relief sought for. In the above said E.A.No.101 of 2013, the title of the petitioner was not decided and directed to decide the title in the pending suit, O.S.No.120 of 2010. In O.S.No.103 of 2011, only obstruction has been recorded and closed the E.A. Considering the plaint averments alone, the Court has to decide the case, whether it has cause of action or not. Therefore, the trial Court dismissed the petition filed by the petitioner for rejection of plaint under order 7 Rule 11 of CPC. Aggrieved by this order, the petitioner filed this revision petition.

6.The learned counsel for the petitioner submitted that the order

of the trial Court is contrary to law and failed to consider the fact that the respondents/plaintiffs in the suit failed to prove their title over the suit property in E.A.No.101 of 2013 and E.P.No.14 of 2013, before the Additional Subordinate Judge, Chengalpet, which was disposed of by order dated 21.09.2016. In the above said proceedings, at the time of enquiry the respondents/plaintiffs did not produce any evidence to establish their title over the suit property. It was recorded by the Court in its order. The obstruction was sustained by the Court. The respondents/plaintiffs did not file any appeal as provided by law. It became final. The finding in E.A.No.101 of 2013 in E.P.No.14 of 2013 directly and substantially decided the issue of title over the suit property. All the question of right of title and interest raised by the petitioner/obstructor were sustained, so that order will operate as *resjudicata* as contemplated.

7.The learned counsel for the petitioner further submitted that the respondents/plaintiffs ought to have impleaded all the subsequent purchaser of the revision petitioner in the Suit in O.S.No.120 of 2010. He had not impleaded them as a parties to the suit. By virtue of Section 52 of TP Act, the respondents/plaintiffs ought to have impleaded the subsequent

purchasers to bind the result of the suit in O.S.No.120 of 2010. But he failed. He further submitted that the finding in E.A.No.101 of 2013 E.P.No.14 of 2013 become final, so that the respondents/plaintiffs again filed a separate suit for remedy and it is barred under law. He further reiterated the other grounds raised in the grounds of revision petition and also relied upon the following decisions to support his arguments,

- 1.In the case of T.Arivanandam Vs. TV Satyapal, reported in **1977 (4) SCC 467.**
- 2.In the case of K.K.Modi Vs. K.N.Modi and others, reported in **1998 (3) SCC 573.**
- 3.Ranipet Municipality Vs. M.Shamsheerkhan, reported in **1998 (1) CTC 66.**
- 4.M.Sundaram Vs.R.Thangasamy Nadar, reported in **MANU/TN/1159/1998.**
- 5.Sameer Singh and others Vs. Abdul Rab and others, reported in **2015 (1) SCC 379.**
- 6.S.Rajeshwari Vs. S.N.Kulasekaran and others, reported in **2006 (4) SCC 412.**

and thus pleaded to set aside the order of the trial Court and to allow the Civil Revision Petition.

8.The learned counsel for the respondents/plaintiffs supported the order of the trial Court and further submitted in E.A.No.101 of 2013 in E.P.No.14 of 2013 in O.S.No.143 of 2013, the executive Court did not declare the right over the suit property in favour of the revision petitioner/1st defendant and further the decree passed in O.S.No.173 of 2010 for partition is not declared as null and void. The respondents/plaintiffs already filed two suits in O.S.No.120 of 2010 and O.S.No.103 of 2011 for the relief of declaring the sale deed in favour of the revision petitioner/1st defendant is null and void and also for permanent injunction against them. The O.S.No.219 of 2012 is filed to declare the sale deed executed by the revision petitioner/1st defendant in favour of the other subsequent purchasers are null and void. The E.P. Court directed the plaintiffs to prove the title over the property in the suit filed by them and the parties has to decide their title in the suit filed by the plaintiffs. With this observation, obstruction was sustained. The cause of action pleaded in O.S.No.219 of 2012 is sufficient to proceed the case and thus supported the

order of the trial Court and pleaded to dismiss the revision petition.

9.Heard the learned counsel for the parties and perused the records.

Fact of the case:

10.The plaintiffs- P.Sundaram.and P.Samuel are respondents in the revision petition. The revision petitioner is the 1st defendant in the suit. This revision petition is arised from I.A.No.1688 of 2017 in O.S.No.219 of 2012. The O.S.No.219 of 2012 is a suit filed by the plaintiffs against the revision petitioner-Vijaya Builders/1st defendant and other 13 defendants with a prayer to declare the sale deed executed by the 1st defendant-Vijaya Builders, in favour of other defendant on various deeds with regard to plaint B and C schedule properties as illegal as void coupled with other mandatory injunction and permanent injunction against the defendants with regard to the suit plaint schedule properties. This revision petitioner filed the above I.A.No.1688 of 2017 to reject the plaint as the plaintiffs has no cause of action. Which was dismissed by the trial Court.

11.The respondents/plaintiffs before filing the above said suit in

O.S.No.219 of 2012 had filed the suit in O.S.No.173 of 2010 before the Additional Subordinate Judge, Chengalpet, for the relief of partition and separate possession of suit A schedule properties. Originally, the above suit was filed before the Principal District Court, Chengalpet, and then due to change of pecuniary jurisdiction, it was transferred to Principal District Sub Court, Chengalpet. In that suit, the matter was referred to Lok Adalat for settlement and the matter was settled between the parties to the suit, based on that E.Proceedings in E.P.No.14 of 2013 was filed by the respondents/plaintiffs before the Principal Sub-Court, Chengalpet for delivery of possession. In that E.P. proceedings this revision petitioner/1st defendant filed E.A.No.101 of 2013 and obstructed the E.P. and in the E.A. proceedings this revision petitioner let evidence and pleaded that he had purchased the suit property for valuable consideration from one L.Mohana Krishnan on 22.12.2006. The sale deed was marked as exhibit Ex.P.6. After the purchase of suit property, the revenue authorities issued patta in favour of the petitioner. It was marked as Ex.P.9 and Ex.P.10 and chitta extract was marked as Ex.P.11 in the above proceedings. The sale deed dated 22.12.2006 was marked as Ex.P.6 in the above said proceedings. In the

above proceedings, the respondents/plaintiffs claimed title through the partition decree. The respondents/plaintiffs in that proceedings pleaded that he had filed the suit in O.S.No.120 of 2020, to declare the sale deed dated 22.12.2006, executed in favour of the revision petitioner/1st defendant is null and void, pending before the trial Court in respect of the same property.

12. Under these circumstances, the executive Court had decided that the delivery will be granted fully after deciding the title in the Civil Court, for the suit in O.S.No.120 of 2010. Therefore, he sustained the obstruct application and delivery of property not granted and obstruction is recorded. The important point to be noted is in the E.A.No.101 of 2013 in E.P.No.14 of 2013 in O.S.No.173 of 2010, the revision petitioner/1st defendant in the suit-Vijaya Builders Limited prayed for the title over the suit property, is not declared by the Court. An application filed under Rule 95 (ii) Order 21 of CPC shall be treated as a suit of the applicant, claiming independent right over the property as an obstructer, order passed therein is decree appealable. Unfortunately, the Executive Court did not decide the title over the suit property. Simply left it open to the parties to decide the title in the suit in O.S.No.120 of 2010 and recorded the obstruction alone.

For the failure of the executive Court to decide the title over the suit property in the above said proceedings, no one has preferred the appeal.

13. Under these circumstances, the principle stated by the Hon'ble Supreme Court in *Madhura Vs Dossi bai* reported in ***AIR 1971 SCC 2355*** has to be made remembered. The principle stated is that the previous decisions on a matter in the issue is allowed, is *resjudicata*. The reason for the decision are not *resjudicata*. Therefore, the principle of *resjudicata* is inapplicable, where there was no decision on merit in earlier proceedings. In this case, in the earlier proceedings in E.A.No.E.A.No.101 of 2013 in E.P.No.14 of 2013 in O.S.No.173 of 2010, no decision was arrived with regard to title over the suit property. Therefore, the arguments placed by the learned counsel for the petitioner is unsustainable and the decisions relied on by the learned counsel to support his arguments are not applicable to his case.

14. Now, I have to consider whether the principle of *lispendency*, under Section 52 of the TP Act, affect the present case in O.S.No.120 of 2010, filed by the plaintiffs/respondents against the petitioner/1st defendant and others for the relief of declaring the sale deed executed by the

defendants 2 to 4 in favour of the 5th defendant on 22.12.2006, is illegal null and void, coupled with other prayer for permanent injunction. After filing all these suits, again the plaintiffs filed another suit in O.S.No.103 of 2011 with a prayer for permanent injunction against the petitioner/1st defendant-Vijaya Builders. Inspite of the earlier suit in O.S.No.120 of 2010, for declaring the sale deed dated 22.12.2006 is illegal null and void, the 1st defendant (revision petitioner) continued to sale the property to other defendants and also other third parties had made construction for which the suit for permanent injunction has been made. The other transactions were held on different dates mentioned in the suit in O.S.No.219 of 2012. It happened after filing of O.S.No.120 of 2010. The petitioner/1st defendant sold the properties to the third parties from 02.03.2012 onwards. That is subsequent to the filing of O.S.No.120 of 2010. The learned counsel for the petitioner argued that the respondents/plaintiffs ought to have impleaded the subsequent purchaser of the petitioner/1st defendant in view of the Section 52 of the TP Act. The argument is not supported as per the principle of Section 52 of the TP Act and as per Section 52 of the TP Act, transfer of

property imposes a prohibition on transfer or otherwise dealing of any property during the pendency of suit. The purchaser is bound by the result of the litigation. In this case, the petitioner/1st defendant, after filing of suit in O.S.No.120 of 2010 sold the properties to other defendants in the suit. Therefore, the failure of the plaintiffs to implead the subsequent purchaser of the defendant will not affect the right of the plaintiffs/respondents. Therefore, in this regard, the arguments placed by the learned counsel for the petitioner/1st defendant is rejected and it is unsustainable.

15.The learned counsel for the petitioner/1st defendant submitted another argument that the plaintiff by filing the suit in O.S.No.219 of 2012 abused the process of Court by filing re-litigation. I have considered the cases filed by the plaintiffs, the 1st suit in O.S.No.173 of 2010 is for partition and separation. Another suit in O.S.No.120 of 2010 against this revision petitioner as a 5th defendant along with other defendants with a prayer that the sale deed executed by the defendants 2 to 4 in favour of the 5th defendant (revision petitioner) on 22.12.2006 with a prayer to declare the sale deed dated 22.12.2006 executed by defendants 2 to 4 in favour of

the 5th defendant as illegal, null and void, coupled with permanent injunction. Another suit in O.S.No.103 of 2011 against this revision petitioner alone with a prayer of permanent injunction, not to put up any third parties in the possession and constructing the buildings and another suit in O.S.No.129 of 2012 against the revision petitioner/1st defendant-Vijaya Builders and other 13 defendants with a prayer to declare the sale deed executed by the 1st defendant in favour of other 13 defendants on various dates from 02.03.2012 onwards as illegal, null and void, coupled with mandatory permanent injunction.

16.I have gone through the complaints in all the above three suits. In all the three suits, the cause of action are different and independent to the limited extent raised in an independent pleadings. In O.S.No.120 of 2010 the validity of sale deed dated 22.12.2006 is in question. In O.S.No.219 of 2012, the validity of sale deed executed by the revision petitioner/1st defendant in favour of other defendants(subsequent purchasers) on 02.03.2012 onwards is in question.

17.Under these circumstance, it cannot be concluded that the

plaintiffs re-agitated the matter in various suits. The action may be termed as an abuse of process of Court, if the party re-litigate a question or issue which has already been decided against him. But in this case, the title over the suit property between the plaintiffs and the revision petitioner (1st defendant)-Vijaya Builders is not decided in any suit. The contention of the learned counsel for the petitioner is that the title of the revision petitioner is decided in E.A.No.101 of 2013 in E.P.No.14 of 2013 is unsustainable because the E.P. Court did not hold the title in favour of the revision petitioner/1st defendant. The question of title is left open to decide in the suit in O.S.No.120 of 2010. Under these circumstance, the arguments that the plaintiffs re-litigate the question or an issue of abuse of process of Court is unsustainable.

18.The decisions relied on by the learned counsel for the petitioner in support of his arguments are unhelpful to the petitioner, to support his arguments. Under these circumstances, I find no error in the order of the trial Court and I confirm the order of the trial Court made in I.A.No.1688 of 2017 in O.S.No.219 of 2012 on the file of the learned District Munsif Court, Chengalpattu, dated 06.02.2019. Further, I find no

merit in the revision petition.

19.Hence Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

22.12.2020

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
Jer

To
The District Munsif Court, Chengalpattu.



WEB COPY

C.R.P.(P.D).No.3206 of 2019

V.SIVAGNANAM.J,

Jer



C.R.P.(P.D).No.3206 of 2019

WEB COPY

22.12.2020