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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No. 41 of 2014

M.P.No.1 of 2014

N.Karunamoorthy

..Appellant

Vs

V.Mathiazhagan

..Respondent

Appeal filed under Section 100 of Code of Civil Procedure against the decree and judgment dated 03.11.2014 made in C.M.A.No.5 of 2014 on the file of the Subordinate Judge, Poonamallee confirming the fair and decreetal order dated 06.02.2014 made in E.A.No.19 of 2008 in E.P.No.55 of 2005 in O.S.No.200 of 1990, on the file of the District Munsif, Ambattur.

For Appellant : Mr.A.V.Arun

For Respondent : Mr.M.V.Seshachari

JUDGMENT

The facts in nutshell that are to be considered in the present civil miscellaneous second appeal are that on 14.05.1987, an agreement for sale was entered into between the respondent/plaintiff and the first defendant/S.Muthukrishnan. On 25.04.1988, the said property was conveyed by the first defendant in favour of the second defendant/T.Jane in Doc.No.2946/1988 at SRO, Ambattur which was marked as Ex.P3. The respondent/plaintiff instituted a suit for specific performance in O.S.No.200 of 1990 before the Sub-Court, Poonamallee, as against defendants 1 and 2/S.Muthukumar and T.Jane. The suit was decreed in favour of the plaintiff granting a relief of specific performance on 05.02.1992. The second defendant in the suit T.Jane had conveyed the said property in favour of one Sargunakumar on 21.08.1992 vide sale deed in Doc.No.8701 of 1992, SRO Ambattur.

2. It is pertinent to note that the property was conveyed as vacant land. Sargunakumar had obtained the building approval for construction of building in the said property on 23.12.1992. In



the year 1998, the respondent/plaintiff in O.S.No.200 of 1990 filed execution petition for execution of sale deed in his favour in E.P.No. 5 of 1998. On 29.09.2000, the Sub-Court, Poonamallee, had executed the sale deed registered in favour of the respondent/plaintiff vide Document No.5430 of 2000, SRO, Ambattur. During the year 2004, due to change in the pecuniary jurisdiction of the Courts, E.P.No. 5 of 1998 was transferred to the file of the District Munsif Court at Ambattur and re-numbered as E.P.No.13 of 2004. On 19.07.2004, the suit property had been sold by Sargunakumar to the appellant. On 07.01.2005, the original sale deed was received from the Sub-Registrar Office at Ambattur and E.P.No.13 of 2004 was closed. On 26.04.2005, the respondent/plaintiff had filed E.P.No.55 of 2005 for delivery of the suit property. On 13.02.2008, the appellant, who was the third party purchaser has filed an obstruction petition in E.A.No. 19 of 2008 in E.P.No.55 of 2005 under Order 21 Rule 97 CPC. The third party obstruction petition was dismissed on 06.02.2014 by the learned District Munsif Court at Ambattur, against which C.M.A.No.5 of 2014 was filed by the obstruction petitioner and the said appeal was also dismissed on 03.11.2014 by the Sub-Court, Poonamallee. Challenging the said two judgments, the present second appeal has been preferred.

3. The substantial question of law raised on behalf of the appellant is that the execution petition in E.P.No.55 of 2005 was filed after a lapse of twelve years from the date of passing of the decree in O.S.No.200 of 1990. Under Article 136 of the Limitation Act, 1963, the limitation period contemplated is twelve years. Therefore, the execution proceeding ought not to have been numbered at all. Thus, the trial Court as well as the First Appellate Court erroneously proceeded on the basis that the execution proceedings was filed within the time limit. At the outset, it is contended that the execution petition filed after a lapse of twelve years from the date of passing of the decree is not maintainable.

4. Learned counsel appearing on behalf of the respondent objected the said point on the ground that it was not the execution petition filed at the first instance by the decree holder. The execution petition was initially filed in E.P.No.5 of 1998 itself and in the said execution proceedings, the Sub-Court, Poonamallee, executed the sale deed in favour of the respondent/plaintiff vide Document No.546 of 2000, and, therefore, the decree in all respects was executed by executing court in favour of the respondent/plaintiff and, therefore, the period of limitation as raised would not arise at all.

5. As far as E.P.No.55 of 2005 is concerned, the occupant of the suit property has refused to vacate and under those circumstances, the decree-holder filed the execution proceeding



for handing over the possession pursuant to the sale deed executed by the Court in E.P.No. 5 of 1998. Therefore, the subsequent execution proceeding, cannot be construed as the execution proceeding filed pursuant to the decree and in fact, the said execution proceedings was filed on account of the fact that the occupant of the said property has not been handed over the possession and, therefore, the execution proceeding was filed for securing the possession of the suit property.

6. Considering the question of law raised, this Court is of the considered opinion that Article 136 of the Limitation Act contemplates twelve years for execution of any decree. In the present case, the suit was instituted for specific performance. The suit was decreed in favour of the plaintiff on 05.02.1992. Pursuant to the decree, execution petition was filed by the decree-holder in the year 1998 in E.P.No.5 of 1998. The decree was passed to execute the sale deed on payment of balance sale-consideration in the suit for specific performance. The balance sale-consideration was paid by the decree-holder and, therefore, the decree holder filed E.P.No. 5 of 1998 for execution of the sale deed in his favour. The Executing Court, mainly, the Sub-Court, Poonamallee, registered the sale deed in favour of the respondent/plaintiff on 29.09.200 vide Document No.5460/2000, SRO, Ambattur. Thus, the decree was executed as it is and therefore, the subsequent execution proceedings cannot be construed as an execution proceeding instituted in order to execute the decree. The subsequent execution proceeding was instituted in view of the subsequent cause of action that arose on the basis that the occupant of the suit property refused to vacate the premises to handover the same to the decree-holder. Thus, the subsequent execution proceeding, is a fresh cause that arose on account of the fact that in spite of the title transfer in the name of the decree-holder, the occupant failed to hand over the possession. Thus, the second execution proceeding which is nothing but a continuation cannot be construed as fresh initiation of execution proceeding to execute the decree which was otherwise executed in E.P.No. 5 of 1998 on 29.09.2000.

7. The question that would arise is whether the occupant of the suit property which was transferred in the name of the decree-holder pursuant to the decree can institute EA proceeding under Order 21 Rule 97 CPC on the ground that the execution proceeding is barred by the period of limitation. The answer is that the Executing Court executed the decree in favour of the decree-holder. The sale deed was executed in favour of the decree holder. Once the title is transferred in favour of the decree-holder pursuant to the decree passed, thereafter the occupants are construed as unauthorized occupants and such unauthorized occupants cannot institute EA proceedings on the ground that the subsequent proceeding was filed after a lapse of



twelve years in view of the fact that the original execution proceeding were executed by the executing Court by registering the sale deed in favour of the decree-holder.

8. As far as the rights of the appellant are concerned, his right after the execution of sale deed by the executing court in E.P.No.5 of 1998 on 29.9.2000 and with effect from 29.09.2000, the decree-holder became an absolute owner of the suit property. When the decree-holder became the absolute owner of the said property, he has got every right to seek possession in view of the fact that the occupant refused to hand over the possession. Thus, in the present case, the appellant has not established even a semblance of legal right so as to raise the point of limitation or to adjudicate the issue on merits with reference to his purchase or any payment to the judgment debtor or to any other vendor subsequent to the passing of decree in O.S.No.200 of 1990. Even in such circumstances, the third party bonafide purchaser suffered monetary loss and their right would be against the person from whom they purchased and not against the decree-holder as there was no nexus between the decree-holder and the third party purchaser, more specifically, in the present case. Under such circumstances, this Court do not find any perversity or infirmity as such with reference to the findings as well as the decision arrived.

9. The question of law raised in respect of period of limitation is also answered and, therefore, the judgment and decree dated 03.11.2014 passed in C.M.A. No.5 of 2014 confirming the fair and decreetal order dated 06.02.2014 passed in E.A.No. 19 of 2008 stands confirmed and the civil miscellaneous second appeal stands dismissed. No costs. Consequently, the connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Subordinate Judge,
Poonamallee.
2. The District Munsif,
Ambattur.



3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.V.Arun, Advocate, S.R.No.14367

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SS (CO)
RGA (29/07/2021)