



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on 24.03.2022

Judgment delivered on 13.07.2022

CORAM:

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU**C.M.S.A.Nos.7 to 9 of 2016****and****C.M.P.Nos.3518, 3613 & 3614 of 2016**

P.Arumugam

...Appellant in all the Appeals

Vs

K.Nandheeswaran

... Respondent in CMSA.No.7/2016

S.Subramani

... Respondent in CMSA.No.8/2016

K.Mahalingam

... Respondent in CMSA.No.9/2016

PRAYER in CMSA.No.7 of 2016: Civil Miscellaneous Second Appeal filed against the fair and final order dated 31.10.2014 made in C.M.A.No. 10 of 2013 on the file of II Additional District Court, Salem confirming the fair and final order dated 09.10.2016 made in R.E.A.No.159 of 2005 in R.E.P.No.346 of 2004 in O.S.No. 359 of 1997 on the file of the Additional Sub Court, Salem.

PRAYER in CMSA.No.8 of 2016: Civil Miscellaneous Second Appeal filed against the fair and final order dated 31.10.2014 made in C.M.A.No. 11 of 2013 on the file of II Additional District Court, Salem confirming the fair and final order dated 09.10.2016 made in R.E.A.No.155 of 2005 in



R.E.P.No.346 of 2004 in O.S.No. 359 of 1997 on the file of the Additional Sub Court, Salem.

PRAYER in CMSA.No.9 of 2016: Civil Miscellaneous Second Appeal filed against the fair and final order dated 31.10.2014 made in C.M.A.No. 12 of 2013 on the file of II Additional District Court, Salem confirming the fair and final order dated 09.10.2016 made in R.E.A.No.151 of 2005 in R.E.P.No.346 of 2004 in O.S.No. 359 of 1997 on the file of the Additional Sub Court, Salem.

For Appellant : Mr.T.Murugamanickam
Senior Counsel
for
Ms.Zeenath Begum

For Respondent
in CMSA.Nos.7 & 8 /2016 : Dr.C.Ravichandran
for S.B.Viswanathan

For Respondent
in CMSA.No.9 /2016 : Mr.J.Bharathi Raja

COMMON JUDGMENT

Challenging the fair and final order dated 31.10.2014 made in C.M.A.Nos.10 to 12 of 2013 on the file of the II Additional District Court, Salem, confirming the fair and final order dated 09.10.2006 made in REA.Nos.159, 155 & 151 of 2005 respectively in REP.No.346 of 2004 in O.S.No.359 of 1997 on the file of the Additional Sub Court, Salem, the appellant/appellant/1st respondent has filed the present Civil Miscellaneous



Second Appeals.

WEB COPY

2. The appellant herein is the plaintiff/decreed holder in the suit. The respondents herein are the petitioners in the Execution Appeals viz., REA.Nos.159, 155 & 151 of 2005 respectively.

3. The case of the petitioners in the Execution Appeals/respondents herein is that originally, the suit property belongs to P.K.Madhavan, Thangamani, M.Suresh. They sold the same to Annapoorani by way of registered sale deed dated 07.07.1997. She executed a power deed dated 17.09.2001 in the name of S.Sivakumar to sell her properties. The said S.Sivakumar has entered into agreement of sale in favour of K.M.Raja. Since K.M.Raja was not able to purchase the suit property, he and S.Sivakumar executed three sale deeds, one in favour of Nandheeswaran/petitioner in REA.No.159/2005, in respect of the suit property bearing S.No.55/6B to an extent of 855 sq.ft. with building and the same was registered on 12.08.2002, for value of Rs.2,72,748/-, another in favour of S.Subramani/petitioner in REA.No.155/2005 in respect of the suit property bearing S.No.55/6B to an extent of 855 sq.ft. vacant site and the same was registered on 17.09.2001 for value of Rs.85,500/- and the other in favour of K.Mahalingam/petitioner in REA.No.151/2005 in respect of the suit



property bearing S.No.55/6B to an extent of 1290 sq.ft with building and the same was registered on 20.09.2002 for value of Rs.1,50,500/-. From the date of purchase, the petitioners are in possession and enjoyment of the suit property respectively. There is no encumbrance over the property at the time of purchase by the petitioners. It is seen that the 1st respondent has filed a Civil Suit in Sub-Court, Salem in O.S.No.359/1997 against the respondents 2 to 5 therein namely P.K.Madhavan, Thangamani, M.Suresh and Annapoorani and an exparte decree was passed on 27.09.2001 in favour of the 1st respondent viz., P.Arumugam. The petitioners are the bonafide purchasers and the title owners of the suit property in S.No.55/6B to an extent of 855 sq.ft vacant site, S.No.55/6B to an extent of 855 sq.ft. vacant site and in S.No.55/6B to an extent of 1290 sq.ft. with building respectively. Hence, the petitioners prayed for allowing the petition to declare that the 1st respondent therein/appellant herein is not entitled to bring the property mentioned in E.P. for possession and to raise the order dated 01.10.2004 against the above said properties.

4. The case of the 1st respondent in the Execution Appeals/appellant herein is that he filed a suit for specific performance against the respondents 2 to 4 therein viz., P.K.Madhavan, Thangamani & M.Suresh on 4.7.1997



and during the pendency of the suit, the respondents 2 to 4 have sold the suit property to the 5th respondent viz., Annapoorani. The suit was decreed on 27.09.2001 and the 1st respondent filed Execution Petitions for execution of a sale in respect of the suit property in favour of the 1st respondent and the sale deed was ordered to be executed and the same was executed on 22.01.2004 and registered on 29.04.2004 and the order of delivery of possession was passed on 11.03.2005. When the Amin had been to the property on 11.04.2005 and attempted to execute the Court order, the respondents 1 to 5 therein prevented the Amin from executing the order of the Court. Then, the 1st respondent filed applications to remove the obstruction and to break open the locks and for police aid. At that point of time, the petitioners have come forward with the applications under Order 21 Rule 58 CPC. The 5th respondent has purchased the property during the pendency of the suit, hence, the same is hit by doctrine of lis pendens and the said sale is not a valid one. The respondents 2 to 5 had not taken any steps to set aside the decree passed on 27.09.2001. The petitioners and the respondents 2 to 5 are bound by the decree and the petitioners are claiming right over the property on behalf of the judgment debtors and that they are not entitled to any relief.



5. The Execution Appeals filed by the respondents were allowed.

Aggrieved by the said order passed in the said Execution Appeals, the appellant herein filed C.M.A.Nos.10 to 12 of 2013. The learned II Additional District Judge, Salem, dismissed the said appeals, confirming the order passed by the learned Additional Subordinate Judge, Salem, in the REA.Nos.159, 155 & 151 of 2005. Aggrieved by the order passed in the CMAs, the present Civil Miscellaneous Second Appeals are filed.

6. Learned counsel for the appellant would submit that the Execution Court cannot go beyond the decree and has to execute the decree as it is. Order 21 Rule 58 CPC will not apply to the facts of the case, since the appellant herein is only executing the decree in a suit for specific performance. The respondents claim of being a bonafide purchaser cannot be decided as the purchase of the respondents is hit by lis pendens. All the transactions between the respondents' vendors and the respondents occurred after the presentation of the suit on 04.07.1997. The sale made in favour of the respondents is hit by the provision of Section 52 of the Transfer of Property Act. The vendor of the appellant has sold a part of the suit property to the said Annapoorani only after receipt of the pre-suit notice.



Even after Annapoorani was impleaded on 20.09.2000, she has executed a power of attorney on 17.09.2001 in favour of Sivakumar and after the decree in O.S.No.359 of 1997 dated 27.09.2001, the sale deed was executed in favour of the respondents on 12.08.2002. Hence, he prayed for allowing the Appeals.

7. In support of the above contentions, the learned counsel for the appellant relied on the following decisions.

- i) 2022 (1) LW 193 (P.K.S.Mohammed Sheriff v. S.Mittalal & others)
- ii) 2008(7) SCC 144 (Usha Sinha vs. Dina Ram & others)
- iii) 2018 (4) CTC 613 (K.S.Ravi vs. K.P.Manickam)

8. On the contrary, the learned counsel for the respondents would submit that there is no encumbrance over the property at the time of purchase. The appellant has filed Civil Suit in Sub Court, Salem in O.S.No.359/1997 and ex parte decree was passed on 27.09.2001. Based on the decree passed, an execution petition was filed. Actually, the suit property was sold to one Annapoorni through a sale deed dated 4.7.1997 by the original owner P.K.Madhavan and the decree passed in the above suit will



not bind them. Since the respondents are the bonafide purchasers of the suit property before ever the order dated 01.10.2004, the appellant is not entitled to the suit property. Hence, the appellate court has rightly confirmed the order of the learned Additional Subordinate Judge, Salem. Therefore, he would pray to dismiss the Appeals.

9. In support of the above contentions, the learned counsel for the respondents relied on the following decisions.

- i) 1984 (1) MLJ 187 (Ammakannu Ammal v. Natesa Thevar)
- ii) AIR 2002 SC 251 (N.S.S.Narayana Sarma & others vs M/s. Goldstone Exports (P) Ltd. & others)
- iii) AIR 1981 SC 981 (Dev raj Dogra & ors. v. Gyan Chand Jain & Ors.)
- iv) 1994(1) SCC 1 (S.P.Chengalvaraya Naidu v. Jagannath)

10. Heard the learned counsel for the appellant and the learned counsel for the respondents.

11. This Court, while admitting the Civil Miscellaneous Second



Appeal on 07.03.2016 has formulated the following substantial question of

WEB COPY law.

i) In execution of a decree for specific performance, whether the Execution court can decide the claim of a third party being a bona fide purchaser under Order XXI Rule 58 CPC?

Subsequently, on 17.10.2021, the Appellant has filed a petition to permit him to raise the following additional substantial law and the same was considered and ordered by this Court on 03.12.2021.

Where a property is not being brought to sale, but only delivery of possession is sought for in execution proceedings, whether a third party can file an application under Order 21 Rule 58 CPC to adjudicate upon his rights in such property?

12. It is seen from the records that P.K.Madhavan, Thangamani and Suresh who were the original owners of the suit property had sold the suit property in favour of one Annapoorani by way of registered sale deed dated 04.07.1997 and the suit was filed on the very same date when the sale was executed. It is seen from Ex.A2 filed by the petitioner in REA.151/2005 that sale deed is dated 04.07.1997 and the stamp papers for execution of sale deed was purchased by the said Annapoorani on 04.07.1997 and the said



sale deed was executed and presented before the Joint Registrar office on 04.07.1997 between 2.00 pm. and 3.00 pm. Therefore, doctrine of lis pendens will not apply to the present case. As per Ex.A2, sale deed in respect of the suit property was executed in favour of Annapoorani on 4.7.1997 and according to the learned counsel for the appellant the document was presented on 4.7.1997 but the same was registered only on 7.7.1997 cannot be countenanced for the reason that the sale in favour of Annapoorani was made on the same date of the filing of the suit and the document was executed on 4.7.1997 by Annapoorani between 2 p.m. and 3 p.m. after paying necessary charges for registration and it was registered on the very same date and the trial Court has also carefully analysed the date of execution of sale deed and the date of presentation of the plaint and has come to the conclusion that it is not hit by doctrine of lis pendens. Further, the original owners P.K.Madhavan, Thangamani, Suresh and Jayasudha have entered into sale agreement with one Muthusamy on 03.12.1993 and thereafter on 30.05.1996, the said P.K.Madhavan and others have executed the registered sale agreement with one Raja Vinayagam under document No.1304/1996 and thereafter, the sale agreement entered between the original vendor and the said Muthusamy was cancelled on 04.10.1996 and



ANNAPPOORANI, before execution of the sale deed has entered into sale agreement with P.K.Madhavan and others on 7.2.1997. Therefore, as a bonafide purchaser, the said Annapoorani entered into registered sale deed with the original vendors and she purchased the suit property. It is pertinent to note that the said Annapoorani, as a bonafide purchaser, sold the suit property to the respondents herein by way of three registered sale deeds and before purchasing the property, she applied for encumbrance certificate and only after finding that there is no encumbrance in the suit property, she has purchased the property. The sale agreement said to have been entered between the appellant and the said P.K.Madhavan and others does not find place in the encumbrance certificate because the said sale agreement dated 15.05.1996 is not a registered one.

13. It is seen from the records that the suit was filed on 04.07.1997 and notice was sent to the original vendors on 14.08.1997 and the said Annapoorani was impleaded as party to the suit and 4th defendant in I.A.No.820/1998 on 20.09.2000 and the plaint was amended on 17.02.2001 and the decree was passed in the suit on 27.09.2001. Thus, Annapoorani had no knowledge of filing of the suit on the date when she purchased the



property from the original vendors and the vendors also had no notice of the filing of the suit when they executed the sale deed in favour of Annapoorani.

Thereafter, Annapoorani executed the registered sale deeds in favour of these respondents.

14. It is the case of the appellant that the respondents have filed REA Nos.151, 155 and 159 of 2005 under wrong provisions of law under Order 21 Rule 58 CPC. Though a wrong provision of law may have been quoted or no provision of law may have been quoted, but these laches are immaterial. The matter is to be inquired into whether the Court has the requisite power to grant the relief as sought by the plaintiff. Rule 97 to 101 of Order 21 contain the provisions enabling the executing Court to deal with a situation when a decree holder entitled to possession of property encounters obstruction from “any person”. From the provisions of these rules the scheme is clear that the legislature has vested wide powers in the executing Court to deal with “all issues” relating to such matters. A mere mentioning of wrong provision of law will not disentitle the petitioners in REAs to approach the Court to determine their right over the property.



15. It is to be noted that there is no pending litigation as on the date of purchase by the respondents' vendor Annapoorani. The sale deed marked as Ex.A2 entered into between P.K.Madhavan and others and the respondents' vendor Annapoorani was presented on 4.7.1997 and the suit was filed on the very same date. The original vendor has conveyed the title deed over the suit property to Annapoorani and as a purchaser of the suit property, the said Annapoorani has conveyed the title to the respondents through three different sale deeds. Therefore, this Court is of the opinion that the Execution Court has power to deal with the issue of ownership of the suit property to meet the ends of justice and to avoid multiplicity of proceedings.

16. The decisions relied on by the learned counsel for the parties are distinguishable on facts and hence, they are not applicable to the facts of the present case.

17. This Court finds no illegality or irregularity in the common order dated 09.10.2006 passed by the Additional Sub Court, Salem, in REA.Nos.159, 155 & 151 of 2005 which was confirmed by the II Additional District Court in C.M.A.Nos.10 to 12 of 2013 by the common



order dated 31.10.2014. The substantial questions of law are answered accordingly.

18. In the result, the Civil Miscellaneous Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.07.2022

Speaking/ Non speaking order
Index:Yes/No
vsi

To

1. II Additional District Court, Salem.
2. The Additional Sub Court, Salem.



WEB COPY



15

CMSA Nos.7 to 9 of 2016

J.NISHA BANU,J.

vsi

Pre-delivery judgment made in
CMSA Nos.7 to 9 of 2016

13.07.2022



WEB COPY

