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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.153 of 2015
and MP No.1 of 2015

1. Palaniammal

2. Kalarani

V.Raveendran (died)

3. Sumathi

4. R.Poonkathir

5. Minor Bhuvaneshwari

Rep by guardian/mother Sumathi ... Appellants/Respondents
1,2, 5 to 7/Plaintiff's 1,2 &
LRS of the deceased 3rd plaintiff's

Vs.

1. D.Smitha Prem ...1st Respondent/Appellant/1st Defendant

2. Lakshmi @ Velayal ...2nd Respondent/4th
Respondent/2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 27.08.2014 made in AS No.67 of 2012 on the file of the learned First Additional District Court, Erode reversal of the judgment and decree dated 30.01.2012 made in OS. No.97 of 2010 on the file of the learned Sub Court, Sathyamangalam.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Kaithamalai Kumaran, for R1



JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

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2. The plaintiffs filed the suit seeking for a declaration to declare the Sale Deed executed by the second defendant in favour of the first defendant on 22.10.2007 as "null and void" and for a consequential direction to the defendants to deliver possession of the suit property.

3. The case of the plaintiffs is that the suit property was absolutely owned by the second defendant. The second defendant had entered into a registered agreement of sale on 06.09.2002 with the husband of the first plaintiff and the father of the second and third plaintiffs whereby it was agreed to sell the suit property for a total consideration of Rs.55,000/-. Even on the date of the agreement, an advance of Rs.50,000/- was paid to the second defendant. Within four months from the date of the sale agreement, the husband of the first plaintiff died. Hence the plaintiffs started following up the Sale Agreement executed by the second defendant.

4. The further case of the plaintiffs is that they were ready and willing to perform their part of the contract and the second defendant was evading from receiving the balance sale consideration and execute the Sale Deed in their favour. Hence, a legal notice was issued on 03.09.2004 and a suit for specific performance came to be filed against the second defendant in OS No.481 of 2004. In spite of service of notice, the second defendant did not choose to contest the case and was set ex parte. An ex parte decree was passed in the said suit on 14.11.2005.

5. Thereafter, the plaintiffs filed EP No.35 of 2006, after depositing the balance sale consideration and sought for execution of the Sale Deed, pursuant to the ex-parte decree of specific performance. The notice was served on the second defendant and the second defendant filed counter affidavit in the Execution Petition to the effect that the survey number that has been mentioned in the Execution Petition as Survey No.23/1B, has got nothing to do with the second defendant and sought for the dismissal of the Execution Petition. After such a stand was taken by the second defendant, the plaintiffs verified and found that the correct survey number is 239/1B. Immediately steps were taken by the plaintiffs to file an Amendment Application in the suit in IA No.394 of 2008. The Amendment Application was allowed and the schedule of the property in the plaint and also the



decree was permitted to be amended by order dated 05.01.2009.

6. Thereafter, once again Execution Petition was filed and the Sale Deed came to be executed in favour of the plaintiffs through Court. It is stated that the second defendant was attempting to alienate the suit property once again and hence the plaintiffs filed a suit for bare injunction in OS No.193 of 2008 and that suit was also decreed in favour of the plaintiffs through judgment and decree dated 30.10.2008.

7. The plaintiffs thereafter came to know that the second defendant had executed a Sale Deed in favour of the first defendant on 22.10.2007. According to the plaintiffs, even though the Sale Deed does not bind them, since it challenged their right and title over the suit property, the present suit came to be filed challenging the Sale Deed dated 22.10.2007.

8. The first defendant had filed a written statement and took a stand that she is a bona-fide purchaser for value and that she was not aware about the earlier transactions or the earlier proceedings between the plaintiffs and the second defendant. Hence, the first defendant thereby sought for the dismissal of the suit.

9. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, through a judgment and decree dated 30.01.2012 decreed the suit as prayed for. Aggrieved by the same, the first defendant filed an Appeal before the I Additional District Court, Erode, in AS No.67 of 2012. The Lower Appellate Court on considering the facts and circumstances of the case and on re-appreciation of the oral and documentary evidence, allowed the Appeal through a judgment and decree dated 27.08.2014 and thereby the judgment and decree of the Trial Court was set aside. Aggrieved by the same, the plaintiffs have filed the Second Appeal before this Court.

10. When the Second Appeal was admitted, the following questions of law were framed by this Court:

a. Whether the First Appellate Court is correct in treating the status of the 1st defendant as a bona fide purchaser particularly when she being a transferee from the 2nd defendant is presumed to be aware of the lis in O.S. No.481 of 2004?



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b. Whether the First Appellate Court is right in ignoring the doctrine of lis pendens which itself is treated as a constructive notice to a purchaser that she is bound by a decree?

c. Whether the amendment of S.F.No.23/1B as S.F.No.239/1B in pursuance to the order dated 05.01.2009 made in I.A.No.394 of 2008 will relate back to the date of the plaint, if not, whether the court has no power to invoke Section 26 of the Specific Relief Act in the absence of any dispute as to the identity of the property?

11. Heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the first respondent. This Court also carefully perused the materials available on record and the findings of the Lower Appellate Court.

12. During the Course of arguments, this Court found that the Lower Appellate Court did not fulfill the mandate under Order XLI Rule 31 of the Code of Civil Procedure, by assigning proper reasons while reversing the findings of the Trial Court and hence, the following additional question of law was framed:

Whether the Lower Appellate Court while reversing the findings of the Trial Court and allowing the Appeal, had assigned proper reasons for differing with the findings of the Trial Court, as mandated under Order XLI Rule 31 of the Code of Civil Procedure?

13. This court is not intentionally going into the merits of the case that were put forth by the counsel appearing on either side. This Court while going through the judgment of the Lower Appellate Court finds that not even in a single place, the Lower Appellate Court had taken up the findings of the Trial Court and discussed about the same. It is now a well settled law that where the Appellate Court wants to reverse the judgment and decree of the Trial Court, the Appellate Court must spell out the reasons and discuss the points as to why it is disagreeing with the findings of the Trial Court. If the Appellate Court does not assign such reasons and deal with the findings of the Trial Court while reversing the same, the judgment of the Appellate Court is liable to be interfered on that ground alone. Useful reference can be made to the judgment of the Hon'ble Supreme Court in K.Karuppu Raj v. M.Gaesam, reported in 2022 (1) CTC 674.



14. In this case, the Lower Appellate Court had assigned reasons starting from paragraph No.15 of the judgment. This goes up to paragraph No.18. Not even in a single place, the Lower Appellate Court has even touched upon the findings of the Trial Court. The Lower Appellate Court has not independently considered the findings of the Trial Court and has rendered its findings. This only goes to show that the Lower Appellate Court failed to follow the mandate as prescribed under Order XLI Rule 31 of the Code of Civil Procedure, which has been reiterated every time by the Hon'ble Supreme Court and this Court on various occasions.

15. In view of the above, this Court has to necessarily interfere with the judgment and decree of the Lower Appellate Court and remand the matter back to the file of the Lower Appellate Court. In view of the same, this Court is not answering the substantial questions of law that were framed at the time of admission of the Second Appeal, since it will touch upon the merits of the case. This Court does not want to render any findings on the merits of the case, since it will have a bearing on the Lower Appellate when once again it considers the case on merits.

16. The upshot of the above discussion leads to the conclusion that the judgment of the Lower Appellate Court requires the interference of this Court, since the Lower Appellate Court did not spell out any reason and discussed the points as to why it has disagreed with the findings of the Trial Court. The additional substantial question of law framed by this Court is answered accordingly.

17. In the result, the Second Appeal is allowed and the judgment and decree of the I Additional District Judge, Erode, made in AS No.67 of 2012 is hereby set aside. The matter is remanded back to the file of the I Additional District Judge, Erode. The learned I Additional District Judge, Erode is directed to hear the Appeal afresh and deal with the same strictly in accordance with law and the final judgment shall be passed in the Appeal on or before 30.06.2022. The Lower Appellate Court shall report compliance of the direction issued by this Court, after passing the final judgment in the Appeal. Both the sides are directed to co-operate to ensure that the Appeal is concluded within the time stipulated by this Court. No costs. Consequently the connected miscellaneous petition is closed.



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18. The Registry is directed to immediately send back the original records to the file of the I Additional District Judge, Erode.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

jv

To

1. The I Additional District Judge,
Erode.

2. The Sub Judge,
The Sub Court,
Sathyamangalam.

Copy to:

The Section Officer

VR Section,

High Court Madras.

(Direction to send back the records
to 1st Additional District Court, Erode)

+1cc to Mr.N.Manokaran, Advocate SR.No.20066

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.20023

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NRL(CO)

CB(06/04/2022)