IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 589 of 2013
and
M.P.No. 1 of 2013 & C.M.P. No. 9469 of 2019

1. K.Ramasamy,
S/o. Sengoda Gounder

2. P.Sengottuvel,
S/o. Palaniappa Gounder

3. K.M.Palanisamy,
S/o. Marappa Gounder ... Appellants

Vs.

Asst. Commissioner,
Commercial Tax,
Mettur Road,
Assessment Circle,
Erode-638 011. ... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 10.12.2012 made in A.S.No. 98 of 2012 on the file of Principal District Judge at Erode confirming the judgment and decree dated 03.07.2012 made in O.S.No.227 of 2010 on the file of Principal Subordinate Judge, Erode.

For Appellants : Mr.AR.L.Sundaresan, Senior Advocate for Mr.R.Prabakar

For Respondent : Dr.S.Suriya, Addl. Govt. Pleader

JUDGMENT

The appellants herein are the plaintiffs in the suit in O.S.No.227 of 2010 on the file of Principal Subordinate Judge, Erode filed against the respondent/defendant for the relief of declaration and other consequential relief of permanent injunction restraining the defendant from bringing the suit property for sale.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The contention of plaintiffs is that the suit property, an extent of 2878.5 sq.ft. along with building situated in Old S.F. No.92/A, New S.F.No.92/2 in Erode Town is originally belonged to one K.Muthusami as his self-acquired property. The said Muthusami has two sons viz., Loganathan and Kumar and two daughters viz., Manjula and Thulasimani. On 30.12.2002 under a registered settlement deed, the said Muthusami settled the suit property measuring 2878.5 sq.ft in favour of his second daughter. She accepted the said settlement and took possession of the property and on the same day, the said Thulasimani executed a Power of Attorney in favour of one V.Karthik and K.Baskaran and the said power holders sold an extent of 698 sq.ft. in favour of 1st plaintiff and subsequent to that, the 1st plaintiff sold the extent of 690 sq.ft. in favour of 2nd and 3rd plaintiffs through a registered sale deed dated 08.10.2004. Thus, all the plaintiffs 1 to 3 are co-owners of the suit property and enjoyed the same as absolute owners of the suit property.

4. While so, on 21.06.2010, in “Dinamalar” publication, they found that the defendant has published number of items of property and

the same were brought for sale by auction for the alleged sales tax dues payable by late K.Muthusami and his son Loganathan, who were said to be partners of one Kaveri Agencies. The plaintiffs are not aware of any such tax arrears and they are bonafide purchasers purchased the suit property for a valuable consideration. Hence, they are entitled to get protection under Sec.24-A of Tamil Nadu General Sales Tax Act. The plaintiffs contended that on the date of purchase by 1st plaintiff, no such proceedings were either pending or brought to his notice by anyone and nor the properties were attached. Hence, they have filed a suit.

5. The defendant admits that the suit property belong to one K.Muthusami, but denied the other allegations. The contention of the defendant is that the said K.Muthusami and his son Loganathan were partners of one Kaveri Agencies and right from 01.12.1993 onwards, there were sales tax due and arrears upto the year of 1997 and the total amount of sales tax arrears comes around Rs.9 crores. The said Kaveri Agencies preferred an appeal before the appellate authority Assistant Commissioner (CT), Erode, Sales Tax Appellate Tribunal I and II and

also before this Court and all the appeals went against them. In fact, the suit property being an immovable property belong to the said K.Muthusami was attached and brought to sale by public auction as per the order under the Act and notices sent to legal heirs. Accordingly, aggrieved over the attachment of suit property, the plaintiffs filed the said suit.

6. The defendant further contended that the execution of settlement deed is void as per Sec.24-A of TNGST Act for the reason that any dealer create a mortgage, gift, exchange or any other mode of transfer of his assets in favour of any person with the intention to defraud the revenue, such transfer shall be void. So also, the purchase made by 2nd and 3rd plaintiffs from the 1st plaintiff also nonest in law, thereby contending that the proceedings initiated under the provision of law is valid.

7. Before the trial court, issues were framed and documents Ex.A1 to A6 and Ex.B1 to B35 were adduced. On perusal of oral and documentary evidence, the trial judge concludes that one of the partner of

Kaveri Agencies, late K.Muthusami was very well aware of the tax arrears proceedings and to defraud the claim of defendant, he purposely executed a gift deed in respect of the suit property in favour of his 2nd daughter in the year 2002 and the sum and substance made by plaintiffs 1 to 3 in the year of 2004 was also not a bonafide purchase for the reason that they have not taken any steps to transfer the names in the revenue records and their conduct reveals that all the plaintiffs 1 to 3 are not bonafide purchasers. Accordingly, the suit was dismissed as no merits.

8. Challenging the said findings, the plaintiffs preferred an appeal in A.S.No. 98 of 2012 before the Principal District Judge, Erode, wherein the lower appellate judge independently analysed the facts and law, finally held that the said K.Muthusami, as a partner of Kaveri Agenices had clear knowledge about the recovery of surcharge proceedings and he executed a gift deed in favour of his 2nd daughter and she also sold the property to 1st plaintiff only to defraud the revenue and also held that the plaintiffs 2 and 3 are not bonafide purchasers by confirming the trial court findings and dismissed the appeal.

9. Challenging the concurrent findings, the plaintiffs filed this Second Appeal contending that both the courts below failed to appreciate the fact that the appellants herein are in continuous possession and enjoyment of the suit property for the past several years and a mere perusal of encumbrance certificate would clearly reveals that the property has been sold much prior to the auction notice and no notice of attachment of suit property was served on the plaintiffs eversince from the year of 2003. In fact, the alleged attachment was made only in the year of 2009 after the appellants 1 to 3 purchased the property. Hence, they are entitled to get the benefits under Sec.24-A (i) of the TNGST Act, but without appreciating all those facts, the courts below dismissed the claim of plaintiffs, as such, it is unjust, unfair and the same is liable to be set aside. Accordingly, this Second Appeal is admitted on the following question of law :-

> " 1) Whether the courts below are correct in non-suiting the appellants without considering the fact that the appellants are bonafide purchaser for consideration without notice?

2) Whether the courts below are correct in law in coming to the conclusion that the transfer in favour of the appellants was hit by Sec.24A of the Sales Tax Act?

3) Whether the courts below are correct in law in non-suiting the appellants when Sec.100 of Transfer of Property Act prohibits that no charge shall be enforced against any property in the hands of a transferee for consideration with the notice of charge?"

10. The learned counsel appearing for appellants/plaintiffs submitted that all the three plaintiffs were not aware of huge arrears of tax and proceedings pending before the respondent. However, a gift deed was executed by one of the partner K.Muthusami in favour of his 2nd daughter, and subsequently, she gave a power of attorney in favour of V.Karthik and K.Baskaran and based upon that, she sold the property in favour of 1st plaintiff on 28.11.2003 and subsequently, the 1st plaintiff sold the suit property in favour of 2nd and 3rd plaintiffs and all the three plaintiffs became absolute owners of the suit property. Moreover, their

contention is that they came to know about the surcharge proceedings only after due publication made on 17.11.2009 and all the three plaintiffs are holding the property without the knowledge of the proceedings initiated under the Tamil Nadu General Sales Tax Act. So, they prayed that they are entitled to get benefits under Sec. 24-A(i) of the Act. In this regard, Sec.24-A of TNGST Act reads as follows:-

"*24-A Transfers to defraud revenue void:- where during the pendency of any proceeding under this Act or after the completion thereof, any dealer creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceedings or otherwise:-*

(i) for adequate consideration and without notice of the pendency of such proceeding under this Act, or. As the case

may be, without notice of such tax or other sum payable by the dealer; or

(ii) with the previous permission of the assessing authority."

11. The learned counsel appearing for appellants/plaintiffs further submitted that without knowledge of pendency of surcharge proceedings, the 1st plaintiff purchased the property from 2nd daughter of K.Muthusami and the 2nd and 3rd plaintiffs, as a bonafide purchasers purchased the property from the 1st plaintiff, all of them are entitled to get benefits under Sec. 24-A of TNGST Act. To encounter the same, the learned counsel for respondent/defendant would submit that one of the partner of Kaveri Agencies viz., K.Muthusami was aware of the said pending arrears and he was put on notice even in the year of 1997 itself. Challenging the said proceedings, he preferred an appeal before the authorities and all the appeals were dismissed by the appellate authority as well as this Court. Having knew all these proceedings, in order to defraud the revenue, the said K.Muthusami executed a gift deed in the year of 2002 in favour of his 2nd daughter and thereafter, she sold the

property in favour of 1st plaintiff. Therefore, the beneficiary, the 1st plaintiff is not entitled to claim protection under Sec.24-A (i) of the Act. In support of his contentions, the defendant relied on the notice served in the year of 1997 to the said K.Muthusami, one of the partner of Kaveri Agencies and the same is enclosed in the typed set of papers, which would clearly reveals that in the year of 1997 itself, the said Muthusami received notice from the defendant claiming arrears of tax and thus, he had knowledge about tax arrears. Therefore, knowingfully well about the pendency of the said surcharge proceedings, the said K.Muthusami executed a gift deed in favour of his 2nd daughter clearly denotes that to defraud the claim of defendant, such document was executed. So, neither Muthusami nor plaintiffs entitled to get any protection under Sec. 24-A (i) of the Act and the same was rightly appreciated by the courts below, which needs no interference.

12. Furthermore, the 1st plaintiff has no title over the property for the reason that the alleged gift deed stands in the name of 2nd daughter of K.Muthusami itself void under law. Hence, based upon the void

document, the 2nd and 3rd plaintiffs are not entitled to get any better title. Apart from that, the 2nd and 3rd plaintiffs also contended that they are bonafide purchasers and they are entitled to get benefits under Sec.24-A (i) of the Act. Admittedly, they have purchased the property in the year of 2004 and they were not aware of the proceedings initiated by the defendant. But, as discussed above, the alleged gift deed executed by K.Muthusami in favour of his 2nd daughter is void under law and subsequently, she sold the property in favour of 1st plaintiff and though the plaintiffs 2 and 3 have purchased the property from the 1st plaintiff in the year of 2004, till 2010, they have not taken any steps to transfer the names in the revenue records. Furthermore, before they purchased the property, they ought to have made enquiry about the ownership of the property, but no evidence placed before this court that they have made valid enquiry. Hence, the courts below have rightly appreciated this aspects, which needs no interference.

13. Even though the property is attached in the year of 2009, but against these properties, surcharge proceedings were initiated from the

year of 1993 onwards, because the arrears due of Kaveri Agencies starts from the year of 1993 onwards. So, to defraud the claim of defendant, one of the partner of Kaveri Agencies, K.Muthusami executed a gift deed in favour of his second daughter and the subsequent purchase made by the plaintiffs 1 to 3 also non-est in the eye of law. Thus, they are not entitled to get protection under Sec.24-A (i) of the Act. Accordingly, the question of law (1) and (2) are answered.

14. Though the attachment was effected only in the year of 2009, but the tax due from the year of 1993 was under challenge by the Kaveri Agencies before the Tax Appellate Tribunal and the same was negatived by this court in the appeal proceedings. Thereafter, the defendant took steps to attach the property, which is valid under law and the same cannot be questioned by the plaintiffs, as they have no locus standi and the alleged document stands in their name also void and non-est in law. Accordingly, the question of law (c) is answered and the findings of trial court and lower appellate judge is fair and justifiable one, which needs no interference.

15. In the result, this Second Appeal is dismissed as no merits and the orders passed by learned Principal District Judge, Erode in A.S.No.98 of 2012 and learned Principal Subordinate Judge, Erode in O.S.No.227 of 2010 are confirmed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

01.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Principal District Judge,
Erode.

VR section

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
S.A. No. 589 of 2013

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