IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.01.2022

CORAM:

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.1124 of 2021

Mani @ Sundaramoorthi
S/o, Duraisamy Gounder ...Appellant/Appellant/Plaintiff

Vs.

Balusamy Chettiar,
S/o, Muthusamy Chettiar ...Respondent/Respondent/Defendant

Prayer:
Second Appeal is filed under Section 100 of C.P.C., against the judgment and Decree dated dated 30.03.2021 made in A.S.No.19 of 2018 on the file of the Additional Subordinate Court, Kallakurichi, confirming the judgment and decree dated 10.08.2017 made in O.S.No.299 of 2011 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellant : Mr.M.PremKumar
for R.Anbukarasu
For Caveator : Mr.P.Valliappan
for M/s.PV Law Associates for Caveator

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated 30.03.2021 passed in A.S.No.19 of 2018 by the learned Additional Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 10.08.2017 passed in O.S.No.299 of 2011 by the learned Principal District Munsif, Kallakurichi.

2. The appellant herein is the plaintiff, who filed a suit for permanent injunction against the respondent restraining him from interfering with his peaceful possession and enjoyment of the suit properties and for costs.

3. The appellant claimed that he purchased the suit property from one Gopal, S/o, Sundaram Aachari, under a registered sale deed dated 27.01.2005 for a valuable consideration of Rs.3,31,000/-. Ever since the date of purchase, he is in possession and enjoyment of the suit property. The respondent

owns the property on the northern side of the suit property. He is a third party so far as the suit property is concerned and he has no right or title in the suit property. He is an influential man in the village. He is trying to trespass into the suit property from the last week of July 2011. Under the said circumstances, the appellant has filed the suit, for the relief of permanent injunction.

4. The case of the respondent, in brief, is as follows:
It is specifically denied by the respondent that the suit property belongs to the appellant. The sale deed executed by Gopal in favour of the appellant is also denied. The sale deed dated 27.01.2005 is not true and valid, which is hit by doctrine of lis pendens. Originally, the suit property and other properties belonged to one Sundaram Asari ancestrally. He died intestate leaving behind his five sons and four daughters. They are (i) Kutti @ Sankaran (ii) Kannan @ Krishnan (iii) Mani @ Mahadevan (iv) Gopal (v) Sampath (vi) Baby @ Kamatchi (vii) Premavathi (viii) Kausalya (ix) Vijayalakshmi. Since the properties are ancestral in nature, sons of Sundaram Asari are each entitled to 10/54 share and his daughters are each entitled to 1/54 share. One of the sons, Mani @ Mahadevan created an encumbrance and sold the portion to one Chinnasamy and Pommannan. Other sons had filed a suit for partition in O.S.No.385 of 1981. After contest, the suit was decreed and preliminary decree declaring the plaintiffs' right of 40/54 share in the suit property and other properties. Daughters were also found to be entitled to 4/54 shares. The decree was passed on 31.03.1987. The respondent agreed to purchase the shares of one Kutti @ Sankaran, Kannan @ Krishnan, Gopal, Sampath, who were entitled to 40/54 shares. A registered sale agreement was entered into with them on 20.04.1987. The Preliminary decree passed in O.S.No.385 of 1981 was finally confirmed by this Court in S.A.No.1617 of 1991. The respondent requested the parties to the sale agreement to receive the balance sale consideration and to execute the sale deed. They did not comply with the request. Therefore, notice dated 07.12.2002 was sent to the parties. They have not responded positively. Therefore, the suit for specific performance of the agreement dated 20.04.1987 was filed in O.S.No.142 of 2003 on the file of the Subordinate Court, Kallakurichi. The appellant's vendor Gopal was the second defendant in the suit. He contested the suit. Except him, all other defendants in the suit admitted the respondent's claim and executed a registered sale deed in respect of their shares in the suit property and other properties in favour of the respondent. The appellant's vendor Gopal alone contested the suit. The suit was decreed on 30.11.2007. Even after the decree, Gopal did not come forward to execute the sale deed. Therefore, E.P.No.59 of 2008 was filed for execution of the sale deed. The sale deed was executed by the learned Subordinate

Judge, Kallakurichi on behalf of Gopal on 31.10.2008 and the possession was taken through court Amin as per the order passed in E.A.No.182 of 2009 on 24.07.2009. The respondent's wife Kamatchi Ammal purchased 4/54 shares of four daughters of Sundara Asari through a registered sale deed on 19.01.2003. Thus, the respondent had purchased the entire extent of the suit property and he is in possession and enjoyment of the suit property. This is frivolous and adventurous suit and it is hit by the doctrine of lis pendens. Therefore, the suit is liable to be dismissed.

5. On the basis of this pleadings, the trial court framed the following issues:

i. Whether the plaintiff is in possession and enjoyment of the suit property?

ii. To what relief, the plaintiff is entitled for?

6. During trial, P.W.1 was examined and Exs.A1 to A6 were marked on the side of the appellant/plaintiff. D.W.1 was examined and Exs.B1 to B16 were marked on the side of the respondent/defendant. Exs.X1 and X2 were also marked.

7. On consideration of the oral and documentary evidence, the learned trial Judge found that the appellant has not produced any material to show that he is in possession and enjoyment of the suit property except filing the sale deed and copies of the proceedings in O.S.No.142 of 2003 and O.S.No.385 of 1981 and legal notice. On the other hand, it is found that the respondent produced the materials in the form of documents to show his title and possession in respect of the suit property. In this view of the matter, the trial Judge found that the appellant is not entitled for the permanent injunction and dismissed the suit. Against the said dismissal order, the appellant preferred an appeal in A.S.No.19 of 2018. The Appellate Judge also found from the oral and documentary evidence that the appellant has not made out a case for granting the relief of permanent injunction mainly for the reason that the sale deed in his favour was hit by principle of lis pendens and there is no material to show that he has been in possession and enjoyment of the suit property on the date of filing the suit. The appeal was dismissed, confirming the judgment and decree of the learned trial judge. Challenging the said judgment of the first appellate court, the appellant has filed this Second appeal.

8. Learned counsel for the appellant challenged the judgment and decree of the Courts below, especially, the first appellate court, mainly on three grounds. The first ground is that the respondent sent Ex.A6 notice to the appellant claiming him to cancel the document executed between the appellant and Gopal in

respect of the suit property. It is evident from the notice that the respondent is aware of the sale deed executed by Gopal in favour of the appellant. Therefore, when he is aware of the existence of Ex.A1 sale deed dated 27.01.2005, he ought to have impleaded the appellant as a party in the specific performance suit in O.S.No.142 of 2003. When the third party interest is created in respect of the suit property, it is necessary that the third party should be impleaded as a party to the pending proceeding. When that was not done, the respondent cannot take up the plea of lis pendens. The second ground is that the appellant was not impleaded as party in the execution proceeding. The third ground is that the appellant is a bonafide purchaser.

9. On these grounds, the learned counsel for the appellant submitted that both the Courts below had not considered these aspects, especially the issuance of Ex.A6 notice and failure to implead the appellant as a bonafide purchaser for value without notice of the pending proceeding. Thus, he prayed for setting aside the judgement and decree of the Courts below and for allowing this Second Appeal.

10. In response, the learned counsel for the Caveator/respondent submitted that Ex.A6 notice was sent after the execution of Ex.A1 sale deed on 27.01.2005. Sale agreement was executed on 20.04.1987. It is a registered sale agreement. Therefore, the appellant cannot claim that he has no means to know about the agreement and he is a bonafide purchaser. The suit for partition with his brothers got over only when the judgment of the Court below was confirmed by this Court in S.A.No.1617 of 1991 on 29.11.2002. Even thereafter, the parties to the agreement had not come forward to execute the sale deed. Therefore, the suit for specific performance in O.S.No.142 of 2003 was filed. Hence, it is not open to the appellant to contend that he is not aware of the sale agreement and the pending proceeding. As a bonafide purchaser, he has to verify and trace whether the title to the property to be purchased is free from encumbrance. When that was not done, he cannot claim that he is a bonafide purchaser. Learned counsel for the Caveator prayed for confirming the judgment and decree of the Courts below and for the dismissal of the Second Appeal.

11. Considered the rival submissions and perused the materials on record. It is seen from the abovesaid pleadings and submissions that there is a registered sale agreement among the respondent and Kutti @ Sankaran, Kannan, Krishnan, Gopal, Sampath for selling their undivided 40/54 share in the suit property. The suit in O.S.No.385 of 1981 filed for partition was disposed finally in S.A.No.1617 of 1991 on 29.11.2002, confirming the partition granted by the trial court.

Thereafter, the respondent filed O.S.No.142 of 2003 for the relief of specific performance against the said four brothers. It appears that except the appellant's vendor Gopal, other legal heirs had executed the sale deed in respect of their shares in favour of respondent. Gopal had only contested the suit in O.S.No.142 of 2003 for specific performance and the suit was decreed on 30.11.2007. During the pendency of this proceeding, Gopal, one of the parties to the aforesaid partition suit and the specific performance suit, sold the suit property to the appellant on 27.01.2005. The sale in favour of the appellant through Ex.A1 is a sale during the pendency of O.S.No.142 of 2003. The suit property is a property in O.S.No.385 of 1981 and O.S.No.142 of 2003. Therefore, this sale is hit by the principle of lis pendens.

12. The decision of the Hon'ble Supreme Court reported in 2012 (7) SCC 738 [A.Nawab John and Others Vs. V.N.Subramaniyam] is held as follows:

> 16. This Court in Jayaram Mudaliar v. Ayyaswami [(1972) 2 SCC 200] (paras 42 to 44) quoted with approval a passage from Commentaries on the Laws of Scotland, by Bell, which explains the doctrine of lis pendens: (SCC p. 217, para 43)
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> "43. … Bell, in his Commentaries on the Laws of Scotland, said that it was grounded on the maxim: 'Pendente lite nibil innovandum'. He observed:
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> 'It is a general rule which seems to have been recognized in all regular systems of jurisprudence, that during the pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.'"
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> (emphasis supplied)
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> 17. Section 52 of the Transfer of Property Act, 1882 (for short "the TP Act") incorporates the doctrine of lis pendens and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject-matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such a suit or proceeding. The section is based on the principle:

> "41. … '… that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.'" (Bellamy v. Sabine ER p. 849)
>
> Quoted with approval by this Court in Vinod Seth v. Devinder Bajaj. (SCC p. 20, para 41)
>
> 18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.
>
> "12. … The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." (Sanjay Verma v. Manik Roy SCC p. 612, para 12.)"

It is made clear from the judgment that the subject matter of the suit in an immovable property cannot be transferred or otherwise dealt with so as to affect the rights of any other party to such a suit. If any such alienation is made, the validity of transfer would depend on the outcome of the suit.

13. The suit in O.S.No.142 of 2003 was decreed in favour of the respondent. Subsequently, the respondent filed E.P.No.59 of 2008 for execution of sale deed and sale deed was also executed. As per the order passed in E.A.No.182 of 2009, delivery of the suit property was also handed over to the respondent. Thus, it is clear that suit proceedings are pending relating to the suit properties and other properties before the Court from 1981. More particularly, the suit for specific performance was pending

from 2003 in O.S.No.142 of 2003. The suit property was purchased by the appellant from Gopal on 27.01.2005, during the pendency of O.S.No.142 of 2003. This suit was decreed against Gopal and the decree passed in O.S.No.142 of 2003 culminated into a delivery of the property in favour of the respondent. Therefore, the sale in favour of the appellant on 27.01.2005 in respect of the suit property through Ex.A1 sale deed is hit by principle of lis pendens and he cannot claim any right in the suit property on the basis of this sale deed.

14. From the records produced by the Courts below, it is apparent that the appellant has not produced any single piece of evidence to show that he was in possession and enjoyment of the suit property on the date of filing of the suit. Therefore, both the Courts below found concurrrently that the appellant has not proved his claim of possession in the suit property on the date of filing the suit and dismissed the suit.

15. For the reasons aforestated, this Court finds no reason to take different view in the matter. There is no substantial question of law arises for consideration in this Second Appeal. Therefore, this Court confirms the judgment and decree dated 30.03.2021 passed in A.S.No.19 of 2018 on the file of the Additional Subordinate Court, Kallakurichi, confirming the judgment and decree dated 10.08.2017 passed in O.S.No.299 of 2011 on the file of the Principal District Munsif Court, Kallakurichi.

16. In conclusion, the second appeal is dismissed with the costs of respondent throughout. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Additional Subordinate Judge,
   Additional Subordinate Court,
   Kallakurichi.

2. The Principal District Munsif,
   Principal District Munsif Court,
   Kallakurichi.

Copy to
The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.P.Valliappan, Advocate, Sr.No.2678

S.A.No.1124 of 2021

SS(CO)
KKV/29/07/2022