



C.M.A(MD)No.387 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of pronouncing the Judgment |
|--------------------------------|----------------------------------|
| <b>16.08.2022</b>              | <b>26.08.2022</b>                |

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**C.M.A(MD)No.387 of 2015**

**and**

**M.P.(MD)No.2 of 2015**

S.Seenivasan

...Plaintiff/Decree Holder/Respondent  
Appellant

-Vs-

1.Senbagavalli

...3<sup>rd</sup> party/Petitioner/1<sup>st</sup> Respondent

2.A.Balamurugan

2.A.Kadarkarai

...1<sup>st</sup> and 2<sup>nd</sup> Defendants/Judgment Debtors/  
R-2 & 3/R-2 & 3

**PRAYER:** Civil Miscellaneous Appeal is filed under order 43 Rule 1(r) of the Civil Procedure Code, to set aside the order made in E.A.No.9 of 2009 in E.P.No. 29 of 2008 in O.S.No.3 of 2006, dated 18.09.2013, on the file of the II Additional District Court, Thoothukudi.

For Appellant : Mr.M.Suresh Kumar

For R-1 : Mr.S.Ramesh @ Ramiah

For R-2 :Mr.P.Santhoshkumar



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## **JUDGMENT**

This Appeal has been filed to set aside the order, dated 18.09.2013 in E.A.No.9 of 2009 in E.P.No.29 of 2008 in O.S.No.3 of 2006, on the file of the II Additional District Court, Thoothukudi.

2. The 3<sup>rd</sup> party/Claimant has filed an application in E.A.No.9 of 2009 in E.P.No.29 of 2008 in O.S.No.3 of 2006 on the file of the II Additional District Court, Thoothukudi, under Order 21 Rule 58 of the Civil Procedure Code to declare that the petitioner is the lawful owner of the schedule mentioed property and hence, allow the claim petition with reference to the schedule mentioned property alone shown as 1<sup>st</sup> schedule in O.S.No.3 of 2006 and the same was allowed on 18.09.2013. Against the said order, the Appellant/decrece holder is before this Court.

3. Heard on either side and perused the material documents available on record.



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4.The appellant has obtained a decree in favour of him and against the respondent Nos.2 & 3 herein. Since the respondent Nos.2 & 3 have not complied with the Judgment and Decree passed by the trial Court, the appellant has filed a execution petition in E.P.No.29 of 2008. During the pendency of the said E.P., the 1<sup>st</sup> respondent herein had filed an application in E.A.No.9 of 2009, claiming that the first respondent is a bonafide purchaser. The Executing Court has allowed the claim application filed by the 1<sup>st</sup> respondent herein. Aggrieved over the said order, the decree holder is before this Court as appellant by way of this Civil Miscellaneous Appeal.

5.According to the appellant, he has entered into an agreement with the respondent Nos.2 & 3 and also obtained decree in favour of him.

6.According to the first respondent, the so called bonafide purchaser stated that she is a bonafide purchaser for valuable consideration, without knowing the defect of title or agreement or encumbrance.



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7. The case of the first respondent is that she has purchased the petition mentioned property, by way of a registered sale deed, dated 22.12.2005 and she is a bonafide purchaser for valuable consideration and paid a sum of Rs.4,50,000/-to the 2<sup>nd</sup> respondent. The respondent Nos.2 & 3 have handed over the original title deed and the original Will and they have colluded with the appellant and created an anti-dated sale agreement to sell the suit properties and other properties owned by the 3<sup>rd</sup> respondent.

8. The suit in O.S.No.3 of 2006 filed on 09.02.2006, but the sale deed was executed in favour of the 1<sup>st</sup> respondent as earlier as on 22.12.2005. The appellant did not impleaded the 1<sup>st</sup> respondent herein as a party to the suit. The 1<sup>st</sup> respondent knowing the fact, since she is in possession, only at the time of taking delivery and therefore, she has filed a claim petition in E.A.No.9 of 2009. Therefore, she is a bonafide purchaser for valuable consideration, without knowing the sale agreement Ex.A.1 in the suit. The 1<sup>st</sup> respondent is in possession of the property. Therefore, the Executing Court has rightly accepted the contention of the 1<sup>st</sup> respondent and allowed the said execution application in



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E.A.No.9 of 2009. There is no merit in the appal. The learned counsel appearing for the 1<sup>st</sup> respondent relied upon the Judgment reported in **2014-4-L.W. 686**, in the case of ***K.Rajendran Vs. K.Chinnappa Gounder and another.***

9. The specific case of the appellant is that he entered into an agreement with respondent Nos.2 & 3. Though, they denied the same, he got decree in his favour.

10.The respondent Nos.2 & 3 are the brothers. The 1<sup>st</sup> respondent/claim petitioner is the cousin sister of the respondent Nos.2 & 3 and they are residing under the same roof, namely, in the suit property.

11.The 1<sup>st</sup> respondent/claim petitioner's claim is only, in order to defeat the right of the appellant, she colluded with the respondent Nos.2 & 3 and created the document Ex.P.1 sale deed. Though, they have stated that she got an agreement and encumbrance certificate prior to the agreement of the appellant with the respondent Nos.2 & 3, she has not produced the agreement and encumbrance certificate. Therefore, she cannot be treated as a bonafide purchaser.



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The 1<sup>st</sup> respondent is not a stranger and she is aware of the agreement between the appellant and respondent Nos.2 & 3. Since all are residing under the same roof she knows everything and in order to defeat the right of the appellant, they collusively have created the document, as if the 1<sup>st</sup> respondent purchased one of the items mentioned in the suit from respondent Nos.2 & 3, without any notice of agreement for valuable consideration. Though, the sale deed was prior to the filing of the suit, but, subsequent to Ex.A.1 agreement. Therefore, the doctrine of *lis pendens* strictly not arises. Since no suit was pending on the date and it was not hit by *Section 52 of the Transfer of Property Act*. However, the 1<sup>st</sup> respondent knows about the agreement with the appellant and respondent Nos.2 & 3 and therefore, she is not a bonafide purchaser for valuable consideration without any notice of agreement. The trial Court has failed to appreciate the same and allowed the claim petition. Therefore, the conduct of the parties already decided in the suit, pending suit the respondent Nos.2 & 3 have not intimated either orally or any in writing or even in the pleadings and documents and even in evidence putforth by the respondent Nos. 2 & 3. In the suit, they never disclosed about the sale of the property. Only, after filing, the claim application by the 1<sup>st</sup> respondent, the appellant came to know about the sale and therefore, no occasion to implead



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her in the suit and she is not a bonafide purchaser and the claim petition is to be dismissed.

12. The Executing Court has failed to appreciate and also looked into the conduct of the respondents herein and wrongly allowed the application.

13. Though, the respondent Nos. 2 & 3 have filed the appeal as against the Judgment and decree passed in original suit and the appeal also taken up together today along with this Civil Miscellaneous Appeal. The appeal is also dismissed on the ground that the appellants in A.S(MD) No.133 of 2010 have not come to the Court with clean hands and agreement of sale Ex.A.1 was proved as genuine and appellant herein has proved he was ready and willing to perform his part of contract.

14. Pending appeal, the appellant herein has filed E.P and pending E.P. the 1<sup>st</sup> respondent herein has filed an application in E.A. No.9 of 2009 claiming that she is a bonafide purchaser and therefore, the E.P. has to be dismissed in respect of the property mentioned in the claim petition, which is, item No.1 of the suit schedule property.



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15. A careful reading of the entire materials available on record, there is no material to show that the respondent Nos. 2 & 3, at any point of time, they informed about the sale with the 1<sup>st</sup> respondent herein, to the appellant.

16. The points to be decided in the appeal are as follows:

*Whether the 1<sup>st</sup> respondent is a bonafide purchaser for valuable consideration without notice?*

17. **Point No.1**

The specific case of the appellant is that the 1<sup>st</sup> respondent is not a bonafide purchaser for valuable consideration without notice of agreement. The respondent Nos. 2 & 3 never revealed in the suit that they have executed the sale deed in favour of the 1<sup>st</sup> respondent and none of the documents filed before the suit in O.S.No.3 of 2006. The respondent Nos.2 & 3 have not stated that they have informed to the appellant regarding the sale of the property to the first respondent. All the respondents are residing under the same roof from their childhood days. The 1<sup>st</sup> respondent aware of the sale agreement and in order to defeat the right of the appellant collusively they have created the document,



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namely; sale deed as if respondent Nos.2 & 3 sold the one of items of the suit properties. Therefore, the 1<sup>st</sup> respondent is not a bonafide purchaser.

18. The case of the 1<sup>st</sup> respondent is that, she is not aware about the agreement between the appellant and respondent Nos. 2 & 3, she was not a party to the agreement. There is no occasion to know about the agreement and therefore, she is a bonafide purchaser. Since the original document and possession was handed over to the 1<sup>st</sup> respondent, there was no occasion to raise any doubt about any encumbrance or any suit between the respondent Nos. 2 & 3 and the appellant. Therefore, as a bonafide purchaser, she is entitled to the 1<sup>st</sup> item of the suit property and her interest is to be protected. Therefore, the Executing Court has rightly appreciated that the 1<sup>st</sup> respondent has proved her claim, whereas, on the side of the appellant and other respondents no one has been examined as witness and produced any documents. Therefore, the trial Court has rightly allowed the claim petition and there is no merit in the appeal.

19. Though, the 1<sup>st</sup> respondent has stated that she is a bonafide purchaser, she has specifically stated that she has entered into an agreement of



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sale with the respondent Nos. 2 & 3, prior to the agreement Ex.A.1 between the appellant and the respondent Nos. 2 & 3, dated 21.11.2005. Though, the 1<sup>st</sup> respondent has stated to have entered into an agreement with the respondent Nos.2 & 3 on 05.10.2005 itself, which is prior to the agreement of the appellant and also she has stated that she has obtained encumbrance certificate. Whereas, he has also admitted that she has not produced either the alleged agreement or the encumbrance certificate said to have been obtained by her from the respondent Nos.2 & 3

20. Further, it is the case of the 1<sup>st</sup> respondent that she has paid advance amount of Rs.1 lakh on 05.10.2005, subsequently, she has also paid a sum of Rs.3,50,000/-, totally paid a sum of Rs.4,50,000/-, but, whereas in her sale deed, Ex.P.1, it is mentioned as Rs.1,84,000/-. Though she has stated that the respondent Nos. 2 & 3 gave an acknowledgment and receipt for them, but they have not been examined as witnesses. The 1<sup>st</sup> respondent has not proved Ex.P.1 and admitted that the alleged agreement was also not a registered one.



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21. Further, on a careful perusal of the records, admittedly, the 1<sup>st</sup> respondent is a close relative of the respondent Nos. 2 & 3, namely; cousin sister. From the evidence of P.W.1, the 1<sup>st</sup> respondent has clearly admitted that from childhood days all are residing under one roof, namely, the suit properties. When the respondent Nos. 2 & 3 specifically taken a defense in the main suit that on 05.12.2005 the appellant and four other persons came to the house of the respondent Nos. 2 & 3, in the morning about 07.00 a.m., and threatened them and obtained signatures by coercion and also they have given a complaint to the police, when the 1<sup>st</sup> respondent admitted that she is also residing in the same roof from childhood stage along with the respondent Nos. 2 & 3 and hence, she might have been known about the incident, if the incident is true. Therefore, it is not believable that, when a person is residing under the same roof and she has not stated anything about the incident alleged to have taken place on 05.12.2005. Even otherwise person residing under the same roof with a good relationship, however, the suit filed in the year of 2006 the claim petition filed in the year of 2009 for more than three years the person not aware of the activities of the inmates is not believable. Hence, the claim of the 1<sup>st</sup> respondent that she is a



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bonafide purchaser for valuable consideration without any notice, is not acceptable.

22. Though, her sale is not strictly hit by *lis pendens*, the conduct of the 1<sup>st</sup> respondent clearly shows that in order to defeat the right of the appellant, taking advantage of the closeness of the relations and taking advantage of the 1<sup>st</sup> respondent is also residing in the said property and they created the document Ex.P.1 sale deed. Since the 1<sup>st</sup> respondent is residing with the respondent Nos. 2 & 3 under one roof, there is a possibility of knowing the transaction between the appellant with the respondent Nos. 2 & 3. Therefore, the 1<sup>st</sup> respondent is not a bonafide purchaser and she has paid a sum of Rs.4,50,000/-. In the suit in O.S.No.3 of 2006, the respondent Nos.2 & 3 have stated that the value of the property is Rs.10 lakhs and the appellant in order to scrap the property tried to get lesser value of Rs.6 lakhs. Therefore, the respondents have created Ex.P.2 for the purpose of claim application. Once the 1<sup>st</sup> respondent admitted that all the respondents are residing under one roof and since they have got closeness in the relationship and definitely they could have informed about the sale agreement with the appellant and also when the appellant came along with other persons on



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05.12.2005 at about 07.00 a.m., So, nothing was reflected in the documents filed by them.

23. Therefore, this Court, while closely scrutinized the oral and documentary evidence and conduct of the parties, found that the 1<sup>st</sup> respondent is not a bonafide purchaser for valuable consideration without notice of agreement.

24. Therefore, under such circumstances, this Civil Miscellaneous Appeal is allowed, by setting aside the order, dated 18.09.2013 in E.A.No.9 of 2009 in E.P.No.29 of 2008 in O.S.No.3 of 2006 on the file of the II Additional District Court, Thoothukudi. The Executing Court is directed to proceed with the E.P. and dispose of the matter, on merits in accordance with law, within a period of one month, from the date of receipt of copy of the order. No Cost. Consequently, connected miscellaneous petition is also closed.

**26.08.2022**

Index : Yes / No

Internet : Yes / No

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To

1.The II Additional District Court,  
Thoothukudi.

2.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VELMURUGAN, J.**

*ksa*

**Judgment made in**  
**C.M.A(MD)No.387 of 2015**

**26.08.2022**