



S.A.No.456 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.456 of 2005

Ragupathy

...Appellant

Vs

1.Seetharaman (Died)

2.Inayathulla

3.Ramani

4.Gowri

5.Ramesh

6.Siva

... Respondents

[RR3 to 6 brought on Record as LR's of
the deceased first respondent vide
Order of Court dated 24.02.2021 made
in C.M.P.No.1228 to 1230 of 2011
in S.A.No.456 of 2005 (TKRJ)]

Prayer: Second Appeal is filed under Section 100 of C.P.C against the
Judgement and Decree in A.S.No.2 of 2002, on the file of the Principal



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District Judge, Villupuram District, Villupuram, dated 02.10.2004 in confirming the judgment and decree in O.S.No.167 of 1998 on the file of the Principal District Munsif Court, Tirukoilur dated 14.08.2001.

For Appellant : Mrs.R.Abirami

For Respondents : Mr.P.Dinesh Kumar [R3]

R1 – Died – Steps Taken

R2 – Died (T/E)

JUDGMENT

The appellant herein is the plaintiff and the respondents herein are the defendants before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

The brief facts of the case are :

3. The plaintiff has filed the suit for the relief of declaration to declare the sale deed dated 01.09.1994 executed by the 2nd defendant in favour of the 1st defendant as null and void, since the same was executed



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subsequent to the attachment made in O.S.No.15 of 1992 in E.P.No.470 of 1993.

4. The plaintiff submits that the suit property was originally belonged to the 2nd defendant, and that against the 2nd defendant, the plaintiff has instituted a suit. In pursuance of the decree, while executing the same in E.P.470 of 1993 there was an attachment against the suit property on 01.09.1994. However, ignoring the order of attachment, the 2nd defendant has executed the sale deed in favour of the 1st defendant on 01.09.1994. Therefore, according to the plaintiff the said sale deed is null and void by virtue of Section 64 of CPC. Hence, prayed to decree the suit.

5. Resisting the above contention, the defendant would submit that prior to the sale deed dated 01.09.1994, there was an agreement dated 13.08.1994, and that the sale was only in pursuance of the agreement. It is further submitted that the attachment was made subsequent to the agreement, and further the said attachment was not intimated to the respondents. Therefore, the 1st defendant submitted that being the *bona-fide*



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purchaser for valuable consideration, the prayer sought for by the plaintiff for declaration is liable to be dismissed.

Evidence and documents:-

6. On the side of the plaintiff, he himself was examined as PW 1 and Mr.Ramasamy Nattar was examined as PW2. On their behalf Exs.A1 to A12 were marked. On the side of the defendants, Mr.Seetharaman was examined as DW1, Mr.Govindarajan was examined as DW2 and and Mr.Manick Basha was examined as DW3, and Exs.B1 to B10. Were marked.

Findings of the Court below:

7. While perusing the judgment of the trial Court, as well as the First Appellate Court, both the Courts have concurred with the submissions made by the 1st defendant and found that the 1st defendant is the *bona-fide* purchaser for the valuable consideration and dismissed the suit. Challenging the same, the plaintiff has preferred this appeal before this Court.



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8. This Court while admitting the second appeal has framed the following substantial questions of law :

"1. Whether the Courts below are right in recognising the transaction under Exs.B4 and B5 which are hit by lis pendens and Section 52 of the Transfer of Property Act?

2. Whether a private sale made by the 2nd defendant in favour of the 1st defendant is not void under Section 64 of the Code of Civil Procedure?"

Submissions of either side counsel:

9. The learned counsel for the plaintiff would submit that, during the subsistence of the attachment of the suit property, the 2nd defendant has sold the same to the 1st defendant which is hit by Section 64 of CPC. For ready reference, this Court deems it appropriate to extract Section 64 of CPC :

"64. (1) Where an attachment has been made, any



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private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

Explanation—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets."

10. According to Section 64 of CPC, if any private transfer takes place after the attachment, it become null and void. However, if such transfer was made in pursuance of any contract, and that if such contract is prior to attachment, then such private transfer will be saved as the same would come within the exception to Section 64 of CPC.

11. First of all, the admitted facts are the attachment was ordered on



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01.09.1994, and there is no proof as to the reporting of the attachment to the Sub-Registrar Office. Besides, here the defendants relied upon to the agreement dated 13.08.1994 which is marked as Ex.D4. Therefore, it is submitted by the learned counsel for the defendant that, since the date of agreement is prior to the date of attachment, their sales would be protected by the very same provision under Section 64 of CPC.

12. In this regard, the learned counsel for the defendant invited the attention of this Court to the provision under Section 64(2) of CPC. As per Section 64(2) of CPC, if any contract, precedes to the attachment, then such transaction is saved from the rigour of Section 64(1) of CPC. In our case both the Courts below recorded the findings of fact, that the impugned sale deed dated 01.09.1994, preceded by the contract for transfer.

13. Apart from the submission made by the learned counsel for the defendant according to Ex.A1, sale certificate, the property which was auctioned to the plaintiff was only 1/3rd share of the A- Schedule Property.



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However, while describing the property of the 2nd defendant, the plaintiff has given a specific boundary which is also contrary to the sale certificate.

14. Therefore, this Court is of the view that the findings of fact recorded by both the Courts below that the sale deed stands in the name of the 1st defendant is valid and that he is *bona-fide* purchaser is well merited. There are no materials to deviate from the said findings. Therefore, the substantial questions of law are answered in favour of the respondent/defendant.

15. In the result, this Second Appeal is dismissed by confirming the Judgement and Decree passed by both the Courts below. No order as to costs.

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Index : Yes/No
Speaking order/non-speaking order
ssn

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To

1. The Principal District Judge,
Villupuram District,
Villupuram.
2. The Principal District Munsif Court,
Tirukoilur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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C.KUMARAPPAN, J.,

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