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S.A.No.456 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

S.A.No.456 of 2019

N. Perumal ... Appellant

Vs.

R.Jayapal ... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 31.07.2013 in A.S.No.83 of 2012 on the file of the learned Subordinate Judge, Namakkal, confirming the Judgment and Decree dated 06.07.2012 in O.S.No.93 of 2006 on the file of the learned Principal District Munsif, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondent : Mr.S. Senthil

JUDGMENT

The defendant is the appellant. The parties are being referred to as their rank in the suit.



2.The plaintiff presented O.S.No.93 of 2006 for the relief of declaration and injunction. The declaratory relief was that the decree obtained by the defendant in O.S.No.476 of 1995 dated 30.08.2001 is not binding and for the consequential relief of injunction.

3.The facts in the case are not in dispute. The property originally belonged to one Salem District Tamil (Strict) Baptist Trust Society. The said Society had alienated the property in favour of one Rani on 09.10.1991. The said Rani had after the purchase given power of attorney in favour of one V.K.Ramanathan on 19.04.1995. The said Ramanathan, as the power of attorney of the said Rani, sold the property to one Perumal, son of Kuzhanthaivel, on 07.06.1995. The said Perumal gave power of attorney in favour of one Anand on 24.10.1997. The said Anand sold the property to the plaintiff on 05.03.2004.

4.The defendant also claims the property from the Salem District Tamil (Strict) Baptist Trust Society. According to him, the



Society had entered into an Agreement of Sale on 15.11.1987. The value of the property as per the Sale Agreement was Rs.40,000/-. The Agreement was renewed on 14.11.1990, 25.10.1992 and 25.10.1993. According to him, since the Society did not execute the Sale Deed he presented a suit for specific performance on the Agreement of Sale in O.S.No.476 of 1995. In this suit, he has obtained an *ex parte* decree and on that basis, he filed an Execution Petition in R.E.P.No.243 of 2004 and obtained a Sale Deed in his favour on 05.03.2004.

5.During the course of trial, the plaintiff examined himself as PW1 and one David Livingston as PW2. He marked Ex.A.1 to Ex.A.22. On the side of the defendant, the defendant Perumal, son of Nalliyanna Gounder examined himself as DW1 and marked Ex.B.1 to Ex.B3.

6.The trial Court granted the declaration but denied the permanent injunction. Against the denial of permanent injunction, no Cross Appeal was filed and therefore, that has become final.



Insofar as the declaratory relief is concerned, the Trial Court came to the conclusion that the plaintiff ought to have impleaded Rani, the purchaser of the property from the Salem District Tamil (Strict) Baptist Trust Society in 1991 and since she was not impleaded the decree will not bind the plaintiff.

7.This has been confirmed by the Lower Appellate Court.

8.Aggrieved by the Judgment and Decree of the Courts below, the present Second Appeal has been presented.

9.The learned counsel for the appellant would urge the following Substantial Question of Law:

"Whether Ex.A.22 - Agreement of Sale in favour of the defendant is binding on the plaintiff and his predecessor in title?"

10.Heard the learned counsel appearing on either side and perused the papers.



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11.The narration of the above said facts would go to show that by that time the suit in O.S.No.476 of 1995 had been filed, the defendant therein had alienated the property in favour of Rani. Therefore, on the date of presentation of the Plaint in the suit for specific performance, Rani had subsisting right in the property. However, she was not made a party to the proceedings.

12.In a suit for specific performance, a purchaser of the property prior to the presentation of the suit is proper and necessary parties. A decree passed in the absence of such parties is not binding on them. The Society having alienated the property in favour of Rani in 1991, she ought to have been made a defendant in the suit. This is because precious right has been given to such a person who has purchased the property subsequent to the Agreement. The defence that she is a bonafide purchaser for value without notice of the Agreement is available to the purchaser. That right cannot be defeated by obtaining an *ex parte* decree and seeking to execute the



same against the third parties, who claim under the purchaser of the property, prior to the presentation of the suit for specific performance.

13.Apart from that, the Courts below have entered a finding of fact that the Agreement of Sale itself is a collusive one. While I do not agree with the other finding that the Sale Deed has not been attested, the points still remain that the defendant has not managed to convince the Courts below that the Agreement was true and genuine.

14.I take strength on the abovesaid position of Law that the purchaser of the property after the Agreement of Sale but before the filing of the suit has to be impleaded as proper and necessary party to the suit. I rely upon the Judgments in **Thangavel Chettiar and another v. Kuppu Bai and another (1964) (77) L.W. 185** and that of the Supreme Court in **Durga Prasad v. Deep Chand (1954 (1) MLJ SC 60)**. The defendant, having failed to implead the proper and



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necessary parties to the suit, is not entitled to take a plea that Ex.A.22

- Agreement of Sale is binding on the purchaser of the property.

Therefore, the Substantial Question of Law suggested by the learned counsel appearing for the appellant does not arise for consideration.

Accordingly, this Second Appeal is dismissed. No costs.

19.07.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

mps

To

1.The Subordinate Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.



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V. LAKSHMINARAYANAN, J.

mps

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