BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.03.2023

PRONOUNCED ON : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.985 of 2017

Prithiviraj ... Appellant

vs.

1.A.Muneeswaran

2.V.Velladurai ....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(ja) of C.P.C. to set aside the decreetal order dated 29.04.2016 passed in E.A.No.105 of 2011 in E.P.No.12 of 2009 in O.S.No.10 of 2008 on the file of the Principal District Judge, Tirunelveli.

For Appellant : Mr.G.Prabhu Rajdurai

For R1 : Mr.H.Arumugam

R2 : Dismissed

J U D G M E N T

The above appeal has been filed by a third party to the suit in O.S.No.10 of 2008 on the file of the Principal District Court, Tirunelveli challenging the dismissal of his application under Order 21 Rule 101 of C.P.C seeking to deliver possession of the suit schedule property.

Factual Matrix:

2.Admittedly one V.Velladurai is the owner of the suit schedule property. It is alleged by the plaintiff/Muneeswaran that the said Velladurai had executed a registered sale agreement on 13.08.2002 in his favour for a sale consideration of Rs.9,00,000/-. Alleging non performance of the said sale agreement, the suit for specific performance was filed by Muneeswaran on 29.01.2008 in O.S.No.10 of 2008 for the relief of specific performance.

3.The defendant had remained exparte and an exparte decree was passed on 09.09.2008. The plaintiff had filed E.P.No.12 of 2009 for execution of the sale deed and the judgement debtor had remained exparte and the sale deed was executed by the Court. Thereafter, the plaintiff had filed E.A.No.152 of 2010 for taking delivery of the property in which the judgement debtor had remained exparte and an order of delivery was passed. According to the plaintiff, the delivery was taken on 15.09.2010.

4.The present appellant who is the third party to the said suit had filed E.A.No.105 of 2011 under Order 21 Rule 101 of C.P.C seeking repossession of the property from the decree holder. The said application was dismissed by the Executing Court. Challenging the same, present appeal has been filed.

5.Contentions of the learned counsel appearing for the appellant

(i).The original owner of the property namely Velladurai had executed a registered general power of attorney in favour of Irulappa Thevar who is the father of the appellant on 24.10.2002. Thereafter, on 24.03.2003, a cash receipt was issued by Velladurai in favour of Irulappa Thevar referring to a sale agreement. Based upon the said sale agreement, Irulappa Thevar had satisfied the money decree suffered by Velladurai in O.S.Nos.77 and 78 of 2005 on the file of the District Munsif Court, Sivagiri.

(ii).On 10.01.2007 an unregistered sale agreement was executed by the said Velladurai in favour of Irulappa Thevar. On 26.01.2008 based upon the power of attorney dated 24.10.2002, the said Irulappa Thevar had executed a sale deed in favour of his son namely Prithiviraj on 26.01.2008. The said sale deed was registered on 05.02.2008.

(iii). The suit for specific performance was filed by the agreement holder namely Muneeswaran only on 29.01.2008. Even before the said date, a sale deed has been executed by the said Irulappa Thevar in favour of the present appellant.Therefore, the registration of the sale deed relates back to the date of execution namely 26.01.2008.

(iv).In view of Section 47 of the Registration Act, whenever a sale deed is registered, it relates back to the date of execution of the sale deed. Therefore, it should be construed that the sale deed was executed even prior to the filing of the suit for specific performance. The suit for specific performance has been filed without impleading the appellant herein and therefore, the decree is not executable.

(v).The learned counsel for the appellant had further contended that the possession of the property was handed over to the father of the appellant on 24.03.2003 itself. There is a registered power deed in favour of the father of the appellant on 24.10.2002. Without verifying the said document, the decree holder has purchased the property and hence, he cannot be considered to be a bonafide purchaser for valuable consideration.

(vi). The possession of the property originally was with appellant's father and later, the appellant has taken possession of the property. Therefore, the Amin report that possession was handed over to the decree holder in only a paper delivery and that will not confer any right upon the decree holder.

(vii).The power of attorney and the sale agreement in favour of the appellant's father are of the year 2002 and 2003 and only to evade execution of sale deed, the suit sale agreement has been created in favour of the decree holder on 13.08.2007.

(viii). The learned counsel for the appellant had relied upon the judgement of the Hon'ble Supreme Court reported in ***(1991) 1 SCC 715 (Hamda Ammal Vs. Avadiappa Pathar and 3 others)*** to impress upon the Court that where a sale deed was executed prior to attachment order but registered subsequently, the sale deed will prevail over the order of attachment in view of Sections 47 and 49 of the Registration Act.

(ix).The learned counsel for the appellant had further contended that the Executing Court had not properly appreciated Exhibits P1 and P5 and has arrived at an erroneous finding that Exhibit P3 document was created subsequently by Velladurai.

(x).The learnedcounsel had further contended that the mortgage discharge receipts have been misinterpreted by the Executing Court to arrive at a finding that the mortgage amount was directly paid by the mortgagor and not by the agreement holder.

(xi).The learned counsel had further attacked the findings of the Executing Court that Exhibits P1 and P5 have been created subsequent to the filing of the specific performance suit merely on the assumption that the said Velladurai and the appellant's father are close relatives.

(xii).The Executing Court had arrived at an erroneous finding that Exhibit P1 was ante-dated without any basis whatsoever. In view of the judgement of the Hon'ble Supreme Court reported in ***(1991) 1 SCC 715 (Hamda Ammal Vs. Avadiappa Pathar and 3 others),*** the findings of the Executing Court that Exhibit P1 is hit by *lis pendens* is not legally sustainable.

(xiii).He had further contended that the Executing Court has arrived at a finding that the appellant had got knowledge of dispossession and the petition of repossession having been filed beyond 30 days, the present appeal is barred by limitation. He pointed out that Article 128 of Limitation Act is not applicable to the facts of the present case, but only Article 65 of the Limitation Act is applicable.

(xiv).The appellant had become owner of the property even before filing of the specific performance suit and therefore, the suit for specific performance filed as against the said Velladurai who did not have any title is not valid and the decree is said to have been executed as against the person who is not the owner of the property. Therefore, the appellant is entitled to take repossession of the property from the decree holder whose decree is invalid in the eye of law.

6.Contentions of the learned counsel appearing for the first respondent.

(i). The decree holder has entered into a registered sale agreement on 13.08.2007 and a telegram was sent on 25.01.2008 to the owner of the property calling upon him to execute the sale deed. The suit for specific performance has been filed on 29.01.2008 and an order of interim injunction restraining the owner of the property from encumbering the property was granted.

(ii).Only after receipt of the telegram to execute the sale deed, another sale deed is said to have been executed in favour of the present appellant on 26.01.2008, but it was registered only on 05.02.2008 which is 7 days after filing of the suit and grant of interim injunction.

(iii).He had further contended that the sale deed was actually executed on 05.02.2008, but it was antedated as 26.01.2008 in order to get over the doctrine of *lis pendens.*

(iv).The learned counsel for the respondent had further contended that the power of attorney of the year 2002 was not reflected in the encumbrance certificate when he had verified the same before entering into the sale agreement.

(v).He had further contended that the owner of the property namely Velladurai was present at the time when delivery was taken by the decree holder and he has signed in Exhibit A11. Therefore, the contention of the appellant that the possession was with him on the said date is not factually correct.

(vi).The learned counsel for the respondent had further contended that the balance sale consideration was deposited by him and the owner of the property namely Velladurai had withdrawn the said amount from the Court and only thereafter, the present proceedings have been initiated by the appellant.

(vii).The learned counsel had further contended that one Veeraiah who is also a signatory to the Amin report was not examined on the side of the appellant herein to establish that the possession was taken only from the appellant herein and not from Velladurai.

(viii).The learned counsel had further contended that the sale deed was executed and registered only on 05.02.2008, but it was ante-dated only to get over the doctrine of *lis pendens*.

(ix).The learned counsel for the respondent had further contended that the owner of the property had remained exparte in the suit and in the execution proceedings.

(x).The learned counsel for the respondent had relied upon the judgment of the Hon'ble Supreme Court reported ***in (2010) 13 SCC 128 (Har Narain (Dead) by Lrs. Vs. Mam Chand (Dead) by Lrs. and others)*** where the Hon'ble Supreme Court had as occasion to consider Section 47 of the Registration Act and Section 52 of the Transfer of Property Act. In the said judgment, the Hon'ble Supreme Court had pointed out that only on registration of the sale deed, the sale becomes complete. Therefore, when the sale deed was registered on 05.02.2008, sale got completed only on the said date which is after the date of filing of the suit and hence, the same is hit by doctrine of *lis pendens*. Hence, he prayed for dismissal of the appeal.

7.I have considered the submissions made on either side and perused the materials available on record.

8.There is no dispute that one Velladurai is the owner of the property. The said Velladurai had executed a registered sale agreement in favour of one Muneeswaran on 13.08.2007. Seeking execution of sale deed based upon the said sale agreement, a telegram has been sent by Muneeswaran to Velladurai on 25.01.2008 which is marked as Exhibit A4 in the suit. It could be seen from the records that the suit for specific performance has been filed on 29.01.2008.

9.It is the contention of the appellant/third party that the sale deed was executed in his favour on 26.01.2008 and it was registered on 05.02.2008. Therefore, the issue that requires to be decided is whether the sale deed said to have been executed on 26.01.2008 and registered on 05.02.2008 in favour of the appellant will be hit by the doctrine of *lis pendens* in view of filing of the suit for specific performance on 29.01.2008 or not.

10.The Hon'ble Supreme Court in a judgment reported ***in (2010) 13 SCC 128 (Har Narain (Dead) by Lrs. Vs. Mam Chand (Dead) by Lrs. and others)*** in Paragraph No.23 has held as follows:

"23.In view of the above, we reach the inescapable conclusion that the sale executed by respondent No.1 in favour of respondent Nos. 2 to 6 on 2.8.1971 could not be termed as a complete sale until the document got registered on 3.9.1971. In view of the provisions of Section 47 of the Act, 1908 the effect of registration would be that registration would relate back to the date of execution but it does not mean that sale would be complete in favour of respondent Nos. 2 to 6 prior to 3.9.1971 i.e. the date of registration of the sale deed. In view of the above, as sale stood completed during the pendency of the suit, doctrine of lis pendens is applicable in the facts and circumstances of the case. The courts below failed to appreciate that the fiction created by Section 47 of the Act 1908, itself is a consequence of registration of the sale deed."

11.In view of the above said judgement of the Hon'ble Supreme Court, it is clear that the sale will take effect only from the date of the registration of the sale deed. Therefore, the crucial date to find out whether a document is hit by the doctrine of *lis pendens* or not, is the date of registration, if the document is a compulsorily registrable document. In the present case, the sale deed having been registered on 05.02.2008, 7 days after the date of filing of the suit, is clearly hit by the doctrine of *lis pendens.*

12. Section 47 of Registration Act is extracted as follows:

> "**47.Time from which registered document operates**. —A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

13.As per Section 47 of the Registration Act, on registration, a document shall operate from the date and time of its execution itself and not from the date and time of its registration. The object of the said section is only to create a legal fiction regarding the date on which the title passes. The main object of Section 47 of the Registration Act is only to decide about the priority of two competing documents executed by the same person relating to the same property. In such circumstances, the date and time of execution of the document will decide the passing of title, once the registration is effected on a later date. Whether the said Section 47 of the Registration Act, relating to the doctrine of relation back can be pressed into service to evade Section 52 of the Transfer of Property Act is the question to be decided.

14.Section 52 of the Transfer of Property Act is based upon a public policy that once a suit is filed pertaining to a property, any attempt to alienate or encumber of the property should be discouraged. The subject matter of the suit should not be subjected to subsequent sale to a third person, otherwise litigation will not come to an end. Once a suit is filed relating to an immovable property before a competent civil Court, the property comes within the jurisdiction of the Court. Therefore, any private alienation which may attempt to remove the subject matter of litigation from the ambit of the Court should never be encouraged. The principles contained in Section 52 of the Transfer of Property Act are based on equity and good conscience. If any alienation/encumbrance is permitted during the pendency of the suit, it will be impossible to successfully terminate the proceedings and it will defeat the ends of justice.

15.The scope and object of Section 47 of the Registration Act is to accord priority to a document that was executed in a prior point of time. Therefore, even if a document is registered on a later date, it will take effect from the date when it was executed and not from the date and time of its registration. The very object of Section 47 of the Registration Act is to find out the time of passing of title from the vendor to the purchaser. Once the title had passed by way of execution of a document and the said document is registered on a later date, the sale takes effect from the date and time of execution itself. Therefore, it is clear that the object is to decide the priority of title between two private parties based upon the date and time of execution, irrespective of the date of registration. However, Section 52 of the Transfer of Property Act is based upon the public policy of avoiding multiple litigations and to restrict the power of encumbrance of the parties to the suit during the pendency of the proceedings, except with the permission of the Court. Therefore, Section 47 of the Registration Act dealing with priority of private rights can never be invoked in order to override the doctrine of lis pendens under Section 52 of the Transfer of Property Act which is based upon the public policy, equity and good conscience.

16.The decree holder has taken a specific stand that Exhibit P1 sale deed was actually executed and registered only on 05.02.2008, but it has been ante-dated as 26.01.2008. When there is a specific allegation with regard to ante-dating of a document, unless the beneficiaries of the said document establish that the document was actually executed on the date mentioned in the document, he cannot avail the benefit of Section 47 of the Registration Act.

17.Our High Court in a judgment reported in ***1996 (1) L.W. 622 (Krishnan Vs. Sivalinga Gounder & Another)*** in Paragraph No.18 has held that unless an explanation is offered by the purchaser to show why the registration was not effected on the date of the execution, he cannot get the benefit under section 47 of the Registration Act. The purchaser has to prove that the document was executed on the date reflected in the document by examining the attestors to prove the date of execution of the document when there is an allegation of ante-dating.

18.Our High Court in the judgement cited supra in Paragraph No. 11 of the judgement has further held that even though it can presume that the document was executed on the date mentioned in the document, it is only a weak presumption. When the execution is challenged on the allegation that it is ante-dated, it is for the beneficiary of the document to prove that it was executed on the date which is mentioned in the document. It is further held that even the said weak presumption will apply only between the parties to the transaction and not against the third person. In the present case, admittedly, the decree holder is a third party to the said Exhibit P1 sale deed and therefore, the benefit of legal presumption under Section 47 of the Registration Act cannot be invoked as against the decree holder who is a third party to the said document. Therefore, viewed from any angle, the question of projecting Section 47 of the Registration Act in order to get over the embargo under Section 52 of the Transfer of Property Act is not legally sustainable.

19.A perusal of Exhibit P1 sale deed dated 26.01.2008 reveals that it has been attested by one Arunachalam and R.Servai@ Karupiah. None of them have been examined to establish the date of execution of the document as 26.01.2008. No explanation has been offered by the appellant for not registering the document either on the same day or on the next day. In such circumstances, the contentions of the decree holder that the document was ante-dated has to be accepted and the benefit of Section 47 of the Registration Act cannot be availed by the appellant.

20.On the date when the sale deed is said to have been executed in favour of the appellant, had he verified, it would have been reflected in the encumbrance certificate that there was a registered sale agreement in favour of the decree holder on 13.08.2007. Therefore, it is clear that the appellant is not a bonafide purchaser for valuable consideration.

21.Section 19(b) of the Specific Relief Act protects only the transferee for value who had paid the consideration in good faith and without notice of the original contract. In the present case, there is a registered sale agreement in favour of the decree holder on 13.08.2007. A telegram has been sent to the owner calling upon him to execute the sale deed on 25.01.2008. The suit for specific performance was filed on 29.01.2008. The appellant claims title on the basis of a sale deed registered on 05.02.2008 said to have been executed by the original owner. Therefore, it is clear that the appellant/purchaser had notice about the original contract namely the registered sale agreement dated 13.08.2007 but has proceeded to purchase the property. Any omission to search the encumbrance register would amount to gross negligence. Therefore, the appellant cannot be considered to be a bonafide purchaser for valuable consideration without notice of the original contract.

22.The decree holder has taken possession of the property through Court on 15.09.2010 under Exhibit P11. A perusal of the said document would indicate that the original owner of the property namely Velladurai had signed the said document. In Paragraph No.12 of the claim petition, the appellant had contended that his employee one Veeraiah was present there on 15.09.2010. The said Veeraiah is also one of the attestors to the deliver receipt. The appellant had not chosen to examine the said

Veeraiah for reasons best known to him.

23.In view of the above said deliberations, it is clear that the sale deed dated 26.01.2008 in favour of the appellant is hit by the doctrine of *lis pendens* and the appellant is not a bonafide purchaser for valuable consideration without notice of the original sale agreement in favour of the decree holder. The appellant had failed to establish that the document was actually executed on 26.01.2008 and not on 05.02.2008. Therefore, this Court does not find any merit in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs.

27.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Principal District Judge,
Tirunelveli.

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.985 of 2017

27.04.2023