IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2024

PRONOUNCED ON : 26.07.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.S.No.332 of 2011
CMP.No.27281 of 2023
M.P.No.1 of 2011

1.M/s.Sri Amman Services,
Rep., by its Partner
Mr.Jeeva son of M.Pattu

2.J.Vedhavalli … Appellants/defendants 6 &7

Vs

1.Smt.Vasantha Bai ... Plaintiff/1st respondent
2.V.Thamba
3.S.Padmini
4.P.Devarajan
5.Ponnamma
6.Jayanthi
7.Nadiya
8.Sundar … Defendants/Respondents

PRAYER: This First Appeal has been filed Under Order 41 Rule 1 read with Section 96 of the Civil Procedure Code, to set aside the judgment and decree in O.S.No.11959 of 1996, dated 19.02.2010, passed by the

Additional District and Sessions Judge, (Fast Track Court No.III), Chennai 600 001 and pass such further order.

For Appellants : Mr.L.Rajasekar

For Respondents : Mr.S.Santhosh Kumar for
Mr.K.Azhaguraman for R1

Mr.A.Raj Prince for
Mr.A.Thiagarajan for RR5 to 8

No Appearance for RR2 to 3
R4 – Notice dispensed with

JUDGMENT

The instant appeal had been preferred by the defendants 6 and 7 who claim as the bonafide purchasers in lis pendens as being aggrieved by the Judgment and Decree of the Court Below which had decreed the suit for specific performance and directed the defendants to execute the sale deed and surrender the possession to the plaintiff on deposit of balance sale consideration by the plaintiff. For easy reference parties are referred as per their rank in the original suit.

2.The fact of the case which lead to the present Appeal is succinctly narrated hereunder. The defendants 1 to 3 and the plaintiff had ventured into an agreement of sale on 07.07.1994 to sell the suit property situated at Door No.91, Varadarajapuram, Poes Road, Teynampet, Chennai- 600 018 ad measuring about 2550 sq.ft. for a sale consideration of Rs.6,75,000/- with a condition to execute the sale deed on or before 15.10.1994. On the same date, the defendants 1 to 3 had received a sum of Rs.50,102/- as advance amount and agreed to receive the balance sale consideration of Rs.6,24,898/- on the date of registration. Thereafter, the defendants 1 to 3 turned deaf ears to execute the sale deed in favour of the plaintiff. Hence, the plaintiff sent a letter on 30.09.1994 and a legal notice on 08.10.1994 calling the defendants 1 to 3 to perform the contract. The defendants 1 to 3 replied to the letter dated 30.09.1994 on 07.10.1994 and stated that there is a cloud in the title and the defendants 1 to 3 were not in the position to perform their obligation under the agreement of sale. Hence, the plaintiff filed the suit for specific performance as against the defendants 1 to 3 and subsequently, the defendants 4 to 7 were impleaded as subsequent purchasers lis pendens and the defendants 8 to 11 were brought on record as the third defendant died lis pendens.

3.Considering the pleadings and evidence available before the Trial Court, the following issues were framed by the Trial Court to reach finality,

a) Whether the sale agreement dated 07.07.1994 is vitiated by fraud and misrepresentation?

b) Whether the suit is bad for non-joinder of necessary parties?

c) Whether plaintiff is entitled for the relief of specific performance?

d) To what other relief?

At the time of pronouncing judgment one more additional issue was framed as follows:

Whether the defendants 6 and 7 are the bonafide purchasers for value without notice?

4. After considering the facts and evidences submitted by both the parties before the Trial Court, the Trial Court decreed the suit as prayed for on the ground that the plaintiff had performed her part of contract in accordance in law and the defendants refused to perform the contract and sold the property to third party and failed to prove the fraud and misrepresentation as against the plaintiff.

5.Heard, Mr.L.Rajasekar, learned Counsel for the Appellants, Mr.S.Santhosh Kumar, learned Counsel appearing on behalf of Mr.K.Azhaguraman, learned Counsel for First Respondent and Mr.A.Raj

Prince, learned Counsel appearing on behalf of Mr.A.Thiagarajan, learned Counsel for Respondents 5 to 8.

6.Mr.L.Rajasekar, learned Counsel for the Appellants would contend that the suit property was acquired by one Mr.T.Munuswami and the first defendant through adverse possession. Thereafter, the said Mr.T.Munuswami and the first defendant was in the possession of the suit property along with their children i.e. the second and third defendant. After the death of the said Mr.T.Munuswami, the defendants 1 to 3 were become the absolute owners and actual possession of the suit property which is 2550 sq.ft. was enjoyed by the defendants 1 to 3 collectively. Thereby, the defendants 1 to 3 had entered into an agreement of sale with the plaintiff on 07.07.1994 for a sale consideration of Rs.6,75,000/- with a condition to conclude the sale on or before 15.10.1994. The defendants 1 to 3 were received a sum of Rs.50,102/- as advance amount on the same date of agreement and agreed to receive the balance sale consideration on the date of registration.

7.He contended that when the defendants denied to perform the contract, the plaintiff has filed a suit for specific performance as against the defendants 1 to 3 originally in C.S.No.1570 of 1994 on the file of this

Hon'ble Court and subsequently, the suit was transferred to the file of City Civil Court, Chennai and trail was conducted before the Hon'ble III Fast Track Court, Chennai. In such circumstances, the defendants 1 to 3 sold the suit property to fourth defendant with the permission of the Court through Ex. A6 to Ex. A8. Further, the suit property was mutated from fourth defendant to fifth defendant through sale deed Ex.B9. Moreover, he put forth that the sixth defendant is a partnership firm represented by one Mr.Jeeva and seventh defendant. The defendants 6 and 7 purchased the suit property from the fifth defendant through sale deed Ex.B2 for a sale consideration of Rs.20,00,000/-. He further put forth that defendants 6 and 7 were not aware of the original contract between the plaintiff and the defendants 1 to 3. After purchasing the suit property from the fifth defendant, the defendants 6 and 7 had applied for a loan, and made a construction in the year 2005.

8.He vehemently contended that the defendants 6 and 7 are bonafide purchasers without notice of the original contract and the trial court erroneously held that Ex B9 and Ex B2 sale deeds executed by fourth defendant and fifth defendant respectively, contain lis pendens clause and every such subsequent sale is subject to outcome of the litigation, whereas no such clause is recited in the said deeds and more particularly, it stated that the suit property is free from any encumbrance. He further contended that the trial court inadvertently held that the defendants 6 and 7 have purchased the suit property even before the fifth defendant could release the Ex B9 from the Section 47A Stamp Act Proceedings. But the perusal of the Ex B9 discloses that the District Revenue Officer (Stamps) have affixed the Rubber Stamp of the Certificate dated 16.06.2003 wherein the difference in the value in fixed at Rs.1,62,162/- and the fifth defendant had paid the difference in the stamp duty on 01.07.2003 and the document was released as on 01.07.2003. Hence, the defendants 6 and 7 were the bonafide purchaser for values without notice of the original contract or the pending litigation.

9.He further contended that after purchase of suit property, the defendants 6 and 7 had spent huge sum for construction. Though the plaintiff who is residing few metres away from the suit property had observed the construction work, she remained silent watching the progress and completion of the construction. Later, she moved the petition to implead the defendants 6 and 7 with malafide intention. The said conduct of the plaintiff throws doubt which was failed to be taken note by the trial court and the Trial Judge inadvertently held that the amount spent on the construction during the pendency of the litigation will not help the defendants 6 and 7 to have equity. Further, he submitted that the trial court ought to have seen that the defendants 6 and 7 have placed all the materials and the evidence before the Hon'ble Court to prove that they are the bonafide purchaser for value without notice of the agreement or the pendency of the suit. In contra, erred in observing that the defendants 6 and 7 who had failed to produce the legal opinion, and without getting legal opinion and not verified parent documents cannot claimed to be a bonafide purchaser for valuable consideration. Further, held that it must be presumed that to suppress certain facts, the defendants 6 and 7 had purchased the suit property. But the trial judge failed to consider that the fourth defendant who purchased the suit property from the defendants 1 to 3 with the permission of court during lis pendens deliberately avoided the clause of lis pendens in the subsequent sale Ex B9 and conveyed a defect title to the fifth defendant who in turn sold the property to defendants 6 and 7 who stood as bonafide purchasers.

10.He submitted that the judgment and decree of the trial court could not be sustained in the light of the perverse findings given ignoring the points put forth by the defendants 6 and 7 as to the requirements of Section 19 of the Specific Relief Act and liable to be set aside. Hence, he requires the interference of this Hon'ble Court to set aside the judgment and decree of the trial court and prays to allow the appeal.

11.Countering the arguments of the learned counsel for Appellant, Mr.S.Santhosh Kumar, learned Counsel appearing for the first respondent/plaintiff contend that the defendants 1 to 3 and the plaintiff entered into the agreement of sale on 07.07.1994 for a sale consideration of Rs.6,75,000/-. After receiving a sum of Rs.50,102/-, the defendants 1 to 3 assented to receive the balance sale consideration on the date of registration. He further submitted that the said sale agreement was time bounded and to be executed on or before 15.10.1994. Hence, the plaintiff and her son Ramesh met the defendants 1 to 3 on 26.09.1994 for fixing the date of registration. But the defendants 1 to 3 purchased time for flimsy reasons and deferred from execution. Therefore, letter was sent to the defendants 1 to 3 on 30.09.1994 calling upon them to perform the contract. But, the defendants 1 to 3 brushed aside the letter. Moreover, the plaintiff caused a legal notice dated 08.10.1994 and invited the defendants 1 to 3 to execute the sale in favour of the plaintiff. In the meanwhile, the defendants

1 to 3 replied to the letter dated 30.09.1994 on 07.10.1994 and stated that one Mrs.Amirthavalli, who is the daughter of first defendant also has right over the suit property. Since because she predeceased her mother and siblings, her right over the suit property will devolve upon her legal heirs i.e. her husband and children. Therefore, in such circumstance, there is no possibility to execute the sale deed in favour of the plaintiff and advised the plaintiff to take back the advance amount. The plaintiff sent a rejoinder dated 10.10.1994 and denied the reply given by the defendants 1 to 3.

12.He submitted that in furtherance to that, the plaintiff filed a suit for specific performance as against the defendants 1 to 3 before the Hon'ble High Court and later the same was transferred to the City Civil Court, Chennai. While this Court taken up interim injunction application and dismissed it vide order dated 19.01.1995 expressed its view that if the respondents want to alienate the property or enter any transaction with the third parties, they should specifically mention the pendency of the suit in such transaction and bring it to the notice of the purchaser or the person who enters into the agreement so that they cannot plead ignorance of the suit on a subsequent date. Without mentioning the pendency of the suit, the respondents cannot enter into any agreement of sale or any transaction otherwise with third parties. Further if they do so anything inspite of the pendency of the suit, they are doing it at their own risk and they cannot claim equity especially when the transaction had been entered into during the pendency of the litigation and if the plaintiff succeeds, she is automatically entitled to get the relief of specific performance. Therefore, the defendants 1 to 3 sold the property to the fourth defendant under three sale deeds with contingent clause of lis pendens.

13.The suit property was further transferred from fourth defendant to fifth defendant and to defendants 6 and 7. But the fourth defendant who purchased the property from the actual owners through three sale deeds failed to mention the contingent clause in subsequent purchase and remained absent in this appeal. Therefore, the subsequent purchasers, defendants 5,6 and 7 are also bound by the decree as they had purchased during the pendency of suit. He relied upon the judgment of Apex Court in ***Vidur Impex and Traders Private Limited and Others Vs Tosh Apartments Private Limited and Others*** reported in ***2012 (8) SCC 384*** and contended that the sale deed executed in clandestine manner and in violation of court order will not transfer a valid title or interest over the property.

14.He contended that the defendants 1 to 3 expressed their inability to execute the sale deed that one more legal heir was also having right over the suit property in the reply notice dated 07.10.1994. Therefore, they refused to execute the sale deed on the reason that it is impossible to execute the sale deed precluding that female successor. In contra, whereas in the written statement, the defendants 1 to 3 denied the execution of agreement of sale that the first defendant is illiterate widow and defendant 2 and 3 are doing contract job and they were not informed about the terms of contract. The signatures of the defendants were obtained in the agreement which was prepared by the counsel of the plaintiff on the instruction of the plaintiff and the plaintiff is attempting to knock away valuable profit for lesser price. Therefore, the defendants 1 to 3 stated that the agreement of sale was executed by the defendants under fraud and misrepresentation of the plaintiff. The trial court rightly held that the defendants 1 to 3 had admitted the execution of agreement and advance received through ocular evidence, hence, when the plea of fraud and misrepresentation is raised by the defendants 1 to 3, then onus of proof is on the defendants 1 to 3 to prove it. But the defendants 1 to 3 failed to substantiate their contention. Further, the trial court rightly observed that the defendants failed to produce any material to prove that the suit property was worth about 15 lakhs on the date of agreement. On this conclusion, the trial court rightly observed that the agreement of sale executed by the defendants 1 to 3 in favour of plaintiff is true, valid and for valuable consideration.

15.He put forth that the Trial Court correctly held that the court is not in position to accept that the defendants 6 and 7 are bonafide purchaser for value without notice. Because, every ordinary prudent purchaser will verify the parent document to find out whether vendor is having saleable interest. But in this case, the defendants 6 and 7 had purchased the suit property from fifth defendant without even looking this sale deed or verifying his saleable interest. Because encumbrance certificate Ex. B4 discloses that the document executed in favour of fifth defendant was pending under Section 47A and even before release of such document, the suit property was purchased by the defendants 6 and 7. Further, in the written statement filed by the defendants 6 and 7 they have clearly stated that the fifth defendant who is their vendor had handed over the title deeds pertaining to the suit property. After thorough verification of the ownership, they have purchased the suit property is mere a pleading and not the fact. Further, the sale deed Ex.A6 to Ex.A8 contains lis pendens clause will itself operate as notice and there is no requirement of any specific or particular notice for the said contingent clause and the defendants 6 and 7 cannot take a defence of negligence or deliberation of the fourth defendant.

16.He further submitted that the trial court correctly held that even though the liquidated damages is mentioned in the agreement of sale, the plaintiff is entitled to elect the remedy and she has selected the remedy of specific performance and mere mentioning of liquidated damages in the agreement of sale for breach will not defeat the plaintiff from getting the agreement executed. The trial court decreed the suit for specific performance. Hence, the judgment and decree of the trial court is just and proper.

17.He further contended that when the agreement of sale is held to be valid and enforceable by the trial court, the said agreement of sale can be challenged only by the party to the agreement and not otherwise. Though the defendants 6 and 7 claims to be bonafide purchasers cannot challenge the agreement of sale not being a party to agreement. Further, they cannot claim any right as against the plaintiff and the said appeal is not sustainable in law. Therefore, the judgment and decree of the trial court requires no modification by this Hon'ble Court and prayed to dismiss the appeal.

18.I have considered the rival submissions made by the learned counsels appearing for the respective parties and perused the materials available on record.

19. In the light of the submissions made on behalf of the counsel for both sides, the following issues emerge for our consideration in this appeal:-

a) Whether the Appellants are entitled to challenge the Decree of Specific performance assailing the Sale Agreement marked as Ex A.2?

b) Whether the Appellants have right to claim protection under Section 19(b) of Specific Relief Act as Bonafide Purchaser in lis pendens?

Issue No.(a)

20.The learned counsel appearing for the first respondent/plaintiff had raised an issue as regards to the maintainability of the appeal in respect of assailing the sale agreement marked as Ex.B2 is concerned, for the reason that the appellants are only subsequent purchasers, who cannot assail the agreement of sale to which they were not parties.

21.In reply to the objection raised by the first respondent/plaintiff, the appellants/6th & 7th defendants have placed on record the judgment of the Hon'ble Apex Court in the case of ***Rajkumar vs. Sardari Lal & Ors.,*** reported in ***(2004) 2 SCC 601***. A reading of the aforesaid judgment would show that even though a *lis pendens* transferee not brought on record is entitled to seek for setting aside the decree passed against the transferor, who were the sixth and seventh defendants in the Suit. The reason assigned by the Hon'ble Apex Court is that a purchaser *pendente lite* will be bound by the proceedings taken by the successful party in execution of a decree and that the purchaser *pendente lite* should be given an opportunity to protect his rights. In view of the aforesaid judgment, I do not propose to entertain the claim made by the learned counsel appearing for the first respondent/plaintiff and decide the issue in favour of the appellants/6th & 7th defendants .

Issue No.(b)

22.Under Ex.A.2, dated 07.07.1994, the first respondent/plaintiff had entered into an agreement of sale with defendants 1 to 3. Since, the defendants 1 to 3 had been evading execution of the sale deed, the first respondent/plaintiff herein had filed a Suit in C.S.No.1570 of 1994. In the said Suit, in an application filed by the first respondent/plaintiff, this Court had passed orders permitting the defendants 1 to 3 to sell the property. However, they were directed to incorporate a clause indicating the sale agreement under Ex.A.2 and the pendency of the Suit. Only thereafter, the defendants 1 to 3 herein had executed the sale deeds under Ex.A6 to Ex.A8 on 29.03.1996 in favour of the 4th defendant. Thereafter, the 4th defendant had sold the property in favour of the 5th defendant herein on 26.03.2003, from whom the appellants/6th & 7th defendants have purchased the property under Ex.B2 on 28.11.2003. It is pertinent to note that Ex.A.6 to Ex.A.8 contains the clause as directed by this Court in the interim application. But however, under Ex.B.9 & under Ex.B.2, the said clause is not found. Under Ex.B.9, the 4th defendant had sold the property in favour of the 5th defendant. The pendency of the Suit had not been indicated therein. The 5th defendant being purchaser of the Suit property from the 4th defendant cannot be said to be unaware of the said clause, as the parent document of his predecessor in title clearly contains the said clause. It is the case of the appellants/6th & 7th defendants that since in the document under Ex.B.9, there was no such clause, they had purchased the said property and that they are the bonafide purchasers of the Suit Schedule Property.

23.It is to be noted that the time gap under Ex.A6 to Ex.A8 and Ex.B2, is 7 years and 8 months. Any prudent purchaser would have verified the title of the property and is also supposed to verify the encumbrance certificate of the property at least for a minimum period of 12 years. Even though it is the case of the appellants/6th & 7th defendants that they were not aware of the dispute between the parties, they had not produced any documentary evidence to substantiate that the property was free from encumbrance. It is the purchaser of a property who is to be aware of the title to the property prior to his purchase. Such a principle has been evolved under the doctrine of caveat-emptor and in my view, the appellants cannot feign ignorance of the pendency of the suit.

24.It is also to be noted that the first appellant/6th defendant herein is a partnership firm represented by its partners and it cannot be their case that they had not sought for any legal opinion before the purchase of the property. Had they got the legal opinion, definitely an Advocate would have advised them to verify the encumbrance certificate for the preceding period i.e., minimum of 12 years before advising the appellants to purchase the property. In such an event, this Court can only presume that the appellants/6th & 7th defendants have been aware of the pendency of the suit and only to claim to be a bonafide purchaser, they had purged the knowledge of the Suit.

25.The reason for such a direction was issued to include a clause about the pendency of the suit in any sale that is to be made by the defendants 1 to 3, is that such a clause would also be binding on the successor in interest of the Suit Schedule Property. Suppressing of such clause in the subsequent sale deeds is of no consequence and the successor in interest of the property cannot claim to have been ignorant of the pendency of the suit and also cannot claim protection under Section 19(b) of the Specific Relief Act. In that context, it is to be noted that under Section 52 of the Transfer of Property Act, 1882 protects the interest of parties by mandating the principle of doctrine of *lis pendens*. It is also to be noted in the present facts of the case is that as and when the property had been transferred, the respective buyers have also been impleaded by the first respondent/plaintiff, as party to the Suit by taking out appropriate application immediately. When that being so, the claim of the appellants/6th & 7th defendants that they were not aware of the suit and that they have also put up valuable construction in the property would not be of any help to the appellants/6th & 7th defendants. The appellants/6th & 7th defendants admittedly have purchased the property in November 2003 and immediately thereafter, an application to implead them as defendants had been taken by the first respondent/plaintiff in I.A.No.13 of 2004 and only thereafter, they have also proceeded to construct the building. The same is evident from Ex.B.3, produced by them which indicates that an application had been made for grant of approval of building plant in the year 2004 by application dated 15.03.2004.

26.It is also to be noted that the appellants/6th & 7th defendants who were respondents 6 & 7 in the application in I.A.No.13 of 2004, had also filed their vakalat on 14.05.2004. Therefore, when they had only made an application for grant of approval in March 2004 and when they had filed a vakalat in I.A.No.13 of 2004, in the month of May 2004, they cannot claim equity based on the building that they had constructed in the property.

27.Hence, in view of the same, issue No.(b) is decided against the appellants/6th & 7th defendants by holding that they are bound by the agreement of sale, which had been directed to be specifically performed as against the defendants 1 to 3 and I also conclude that the appellants/6th & 7th defendants herein are not bonafide purchasers of the Suit Scheduled Property for valuable consideration.

28.In fine, the Appeal Suit fails and is accordingly dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

26.07.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
pbn

To

Additional District and Sessions Judge, (Fast Track Court No.III),

Chennai 600 001

K.KUMARESH BABU,J.

pbn

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