



Second Appeal No.1419 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1419 of 2013
and M.P.No.1 of 2013

1.Sowbakkiam Ammal
2.Ranganathan

... Appellants

-Vs-

Gunasekaran

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 29.07.2013 made in A.S.No.40 of 2010 on the file of the learned Principal District Judge, Villupuram reversing the judgment and decree dated 07.09.2009 made in O.S.No.35 of 2007 on the file of the learned II Additional District Munsif, Ulundurpet.

For Appellants : Mr.R.Gururaj
For Respondent : Mr.Rajarajan

J U D G M E N T

This appeal has a checkered history. The defendants appeal before me seeking for acceptance of their appeal filed against A.S.No.40 of 2010 on the file of the Principal District Judge, Villupuram dated 29.07.2013. By the said judgment, the learned Principal District Judge allowed the appeal against the



Second Appeal No.1419 of 2013

judgment and decree in O.S.No.35 of 2007 dated 07.09.2009 on the file of the II Additional District Munsif at Ulundurpet.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. O.S.No.35 of 2007 is a suit for declaration of title and for permanent injunction. One Gunasekaran is the plaintiff. He claims to have purchased the property under Ex.A1 dated 08.07.2004. He would state that on the basis of Ex.A1 he mutated the property in his favour under Ex.A2 and has been in possession and enjoyment of the property by paying kist under Exs.A3 and A4. He would state that the defendants are seeking to interfere with his possession and as he has purchased the property from the previous owner as a bonafide purchaser for value without notice of any defect in title, he is entitled to the decree.

3. On service of summons, the defendants entered appearance and pleaded that the property originally belonged to one Vijayarama Reddiar. They would allege that Vijayarama Reddiyar was a defaulter in payment of Government dues and therefore his property was brought for auction by the Government. In the auction sale, the Government itself purchased the property



Second Appeal No.1419 of 2013

and converted the land into "Tharisu" or waste lands. Vijayarama Reddiar had four sons by name Arunachalam, Rajasundaram, Lakshminarayanan and Venkatesh. Arunachalam, on his behalf and on behalf of the other legal heirs of Vijayaramareddiar approached the District Revenue Officer for cancellation of the sale. Arunachalam was successful in his endeavour and the sale which had been held, was cancelled by the District Revenue Officer by his proceedings dated 12.10.1999. Arunachalam, in order to restore the property to the family, approached the second defendant for financial assistance. The second defendant readily offered to pay sums of money to retrieve the property. He had given in all a sum of Rs.80,000/- by 12.10.1999.

4. As nothing comes free, on 30.12.1999 the second defendant entered into an agreement of sale with Arunachalam, his mother and his brothers for the purchase of the property retrieved from the Government for a sum of Rs.1,00,000/-. As they had already received Rs.80,000/- on the date of agreement ie., on 30.12.1999, he had paid a sum of Rs.18,000/- leaving a balance of Rs.2,000/- for the purpose of the sale.

5. As Arunachalam and his siblings did not execute the sale deed as per their undertaking dated 30.12.1999, the second defendant was constrained to file a suit for specific performance of the agreement of sale. This suit was taken



Second Appeal No.1419 of 2013

on file as O.S.No.61 of 2000 on the file of the learned Subordinate Judge at Villupuram. The suit schedule mentioned properties in O.S.No.61 of 2000 were items 14 and 15 in that suit. On account of the enhancement of pecuniary jurisdiction, the suit which was laid before the Subordinate Court at Villupuram was transferred to the file of the learned II Additional District Munsif Court at Ulundurpet. It was renumbered as O.S.No.142 of 2004. The suit had been presented on 27.03.2000. It was transferred and renumbered before the II Additional District Munsif Court in 2004.

6. Arunachalam and his brothers entered appearance in O.S.No.142 of 2004 and filed their written statement. Though the written statement runs into a few pages, the gist of it is, they conceded to a decree being passed in the suit. After having filed the written statement, they did not contest the suit, which resulted in passing of an exparte decree on 30.01.2006.

7. In order to execute this decree, the second defendant had taken out an application for execution in E.P.No.47 of 2010 on the file of the Principal District Munsif Court at Ulundurpet. On 09.12.2011, delivery was ordered and delivery was also taken through the Court. The plaint, written statement and decree in O.S.No.61 of 2000 on the file of the Subordinate Court which was subsequently renumbered as O.S.No.142 of 2004 on the file of the II Additional District Munsif



Second Appeal No.1419 of 2013

have been filed in this proceeding. In effect, the plea of the second defendant was that the sale deed executed in favour of the plaintiff on 08.07.2004 does not bind them. It was also specifically pleaded that the children of Vijayarama Reddiar are proper and necessary parties to the suit.

8. On the basis of these pleadings, the learned District Munsif, Villupuram framed the following issues:

- (1) Whether the plaintiff is entitled to the relief of declaration with regard to the suit property as prayed for?*
- (2) Whether the plaintiff is entitled to the consequential relief of permanent injunction?*
- (3) Whether the sale deed dated 08.07.2004 in favour of the plaintiff is a sham and nominal document as alleged by the 2nd defendant?*
- (4) Whether the suit is bad for non joinder of necessary parties?*
- (5) Whether the suit is affected by mis joinder of parties?*
- (6) To what other relief the plaintiff is entitled to?*

9. On the side of the plaintiff, he examined himself as P.W.1 and two other witnesses. On the side of the defendants, the second defendant examined himself as D.W.1. Four documents were filed on behalf of the plaintiff and three documents were filed on behalf of the defendants.



Second Appeal No.1419 of 2013

WEB COPY

10. On the matter being taken up for trial, the learned Additional District Munsif, Villupuram rendered a finding that the purchase made by the plaintiff Ex.A1, is hit under Section 52 of the Transfer of Property Act and that the plaintiff is bound by the decree in O.S.No.142 of 2004. Consequently he dismissed the suit.

11. Aggrieved by the same, regular appeal had been preferred before the Principal District Judge, Villupuram.

12. In this appeal, two applications were taken out; one to amend the plaint in order to incorporate the plea that the defendant is a bonafide purchaser for value and also for letting in additional evidence viz.,

- (a) Sale deed dated 04.07.1979 executed by Arunachalam and Rajasundaram, sons of Vijayaramareddiar in favour of Vellaya Padayatchi.
- (b) Agreement of sale between the plaintiff and the said Vellaya Padayatchi dated 26.08.1999.
- (c) Agreement between the plaintiff Gunasekaran and all the legal heirs of Vijayaramareddiar dated 09.09.1999.

13. Initially, the learned appellate Judge allowed these applications and



Second Appeal No.1419 of 2013

remanded the matter for fresh disposal. Aggrieved over the same, C.M.A.No.3138 of 2010 was preferred to this Court against the order of remand.

This Court by an order dated 17.08.2011 allowed the appeal and directed the Principal District Judge to permit the respondent/plaintiff to amend the plaint as well as to mark any documents that he would seek to bring on record.

14. As per the directions of this Court, the learned Principal District Judge allowed the plaintiff to incorporate Para No.1A in the plaint. In effect, pleadings about the aforesaid documents as well as to take the plea of bonafide purchaser for value without any notice of defect in title were entertained. After having allowed the applications, he took up the main appeal for disposal. He held that the decree in O.S.No.142 of 2004 on the file of the II Additional District Munsif at Ulundurpet will not bind the plaintiff as fraud had been practiced upon the Court. He further held that since fraud, misrepresentation and coercion are vitiating circumstances and the decree in O.S.No.142 of 2004 being vitiated, the sale of the property in favour of the plaintiff is valid and therefore, allowed the appeal setting aside the judgment and decree of the trial Court and decreed the suit as prayed for.

15. Against the reversing finding, the present Second Appeal has been brought forth before this Court. The Second Appeal was admitted on the



Second Appeal No.1419 of 2013

following substantial questions of law on 11.02.2014.

WEB COPY

- (1) Whether the judgment and decree in O.S.No.142/2004 on the file of the District Munsif Court, Ulundurpet is not binding on the plaintiff in O.S.No.35/2007 ie., the suit appealed against?
- (2) Did the lower appellate Court commit grave error in failing to see that the judgment and decree in O.S.No.142 of 2004 cannot be declared invalid or collusive by another court of co-ordinate jurisdiction?
- (3) Did not the lower appellate Court fail to see that in appeal, plaintiff filed additional evidence which is a totally different title but which is also incomplete dis entailing him to any relief?
- (4) Is not the judgment of the lower appellate Court perverse?"

16. On service, Mr.Rajarajan entered appearance for the respondents. I heard Mr.Gururajan and Mr.Rajarajan for the respective parties and have gone through the records.

17. The undisputed facts that arise from Exs.B1 to B3 are that, the original owner of the property viz., Vijayarama Reddiar was in acute financial crisis and his properties had been sold in auction. In order to retrieve the property from the clutches of the Government, his legal heirs had borrowed



Second Appeal No.1419 of 2013

monies from the second defendant. The second defendant, taking advantage of their situation, gave them a sum of Rs.80,000/- initially and once the property was retrieved from the Government, he gave an additional sum of Rs.18,000/- and entered into an agreement of sale. As the legal heirs of Vijayarama Reddiar did not execute the sale deed, he presented a suit on 25.03.2000 for specific performance of the agreement of sale dated 30.12.1999. The said suit ended in a decree on 30.01.2006 and in pursuance of the decree, delivery was also taken of the property on 09.12.2011 after he took possession of the property mutating the revenue records in his favour. These facts are clear from Exs.B1, B3, B6 and B7. All was well till the plaintiff purchased the property on 08.07.2004.

18. The issue that I have to decide is whether this sale is hit by the principle of *lis pendens*. If the sale is hit by *lis pendens*, the Second Appeal has to be allowed, if the sale is not hit by *lis pendens*, the appeal has to fail.

19. The application of doctrine of *lis pendens* commences from the date on which the plaint is presented and continues through the passing of the decree and concludes only when the execution petition itself, if any filed, gets terminated. Therefore, in this particular case, the lis commenced on 27.03.2000 when the suit was originally presented before the Subordinate Court at Villupuram. The suit stood transferred to the file of the II Additional District



Second Appeal No.1419 of 2013

Munsif Court at Ulundurpet on account of the fact of enhancement of pecuniary jurisdiction of the Civil Court from Rs.30,000/- to Rs.1,00,000/-. On 30.01.2006, the suit was decreed and execution petition was filed and possession was taken through Court on 09.12.2011. Therefore, as already premised, between 27.03.2000 till 09.12.2011 any sale would have been hit by the doctrine of *lis pendens*. The case at hand would show that the plaintiff had purchased the property only on 08.07.2004 during the pendency of the suit before the learned Additional District Munsif at Ulundurpet. Therefore, from a casual glance on the dates, I can come to the conclusion that the sale would attract the doctrine of *lis pendens*.

20. It is not as if Mr.Rajarajan did not see this coming. Therefore he came up with two submissions viz., that the decree in O.S.No.142 of 2004 is a collusive decree and therefore Section 52 would not be attracted and secondly that, he is a bonafide purchaser for value without notice and would be entitled to the benefit of Section 19 of the Specific Relief Act.

21. It is true that if it is a collusive decree, the operation of Section 52 would stand excluded. But, in order to prove collusion, it is the duty of the plaintiff to plead and prove this vitiating circumstance in the plaint. This is an essential requirement under Order VI Rule 4 of Civil Procedure Code. Unless



Second Appeal No.1419 of 2013

and until specifics are given in the plaint, the Court cannot probe into it, as any amount of evidence cannot be looked into if that is not supported by a plea.

This position of law has been laid down by the Supreme Court in **Ladli Parshad Jaiswal -vs- The Karnal Distillery Co., Ltd., (1964 (1) SCR 270)** and in **Bisundeo Narain vs. Seogini Rai and Another (AIR 1951 SC 280)**.

22. The position of law being clear, even after a careful perusal of the plaint, I am unable to discern any plea, which would enable me to hold that the decree is one which is a result of collusion between the legal heirs of Vijayarama Reddiar and the second defendant. In addition, it is necessary to point out that the plaintiff did not implead the legal heirs of Vijayaramareddiar to this proceeding. The omission to implead the necessary parties has not been waived in terms of Order I Rule 13 by the defendants in their written statement. On the contrary, they have taken a specific defence that the legal heirs of Vijayarama Reddiar, the previous owners are proper and necessary parties to the suit. Conspiracy or collusion, in the very nature of things require two individuals. We have one interested individual in O.S.No.142 of 2004 viz., the second defendant. But, the other parties who allegedly colluded with him have not been made parties to the suit.

23. I recollect, under Section 99 of Civil Procedure Code, no decree can



Second Appeal No.1419 of 2013

be reversed for non-joinder of parties unless and until the said parties are proper and necessary to the proceedings. This is clear from the proviso to Section 99.

In this particular case, as Mr.Rajarajan would want to get over the decree on the ground of collusion and the active collusive parties viz., the legal heirs of Vijayaramareddiar not being made parties to the suit. I am unable to accede to the said plea. I have to point out that the lower appellate court has returned a very curious finding that the agreement of sale dated 30.12.1999 had not been filed in O.S.No.142 of 2004. I went through Ex.B1 and I find that the said document has been filed as the first plaint document in O.S.No.142 of 2004. Failure to take into consideration a relevant fact would render the judgment perverse. This fact not having been taken into consideration by the learned Principal District Judge renders his judgment perverse. Apart from that, when the validity of the suit in O.S.No.142 of 2004 was not in challenge before him, the learned Judge has returned a finding on the very decree itself. He was not sitting on appeal against O.S.No.142 of 2004 and therefore, any finding beyond what had been presented to him is *per se* without jurisdiction. Further more, without a plea of collusion even found in the plaint, the learned Judge has returned a finding as if the judgment in O.S.No.142 of 2004 is vitiated by this circumstance.

24. Turning to the point of Section 19 of the Specific Relief Act that has



Second Appeal No.1419 of 2013

been pleaded by Mr.Rajarajan, it is an interesting plea, but without any basis.

Section 19 operates in case a person has purchased the property without due notice of the agreement '**prior to the presentation of the plaint**'. Once the purchase takes place after the presentation of the plaint, Section 52 is attracted. The plane in which Section 52 operates is fundamentally different from the one under Section 19. *Lis pendens* does not know of a bonafide purchase. A person who purchases the property gets whatever is the result of the decree. In this particular case, since the plaintiff has purchased the property pending the lis in O.S.No.142 of 2004 from the legal heirs of Vijayaramareddiar, he gets what the defendants in that suit would have obtained. The defendants in that suit only suffered a judgment of specific performance and faced the ignominy of delivery of possession through process of Court. Therefore, the plaintiff in the present suit would be bound by the decree in O.S.No.142 of 2004 on the file of the II Additional District Munsif and cannot take a plea of Section 19. This issue has been specifically dealt with in number of cases.

25. Mr.Rajarajan would then refer to the judgment in **M.P.Kanoi and Four Others -Vs- Palani, Prop, M.P.Builders (2001(3) CTC 452)** to argue that this Court has recognized that Section 19 would apply even for a person who has purchased the property *lis pendens*. A careful persual of the judgment, especially para 12, would show that this Court had not laid down such a



Second Appeal No.1419 of 2013

proposition as canvassed by Mr.Rajarajan. On the contrary, that was a case where the applicants who were third parties to the suit for specific performance had taken a plea that even before the suit had been presented, they had entered into registered sale deeds and therefore they were proper and necessary parties to the suit. The law according to me is this, where Section 52 of the Transfer of Property Act applies, Section 19 of the Specific Relief Act will have to give way.

26. In the light of the above discussion, the substantial questions of law are answered in favour of the appellant and against the respondents. The Second Appeal is allowed. The judgment and decree of the learned Principal District Judge, Villupuram in A.S.No.40 of 2010 dated 29.07.2013 is set aside, and the judgment and decree of the learned II Additional District Munsif, Ulundurpet in O.S.No.35 of 2007 dated 07.09.2009 is restored. The suit in O.S.No.35 of 2007 shall stand dismissed. Costs throughout. Consequently, connected miscellaneous petition is closed.

20.02.2024

Index : Yes/No
Neutral Citation : Yes/No
KST

To

1.The Principal District Judge, Villupuram



Second Appeal No.1419 of 2013

2.The II Additional District Munsif, Ulundurpet.

WEB COPY