



C.M.P. Nos. 28044 and 28046 of 2024
in S.A. No.535 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.M.P. Nos. 28044 and 28046 of 2024

in
S.A. No.535 of 2014

K.Saravanan

...Petitioner in both CMPs
/Appellant

Vs.

1.Kaliavaradan

2.Poovazhaki

... Respondents in both CMPs
/Respondents

PRAYER: This Petition is filed under Order 2 Rule 4 (22) of Appellate Side Rules to raise the additional ground that "the learned First Appellate Court is failed to appreciate that the appellant is protected under the provision of Section 41 of the Transfer of Property Act in view of fact that he being the third party bonafide purchaser for valuable consideration and uninterrupted continuous possession and enjoyment of Mr.Venukrishnan from the year 1994 and Patta stands in his name and the subsequent registered Settlement Deed dated 26.02.2008 executed in the name of the appellant's vendor" pending disposal of the second appeal and this Petition is filed under Sections 100 & 151 read with Order XLII Rule 2 of Code of Civil Procedure to pass an order framing the following additional substantial question of law 'whether the appellant herein is protected as per the provision of the Section 41 of the Transfer of Property Act' pending disposal of the second appeal.

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For Appellant : Mr.K.Chandrasekaran

For Respondents : Ms.Nilafer for M/s.R.Meenal

COMMON ORDER

The appellant has filed these petitions raising the additional grounds and additional substantial question of law by stating that he has purchased the suit property from an ostensible owner the bonafide intention and hence, his interest should be protected under Section 41 of the Transfer of Property Act.

2. It is submitted by the learned counsel for the appellant that the Courts below have not adverted into the above points and hence, the said points have been raised as additional substantial question of law.

3. The learned counsel for the respondents submitted that the appellant cannot be allowed to raise such pleadings at the stage of the second appeal



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because these contentions were not raised by the plaintiff before the Trial Court and no pleadings have been made in this regard. In support of the above contention, the learned counsel for the respondents has cited a decision of the Supreme Court of India rendered in the case in ***P.Buchi Reddy (Dead) by Lrs. -vs- R.V.Raveendran*** reported in **2008 (4) SCC 594**.

4. Admittedly, the appellant, who is the plaintiff, has not raised the point that he has purchased the suit property from Thangammal believing that she is the ostensible owner. All along the plaintiff had claimed that Venu Krishnan was the absolute owner of the suit property and by virtue of the settlement he had made in favour of his wife Thangammal she had acquired title and that it was passed in favour of the plaintiff.

5. Having made the categorical plea in that regard, the plaintiff has proceeded to trial to prove the above facts. Nowhere in the pleadings it has been pleaded that there are other sharers, who have got title. But he had persuaded to purchase the suit property from Thangammal believing that



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she is the ostensible owner. Now, only at the stage of the second appeal the appellant has raised this point, which is no doubt a mixed question of facts and law.

6. In this regard, it is appropriate to refer the judgment cited by the respondents herein as under:-

“22. Rukminibai did not have any title deed to the suit property. The case of the plaintiffs during arguments was that the gift made in the year 1961, being by way of “pasupu kumkumam” in favour of a sister by a brother, could be oral and did not require a registered instrument. But the property allegedly gifted to Rukminibai was not mutated in the name of Rukminibai in the municipal records, but continued in the name of Damodar Rao even after 1961. Damodar Rao was a resident of Warangal and staying in the house adjoining the suit property. Rukminibai was a resident of Hyderabad. Therefore, as on the date of sales in favour of the plaintiffs, 9-



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12-1968, Rukminibai had neither any title deed nor actual possession. Nor was the property mutated in her name in the municipal records. The tax-paid receipts produced by the plaintiffs related to a period subsequent to the execution of the sale deeds by Rukminibai in their favour and subsequent to the sale by Damodar Rao in favour of the defendant. On the other hand, the suit property was sold in favour of the defendant by Damodar Rao who was shown as registered owner in the municipal records and who even according to the plaintiffs was the original owner of the property.

23. The first appellate court found that the evidence of the plaintiffs and their witnesses as to the title of the plaintiffs' vendor Rukminibai was sketchy and inconsistent. It referred to three versions as to how Rukminibai got the property. The first version (as per PW 1) was that the suit property belonged to Rukminibai's father and he had given it to his daughter Rukminibai by way of "pasupu kumkumam". The



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second version (as per PW 2) was that after the death of Rukminibai's father, there was an oral partition between K.V. Damodar Rao and Rukminibai and at that partition, the suit property was allotted to Rukminibai. But both PW 1 and PW 2 admitted that they did not make any enquiry with Rukminibai about her title. The third version (as per PW 4 Rukminibai) was that Damodar Rao made an oral gift of the plot in her favour by way of “pasupu kumkumam” in the year 1961. She admitted that there was no special occasion for gifting the plot to her in the year 1961, as she was married long prior to 1961.”

The above citation is squarely applicable to the facts of the case.

7. However, the learned counsel for the petitioner submitted that even in the absence of any pleadings even during course of trial and the evidence on record makes out even indirectly the above question there cannot be any bar to raise in the second appeal.



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8. In this regard, reliance was placed on the judgment of the Supreme Court of India held in the case in ***Bhagwati Prasad -vs- Chandramaul*** reported in **AIR 1966 Supreme Court 735**, wherein it has been held as under:-

“10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot override the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both



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parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”



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9. On perusal of the records, neither the pleadings nor the evidence nor the course of the trial has made out a stand even indirectly that the plaintiff had claimed ownership by way of purchasing the property from an ostensible owner. Hence, the above citation cited by the learned counsel for the appellant is not applicable to the present situation.

10. In view of the same, these petitions are dismissed.

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R.N.MANJULA, J.

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