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S.A.No.178 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.178 of 2019 &
CMP.No.3136 of 2019

M.Munikanniah

... Appellant

-Versus-

1.Murugesan

2.Bangaru Naidu

... Respondents

Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 16.06.2016 made in AS No.35 of 2015 on the file of the learned Sub Court Tiruttani confirming the judgment and decree dated 03.08.2015 made in O.S.No.157 of 2009 on the file of the learned District Munsif Court, Tiruttani.

For Appellant : Mr.N.Manoharan

For Respondent 1 : Dr.C.Ravichandran

For Respondent 2 : No appearance

JUDGMENT

The present Second Appeal arises against the Judgment and Decree of the Court of Subordinate Judge, Tiruttani in A.S.No.35 of 2015 dated 16.06.2016 in confirming the judgment and decree of the court of the District Munsif at



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Tiruttani in O.S.No.157 of 2009 dated 03.08.2015.

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2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3. The plaintiff has preferred this appeal. The plaintiff presented O.S.No.157 of 2009 seeking the relief of declaration of his right, title, interest and ownership over the suit schedule mentioned property and for consequential relief of permanent injunction restraining the defendants, their men, agents and subordinates from interfering with the plaintiff's peaceful possession and enjoyment of the same.

4. The case of the plaintiff is that he had purchased the property from one Vasumathi on 29.06.1994 and from one Hari Prasad Babu on 20.06.1994. Both Hari Prasad Babu and Vasumathi had purchased the property from one Kora Raghavalu Naidu by way of two sale deeds dated 20.10.1993. Kora Raghavalu Naidu had obtained the property from one Budaiah, pursuant to the judgment and decree in S.A.No.1982 of 1977. He would plead that on 07.11.2009, the defendants attempted to interfere with his possession, which he successfully



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prevented, constraining him to move a suit seeking protection from the Court.

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5. On service of summons, the defendants entered appearance. They filed separate written statements.

6. According to the defendants, the sale deed insofar as items 1 and 2 executed by Kora Raghavalu Naidu is not binding on them. They would state that the entire extent of 80 cents in Item No.1 belonged to one Palegari Chengalvaraya Naidu, Palegari Govindudu @ Govindappa Naidu and P.Kannigadu @ Kanniappa Naidu, the father of the first defendant. They enjoyed the property by mutating the revenue records and also obtained patta in their favour. Palegari Chengalvaraya Naidu, being unmarried, died issueless and hence, his share in the property was taken over by Govindappa Naidu. Govindappa Naidu by virtue of succeeding to the estate of Palegari Chengalvaraya Naidu had $\frac{2}{3}$ rd share in the property, i.e., 54 cents out of 80 cents and sold his share in the property to one Sanjeevammal.

7. Sanjeevammal, who is none else than the wife of Budaiah, had in turn sold the property, on 17.11.1980, in favour of minor Venkatesan, who was then



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represented by his mother Ponnammal. Pursuant to the sale deed dated 17.11.1980, the possession was also handed over to Ponnammal, who took the possession on behalf of her minor son, Venkatesan. When Venkatesan was seven years, he passed on leaving behind his mother as his sole legal heir. Thereafter, Ponnammal had sold the property to Murugesan, the first defendant, in and by way of a sale deed dated 02.09.2009. Therefore, it was the case of Murugesan that as the title was traced to the Palegari brothers, Budaiah was not the owner of the property. Therefore, the purchase by Kora Raghavalu Naidu would be of no help.

8. On the basis of these pleadings, the trial court framed the following issues:

“(i) Whether the plaintiff was never in possession and enjoyment of the suit property and he never raised crops in the suit property?

(ii) Whether the defendants have no right and title to the suit property and they never attempted to trespass in the suit property?

(iii) Whether one Ponamma sold her 54 cents to the 1st defendant under registered sale deed dated 02.09.2009 and one Govindarajalu Naidu sold the 2nd item in favour of 2nd defendant under registered sale deed dated



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25.05.1981?

(iv) *Whether the sale deed dated 27.03.1989 in favour of Kora Raghavalu Naidu by the District Munsif, Tiruttani is not valid in law and binding on the defendants?*

(v) *Whether the plaintiff is entitled to the relief as prayed for?*

(vi) *To what relief if any the plaintiff is entitled to?"*

9. Subsequently, the issues were recast when the matter was taken up for enquiry. The issues are as follows:

“(i) Whether plaintiff's predecessors had title in suit properties to convey the same to plaintiff?

(ii) Whether it is true that defendants 1 and 2 had possession and enjoyment of items 1 and 2 respectively?

(iii) Whether the plaintiff is entitled to relief of declaration of title to suit properties as prayed for?

(iv) Whether plaintiff is entitled to relief of consequential permanent injunction as prayed for?

(v) What other reliefs?"

10. On the side of the plaintiff, he examined himself as PW1 and another witness as PW2 and marked Ex.A1 to Ex.A16. On the side of the defendants,



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the first defendant entered the witness box as DW1 and he examined his vendor Ponnammal as DW2 and Kanniappa Naidu as DW3 and an other witness as DW4. On their end, Ex.B1 to Ex.B6 were marked.

11. Considering the oral and documentary evidence let in before her, the learned trial judge came to a conclusion that the plaintiff has not proved his title to the first item of the suit property and dismissed the same. She however decreed the suit, insofar as the second item of the suit property is concerned.

12. Aggrieved by the dismissal of the prayer as far as item No.1 of the suit property is concerned, the plaintiff preferred A.S.No.35 of 2015. The learned Subordinate Judge, Tiruttani dismissed the appeal on 16.06.2016 confirming the findings of the court below.

13. Aggrieved by the decree of the courts below, the present second appeal has come up before this court.

14. This Court did not admit the appeal, but had ordered notice regarding admission on 12.02.2019. On service of summons, the contesting first



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defendant engaged Dr.C.Ravichandran.

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15. The matter is listed before me for admission and orders.

16. I have heard Mr.N.Manoharan for the appellant and Dr.C.Ravichandran for the first respondent.

17. Mr.N.Manoharan would submit that the judgments and decrees of the courts below are perverse as they have ignored the principle of lis pendens. He would continue on that line to submit that as Ex.A1 to Ex.A3 had not been challenged in the manner known to law, either by filing a suit to set aside the same or by initiating obstruction proceedings in E.P.No.26 of 1988 namely Execution Petition filed pursuant to the compromise decree in S.A.No.1982 of 1977, the defendants are barred from pleading otherwise. He would point out to the judgment and decree of the lower appellate court and would state that the same is contrary to the provision of Order XLI Rule 33 of the Code of Civil Procedure and hence, would seek interference by this Court.



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18. On the basis of these submissions, the learned counsel would suggest the following substantial questions of law for the purpose of admission:

“(i) Have not the courts below committed an error in overlooking the sale deed dated 27.03.1989 (Ex.A1) executed by the court in E.P.No.26 of 1988 pursuant to the decree dated 21.06.1978 made in S.A.No.1982 of 1977 and the consequential sale deeds marked as Ex.A2 and Ex.A3 would lend support the title of the plaintiff?”

“(ii) Whether the courts below have committed an error in giving undue certificate to the lis pendens sale deeds Ex.B2 dated 17.10.1980 and Ex.B3 dated 02.09.2009) which were fabricated during the pendency of O.S.No.21 of 1974 filed on the basis of the sale agreement dated 12.06.1966?”

“(iii) Whether the courts below are correct in dismissing the suit for declaration and permanent injunction filed by the plaintiff especially in the absence of any challenge made to Ex.A1 to Ex.A3 in the manner known to law either by filing a suit or obstruction in E.P.No.26 of 1988?”

“(iv) Whether the judgment of the First Appellate Court is perverse for non-compliance of the mandate of Order 41 Rule 33 CPC?”



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19. Per contra, Dr.C.Ravichandran would submit that *lis pendens* would not arise in this case as the first defendant claims title to the property by virtue of a transaction, which is prior to the presentation of the plaint. He would further point out that a person, who has title to the property, need not always sue for declaration that any document which has been created over the said property is null and void. He would plead that as his clients are the owners of the property, they can ignore the sale deeds which have been created by Kora Raghavalu Naidu and Budaiah. He adds that though the judgment of the lower appellate court is short, the learned judge has dealt with the substantive issues within the space available in the judgment. He would finally submit that though the learned judge has not discussed the issues as required under Order XLI Rule 33, the judgment is not vitiated as there is substantial compliance of the requirement of the said provision thereof. He would state that no question of law much less the substantial question of law arises for consideration in the present appeal and therefore, seeks dismissal.

20. I have carefully considered the submissions made on either side.



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21. The title of the plaintiff to the property traces back to a sale agreement dated 12.06.1966. In terms of Section 54 of the Transfer of Property Act, a contract of sale of immovable property does not in itself create any interest or a charge over the property. It is the duty of the plaintiff having come forward with a suit for declaration of title to show that his predecessor in title namely, Budaiah, had right, title, and interest over the property for the purpose of entering into the agreement.

22. An agreement of sale or for that matter even a suit for specific performance which came to be filed subsequently between Kora Raghavalu Naidu and Budaiah does not go into the issues of title. Prior to the amendment of the Specific Relief Act, all that the courts look into is the readiness and willingness of the plaintiff and whether he had done everything that he can do in terms of the settled contract between the parties and if he had done so, the court would grant a decree for specific performance. The purpose of the aforesaid narration is to show that for the mere fact that the agreement of sale is entered into between Budaiah and Kora Raghavalu Naidu, it would not create a right in Kora Raghavalu Naidu to stake over the property over which Budaiah himself did not have any right.



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23. The further fact that the sale deed had been executed by the Court pursuant to the compromise decree also does not improve the case of the plaintiff. The Trial Court under Ex.A1 had executed the sale deed on the basis of the compromise decree under Ex.A13. The discussion *supra* would show that when Budaiah did not have a right over the property, any transaction based on such an agreement executed by him would also not confer any right on the purchaser. If Budaiah did not have any right over the property, then he could not have conveyed anything to Kora Raghavalu Naidu. If Kora Raghavalu Naidu had obtained the document from a person who had no title, he could not have conveyed anything to the plaintiff's vendors namely Vasumathi and Hari Prasad Babu. I am able to see that the title deed of the plaintiff, his vendors viz., Vasumathi and Hari Prasad Babu and their vendors viz., Kora Raghavalu Naidu are all traceable to the agreement of sale executed by Budaiah. As an agreement of sale does not confer any right, title or interest over an immovable property, the plaintiff cannot succeed to the same.

24. In a suit for declaration of title, I have to see who has better title to the property. As against the agreement of sale projected by the plaintiff, the



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defendants have produced the sale deed for the first item of the suit schedule property executed by Govindappa Naidu, one of the Palegari brothers in favour of Sanjeevammal. Sanjeevammal has thereafter executed a sale deed in favour of the minor Venkatesan and the said Venkatesan having died when he was seven years old, his mother Ponnammal, DW2, had sold the property in favour of the first defendant.

25. When I looked at the two sets of documents, I could see that title traceable to an agreement of sale on the side of the plaintiff and the sale deeds in favour of the defendant. Therefore, I would hold the defendant has better title to the first item of the suit schedule property and hence, the finding of the courts below would have to be confirmed.

26. At this stage, I have to address the second argument of Mr.N.Manoharam that Kora Raghavalu Naidu had obtained the property by virtue of the decree of the court. A decree of the Court in a suit for specific performance does not confer title on a person. All it does is, it puts into execution on behalf of the plaintiff, his right, title and interest to the property, which had been agreed upon. The agreement crystallizes into a decree and the



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decree thereafter becomes executable into a sale deed at the hands of the Court.

It is the agreement which merges into the decree of the court. If the agreement holder has no right over the property, then whatever is obtained in the decree is of no avail. Therefore, the argument that since Kora Ragavalu Naidu had obtained the property by virtue of the court executing the decree is a plea in vain.

27. The next argument of Mr.N.Manoharan that the sale deed executed by Sanjeevammal in favour of Ponnammal is hit by principle of *lis pendens*. I am able to see that the property belonged Sanjeevammal as she purchased it from Palegari brothers. Neither the Palegari brothers nor Sanjeevammal are the parties to the suit in O.S.No.21 of 1974. The fact that Sanjeevammal and Budaiah were married does mean that the suit presented by a stranger as against the husband would affect the interest of the wife, which had crystallized in her at least a decade before the presentation of the plaint.

28. The principle that the wife cannot have a separate existence from the husband has not been in vogue at least for a century and above even in countries like that of United Kingdom nor is it vogue in India after 26.01.1950.



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A female is entitled to possess a property independently and in exercise of that right which a female has, Sanjeevammal had purchased the property in her name. As neither Sajeevammal nor her predecessor-in-title were parties to the suit in O.S.No.21 of 1974, the issue of *lis pendens* does not arise even for a moment's consideration.

29. Finally, turning to the submission on Order XLI Rule 33, I have to agree with Mr.N.Manoharan that the judgment has not gone into great detail as of facts and law. However, as Kora Raghavalu Naidu and the plaintiff/Munikanniah had not produced any evidence before the Court that the first item of the property belonged to Budaiah, the learned first Appellate Judge confirmed the judgment and decree of the Trial Court. While it is a wish and desire that the lower Appellate Court should give reasons for its decision, since I found some reasons have been given by the first Appellate Court to confirm the judgment of the Trial Court, I will not view the failure to give a detailed reason as required by the last court of appeal as a serious irregularity in the facts of this case.

30. The substantive compliance having been found by me, I am



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constrained to reject all the submissions made by Mr.N.Manoharan.

Consequently, the second appeal is not admitted.

31. Apart from these issues, in terms of Section 48 of the Transfer of Property Act, Sanjeevammal's sale deed being prior in point of time namely 1963, and the sale deed of Kora Raghavalu Naidu being traceable back to the agreement of the year 1966, the sale deed of Sanjeevammal will take priority. Therefore, I am of the view that none of the substantial questions of law suggested by Mr.N.Manoharan arises for consideration in this case.

32. In the light of the above discussion, the Second Appeal is dismissed. The judgment and decree of the learned Subordinate Judge, Tiruttani in AS No.35 of 2015 dated 16.06.2016 confirming the judgment and decree the learned District Munsif Court, Tiruttani in O.S.No.157 of 2009 dated 03.08.2015 is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

26.06.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

- 1.The Subordinate Judge, Tiruttani
- 2.The District Munsif Court, Tiruttani



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V.LAKSHMINARAYANAN, J.

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