



A.S.No.69 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 17.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.69 of 2025 &

CMP.Nos.1211 & 1212 of 2025

1. Anila Ann Kuruvilla
2. Asha Susan Mathew
3. Anju S.Mathew

... Appellants

Versus

1. Menakabai S.Nikam
2. Shakunthala S.Nikam
3. Supriya S. Nikam
4. Meena S.Nikam
5. Anand S.Nikam
6. N.Arunachalam
7. M.Damodharan
8. P.Devi

... Respondents

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure to set aside the decree and judgment passed by the II Additional City Civil Court, Chennai in O.S.No.5059 of 2018 on 16.11.2024.

For Appellants : Mrs.K.M.Valsala



A.S.No.69 of 2025

For respondents : Mrs.R.Nirmaladevi – R6

R1 to R5 and R7 notice returned unserved

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JUDGMENT

Challenge has been made to the decree and judgment of the trial Court dismissing the suit filed by the plaintiffs for declaration and permanent injunction, in the present appeal .

2. The parties are arrayed as per their own ranking before the trial Court.

3.[i] It is the case of the plaintiffs that an extent of 1508 sq.ft. of vacant land is a part and parcel of larger extent of land measuring 3020 sq.ft. which was originally owned by one Ranganayaki Ammal along with her husband Mr.D.P.Krishnaswamy Naidu, they sold the property as plot No.4 measuring to an extent of 3020 sq.ft. by a sale deed dated 22.01.1972 in favour of one Venugopal and Giridhar Babu. Thereafter, an extent of land measuring 1508 sq.ft. has been sold in favour of Subash Kumar S.Nikam, son of the first



A.S..No.69 of 2025

defendant and husband of the second defendant and father of the defendants 3 to 5 by way of a sale deed dated 12.03.1984. The said Subash Kumar S.Nikam approached K.M.Thomas, the father of the plaintiffs and agreed to sell the property for a total sale consideration of Rs.30,000/-. The sale consideration has been paid on various dates and original documents have also been handed over to the plaintiffs' father. The plaintiffs' father was also put in possession of the property as part performance of the contract. The remaining sale consideration of Rs.5000/- alone has to be paid.

3[ii]. When the matter stood thus, the said Subash Kumar S.Nikam suffered paralytic stroke and he was taking treatment. The remaining sale consideration has also been paid on 27.09.1991. Subash Kumar Nikam died on 21.07.1992. Therefore, a legal notice has been issued by the father of the plaintiffs to the second defendant on 29.11.1999 and filed the suit in O.S.No.8015 of 1999. The second defendant, wife of the said Subash Kumar S.Nikam has entered appearance and filed written statement. Disputing the agreement, she wantonly did not disclose the names and details of other legal heirs. Having filed the written statement, she remained exparte. Therefore, the



A.S.No.69 of 2025

suit has been decreed on 09.07.2002. Thereafter, Execution Petition in E.P.No.48 of 2004 has been filed and sale deed has also been executed in favour of the father of the plaintiffs, K.M.Thomas, by the Court on 08.02.2006. The father of the plaintiffs died on 07.04.2017. As the possession has already been handed over, the plaintiffs are in possession of the property. While so, the seventh defendant with his henchmen tried to damage the compound wall of the suit property on 25.11.2017. After his attempt to encroach the property, the plaintiffs came to know that the legal heirs of Subash Kumar S.Nikam had created various documents and dealt with the suit property during the pendency of the suit. Hence, the suit for declaration and permanent injunction.

4. The defendants 1 to 5 remained exparte and they have not filed any written statement.

5. The sixth defendant had purchased the property during the pendency of the suit filed for specific performance. His specific contention is that he is in absolute possession of the suit property which is a vacant land to an extent of 1508 sq.ft. which is part of the larger extent of land measuring 3020 sq.ft.,



A.S..No.69 of 2025

which was originally owned by one Ranganayaki Ammal along with her husband. It is his contention that since he had purchased the property, he is in possession of the suit property. According to him, he had purchased the suit property after exercising due diligence and the alleged decree came to be passed after three years on 09.07.2002 and the execution petition has been filed in the year 2004 and the sale deed is said to have been executed by the Court on 08.02.2006. Since there is no encumbrance even in the year 2017, this defendant has registered the power of attorney and sold the property to the eighth defendant. According to him, the document relied upon by the plaintiffs is not in respect of the suit schedule property. The plaintiffs are no way related to the suit property. That apart, the plaintiffs have not filed the suit for declaration, but sought the relief to set aside the document. Hence, according to him, he had purchased the property after due verification.

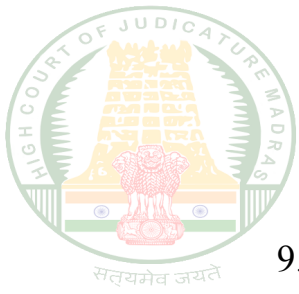
6. Based on the above pleadings, the following issues have been framed :



A.S..No.69 of 2025

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1. Whether the plaintiffs are entitled for declaration that they are the absolute owners of the plaint schedule property?
2. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for?
3. Whether the 6th defendant is a bonafide purchaser for value?
4. To what other relief the plaintiffs are entitled?
7. On the side of the plaintiffs, P.W.1 has been examined and Ex.A.1 to A.10 have been marked On the side of the defendants, the sixth defendant has examined himself as D.W.1 and marked Ex.B.1 to B.11.
8. The trial Court considering entire evidence, non suited the plaintiffs on the ground that after execution of the sale deed pursuant to the decree in the specific performance suit, they had not obtained possession from the Court and the sixth defendant is a bonafide purchaser.



A.S..No.69 of 2025

9. The learned counsel appearing for the appellants would contend that the trial Court has committed gross error in dismissing the suit. Admittedly, there is no dispute with regard to the identity of the property. Even in the earlier suit filed for specific performance, the first and second defendants in the present suit, contested the earlier suit wherein they had clearly admitted that the document of the property is with the plaintiff's father K.M.Thomas. Having filed written statement, they remained exparte in the suit and the suit has been decreed for specific performance in the year 2002. During the pendency of the suit, the legal heirs have fraudulently sold the property to the sixth defendant. Hence, according to them, such a sale is hit by doctrine of lis pendens. The sixth defendant is not a bonafide purchaser. Therefore, the trial Court has not even gone into this issue and merely got carried away by irrelevant materials with regard to the discrepancy in the plot numbers. Hence, submitted that the decree and the judgment of trial Court has to be set aside.

10. The learned counsel appearing for the six respondent vehemently contended that there is no entry reflected in the encumbrance and the sixth defendant has purchased the property after due verification of encumbrance.

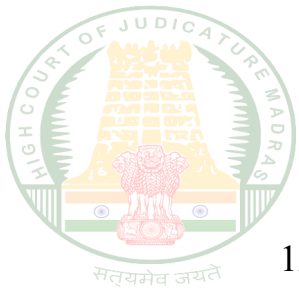


A.S.No.69 of 2025

Therefore, he is a bonafide purchaser. His sale is only in respect of the plot No.21. Whereas the original number of the plot number is No.4. Therefore, no correlation has been established by the plaintiffs. There is inconsistency in plot numbers and the earlier decree in O.S.No.8015 of 1999 is not binding on the six defendant since in the said suit, only the second defendant was a party. The defendant has verified encumbrance and with due diligence purchased the property. Further, the suit has been filed after 16 years of the sale deed executed in favour of the said K.M.Thomas. Therefore, the suit is hopelessly barred by limitation. Hence, submitted that the judgment of the trial Court does not require any interference.

11. In the light of the above submissions, now that points that arise for consideration are

1. Whether the suit is barred by limitation?
2. Whether the sixth defendant is a bonafide purchaser without notice of the earlier agreement?
3. Whether the sale in favour of the sixth defendant is hit by section 52 of the Transfer of Property Act.

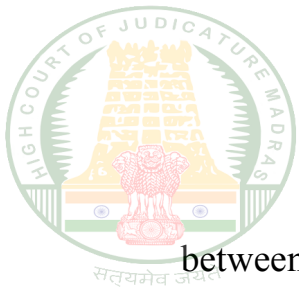


A.S.No.69 of 2025

12. Point Nos.1 to 3 :

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The suit has been filed in respect of 1508 sq.ft., a vacant site, which is part and parcel of the larger extent of land measuring 3020 sq.ft., which was originally purchased by one Subash Kumar S.Nikam under Ex.A.2 sale deed dated 12.03.1984. It is relevant to note that in Ex.A.4 written statement filed in the earlier suit filed by the plaintiff's father in O.S.No.8015 of 1999, it is clearly admitted by the defendant that plot No.5 was originally purchased by one K.M.Thomas. In the above statement it is admitted that the neighbouring plot has been purchased by K.M.Thomas and Plot No.4 was purchased by the husband of the second defendant. It is the specific case of the plaintiffs that in respect of the suit property, an agreement for sale was entered between the original purchaser namely Subash Kumar S.Nikam and K.M.Thomas and original documents have been handed over by Subash Kumar S.Nikam. K.M.Thomas was also put in possession of the property. In the written statement filed by the second defendant in the earlier suit in O.S.No.8015 of 1999, in fact the second defendant had sought for return of original document from K.M.Thomas. This fact also substantiate the case of the plaintiffs that the original documents have been handed over towards earlier contract entered



A.S.No.69 of 2025

between K.M.Thomas and Subash Kumar S.Nikam. The suit in O.S.No.8015 of

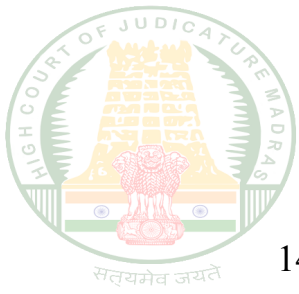
1999 filed by the plaintiff's father was also decreed in favour of K.M.Thomas

The judgment has also been marked as Ex.A.6. Pursuant to the said decree, the

sale deed has also been executed in favour of the said K.M.Thomas under

Ex.A.7.

13. It is relevant to note that the suit for specific performance was pending from the year 1999. The second defendant has filed written statement wherein she has not disclosed the details of the other legal heirs. Admitting the purchase of the neighbouring plot by her husband and also by the plaintiff's father K.M.Thomas, she had never disclosed the existence of other legal heirs. Whereas, during the pendency of the suit, very conveniently she along with her legal heirs have sold the property obtaining non traceable certificate as if original documents have been misplaced, and executed a sale deed Ex.A.5 in favour of the sixth respondent. Therefore, this Court straightaway holds that such a sale would come under the purview of Section 52 of the Transfer of Property Act and the sale is hit by doctrine of lis pendense.



A.S.No.69 of 2025

14. The Hon'ble Supreme Court in the case of *M/s.Siddamsetty Infra Projects Pvt. Ltd., vs. Katta Sujatha Reddy and others* in a review petition in **Review Petition (C).No.1565 of 2022 in C.A.No.5822 of 2022** has held that even in a suit for specific performance, doctrine of lis pendens will apply. To apply lis pendens, the following conditions are essential:

- a. There must be a pending suit or proceeding;
- b. The suit or proceeding must be pending in a competent court;
- c. The suit or proceeding must not be collusive ;
- d. The right to immovable property must be directly and specifically in question in the suit or proceeding;
- e. The property must be transferred by a party to the litigation; and
- f. The alienation must affect the rights of any other party to the dispute.

15. In *Kedar Nath Lal and another vs. Ganesh Ram and others* reported in **(1969) 2 SCC 787**, the Hon'ble Supreme Court has held that if the



A.S.No.69 of 2025

property was acquired pendente lite, the acquirer is bound by the decree ultimately obtained in the proceedings pending at the time of acquisition.

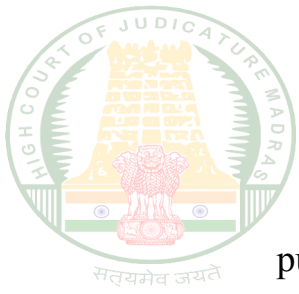
16. In this regard, it is also relevant to refer the judgment of the Hon'ble Supreme Court in *Samarendra Nath Sinha and another vs. Krishna Kumar Nag* reported in *AIR 1967 SC 1440*, wherein, it was held as follows:

"16. What then is the position of the respondent once it is held that the final decree for foreclosure was validly passed by the trial court? Could he challenge that decree in an appeal against it in the High Court on the basis that he was entitled to redeem the said mortgage? Section 91 of the Transfer of Property Act provides that besides the mortgagor any person other than the mortgagee who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same may redeem or institute a suit for redemption of such mortgaged property. An execution purchaser therefore of the whole or part of the equity of redemption has the right to redeem the mortgaged property. Such a right is based on the principle that he steps in the shoes of his predecessor-in-title and has therefore the same rights which his predecessor-in-title had before the purchase. Under Section 59-A of the Act also all persons who derive title from the mortgagor are included in the term



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“mortgagor” and therefore entitled to redeem. But under Section 52 which incorporates the doctrine of lis pendens, during the pendency of a suit in which any right to an immovable property is directly and specifically in question such a property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose. Under the Explanation to that section the pendency of such a suit commences from the date of its institution and continues until it is disposed of by a final decree or order and complete satisfaction or discharge of such a decree or order has been obtained. The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in Radhamadhub Holdar v. Monohar [15 IA 97] where the facts were almost similar to those in the instant case. It is true that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well-established that the principle of lis pendens applies to such alienations. (See Nilkant v. Suresh Chandra [12 IA 171] and Motilal v. Karrabuldin [24 IA 170]). It follows that the respondent having



A.S..No.69 of 2025

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purchased from the said Hazra while the appeal by the said Hazra against the said preliminary decree was pending in the High Court, the doctrine of lis pendens must apply to his purchase and as aforesaid he was bound by the result of that suit. In the view we have taken that the final foreclosure decree was competently passed by the trial court, his right to equity of redemption was extinguished by that decree and he had therefore no longer any right to redeem the said mortgage. His appeal against the said final decree was misconceived and the High Court was in error in allowing it and in passing the said order of remand directing the trial court to reopen the question of redemption and to allow the respondent to participate in proceedings to amend the said preliminary decree. "

Therefore, as the sixth defendant had purchased the property during the pendency of the earlier suit, the contention of the sixth defendant that he is a bonafide purchaser has no legs to stand in the eye of law.

17. The other contention of the learned counsel appearing for the respondents that what was originally purchased was plot Nos.4 and 5 and the suit has been filed in respect of plot No.21. It is relevant to note that the identity of the property is not the issue at all. It is categorically admitted by the



A.S..No.69 of 2025

second defendant in the written statement Ex.A.4 filed in the earlier suit that her neighbouring plot nos.4 and 5 was owned by the plaintiff's father and the other by her husband. The sale deed Ex.A.5 also clearly shows that the said property was purchased by the sixth defendant on 14.12.2000. With regard to survey number, there is no dispute at all. It is not the case of the defendant that Subash Kumar S.Nikam had other properties. When the property was purchased in the year 1984, which was the subject matter of the suit in O.S.No.8015 of 1999, the parties also knew about the property, now it cannot be taken advantage by the respondents with regard to new number mentioned in the suit and subsequent documents. When the properties have been purchased on 12.03.1984 which has been admitted and which was the subject matter of the issue in the earlier suit, merely taking advantage of wrong number quoted in the earlier proceedings, one cannot defeat the rights of the plaintiffs.

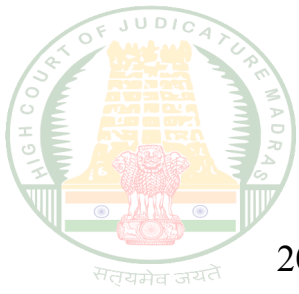
18. In the very written statement Ex.A.4 filed by the second defendant in the earlier suit, the dispute with regard to the identity of the property has never been raised. Similarly, the title deed Ex.A.5 relied on by the sixth defendant clearly indicate that he has purchased the property on 14.12.2000 which relates



A.S..No.69 of 2025

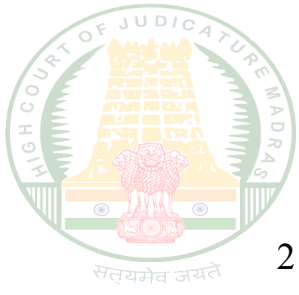
to plot No.4 only. Therefore, now taking advantage of some discrepancies in the plot number, the sixth defendant, who has purchased the property during the pendency of the proceedings cannot contend that he is a bonafide purchaser for valuable consideration. It is further to be noted that as already discussed, the wife of Subash Kumar S.Nikam having filed the written statement in the suit for specific performance, never disclosed the other legal heirs in the entire written statement. Be that as it may.

19. The second defendant is aware of the pendency of the suit. She along with her children and mother-in-law very conveniently dealt with the property in favour of the sixth defendant during the pendency of the suit. Even after the decree had been passed, all the documents, including the sale deed, had been created by the defendants. Therefore, any such sale will be certainly hit by doctrine of lis pendens. Therefore, the subsequent sale in favour of the 8th defendant also assumes insignificance.



A.S..No.69 of 2025

20. Further, the trial Court's reasoning that the suit has been barred by limitation also cannot be sustained in the eye of law. The suit for declaration has been filed immediately after the cause of action arose. It is the specific case of the plaintiffs that their father is the owner of the plot No.5, he has entered into an agreement of sale to purchase the suit property and rightly filed a suit for specific performance and the suit has been decreed in his favour. Pursuant to the same, sale deed has also been executed by the Court under Ex.A.7. It is also clearly pleaded in the plaint that as a part performance of the contract, possession was also handed over at the time of agreement in the year 1987 itself. Therefore, the question of filing execution petition for delivery of possession does not arise at all. The trial Court has travelled beyond the issue and non suited the plaintiffs without proper application of mind. The defendants 1 to 5 having dealt with the property during the pendency of the suit and conveniently remained exparte and now, only the sixth defendant is contesting the matter and infact he has not even challenged the judgment in the earlier suit, he cannot contend that he is a bonafide purchaser. Hence, the decree and judgment of the trial Court has to be set aside. The points are answered accordingly.



A.S.No.69 of 2025

21. In the result, this appeal is allowed and the judgment and decree of the trial Court in O.S.No.5059 of 2018 dated 16.11.2024 is set aside and the suit is decreed for declaration and permanent injunction as against the defendants with costs. Consequently, connected miscellaneous petitions are closed.

17.04.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The II Additional City Civil Court, Chennai.
2. V.R.Section, High Court, Madras.



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A.S.No.69 of 2025

N. SATHISH KUMAR, J.

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A.S.No.69 of 2025

17.04.2025