



A.S.No.468 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.468 of 2024
and CMP.No.14069 of 2024

A.Shanthi

... Appellant

Versus

1.G.Jayaraman
2.V.Nirmala
3.S.Veeramani

V.Srinivasan (Died)
4.S.Venkatalakshmi

V.Sivalingam (Died)
5.V.Vijayakumar

6.G.K.S.Chandrasekaran

... Respondents

Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 18.03.2024 in O.S.No.204 of 2017 on the file of I Additional District Court, Salem.

For Appellant	: Mr.R.Nalliyappan
For Respondent	: Mr.V.Sekar for R1
	Mr.P.Mathivanan for R3
	R2 and R4 – Left
	No appearance for R5 and R6



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JUDGMENT

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Challenging the decree and judgment of the Trial Court dismissing the suit filed for declaration, permanent injunction and canceling the decree passed in O.S.No.161 of 2011 on the file of II Additional Subordinate Court, Salem in favour of the first defendant.

2. For the sake of convenience, the parties are arrayed to as per their own ranking before the Trial Court.

3. Brief background of filing this appeal are as follows:

3.a. The Plaintiff has purchased the suit property from the defendants 6 and 7 through their power of attorney agent, the 8th defendant on 09.08.2011. Ever since the date of purchase, the plaintiff is in absolute possession and enjoyment of the suit property and mutation of revenue records have also taken place in her name. The property originally belonged to the second defendant by virtue of a sale deed dated 30.04.1996, she has executed a power of attorney in favour of 3rd defendant on 24.08.2005. According to the plaintiff, the said power of attorney is not intended for the purpose stated therein. That power of attorney was executed between the defendants 2 and 3 when their relationship was cordial, however, the



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3rd defendant in order to create false documents obtained a sham and nominal stamped receipt from the second defendant on the very same day of power of attorney deed dated 24.08.2005. Further, the third defendant had falsely created another sham and nominal sale agreement in favour of the 1st defendant on 28.03.2007. Though 11 months time was agreed for completion of sale, the very next date of the sale agreement, i.e., on 29.03.2007, an endorsement was made in the agreement as if the remaining sale consideration is also passed.

3.b. Thereafter, the second defendant had orally cancelled the power of attorney and sold the property in favour of the defendants 4 and 5 on 30.03.2007. The defendants 4 and 5 sold the property on 07.09.2010 and 14.09.2010 respectively. The plaintiff has purchased the property from the defendants 6 and 7 through their power agent/8th defendant. In the meanwhile, the first defendant has filed a suit in OS.No.161 of 2011 on the file of II Additional Sub Court, Salem through the first defendant for specific performance based on the agreement dated 28.03.2007 and the said suit has been decreed. According to the plaintiff, he is only a bonafide purchaser from rightful owners for valid consideration. Hence, the decree and judgment passed in favour of the first defendant is a result of fraud.



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The sale agreement in favour of the first respondent is sham and nominal without sale consideration. Further, the earlier suit is barred by limitation.

3.c. It is the contention of the first defendant in the written statement that in O.S.No.161 of 2011, an application in I.A.No.401 of 2013 has been filed by the defendants 6,7 and 8 to implead the plaintiff as the 8th defendant and the said application was dismissed. Further, in the said suit, the first defendant has obtained injunction against the defendants therein not to alienate the suit property, inspite of the same, the 8th defendant has executed the sale deed dated 09.08.2011 in favour of the plaintiff and such sale is void ab-initio as it was executed during the pendency of injunction order. The suit is barred under res-judicata and also be lis pendens.

3.d. It is the contention of the 3rd defendant in the written statement that he had entered into a sale agreement dated 28.03.2007 with the first defendant to sell the suit property for a valid consideration on the strength of power of attorney given by the second defendant. It is also stated by the third defendant that the possession was handed over to the first defendant on 29.03.2007. The first



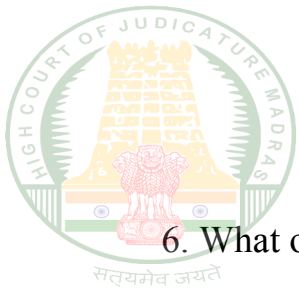
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defendant filed a suit in O.S.No.161 of 2011 seeking specific performance,

wherein, all the defendants were parties and a decree was passed in favour of the first defendant on 08.08.2014 for specific performance. The plaintiff bases title to the suit property from its previous owners, who derive title from sale deeds date 30.03.2007, 07.09.2010 and 14.09.2010 and the same were declared as null and void. In spite of the injunction granted by the Trial Court, the 8th defendant has executed the sale deed dated 09.08.2011 and such sale is void ab initio and there is no cause of action for the suit. Hence, opposed the suit.

3.e. Based on the pleadings, the Trial Court framed the following issues:

1. Whether the suit is maintainable as such the plaintiff vender's title documents were declared as null and void in the earlier suit in O.S.No.161/2011?
2. Whether the plaintiff can maintain the present suit to cancel the judgment and decree in O.S.No.161/2011 as such his vender's are parties to the suit?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff is entitled for declaration of title?
5. Whether the plaintiff is entitled for the relief of cancellation of decree in O.S.No.161/2011?



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6. What other relief?

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3.f. On the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A17 were marked. On the side of the defendant, the first defendant was examined as DW1 and no exhibits were marked.

3.g. The Trial Court based on the oral and documentary evidences had dismissed the suit. Challenging the said decree and judgment, the present appeal is filed.

4. The learned counsel for the appellant submitted that the appellant has purchased the property for a valid consideration and she is a bonafide purchaser of the property. According to him, though the first defendant in the suit claims to have purchased the property vide an agreement entered on 28.03.2007 under Ex.A7 had received advance and on the very next day, remaining amount has been paid and endorsement has been obtained. These facts clearly shows that the very agreement itself is a created one. At any event, power of attorney given to the third defendant is already cancelled and the property has been sold to the defendants 4



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and 5 on 30.03.2007. The defendants 4 and 5 sold the property on 07.09.2010 and

14.09.2010 respectively. The plaintiff has purchased the property from the defendants 6 and 7 through their power agent/8th defendant. Hence, it is the contention that the very suit filed by the first defendant for enforcing the contract dated 28.03.2007 itself is not maintainable and the suit was barred by limitation and the defendants colluded together in the suit and allowed to the decree to be passed. Hence, seeks for allowing this appeal.

5. Whereas, the learned counsel for the first respondent submitted that in the earlier suit filed for specific performance, the defendants 6,7 and 8 filed an application in I.A.No.401 of 2013 to implead the plaintiff in the suit and the same was dismissed on merits. Further the earlier suit was contested and the decree has been passed. The very sale in favour of the appellant has been made violating the injunction granted by the Trial Court in the earlier suit in O.S.No.161 of 2011. That apart the sale is hit by doctrine of lis pendens. Hence, seeks for dismissal of this appeal.

6. In light of the above pleadings and submissions, now the following issues



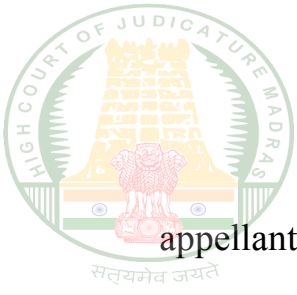
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arise for consideration:-

- WEB (i). Whether the appellant can seek declaration to annul the judgment and decree passed in O.S.No.161 of 2011 on the ground the earlier suit filed for specific performance is barred by limitation?
- (ii). Is there any plea of fraud established by the appellant?
- (iii) To what other reliefs?

Points (i) to (iii)

7. The suit has been filed by the appellant mainly to set aside the decree and judgment of the Trial Court in O.S.No.161 of 2011. The suit in O.S.No.161 of 2011 has been filed by the first defendant in the present suit to enforce the registered agreement dated 28.03.2007 on the ground that the defendants have been evading the agreement. In the said suit, the vendors of the appellant were made as parties and they were defendants and they had contested the matter. In the said suit, the vendors of the appellant took a plea that they are bonafide purchasers. However, the Trial Court negatived their right and granted the decree for specific performance to enforce the contract dated 28.03.2007. It is relevant to note that in the said suit, in fact, application has been taken out to implead the

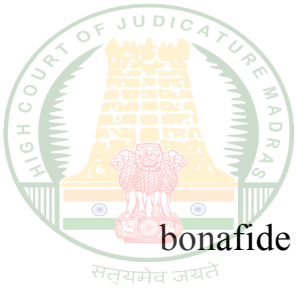


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appellant and the same has been dismissed on merits. Be that as it may, in the said suit, interim injunction was ordered by the Trial Court in favour of the first defendant not to alienate the property. The said suit was filed on 28.04.2011 and the plaintiff/appellant has purchased the property on 09.08.2011 during the pendency of the suit. Therefore, violating the interim orders of the Trial Court the purchase has been made during the pendency of the suit which will certainly get hit under Section 52 of Transfer of Property Act. The doctrine of lis pendens will certainly come into play. Further, the earlier decree and judgment has not been challenged by the vendors. When the Trial Court has already held that the vendors of the appellant are not bonafide purchasers and that decree has reached finality, the appellant who had purchased the property during the pendency of the suit, now cannot re agitate the matter raising all the defense in the present suit.

8. Further, the decree and judgment cannot be challenged on the ground that the suit is barred by limitation. In the entire evidences, there is no materials placed to show that decree and judgment in O.S.No.161 of 2011 is filed by playing fraud. The very purchase made by the vendors of the appellant was during the existence of the agreement dated 28.03.2007, as long as it is not established that they are



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bonafide purchaser, their purchases is always subject to the result of the suit for specific performance. The suit has already been decreed. Such view of the mater, the appellant who purchased the property that too during the pendency of the suit cannot seek better right to challenge the decree and judgment of the specific performance already granted in favour of the first respondent. Accordingly, these points are answered.

9. In view of the above, I do not find any merits in the appeal and this appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order
dhk



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1. The I Additional District Judge,
I Additional District Court
Salem

2. The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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