
(1960) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Second Appeal No. 789 of 1956

Bhagavathula Kameswara Rao

APPELLANT

Vs

Doddaku Veera Raghavulu and Another

RESPONDENT

Date of Decision : 18-03-1960

Acts Referred:

Registration Act, 1908 — Section 47

Citation : AIR 1960 AP 616

Hon'ble Judges : Munikanniah, J

Bench : Single Bench

Advocate : Vidyasagar, for B.V. Ramanarsu, for the Appellant; G.S.R. Anjaneyulu, for K. Krishnamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—The question for consideration in this second appeal is whether a sale deed executed in favour of the claimant before the attachment but registered later than the attachment can prevail.

2. The facts leading to the second appeal briefly are: The plaintiff is the appellant herein who obtained a decree on 22-2-1951 in O. S. No. 78 of 1951 on the file of the District Munsif's court, Masulipatam, on the foot of a promissory note executed on 10-12-1948 by the 2nd defendant in his favour and in Execution Petition No. 104 of 1951 the suit properties were attached on 30-3-1951. The 1st defendant claimed these properties by virtue of a sale deed executed by the second defendant in his favour on 24-1-1951 (Ex.B.2), but it was registered on 2-4-1951 i.e., on a date subsequent to the attachment. As the claim of the 1st delendant was allowed, the plaintiff filed the suit out of which this second appeal arises. Both the lower courts held that the registration of Ex. B. 2 subsequent to the attachment does not affect the rights of the first defendant under the purchase, and the reason for this as stated by the lower courts is that the registration of the sale deed relates back to the date of execution.

3. Mr. Vidyasagar, learned counsel for the appellant, argued that Exs. B. 3 to B. 6 which the first defendant relied upon to prove that there was consideration for the suit sale deed Ex. B-2. were not proved by calling in the persons who executed those vouchers. But they are admittedly in favour of the 1st defendant who examined himself as D. W. 1. These documents were spoken to by the 1st defendant though they are in the name of the 2nd defendant. The payments having been made from out of the sale consideration of Ex. B. 2, and the evidence of the 1st defendant who deposed as D.W. 1 having been believed by both the courts, it cannot, in the circumstances be said that the payments towards these debts of the second defendant have not been made out. The concurrent findings of the lower courts on this aspect of the case therefore, in my view, are unassailable,

4. On the question whether Ex. B-2 which was unregistered till the date of attachment is incapable of prevailing against the claims of the attaching creditor, Mr. Vidyasagar contended that inasmuch as any transfer of interest in the alienated property would pass only on the registration of the sale deed, and as the transfer also should be taken to have effect only from the time of registration, the 1st defendant could not be considered as having any interest which would defeat the claims of the plaintiff when the attachment was made. For this purpose the learned counsel relied upon the case of M.G. Sundaragiriraja Ayyangar and Others Vs. D. Balasubramania Ayyar and Another, J decided by a Division bench of the Madras High Court consisting of Mr. Justice Madhavan Nair and Mr. Justice Bardswell.

The point that arose for determination in that case was whether a creditor who petitioned to adjudicate a debtor was in time in filing his application. That application was filed within three months of the registration of the sale deed which is made the act of insolvency, but it is admittedly beyond three months from the date of execution, of the sale deed. On behalf of the appellant therein it was contended that though Section 47 of the Registration Act makes the effect of registration to begin from the date of execution, Section 34 of the Transfer of Property Act coupled with the other Provisions of the Registration Act are not calculated to give effect to any transfer of property over the value of Rs. 100/- unless the deed is registered and therefore the transfer for purposes of an act of insolvency should have taken place only on the registration of the document.

This contention found favour with that Division Bench as they were in agreement with the decision in the case of N.R.M.M.M. Muthiah Chettiar Vs. The Official Receiver of Tinnevely District and Another, which decided a similar question. There the alienation was with reference to a mortgage deed. Though the learned counsel conceded that it is also a case under the Insolvency Act, he still persisted that the principle that no transfer was effected till the registration should be extended to the instant case. A still later decision in the case of Venkadari Somappa Vs. The Official Receiver of Bellary, under the Insolvency Act is also called in aid by the learned counsel.

This decision also, in my view, pursues the same line of reasoning adopted in the case of *M.G. Sundaragiriraja Ayyangar and Others Vs. D. Balasubramania Ayyar and Another*, (2)). The decision in the case of *In Re: Subbaraya Setty and Others*, referred to in this connection is a similar case concerning the act of insolvency. All these decisions, in my view, are more primarily concerned with the ascertainment of the time when the act of insolvency was committed by the debtor, depending upon a "transfer" of the property which has necessarily to be construed with reference to the definition of "transfer" contained in Section 64 of the Transfer of Property Act. These decisions do not however, in my view, strike at or affect the provision contained in Section 47 of the Registration Act and are not designed to rule that operation of an unregistered document, though compulsorily registerable, takes effect only from the date of registration.

5. The learned counsel for the appellant then referred to the case of *Tarak Nath Mukherjee Vs. Sanat Kumar Mukherjee and Others*, where a Division Bench of the Calcutta High Court was considering the effect of an attachment over a claimant who had only an agreement of sale in his favour. But this decision is clearly distinguishable inasmuch as Section 54 of the Transfer of Property Act makes a contract for sale of Immovable property by itself, incapable of creating any interest or charge on such property. The facts of that decision therefore are of no guidance in a case of sale effected by a conveyance which was subsequently registered.

6. The law on the point, it may safely be taken, should be on the lines indicated by the Judicial Committee in the case of *AIR 1927 42 (Privy Council)* where their Lordships were no doubt considering the question whether the provisions of Section 123 of the Transfer of Property Act and Section 47 of the Registration Act could at all be reconciled. They were concerned with a case of gift where possession of the property has been handed over, but the instrument was not registered. In that connection, the following has been observed by the Judicial Committee :

"They are unable to see how the provisions of Section 123 of the Transfer of Property Act can be reconciled with Section 47 of the Registration Act except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of Immovable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the donor has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with."

In the case of *Akki Guru Basappa and Another Vs. Vuluvathi Setra Santhappa*

and Others, a Division Bench of the Madras High Court consisting of Mr. Justice Devadoss and Mr. Justice Wallace were considering a question arising as to the application of doctrine of lis pendens and stated the law with reference to Section 47 of the Indian Registration Act thus:

"In a competition between two documents creating title to Immovable property the document earlier in date has precedence over another document later in date but registered before the former document. It is not the registration of a document which operates to create title but it is the document itself. The Registration Act makes valid such documents as soon as they are registered but the right conveyed or transferred is the right which exists in the transferor on the date of the document."

Having regard to what has been stated in these reports, and in view of the fact that in the instant case the facts reveal that not only there was the execution of the sale deed by the 2nd defendant in favour of the 1st defendant, but possession was also given as on the date of the execution of the deed just as in the case dealt with by the Judicial Committee something more than mere execution of deed has happened and therefore, the instant case appears to me to fall under the pronouncement of the Privy Council.

7. Further, it is not as though there are no cases where the effect of attachment in regard to a claimant under an unregistered deed has been considered. The case of AIR 1937 143 (Nagpur) is one such in point. There Chief Justice Stone has been dealing with a case where a property was attached by a creditor and the claimant had a sale deed in his favour which was registered subsequent to the attachment. The learned Chief Justice felt that such matters should be said to be covered by the ruling in the case of AIR 1927 P. C. 42 : 50 Mad. 193. Yet another case dealt in Faiyazuddin Khan Vs. Mt. Zahur Bibi, and decided by Fazal Ali and Rowland JJ., gives expression to the same view. A deed of baimokasa in respect of certain property was executed though it required registration, and in a claim "by the holder of the document against attachment of the property, Fazal Ali J. speaking for the Division Bench observed countering the argument that attachment should prevail over the claim under the unregistered document as follows :

"This argument overlooks the fact that the person in whose favour the document is executed has a right under law to ask for compulsory registration, and the document, when so registered, must u/s 47, Registration Act, take effect from the date of the execution. I do not see why in principle the attachment should prevail as against the document when the party executing it does voluntarily what he can under the law be compelled to do."

8. In holding this view, that Division Bench was in agreement with the expression in the case of Nabadwip Chandra Das and Others Vs. Loke Nath Roy and Others, Having regard, therefore, to the state of authorities and also that the line of cases relied upon by the learned counsel for the appellant are distinguishable as

relating only to insolvency proceedings and to the case of an agreement of sale, it seems to me that the case of a sale deed though unregistered at the time of execution stands apart and as the transfer relates back to the execution when it is registered it can operate to prevail over or against the attachment effected later than the execution of the unregistered-sale deed. In this view, I find that the contention of the learned counsel for the appellant is not sound.

9. It follows that the concurrent findings at the lower courts that the 1st defendant is entitled to succeed in the suit and that there could be no decree in favour of the plaintiff are correct, and cannot be set aside. In the result, this second appeal fails and is dismissed with costs. No leave.