
(2010) 03 MAD CK 0267

In the Madras High Court

Case No : C.R.P. (NPD) No. 640 of 2010 and M.P. No. 1 of 2010

Chinna Karuppathal

APPELLANT

Vs

A.D. Sundara Bai and 14 others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 34 Rule 5, 144, 151, 47
Transfer of Property Act, 1882 — Section 52

Citation : (2010) 4 CTC 618

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : T.V. Ramanujam, for T.V. Krishnamachari, for the Appellant; M.S. Krishnan, for Sarvabhauman Associates, Advocates for Respondent No. 14, T.L.L. Ramakrishnan, Advocate for Respondent Nos. 8, 12 and 13, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This Civil Revision has been preferred against the order and decretal order, dated 11.01.2010 made in E.A. No. 139 of 1962 in E.P. No. 134 of 1957 in O.S. No. 226 of 1946 on the file of the Sub-Court, Coimbatore. The Revision Petitioner herein and one Chinnapappu @ Ramasamy Gounder had filed the said Execution Application before the Executing Court u/s 47 r/w. 151 of the CPC and by the impugned order, the Execution Application was dismissed by the Court below on merits. Aggrieved by which, the Revision has been preferred by the Petitioner herein.

2. It is an admitted fact that the Revision Petitioner along with the other person had filed the Execution Application, claiming right over the suit property, questioned the Court auction sale and also prayed for dismissal of the Execution Application, by setting aside the Court auction sale, however, the said Application was dismissed by the Court below.

3. T.V. Ramanujam, learned Senior Counsel appearing for the Revision Petitioner submitted that the Court auction sale relating to the suit property is against law

and liable to be cancelled. According to the learned Senior Counsel, there was no attachment over the property, however, the property was brought in a Court auction sale, hence, the Court auction is illegal and liable to be set aside.

4. Per contra, M.S. Krishnan, learned Senior Counsel appearing for the 14th Respondent/auction purchaser, submitted that the Execution Application filed by the Petitioner along with another before the Court below itself was not legally maintainable and hence, there is no error in the impugned order. According to the learned Senior Counsel appearing for the 14th Respondent, the matter was finally decided by the Apex Court and the points raised by the Petitioner herein in the Execution Application were already decided and reached finality and therefore, filing Execution Application before the E.P. Court and the present Revision Petition are to be construed only an abuse of process of Court.

5. As per the impugned order, the Court below has framed the following point for consideration for deciding the Execution Application:

Whether the Petition u/s 47 filed by the Petitioner to be allowed or not?

In the finding, the Court below has held that in the SLP filed by the Petitioner before the Apex Court, the point that was decided in the Execution Application, u/s 47, C.P.C. was also considered and the relief sought for by the Petitioner herein was negated. The Petitioner had filed separate Execution Application, in E.A. No. 255 of 2009 to take up the Petition filed u/s 47, C.P.C., that was dismissed by the Executing Court. Confirming the order of the Court below, the earlier Revision Petition was dismissed by this Court. The Court below, after considering the earlier orders, which reached finality and also the arguments advanced by both the learned Counsel, has held that there is no merits in the Petition, either in law or on facts and accordingly, dismissed the Execution Application.

6. The Hon'ble Supreme Court of India in Civil Appeal Nos. 5267-5269 of 2002, dated 24.10.2008, has categorically held as follows:

9...This is not a case of usufructuary mortgage. Nor is any interest payable on any loan. Nor is the claim for any rent payable. Therefore, we are not satisfied that Appellants, are persons entitled to the benefits of the Act. In the absence of such satisfaction, the question of setting aside the auction sale u/s 23-A of the Act does not arise. The rejection of the three Applications is proper. As a consequence, the auction sales will have to be confirmed in favour of the auction-purchasers.

10. The Appeals have no merits and are accordingly dismissed.

7. Subsequently, Applications for clarification was filed before the Hon'ble Apex Court by the Petitioners herein, however, by order, dated 23.02.2009, the Hon'ble Apex Court dismissed the Application, seeking clarification. Only after the dismissal of the clarification Applications, the Court below dismissed the Execution Application, as per the impugned order, the aforesaid facts are not in dispute in the Civil Revision Petition.

8. It is an admitted fact that one Ammasai Gounder had filed a Money Suit against one A.T. Krishnasami Mudaliar and another in O.S. No. 226 of 1946 on the file of the Sub-Court, Coimbatore and the Suit was decreed on 14.10.1947. The Defendant in the Suit filed an Appeal in the High Court in A.S. No. 713 of 1947. On the Application filed by the Appellants/ Defendants, stay of execution of the decree was granted, subject to the Defendants therein depositing the entire decree amount into Court. After depositing the amount, the Court had permitted the Plaintiff, who was the Respondent in the Appeal to withdraw the said decree amount, after furnishing security to the satisfaction of the Court. The said Ramasamy Gounder stood as surety and gave his agricultural lands as security for the amount, based on which, the amount was permitted to be withdrawn by the Plaintiff in the Suit. Though the amount deposited by the Defendants was withdrawn by the Plaintiff in the Suit, the Appeal preferred by the Defendants was allowed by this Court on 31.10.1957 and the money decree passed in O.S. No. 226 of 1946 was set aside. Subsequently, the Defendants in the suit moved an Application for restitution u/s 144 of the Code of Civil Procedure. However, the Plaintiff did not repay the amount withdrawn by him, but absconded, hence, the Defendants in the Suit filed E.P. No. 135 of 1957 for recovery of the amount deposited by them, by way of sale of the lands, that were given as security by Ramasamy Gounder. Subsequently, the lands were sold in Court auction sale on 16.11.1960 and 06.09.1961 and the 14th Respondent herein was the successful bidder in the auction.

9. During the pendency of the Execution proceedings, the surety Ramasamy Gounder died and his widow Rajammal was impleaded as his legal representative, who moved an Application in E.A. No. 148 of 1961 under Order 21, Rule 89, C.P.C. for setting aside the auction sale, but she did not deposit the amount mentioned in the sale proclamation and the amount equal to 5% of the purchase money, as required under the said Rule. Hence, by order, dated 17.09.1966, the Application filed by Rajammal for setting aside the sale was rejected by the Court below. However, she challenged the said dismissal order before this Court in C.M.A. No. 337 of 1966 and by Judgment, dated 26.08.1971, the C.M.A. filed by Rajammal was also dismissed, confirming the order passed by the Executing Court. Rajammal challenged the said Judgment in an Appeal by way of filing SLP (C.A. No. 382 of 1973) before the Hon"ble Apex Court. During the pendency of the Appeal, Rajammal moved an Application for scaling down the debt and by setting aside the auction sale under the provisions of the Tamil Nadu Agriculturists Relief Act, 1938.

10. The Hon"ble Apex Court by order, dated 07.11.1986 dismissed the Appeal preferred by Rajammal, however, referred the said Application for scaling down the debt and setting aside the sale under the Act to the Subordinate Court, Coimbatore for disposal in accordance with law.

11. It is not in dispute that subsequently Rajammal settled the lands, which had been offered as security and some other properties in favour of one Chinna

Pappu Gounder, brother of her husband Ramasami Gounder, under a registered Settlement Deed, dated 03.06.1960. The Appellants in Appeal Nos. 5267-5269 of 2002 on the file of the Supreme Court were only the legal heirs of the said Chinna Pappu Gounder. When the matter referred by the Apex Court was taken up by the Executing Court, Rajammal and the aforesaid Appellants before the Apex Court filed three Execution Applications (i) E.A. No. 1612 of 1987 u/s 19-A of the Tamil Nadu Agriculturist Relief Act, 1938 (herein after referred to as the "Act") for determination of the amount to be paid by them to the decree holders (Defendants in the Suit) by scaling down the amount under Sections 7 and 8 of the Act, (ii) E.A. No. 1613 of 1987 u/s 23-C of the Act for setting aside the Court auction sale held on 16.11.1960 and 06.09.1961 and (iii) E.A. No. 782 of 1988 under Order 34, Rule 5 read with Section 151 of C.P.C. for fixing the date of depositing the amount found due and payable by the legal representatives of the surety.

12. The aforesaid three Applications were dismissed by the Executing Court by a common order, dated 22.09.1992. The Executing Court is of the view that remedy if any of the surety or legal representatives would be under Order 21, Rule 89, C.P.C. and that remedy had already been exhausted on account of the Application filed under the said provision of law. The aforesaid order was challenged in C.R.P. Nos. 3162-64 of 1992. The High Court found that there was no error in the rejection of the aforesaid three Applications, by its order, dated 26.02.1998 and accordingly, the Civil Revision Petitions preferred against the orders passed in the aforesaid three Applications were dismissed. It was also categorically held by this Court as well as the Hon"ble Apex Court that merely because agricultural lands were sold in an auction sale, the owners of such lands are not entitled to invoke the exercise of power u/s 23-A of the Tamil Nadu Agriculturists Relief Act, 1938. Only if the Court is satisfied that the Applicant is a person entitled to the benefits of the Act, the relief can be granted and accordingly, the relief sought for under the Act was negated.

13. Admittedly the Revision Petitioner herein was a party to the Appeal in Appeal Nos. 5267-69 of 2002, who has claimed right only through Rajammal and Chinna Pappu Gounder and hence, the Petitioner herein cannot claim any independent right to the property over and above her predecessors in title. It is not in dispute that the earlier orders passed by the Executing Court reached finality up to the Hon"ble Apex Court are binding on the Petitioner.

14. The main argument advanced by learned Senior Counsel, T.V. Ramanujam is that no attachment was made on the property before the same was brought in the Court auction and original decree was also not produced, hence, according to him, the Executing Court could not have granted the relief in favour of the Respondent/auction purchaser. In support of his contention, learned Senior Counsel cited the following decisions:

1. 155 Ind. Cas. 511 (Rangoon) 2. Tej Ram Vs. Amar Singh, 3. AIR 1933 352 (Lahore) 4. Kosuru Ademma Vs. Chevuru Subbamma,

15. Per contra, M.S. Krishnan, learned Senior Counsel appearing for the 14th Respondent/auction purchaser, submitted that the aforesaid questions raised in the Execution Application were already decided and reached finality up to the Hon"ble Supreme Court and therefore, the Petitioner cannot reagitate the same before the Executing Court once again.

16. It is not in dispute that the term "representative" u/s 47, C.P.C. has to be construed in a wider sense than the ordinary meaning of the term, "legal representative", which includes any representative-in-interest. It is not in dispute that as contemplated u/s 47, C.P.C., all question arising between the parties to the Suit in which the decree was passed or their representatives, relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by way of separate suit. As per sub-section (3) of the aforesaid Section, where a question arises as to whether any person is or is not the representative of a party, such question shall for the purposes of this Section, be determined by the Court below. In the instant case, the Petitioner herein has claimed right only through the judgment-debtor, therefore, she cannot claim any independent right to the property than what the judgment-debtor had. Though the Petition filed u/s 47, C.P.C. shall be disposed of like a Suit, for the purpose of determining the issues involved, that were already decided, hence, the points cannot be raised once again. According to the learned Counsel appearing for the Respondents, the grounds raised in the Execution Application by the Petitioner were already decided and reached finality up to Supreme Court and therefore, the same cannot be reagitated before the Executing Court.

17. The Division Bench of this Court has held in Vijayalakshmi Leather Industries (P) Ltd. Vs. K. Narayanan, Lalitha, Venkatanarayanan, Murali, Sumithra and Selvi, as follows:

12...When Section 52 of the Transfer of Property Act makes it clear that no party to the proceeding can transfer any property which is the subject matter of litigation, the transferee from the party to the proceeding or the judgment-debtor cannot have any valid independent title than that of the judgment-debtor. Hence, the transfer made by one of the parties to the proceedings pendente like to subject to the result of the litigation and there is absolute transfer of right or title in favour of the transferee. Hence, by way of subsequent transfers, such subsequent transferee can derive whatever the right there transferor i.e., the transferee from the judgment-debtor or the party to the proceeding had and nothing more...

18. It is well settled that while interpreting the provisions of statute, the Court must give due weight to the intention of the statute, in order to give effect to the provisions. If any narrow interpretation is given and thereby the purpose of the statute is being defeated, the Courts must be careful to avoid such interpretations, however, by way of interpretation, the Court cannot enlarge the right of any party beyond what is available, as per the provisions of law.

19. In AIR 1933 352 (Lahore) it has been held as follows:

The expression "representative" in Section 47 of the CPC has been construed in a wider sense than the expression "legal representative" and includes also representative-in-interest. The two tests to be applied in determining whether a person is a "representative" within the meaning of Section 47 of CPC are (1) whether any portion of the interest of the decree-holder or of the judgment-debtor, which was originally vested in one of the parties to the suit has by act of the parties or by operation of law vested in the person who is sought to be aerated as representative; and (2) if there has been devolution of interest whether so far as such interest is concerned that person is bound by the decree.

20. In Kosuru Ademma Vs. Chevuru Subbamma, , it was held that the term "representative" in Section 47 of the CPC is not confined to legal representative but would also include the representatives-in-interest who may have obtained and who may allege to have obtained the decree-holder's interest by transfer or assignment.

21. The Hon"ble Apex Court in the case of Dhanna Singh and Others Vs. Baljinder Kaur and Others, has held as follows:

Apart from the Doctrine of lis pendens u/s 52 of the T.P. Act, the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the First Defendant, who had given up the right to lead evidence.

22. As per P. Ramanatha Aiyar, The Law Lexicon, the term Lis means a Suit, action controversy or dispute and lis pendens means a pending Suit. The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim pendente lite nihil innovetor, that is, pending the Suit nothing should be change. Lis pendens is applicable to a subsequent purchaser or a person, who claims right based on any settlement Deed or Will through a party to the dispute and such claimants are not entitled to claim any better right than their predecessor in title, who was a party to the litigation, in view of the Doctrine of lis pendeviu of the Doctrine of lis pendens.

23. There is no dispute with regard to the interpretation of the term "representative", that includes the representative-in-interest, apart from legal representative, but it is well settled that either legal representative or representative-in-interest claiming right through a party to the proceeding, cannot claim a right more than the right, that was available to their predecessor in title. In other words, the person who acquire right through a litigant to a dispute or controversy cannot claim a better right than his predecessor in title, as such the earlier decisions, in which the predecessor is a party are binding on the person, who claims right in view of the Doctrine lis pendens.

24. In the instant case, the Revision Petitions is challenging the auction sale that had taken place on 16.11.1960 and 06.09.1961 on the ground that there was no attachment of the property and the original decree passed in the suit was not

produced. The aforesaid defence was already raised, went up to the Supreme Court and reached finality and therefore, the Petitioner, who claims right through the legal representative of the judgment-debtor cannot raise it as a defence. Even if such defence was not raised by her predecessor, after reaching finality, it is not open to the Petitioner to raise certain new defence. Admittedly, the Civil Appeal Nos. 5267 to 5269 of 2002 filed by Chinna Karuppathal, the Petitioner herein and others were dismissed by the Hon''ble Apex Court. By Judgment, dated 24.10.2008, the Hon''ble Supreme Court has held in the Judgment as follows:

9...This is not a case of usufructuary mortgage. Nor is any interest payable on any loan. Nor is the claim for any rent payable. Therefore, we are not satisfied that Appellants, are persons entitled to the benefits of the Act. In the absence of such satisfaction, the question of setting aside the auction sale u/s 23-A of the Act does not arise. The rejection of the three Applications is proper. As a consequence, the auction sales will have to be confirmed in favour of the auction-purchasers.

10. The Appeals have no merits and are accordingly dismissed.

25. Subsequently, the Petitioner herein and others filed Clarification Petition in the aforesaid Civil Appeals, which was also dismissed on 23.02.2009. On the aforesaid circumstances, it is clear that there is no case made out in favour of the Petitioner to maintain the Execution Application u/s 47 r/w 151, C.P.C. once again before the Executing Court.

26. In the light of the various decisions of the Hon''ble Apex Court and this Court, it is crystal clear that the Revision Petitioner, who has no independent right to the suit property brought for sale is not entitled to raise the points that were already decided by the Court below and also reached finality, after the verdict of the Apex Court. Even the Clarification Applications filed by the Petitioner herein and others were admittedly dismissed by the Hon''ble Apex Court by order, date 23.02.2009 and therefore, there is no merit in the Revision Petition and therefore, I could find no error or infirmity in the impugned order, so as to warrant any interference of this Court. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. However, there shall be no order as to costs.