(2000) 10 MAD CK 0036

In the Madras High Court

Case No : L.P.A.No. 147 of 1990

Guruswamy Nadar APPELLANT

Vs

P. Lakshmi Ammal (Died) and thirteen others RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Specific Relief Act, 1963 — Section 19
Transfer of Property Act, 1882 — Section 52

Citation : (2001) 3 CivCC 624 : (2001) 2 RCR(Civil) 13

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : Mr. D. Rajagopal, for the Appellant; Mr. S. Thiruvenkatasamy, for M/s. K.A. Ravindran and A. Shanmugharaj, for the Respondent

Judgement

R. Jayasimha Babu, J.—The appeal arises from a suit for specific performance. That suit was filed on the basis of an agreement dated

4.7.1974 under which the first defendant in the suit had through her husband and power of attorney holder contracted to sell a house property for

a sum of Rs.30,000. Though the trial Court dismissed that suit, that suit has been decreed by the learned single Judge of this Court. The suit had

been dismissed by the trial Court even after holding that the agreement was genuine that the defendants had set up a false story that the second

defendant had signed the agreement in a stupor induced by consumption of liquor. The suit was dismissed on the ground that the subsequently

added defendant who is the appellant before us was a bona fide purchaser for value and, therefore, no decree for specific performance could be

passed against him.

2. That subsequent purchase by the appellant was on 5.5.1975, two days after

the suit for specific performance was filed, that suit having been

filed on 3.5.1975. The trial Court did not consider the applicability of Section 52 of the Transfer of Property Act to this transaction. In appeal, the

learned single Judge while upholding the findings of fact recorded by the trial Court held that the plaintiff was entitled to succeed as though the

subsequent purchaser was found to have made the purchase bona fide and for value as also without notice of the agreement, nevertheless his sale

was subordinate to the decree that could be made in the suit for specific performance which had been instituted prior to the sale in favour of the

subsequent purchaser who is the appellant before us.

3. That finding of the learned single Judge has been assailed before us by the learned counsel for the appellant. It was submitted by him that

Section 19 of the Specific Relief Act clearly and explicitly provides that there can be no decree for specific performance against a person who had

subsequently purchased the property for value and had made the purchase bana fide, and further had made the purchase without notice of the

agreement sought to be specifically enforced in the suit. Counsel submitted that the sale deed executed by the vendor of the appellant was certainly

binding on the vendor and is against the whole world, that the document was supported by consideration and, therefore, in the light of the finding

about his not being aware of the prior agreement, the dismissal of the suit should have been affirmed by the learned Judge while exercising

appellate jurisdiction.

4. Counsel for the first respondent, who was the plaintiff in the trial Court, submitted that Section 52 of the Transfer of Property Act which sets out

the principle of lis pendens in sufficiently clear terms sets out as to when a suit is said to be pending, the explanation to Section 52 pinpoints the

time of commencement of the pendency, as the time of the filing of the suit, and inasmuch as the sale in favour of the appellant took place two days

after the suit had been filed, the doctrine of lis pendens would be attracted. Counsel in this context relied upon a decision of the Full Bench of the

Allahabad High Court in the case of Smt. Ram Peary and Others Vs. Gauri and Others, , as also the decision of a Division Bench of this Court in

the case of M.M.S. Investments and 4 others Vs. V. Veerappan and 8 others, .

5. The Allahabad High Court in its judgment referred to the case of Faiyaz Husain

Khan v. Munshi Prag Narain 1907 (34) IA 102 which in term

referred to the case of Bellamy v. Sabine 1857 (44) ER 842 and the enunciation of the principle of lis pendens by Cranworth L.C. therein, who

observed:

It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to

the property in dispute, so as to prejudice the opposite party.

The rights acquired by a purchaser of a property which is the subject matter of litigation in the Court in a suit instituted prior to the date of the

purchase, are subject to the ultimate decision of the Court in the suit which had already been instituted. That is because one of the parties to the suit

was the vendor, and that party could not be allowed to act to the prejudice of the opposite party who succeeds in the suit, by setting away the

property during the pendency of the suit.

6. Reference was also made in that judgment, to story''s work on Equity IIIrd Edition which contains the statement,

.....And hence arises the maxim pendents lite, nihil innovetur; effect of which is not to annual the conveyance, but only to render it subservient to

the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not

vary them.

7. Thus by reason of the doctrine of lis pendens, the conveyance effected by the party to the suit subsequent to the date of the institution of the suit

and before the decree, is subordinated to the rights of the parties to the suit as determined at the end of the trial in the pending suit.

8. The object of the doctrine of lis pendens is to ensure the parties who come to Court seeking relief are enabled to secure that relief effectively

after the trial, by subordinating the rights acquired by third parties through any of the parties to the suit during the pendency of the litigation, to the

ultimate decree passed in the suit. Such persons would be bound by the decree whether or not they are parties to the suit.

9. The Full Bench of the Allahabad High Court held that Section 19(1)(b) of the Specific Relief Act does not constitute an exception to the Rule of

lis pendens set out in Section 52, but is subject to it.

10. That question of the scope of Section 19(1)(b) vis-a- vis Section 52 of the Specific Relief Act vis-a-vis Section 12 of the Transfer of Property

Act was also considered by this Court in the case of M.M.S. Investments and 4 others Vs. V. Veerappan and 8 others, . It was held by the Court

that bar of lis pendens would apply to a person who purchases the property after the suit for specific performance is filed.

11. We are in complete agreement with the law so laid down. Section 52 of the Transfer of Properly Act reads as under:

Transfer of Property pending suit relating thereto. -- During the pendency in any Court having authority within the limits of India excluding the

Stale of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in

which any right to immovable property is directly and specifically in question, the 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 the decree or order which may be made therein, except

under the authority of the Court and on such terms as it may impose.

Explanaiion:--For the purposes of this Section, the pendency of a suit or proceeding shall be deemed to commence from the date of the

presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has

been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become

unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

12. Section 19 of the Specific Relief Act has not been given overriding effect vis-a-vis Section 52 of the Transfer of Property Act. Where the

property in respect of which specific performance of a contract is sought is immovable property, Section 52 of the Transfer of Property Act is

clearly attracted, as that provision explicitly states that in a suit or proceeding which is not collusive and in which any right to immovable property is

directly and specifically in question, the 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 the decree or order which may be made therein, except under the authority of the Court. While Section

19(b) of the Specific Relief Act may protect a purchaser who makes the purchase bona fide in good faith and without notice of the original

agreement, if such purchase is made by him before a suit for specific performance is instituted, in respect of an agreement obtained by the plaintiff

prior to the date of the sale in favour of the subsequent purchaser, that provision will not immunize a purchaser who makes such purchase after the

institution of the suit from the effects of the decree that may be passed in the suit. The decree made in such suit would bind the subsequent

purchaser whether or not he is a party to the suit.

13. The fact that the purchaser was in fact made a party to the suit, and that he was made a party after considerable lapse of time from the date of

his purchase, would not on that score render the doctrine of lis pendens in Section 52 inapplicable to that purchaser. What is dealt with in Section

52 of the Act is the transfer or other manner of dealing by a party to the suit. The subsequent purchaser is affected not merely because he is a

purchaser, but because he chose to purchase from a person who was a party to a pending suit, and any rights that he secures from such a party

would be passed against that party.

14. We, therefore, do not find any substance in this appeal, and the same is dismissed. However, the parties shall bear the respective costs.

15. We do not find it necessary to wait for service of any further notice on the original vendors, one of whom, it is stated is no more, as the appeal

is being dismissed. This will not come in the way of the execution of the decree by the decree-holder as all the concerned parties were parties

before the lower Court.

