

(2016) 01 KAR CK 0356

In the Karnataka High Court

Case No : Writ Petition No. 24695 of 2013 (KLR-RR/SUR)

H.R. Nagendra Prasad

APPELLANT

Vs

Deputy Commissioner, Tumkur District and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Registration Act, 1908 — Section 47, Section 61
Specific Relief Act, 1963 — Section 31

Citation : (2016) 163 AIC 694 : (2016) 3 CivilLJ 357 : (2016) 2 KantLJ 593

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Venkata Reddy S.K. and Nalina, Advocates, for the Appellant; H. Venkatesh Dodderi, AGA, for the Respondent

Final Decision : Disposed off

Judgement

Anand Byrareddy, J.—1. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. It is stated that one Sri. K.G. Swamy had executed a sale deed in favour of the petitioner, in respect of land in Sy. No. 223/3C of Gottigere Village, Kunigal Taluk, Tumkur District, on 19/1/2005. However, the said K.G. Swamy is said to have denied execution of the same when on 3/2/2005, the petitioner is said to have presented the sale deed for registration. By an endorsement dated 8/2/2005, the Sub-registrar, Kunigal is said to have refused to register the sale deed. The petitioner had then filed an appeal before the District Registrar, Tumkur District. The appeal was allowed by an order dated 19/4/2007 whereby the District Registrar had directed the Sub-Registrar to register the sale deed said to have been executed by Swamy. On 23/4/2007, the Sub-registrar had registered the sale deed dated 19/1/2005 said to have been executed by Swamy in favour of the petitioner. The petitioner is then said to have given a representation dated 19/7/2012 for rectification of entries in the RTC of the Tahsildar, Kunigal. The Tahsildar, by an endorsement dated 19/5/2013, is said to

have opined that the petitioner should approach a civil court in view of an order passed by this court in a writ petition, as well as was indicated in an order of the Assistant Commissioner.

This controversy was on account of the fact that since the petitioner's sale deed was not registered till 23/4/2007, in the interregnum, K.G. Swamy is said to have executed a sale deed in favour of the respondent No. 5 herein on 22/12/2006 and it was presented for registration on 26/12/2006 before the Sub-registrar, Kunigal and the same was registered on 6/1/2007. Thereafter mutation was said to have been effected in the name of the respondent No. 5 vide entry dated 23/2/2007. The petitioner had challenged those entries by way of an appeal before the Assistant Commissioner, Tumkur Sub-Division. The appeal filed by the petitioner was dismissed on 8/1/2010. He is then said to have filed a revision petition before the Deputy Commissioner which was also dismissed by an order dated 21/10/2011. The order of the Commissioner had attained finality and it was not challenged by the writ petitioner. It however transpires that the respondent No. 5 had filed a writ petition against the order of the District Registrar directing the Sub-registrar to register the sale deed of the petitioner. The vendor K.G. Swamy is also said to have filed a writ petition in W.P. Nos. 13063 and 7587/2007 challenging the very same direction by the District Registrar to the Sub-Registrar to register the sale deeds in favour of the petitioner. Those petitions are said to have been disposed of by a common order dated 18/9/2008, whereby the parties were relegated to a civil court to work out their rights by filing an appropriate suit. The respondent No. 5 who had already filed a suit in O.S. No. 94/2007 for permanent injunction as on the date of order, sought to enlarge the scope of the suit by seeking declaration of title. However, for reasons best known to him, sought leave of the court to withdraw the suit with liberty to file a fresh suit which was granted by the civil court as per order dated 24/2/2011. However, respondent No. 5 has not chosen to file any fresh suit.

It is in the above background that the present petition is filed questioning the endorsement at Annexure-A whereby the respondent No. 3 has opined that since there is a controversy between the petitioner and respondent No. 5 this court had already expressed an opinion that the parties must work out their rights before a civil court and since no such judgment and decree has been obtained and since the entries are made in favour of respondent No. 5, there was no warrant to change the entries and it is in this background that the petitioner is before this court.

3. Shri Venkata Reddy S.K., learned counsel appearing for the petitioner would contend that notwithstanding the controversy, the point of law to be answered by this court is as to which of the sale deeds would prevail having regard to the legal provisions governing the registration of sale deeds.

4. While Sri. R.B. Sadashivappa, learned counsel appearing for the respondent No. 5 would vehemently oppose the petition and would submit that the writ

petition is misconceived. The matter has reached finality in this court having declared in the earlier writ petitions that the parties must work out their rights before a civil court and it is for the petitioner, if he is aggrieved by the sale deed in favour of respondent No. 5 and if the law so permits, to have the said sale deed declared as null and void and this is the dictate under Section 31 of the Specific Relief Act, 1963, and without recourse to the same, the petitioner seeking a declaration as it were, before this court as regards his title is in the face of a disputed question of fact would require the petition to be dismissed and the petitioner to be relegated to a civil court.

5. By way of reply, Sri. Reddy would submit that the petitioner had already filed a civil suit and he had sought for comprehensive reliefs including the relief of declaration pursuant to the order of this court and that suit having been withdrawn in the year 2007 with liberty to file a fresh suit and no suit having been filed thereafter, the petitioner cannot be driven to file yet another suit at this remote point of time and if the point of law is declared as to which of the sale deeds would prevail, the petitioner would work out his remedies in the manner known to law and since respondent No. 3 has expressed an opinion, as it were, in giving credence to the sale deed of respondent No. 5 notwithstanding the established position of law, he would submit that if this is clarified, the petitioner would be able to work out his remedies properly before an appropriate forum.

6. In the light of the above rival contentions and given the facts and circumstances, there are two decisions referred to and relied upon by Sri. Sadashivappa to advance the case that the sale deed of respondent No. 5 was registered prior to that of petitioner and it is that sale deed which would prevail and the authorities have acted upon and since he is in possession of the property as a bona fide purchaser for value, the writ petition would have to be dismissed. The judgments relied upon are Ram Saran Lall and others v. Mst. Domini Kuer and others, , AIR 1961 Supreme Court 1747, and Har Narain (dead) by LRs. v. Mam Chand (dead) by LRs. and others, , (2010) 13 Supreme Court Cases 128.

7. In the first of these cases, the Supreme Court was concerned with a case where the parties were Hindus but the Mohammedan Law of pre-emption was applicable to them by custom. The question was whether the first demand called talab-i-mowasibat which has to be made after the completion of the sale in order that the right may be enforced, was made before or after such completion. The making of the demand is not in dispute but the dispute is as to when the sale was completed. The appellants therein had their residential house contiguous to the house owned by certain persons called Pandeys. On 31/1/1946, the Pandeys executed a deed of sale in favour of the respondent therein who was the purchaser in respect of their aforesaid house. The appellants claimed a right of pre-emption on account of the sale. The consideration mentioned in the deed was Rs. 2,000/-. There was a subsisting mortgage on that house and the deed provided that out of the consideration a sum of Rs. 200/- would be left with the

respondent purchaser for clearing off that mortgage. The deed also recited that the Pandeyas had received Rs. 400/- and the remaining Rs. 1,400/- in cash at the time of exchange of equivalents i.e., at the time of handing over of the receipt of the deed and on receipt of the whole and entire amount of consideration money, the Pandeyas had put the said claimant into possession and occupation of the property sold as absolute owner. The deed further indicated that it would become operative from the date when the executants affixed their signatures to the deed. The deed was presented at the registration office for registration by the Pandeyas on the day it was executed and it was left with the Registrar in the Registration office for the necessary entries and on 2/2/1946, the appellants on coming to hear of the execution of the deed of sale made the talab-i-mowasibat. On 7/2/1946, the receipt granted by the Registration office to the Pandeyas was made over to them by the respondent purchaser who there upon paid the balance of the price as stipulated in the deed. On 9/2/1946 the documents were copied in the Registrar's books and thereupon the registration became complete as provided in Section 61 of the Registration Act. The respondent purchaser thereafter received the deed of sale from the Registrar's office on 13/2/1946.

The appellants filed the suit for pre-emption on 9/9/1946. The suit was decreed by the Trial Court and this decision was maintained by the First Appellate Court. The High Court, however, in second appeal set aside the decisions of the courts below with the result that the suit stood dismissed and the appellants were before the Supreme Court. After considering the rival contentions, the Supreme Court answered the point framed by itself that the contention raised that the property was intended to pass under the sale deed on the date of the instrument, was correct. It was held, however, Section 47 of the Registration Act, 1908, indicated as to when a sale would be deemed to be complete, it only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section, it was held, was to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore the court held that the said sale in the case could not be said to have been completed on 31/1/1946.

8. It is not the case of the petitioner in the case on hand, that the sale deed was effective from the date of execution. But once it is registered, it would date back to the date of execution and it would have to be considered that the sale deed would become operative from the date of the execution immediately after it is registered. If that proposition is accepted, the above decision will not help advance the case of respondent No. 5.

9. Insofar as the second of the above decisions is concerned, the facts were as follows:

"Respondent No. 1 therein was owner of land measuring 22 kanals in the district of Riwari, Haryana. He had mortgaged the entire land in favour of the predecessor-in-interest of the appellant namely Har Narain for a sum of Rs. 7,000/-. The appellant was also put in possession of the said land. Respondent No. 4 entered into an agreement for sale of 8 kanals of the said property with the appellant for a sum of Rs. 7,500/- and he received Rs. 200/- as earnest money in cash while a sum of Rs. 7,000/- was to be adjusted as mortgage amount. However, respondent No. 1 executed the sale deed on 2/8/1971 in favour of respondents 2 to 6. Being aggrieved, the appellant filed a suit for specific performance against respondent No. 1 for executing the sale deed in question on 10/8/1971 and the Trial Court restrained him from alienating the suit property by any means. Respondent No. 1 moved an application dated 16/8/1971 for vacating the interim order dated 10/8/1971 wherein he disclosed that the entire land in dispute had already been alienated in favour of respondents 2 to 6. However, the sale deed executed in favour of the said respondents was registered on 3/9/1971."

The suit was contested by the respondents on various grounds, however, the Trial Court dismissed the suit vide judgment and decree dated 4/9/1973 on various grounds, inter alia, that the sale deed deemed to have come into force on 2/8/1971, as the registration thereof dated 3/9/1971 would relate back to the date of execution which had been prior to institution of the suit and thus, the doctrine of lis pendens would not apply. The said respondents 2 to 6 were bona fide purchasers for consideration without notice. Therefore, the sale deed in their favour was to be protected.

Being aggrieved, the plaintiff filed a First Appeal and the same was dismissed by judgment of the year 1979. The High Court was approached by way of a Second Appeal which was again dismissed. The court agreed with the proposition of law laid down by the courts below that the principle of lis pendens would not apply in the facts and circumstances of the case as the sale deed was deemed to have been executed before the filing of the suit though the same had got registered subsequent to the institution of the suit. Therefore the appellants were before the Supreme Court.

The Supreme Court while addressing the matter treated the basic question that arose as to whether in the fact situation, the sale deed executed by respondent No. 1 in favour of respondents 2 to 6 could be subject to the doctrine of lis pendens and in case the appellant had been in possession of the suit land being mortgaged since 1970 whether the respondents 2 to 6 could be held to be vendees without notice of an agreement to sell in favour of the appellant by respondent No. 1.

With reference to Section 47 of the Registration Act, it was observed relying on ,

Air 1961 Supreme Court 1747 which has already been referred to herein above, that a view expressed therein had been followed and approved in a series of decisions namely, *Hiralal Agrawal v. Rampadarath Singh* , AIR 1969 SC 244, *Sk. Mohammad Rafiq v. Khalilul Rehman* , (1972) 2 SCC 336, *Thakur Kishan Singh v. Arvind Kumar* , (1994) 6 SCC 591 and *Chandrika Singh v. Arvind Kumar Singh* , (2006) 10 SCC 404 and it was declared that it was of the considered opinion that inspite of the fact that the registration of the sale deed would relate back to the date of execution, the sale cannot be termed as complete until its registration and it becomes effective only once it stands registered. Thus the fiction created by Section 47 of the 1908 Act does not come into play before the actual registration of the document takes place and therefore the said decision was in complete agreement with the proposition laid down in , AIR 1961 SC 1747 and again the said decision would not advance the case of the respondent No. 5.

10. In that, though the sale deed of respondent No. 5 was registered much earlier to the sale deed of the petitioner, when once the sale deed of the petitioner was registered, the sale deed of the petitioner would date back to the date of execution and hence it would prevail over the sale deed in favour of respondent No. 5 immediately on its registration being completed and would have to be given credence over the sale deed of respondent No. 5. Consequently the opinion expressed by the respondent No. 3 - Tahsildar, to the effect that unless the petitioner obtained a declaration from a civil court as to the sale deed of the petitioner prevailing over the sale deed of respondent No. 5, is answered in favour of the petitioner. In that, the legal position as it stands, and as declared by the Supreme Court, is that a sale deed executed but not registered would not take effect till its date of registration. But once it is registered, it would date back to the date of execution in which event, in the present case on hand, it is the petitioner's sale deed that would prevail over the sale deed of respondent No. 5. It is now for the petitioner to work out his remedies pursuant to the declaration on the point of law. Consequently the petition stands disposed of.

Since the impugned annexure is only an endorsement issued by the Tahsildar, the opinion expressed by this court now would bind the parties.