
(1990) 07 MAD CK 0094
In the Madras High Court

Lakshmi Ammal

APPELLANT

Vs

S. Lakshmi Ammal and Others

RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (1990) 2 MLJ 192

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—The plaintiff has filed this appeal, aggrieved by the dismissal of her suit for specific performance of Ex.A-3 sale agreement dated 4.7.1974 relating to the suit house belonging to the 1st respondent-1st Defendant The 2nd respondent-2nd Defendant is the husband of the 1st respondent and the suit agreement was executed in favour of the appellant by the 2nd respondent, acting as the power agent of 1st respondent, pursuant to the deed of power of attorney Ex. B-I, dated 30.6.1962 executed by the 1st respondent in favour of 2nd Respondent.

2. The sale consideration under Ex.A-3 is Rs.30,000 and according to the appellant, Rs.5000 was received by the 2nd respondent on behalf, of the 1st respondent as advance. Under the said agreement, the sale deed has to be executed on or before 31.7.1974 when the balance of Rs.25,000 has to be paid. According to the appellant, she informed the respondents 1 and 2 in July, 1974 her readiness to complete the sale and the said respondents agreed and requested the appellant to utilise the three stamp papers lying unused with the said respondents for executing the sale deed. The further plea of the appellant is that on 26-7-1974 she purchased stamp papers for the balance of Rs.3,037-50 and that on 28-7-1974 under Ex.A-4, the sale deed was written, but that when the 2nd respondent was asked to come for registering the sale deed, the said respondent represented that he would come to Pudoor the next day, when, on the appellant being ready with the sale deed at the Sub-Registrar's office,

Pudoor, the 2nd respondent would sign the deed and register it after receiving the above said balance sum of Rs.25,000. The further plea of the appellant is that the 2nd respondent did not turn up at Sub-Registrar's office, Pudoor the next day and despite appellant's request, the 2nd respondent did not subsequently also execute the sale deed and register it and that in August, 1974, the 1st respondent wrote to the appellant's husband that the sale agreement was repudiated. The 1st respondent also cancelled the above said power of attorney on 1-8-1974. The respondents denied that the sale deed was written and that they agreed to come to the Sub-Registrar's Office on 29-7-1974 to sign the sale deed and register the same. They also denied that they requested the appellant to utilise the three stamp papers as stated above.

3. The 3rd respondent is the subsequent purchaser from the 1st respondent under Ex.B-3 dated 5-5-1975 and he contends that he is a bona fide purchaser for value without notice of the above sale agreement.

4. In the above circumstances, the present suit was filed on 3-5-1975. The 3rd defendant was impleaded in the suit only in 1988.

5. The trial court held that the abovesaid power of attorney Ex.B-1 was valid and was in force till it was cancelled on 1-8-1974 by Ex.B-2, that the sale agreement Ex.A-3 was valid and binding on the 1st respondent. It also held that the 1st respondent is estopped from denying the receipt of the abovesaid Rs.5,000 as advance. It also disbelieved the version of the respondents that the 2nd respondent was drunk when he executed Ex.A-3. So far, it held in favour of the appellant.

6. But, it held against the appellant in observing that the appellant was not ready and willing to perform her part of the contract, in paying the balance sum of Rs.25,000. It also held that the 3rd respondent was a bona fide purchaser for value without notice of the sale agreement, that the 1st respondent was not bound to execute the sale Deed as prayed for and that the appellant was also not entitled to reimbursement of the abovesaid sum of Rs.5,000 from respondents 1 and 2.

7. The learned Counsel for the appellant submitted that the trial court erred in holding (1) that the appellant was not ready and willing to perform her part of the contract (2) and that the 3rd respondent was a bona fide purchaser for value without notice of the sale agreement. The learned Counsel further submitted that at any rate, Ex.R-3 sale in favour of the 3rd respondent was hit by lis pendens.

8. On the first of these submissions, I find that as against the definite plea in paragraph 7 of the plaint that "Plaintiff has been and is still ready and willing specifically to perform the agreement of her part of which the 1st defendant has had notice", the only plea in the written statement of the 1st respondent is "the allegations in paragraphs 7 of the plaint that this defendant is aware of the contract is denied as false." Thus, it is found that there is no denial at all to the plea that the plaintiff was ready and willing to perform her part of the contract.

Likewise, the 2nd respondent also has not denied the said plea, in his written statement. Further, to the specific averment in paragraph 5 of the plaint "by the latter part of July, 1974, the plaintiff informed the defendants of her readiness to complete the sale", there is no specific denial at all. There is only a vague and evasive denial by the 1st respondent as follows:

The allegation contained in paragraph 5 of the plaint are frivolous and denied." Likewise, the 2nd respondent also has not specifically denied the abovesaid averment in the plaint.

9. Further, the 1st respondent, as D.W. 1 and the 2nd respondent as D.W.2, did not depose at all that the appellant was not ready and willing to perform fee contact. In the circumstances, the contention of the learned Counsel for respondents 1 and 2 that the abovesaid readiness and willingness has not been proved, cannot be accepted. Therefore, I hold that the appellant was ready and willing to perform her part of the contract.

10. The next submission of the learned Counsel for the appellant is that the 3rd respondent was not a bona fide purchaser for value without notice of the suit agreement. He pointed out that the third respondent, as D.W.5 admitted that the suit property was situated next to his own shop. On this ground, he contended that the third respondent must be held to be not such a bona fide purchaser. He also cited the decision in Annamalai Gounder Vs. Chinnathambi Gounder and Others, in support of this contention. I do not think the above decision is applicable in the facts of the present case. In the said case, no doubt, the subsequent purchaser was an adjacent owner. But that is not the sole factor on which he was held to be not such a bona fide purchaser. The other important factor in that case was that the agreement holder was given possession of the property agreed to be sold and he was in possession of it when it was sold to the subsequent purchaser. That is why in view of the existence of these two factors, the court held that the subsequent purchaser was not such a bona fide purchaser. But in the present case, the latter factor is not present and so the above said decision cannot be applied to the present case.

11. Further, in Arunachala Thevar and Others Vs. Govindarajan Chettiar and Others, (Division Bench) it has been held as follows:

The onus of proof lies upon the party seeking to defeat the prior contract, to adduce prima facie evidence that he is a bona fide transferee for value without notice. But, the burden is light and he may discharge it by merely denying the factum of notice on oath. In any case, very little evidence is required on his part to prove this fact which is negative.

It cannot be said in the present case that the said initial burden has not been discharged by the third respondent. So, the burden has only shifted to the plaintiff/appellant, but, she cannot be said to have discharged that burden. No doubt the learned Counsel for the appellant contended that admittedly Exhibit B-3 was registered not at Pudur where the property was situated, but at Tuticorin.

However, the first defendant¹ explained this by saying that since the stamp papers for Rs.40,000 was not available the registration was done at Tuticorin. So, in the circumstances, I hold that the Plaintiff has not established that the third defendant was not a bonafide purchaser for value without notice of the abovesaid sale agreement.

12. However, the learned Counsel for the appellant contended that Ex. B-3 sale deed was hit by lis pendens since Ex.B-3 sale took place only on 5.5.1975 even while the present suit for specific performance was pending, it having been filed on 3.5.1975 itself. To substantiate that lis pendens rule would apply to specific performance suit also, the learned Counsel relied on Gouri Dust Maharaj v. Sheikh Sukur Mohamed (1948) 2 M.LJ. 79 P.C. The learned Counsel for the 3rd respondent -subsequent purchaser on the other hand contended (that lis pendens theory would not apply to specific performance suit. But, this contention of the learned Counsel for the third respondent is not correct. It is settled law that the rule of lis pendens is applicable also to suits for specific performance of contract to transfer Immovable property. (Vide Gouri putt Maharaj v. Sheikh Sukur Mohammed (1948) 2 M.LJ. 79 Vedachari v. Narasimha Mudali AIR 1924 Mad. 307 and G. Rukmani Bai v. Saraswathiammal and Ors. (1989) 2 T.L.NJ. 40. The decision in Nirmala Industries Uthagamandalam v. Srinivasa Perumal Financing Corporation, 100 L.W.222. cited by the learned Counsel for the third respondent has no application to the facts of the present case.

13. in Smt. Ram Peary and Others Vs. Gauri and Others, . it has also been held that Section 52 of the Transfer of Property Act which speaks about the rule of lis pendens is not subject to Section 19(b) of the Specific Relief Act, which provides that specific performance of contract cannot be enforced against the transferee for value, who has paid him money in good faith, without notice Of the original contract. In other words, it was hold therein that the subsequent transferee, even though he has obtained the transfer without notice of the original contract, cannot set up, against the plaintiff-agreement holder, any right defeating the rule of lis pendens, which is founded upon public policy.

13. So, I agree with the contention of the learned Counsel for the appellant and hold that Ex.B-3 is hit by the rule of lis pendens.

14. Lastly, the learned Counsel for the appellant also rightly pointed out to me Namazi, N.B., v. Central Chinmaya Mission Trust, 100 L.W.582 D.B. to reiterate that escalation in price cannot be a defence in a suit for specific, performance.

15. Therefore, I set aside the judgment and decree of the court below and allow the appeal with costs, granting a decree for specific performance of the above said Ex. A-3 sale Agreement in favour of the appellant. Time for depositing the balance of sale consideration of Rs.25,000 in the trial Court is one month. Time for execution and registration of the sale deed is two months.