
(2015) 04 MAD CK 0356
In the Madras High Court
Case No : S.A. No. 1543 of 2004

M. Pandia Nadar and Others	Vs	APPELLANT
Sivakamasundari and Others		RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Registration Act, 1908 — Section 47, 49
Transfer of Property Act, 1882 — Section 52

Citation : (2015) 3 LW 575 : (2015) 5 MLJ 529

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : Chitra Sampath, SC for T.S. Baskaran, for the Appellant; T.V. Ramanujam, SC for V. Chandrasekar, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Mahadevan, J—This Second Appeal has been filed by the Defendants 4 to 6/ Appellants herein, who lost their case before both the courts below, against the judgment and decree, dated 17.12.2003, made in A.S. Nos. 24 and 30/2003, by the learned Principal District Judge, Thiruvallur, confirming the Judgment and decree, dated 11.10.2002, made in O.S. No. 188/1994, by the learned Subordinate Judge, Thiruvallur. For the sake of convenience and for easy reference, the parties are hitherto described as they were arrayed before the Trial Court.

2. The case of the Plaintiff/1st Respondent herein, as set out in the Plaint, is as follows:--

a. The suit properties belonged to the 1st Defendant, who entered into an agreement of sale with the Plaintiff on 24.2.1987 and the Plaintiff has paid a sum of Rs. 1,60,000/- towards the entire sale consideration. Since the Plaintiff has paid the entire sale consideration, time was not treated as the essence of the contract. At that time, the 1st Defendant was under the care and custody of the

Plaintiff. The 1st Defendant had decided to construct a Temple at Manavala Nagar and the said ambition was carried out by the Plaintiff by giving her own funds and funds of the third parties. The Plaintiff has spent a huge amount and the said Temple was named as Kalyana Srinivasa Perumal Temple.

b. Considering the Plaintiff's love and affection and loyalty, the 1st Defendant executed a Will dated 7.2.1987 with regard to the other properties of the 1st Defendant. Pursuant to the agreement, the Plaintiff was put in possession and the Plaintiff is paying necessary tax for the suit properties. The 1st Defendant has allowed to get rent and rental agreements were executed between the tenants and the Plaintiff and the 1st Defendant. The Plaintiff suggested her brother's name to be included as one of the Trustees of the Temple. But, the brother of the Plaintiff Ragunathan became greedy and with a grabbing tendency, started to poison the mind of the 1st Defendant and gave evil ideas to the 1st Defendant. When the Plaintiff came to know about the same, she made several requests for completion of the contract by registering the document. Since the 1st Defendant was evading to do so, the Plaintiff issued a notice dated 27.6.1994, calling upon the 1st Defendant to register the agreement and to complete the contract. Now, the Plaintiff came to know that the 1st Defendant has entered into a fictitious transaction with the Defendants 2 and 3 with a fraudulent motive to evade and to get more money. The 3rd Defendant, who is the wife of late Sivaniah Nadar and the 2nd Defendant, who is a close relative of Sivaniah, are the tenants in the premises and both are aware of the existing agreement with the Plaintiff. The Defendants 4 to 6 have created the alleged agreement of sale on 23.3.1994 with the 1st Defendant. They have created sale deeds in the name of the Defendants 4 to 6 under the sale deeds dated 12.6.1994, which were registered on 18.7.1994. The said documents are created subsequent to the suit in connivance with the 1st Defendant.

c. The 2nd Defendant is the brother of the Defendants 5 and 6 and the 4th Defendant is the father of Panneerselvam, who was working under Sivaniah Nadar. The entire family of Panneerselvam also aware of the suit agreement. The Defendants 4 to 6 are not the bona fide purchasers. The alleged sale deeds referred to by the Defendants 4 to 6 and the agreements are concocted and the same are not binding on the Plaintiff and the same is hit by lis-pendens. Hence, the above suit has been filed for specific performance and for recovery of possession of the suit properties.

3. In the Written Statement filed by the 1st Defendant, it is, inter alia, averred as follows:--

a. The 1st Defendant is residing at No. 7, Alagesan Street, Tambaram. She was at the upstairs of No. 12, Kondamapuram Street. After she sold the said premises with the permission of Pandia Nadar, who is the purchaser of the portion of the building inclusive of upstairs, the 1st Defendant is keeping her articles in one room in the upstairs with his permission. The 1st Defendant was the owner of the suit property. The sale agreement dated 24.2.1987 in favour of

the Plaintiff is denied. This Defendant is aged 84 years. The Defendant was occupying the entire upstairs portion and the Plaintiff was trusted by this Defendant and she was assisting this Defendant. It is denied that the Plaintiff had spent a huge amount for the construction of the Temple at Manavala Nagar. The Will dated 7.2.1987 by this Defendant is true. The suit property is item No. 6 of Schedule A in the Will. The Plaintiff was not in possession of the suit property. This Defendant had executed the Will dated 24.2.1987 out of her own accord. This Defendant has not entered into any transaction with the Defendants 2 and 3. The 2nd Defendant, who is the relative of Sivanayya Nadar, is managing the provision shop of late Sivanayya Nadar. The 3rd Defendant is the wife of Sivanayya Nadar. There can be no cause of action against the Defendants 2 and 3 and there is no cause of action for the suit.

b. The suit was filed on 6.7.1994. A reply notice was sent to the Plaintiff on 8.7.1994. The suit summons were served on her only on 24.7.1994. The alleged agreement of sale is a rank fabrication. The signatures of this Defendant have been forged. The delivery of possession is also not true. If it is true, the Plaintiff should have taken the rental agreement only in her name and should have collected the rent. This Defendant has delivered symbolical possession of the tenanted portions to the respective purchasers. The other allegations stated in the plaint are not true. Hence, the suit has to be dismissed with costs.

4. In the Written Statement filed by the Defendants 2 to 4, it is, among other things, stated as follows:--

The alleged sale agreement dated 24.2.1987 is denied. It is not true that the Plaintiff had spent a huge sum for the construction of the Temple at Manavala Nagar by the 1st Defendant. These Defendants are not aware of the Will dated 7.2.1987. Because of the old age of the 1st Defendant, the Plaintiff and her husband were assisting her. The allegations concerning the Plaintiff's brother are not true. These Defendants were not aware of the alleged agreement in favour of the Plaintiff. These Defendants are bona fide purchasers for valuable consideration of portions of the suit property. They entered into separate agreements dated 23.3.1994 to purchase portions of the suit property. Since the 1st Defendant was not well, the sale deed were registered on 18.7.1994. The Plaintiff is a tenant under the 1st Defendant. The Plaintiff is not entitled to any relief as against these Defendants. In such circumstances, the suit is liable to be dismissed.

5. In the Additional Written Statement filed by the Defendants 4 to 6, it is averred as follows:--

a. The agreement of sale is not true and is denied. It is a created document to snatch the suit item from the 1st Defendant. There is no such stamp vendor and that the stamp papers were not purchased on that date. The Plaintiff has not come to court with clean hands. The properties were agreed to be sold earlier and on 23.3.1994 the sale agreements were executed and in pursuance of the

same, the sale deed were registered. The 1st Defendant had sent a reply to the notice of the Plaintiff. The Plaintiff had filed the suit suppressing the real facts. Hence, the suit has to be dismissed.

6. Before the Trial Court, the case against the Defendants 2 and 3 was dispensed with by the Plaintiff. The Trial Court, after framing necessary issues on the above pleadings, on the side of the Plaintiff, examined P.W. 1 to P.W. 4 and marked Ex. A1 to A24 and on the side of the Defendants, examined D.W. 1 to D.W. 5 and marked Ex. B1 to B7.

7. On consideration of the oral and documentary evidence, the Trial Court decreed the suit for specific performance and the Defendants 1, 4 to 6 were directed to execute the sale deed in favour of the Plaintiff within a period of two months from the date of the decree and the appeals filed by the 1st Defendant and the Defendants 4 to 6, as against the Judgment and decree of the Trial Court, were dismissed by the lower appellate court. Hence, this Second Appeal has been filed.

8. This Court, while admitting this Second Appeal, had formulated the following Substantial Question of Law:--

"Whether the courts below are correct in decreeing the suit having held that the defendants 4 to 6 are deemed to be the bona fide purchasers for value without knowing the prior agreement of sale in favour of the Plaintiff?"

9. Heard both sides.

10. The learned Senior Counsel appearing for the appellants has contended as under:--

a. The courts below erred in decreeing the suit for specific performance based on the forged sale agreement under Ex. A. 2.

b. There is variation in signature of the first defendant in Ex. A1 Will and Ex. A2 Suit Agreement.

c. The genuineness of the stamp paper used for the execution of Ex. A2 had been proved to be false by Exs. B1 and B2 Official records produced from the Treasury for the sale of stamps.

d. The registration of the Will, dated 7.2.1987, after the alleged Ex. A2 sale agreement, which includes the suit property, clearly falsifies the case of the plaintiff.

e. The inclusion of the suit property in the Will, which was registered on 8.4.1987 after the execution of the so-called sale agreement under Ex. A2 clearly disproves the existence of any sale agreement.

f. The plaintiff has no means to pay the sale price of Rs. 1,60,000/- and the same has not been proved by oral and documentary evidence.

g. The learned Principal District Judge having found that the defendants 4 to 6 are bona fide purchasers for value without notice of the alleged suit agreement under Ex. A2, erred in decreeing the suit.

h. The learned Principal District Judge had failed to appreciate the fact that the defendants 4 to 6 had already entered into sale agreements as early as on 23.3.1994, 28.3.1994 and 12.6.1994 and any sale pursuant thereto, is not hit by the principle of lis pendens.

i. The learned Principal District Judge erred in holding that Section 52 of the Transfer of Property Act overrides the provisions of Section 49 of the Registration Act.

j. The learned Principal District Judge had failed to note that the execution of a document alone is attracted under Section 52 of the Transfer of Property Act, since the registration of the same is only a procedural requirement of the authorities.

k. Since the sale deeds have been executed on 12.6.1994 long before the filing of the suit on 8.7.1994, such execution would not hit by the principle of lis pendens.

11. In support of her contentions, the learned Senior Counsel has relied on the following decisions:--

a. Perumal Vs. V. Balasubramanian, (2011) 1 LW 949 .

b. Hamda Ammal Vs. Avadiappa Pathar and Others, (1990) 4 JT 391 : (1990) 2 SCALE 970 : (1991) 1 SCC 715 : (1990) 2 SCR 594 Supp .

c. A. Jitendernath Vs. Jubilee Hills Coop. House Bld. Soc. and Another, (2006) 7 JT 183 : (2006) 5 SCALE 130 : (2006) 1 SCR 702 Supp .

d. Boramma Vs. Krishna Gowda and Others, (2000) 8 JT 13 : (2000) 9 SCC 214 .

e. Akki Guru Basappa and Another Vs. Vuluvathi Setra Santhappa and Others, AIR 1925 Mad 710 : 83 Ind. Cas. 133 : (1925) 48 MLJ 496 .

f. Ittiam and Others Vs. Cherichi alias Padmini, AIR 2010 SC 2994 : (2011) 111 CLT 457 : (2010) 7 JT 590 : (2010) 7 SCALE 495 : (2010) 8 SCC 612 : (2010) 8 SCR 1135 : (2010) 8 UJ 3765 : (2010) AIRSCW 4803 : (2011) AIRSCW 1 : (2010) 7 Supreme 492 .

12. Per contra, the learned Senior Counsel appearing for the first respondent has contended that when the courts below have given concurrent findings and decreed the suit for specific performance, the Court sitting in Second Appeal cannot interfere with the concurrent findings of the courts below.

13. The learned Senior Counsel has further contended that the courts below considering the fact that the first defendant had accepted her signature in Ex. A2 sale agreement, in her evidence, and also considering the other evidences of P.W.

2 and P.W. 3, who are attestors of the sale agreement, decreed the suit and therefore, nothing warrants to interfere with the concurrent findings of the courts below.

14. The learned Senior Counsel has argued that already when the sale agreement came into existence, the execution of another sale agreement and deeds would not bind the plaintiff.

15. In support of his arguments, the learned Senior Counsel has placed reliance upon the following decisions:--

a. Kaliyaperumal Nadar Vs. Santhanam Chettiar and Another, (1995) 2 CTC 313 .

b. Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, AIR 1999 SC 2213 : (1999) 2 CTC 468 : (1999) 3 JT 163 : (1999) 2 SCALE 633 : (1999) 3 SCC 722 : (1999) 2 SCR 728 : (1999) 2 UJ 820 : (1999) AIRSCW 2240 : (1999) 4 Supreme 108 .

c. Thiruvengada Pillai Vs. Navaneethammal and Another, AIR 2008 SC 1541 : (2008) 2 CLT 898 : (2008) 1 CTLJ 324 : (2008) 2 JT 585 : (2008) 2 SCALE 630 : (2008) 4 SCC 530 : (2008) 1 UJ 400 : (2008) AIRSCW 1684 .

d. Sanjay Verma Vs. Manik Roy and Others, AIR 2007 SC 1332 : (2007) 2 CTC 562 : (2007) 147 PLR 229 : (2006) 14 SCALE 81 : (2006) 13 SCC 608 : (2006) 10 SCR 469 Supp : (2007) AIRSCW 1490 : (2006) 8 Supreme 1007 .

e. Har Narain (Dead) by LRs. Vs. Mam Chand (Dead) by LRs. and Others, (2010) 11 JT 641 : (2010) 13 SCC 128 .

f. Guruswamy Nadar Vs. P. Lakshmi Ammal (Died) and thirteen others .

g. Chokalingaswami Idol thr. R.N. Pillai Vs. Gnanapragasam (Dead) by LRs., AIR 2008 SC 2025 : (2008) 2 CLT 495 : (2008) 4 JT 278 : (2008) 4 SCALE 59 : (2008) 4 SCC 219 : (2008) AIRSCW 2676 .

h. Guruswamy Nadar Vs. P. Lakshmi Ammal (D) through LRs. and Others, AIR 2008 SC 2560 : (2008) 106 CLT 533 : (2008) 6 JT 555 : (2008) 7 SCALE 611 : (2008) 5 SCC 796 : (2008) AIRSCW 3583 .

16. I have considered the aforesaid submissions and perused the materials available on record.

17. The only point to be decided is, whether the alleged sale agreement, dated 24.2.1987 is true, genuine and valid or whether the registered sale deeds executed by the first defendant in favour of the defendants 4 to 6 in respect of the suit property is valid?

18. The case of the plaintiff is that the first defendant is the owner of the suit property and that she entered into a sale agreement with the first defendant on 24.2.1987 and in pursuant to the agreement, the plaintiff has paid a sum of Rs. 1,60,000/- towards sale consideration. Since the plaintiff had paid the entire

amount, the time was not treated as the essence of contract. Further, as there was a cordial relationship with the first defendant, she had not shown much interest in the execution of the sale deed.

19. On the other hand, it is denied by the first defendant that she had executed the sale agreement on 24.2.1987 in favour of the plaintiff and also denied the receipt of Rs. 1,60,000/- towards sale consideration.

20. It is also the case of the first defendant that she entered into separate agreements to sell the portions of the suit property on 23.3.1994 to Pandia Nadar and his two sons. On 12.6.1994, the sale deeds were executed, but due to her ill health they were not registered. However, they were registered on 18.7.1994.

21. A perusal of the records reveals that the first defendant had executed a Will on 7.2.1987 in respect of her properties, excluding the houses situated at Somangalam and Tiruvallur, in favour of the plaintiff, her husband Gopala Iyer and her brother Ranganathan and the same was registered on 8.4.1987 for charitable purposes.

22. Though the first defendant had bequeathed the properties mentioned in the Schedule of the registered Will, she had retained the houses situated at Somangalam and Tiruvallur for her own purpose.

23. The plaintiff had claimed that she had purchased the suit property for a sum of Rs. 1,60,000/-, however, the first defendant had denied the same and she had deposed that she had sold the same to the defendants 4 to 6 for a sum of Rs. 4.75 lakhs and executed the sale deeds in respect of the suit property.

24. In the written statement filed by the first defendant, it is stated as under:--

"It is denied that this defendant executed any agreement on 24.2.1987 or any other date in favour of the plaintiff to sell the property to the plaintiff. It is denied that the plaintiff paid Rs. 1,60,000/- or any other amount to this defendant under the alleged agreement to sell."

25. Further, in respect of the plaintiff's means, the first defendant has stated in her written statement as under:--

"The plaintiff never had the wherewithal to pay such huge amount of Rs. 1,60,000/- in February 1987. The plaintiff was not possessed of any property or income. Her husband who is employed in the revenue department was having disrupted service."

".....The plaintiff is silent as to when exactly the alleged sale consideration of Rs. 1,60,000/- was paid. Nor the alleged agreement is clear in this aspect."

26. In respect of the sale of the suit property to the defendants 4 to 6, the following are the averments in the written statement:--

"In fact negotiation for selling the suit property was on quiet for some time. The

plaintiff and her husband were aware of the same. This defendant entered into separate agreements to sell the portions of the suit property on 23.3.1994 to Pandia Nadar, and his two sons of Perambakkam. Later on 12.6.1994 sale deeds were executed by this defendant on stamp papers of exquisite value. Due to ill health of the defendant, the sale deeds could not be registered immediately. Later on the sale deeds were presented for registration on 18.7.1994."

27. D.W. 1 in her evidence has deposed as under:--

28. A perusal of the averments made in the written statement filed by the first defendant and her evidence clearly shows that she had not executed any agreement in favour of the plaintiff and did not receive any amount towards sale consideration and till the receipt of the notice, she did not know about the sale agreement and the alleged sale agreement was seen only in the court and executed the sale agreements and sale deeds in favour of the defendants 4 to 6 and it is also categorically stated that the plaintiff did not have any means to pay such huge amount.

29. That apart, naturally, a doubt is arising with regard to the execution of the alleged sale agreement. Though the Will has been executed on 7.2.1987, it was registered only on 8.4.1987, that is, after the execution of the so-called sale agreement on 24.2.1987. The sale agreement was executed in respect of the suit property and in favour of the first respondent/plaintiff. When the first defendant had executed a Will in favour of the plaintiff and her husband Gopala Iyer and one Ragunathan in respect of her properties except the houses situated at Tiruvalluvar and Somangalam, this Court is at a loss to understand, how the first defendant, even before the registration of the Will, could execute the sale agreement in respect of the suit property for consideration and even assuming for the sake of argument, if she had intended to execute the sale agreement, she would have deleted the house property situated at Tiruvalluvur from the schedule of the Will. But a perusal of the Will shows that the house property of Tiruvallur is shown as item No. 6 in "A" Schedule of the Will. This has not been explained by the first respondent/plaintiff or considered by the courts below, which is a very vital and important aspect in respect of the alleged sale agreement, which was unregistered and contains corrections and deletions and there is no whisper about on which date, the alleged amount was paid, in what form and in whose presence, as the date of this case stands on the alleged sale agreement.

30. This aspect has also been averred in the written statement filed by the first defendant, which is as under:--

"The plaintiff claims that the alleged agreement was executed on 24.2.1987 that she paid the entire sale consideration of Rs. 1,60,000/- and took possession. Had it been true the suit property would have been deleted from the will this aspect would prove that the alleged sale agreement is an after thought and creation to grab the suit property."

31. When the first defendant had decided to execute the registered Will in

respect of her properties, in favour of the plaintiff, her husband and her brother, nothing would have been prevented her from selling the suit property to the plaintiff, if she so desires. But that has not been done, as she had no intention to sell the property to the plaintiff or she would have made any whisper in the registered Will.

32. A perusal of the alleged sale agreement under Ex. A2 also reveals that the stamp affixed on the stamp papers bearing different date and the date of execution is different. The stamp papers originally purchased in the month of Oct 1986 and in the year 1985. The name of the purchaser of the stamp papers are also erased and the name of the plaintiff has been written. These are all to show that the alleged agreement is a forged and concocted one and the same has not been explained by the plaintiff in the manner known to law.

33. In the written statement filed by the first defendant, it is stated as under:--

"A perusal of the alleged agreement of sale would show that it is a rank fabrication. The signatures of this defendant have been unscrupulously forged. Even the strokes and alphabets are different. A closer look of the alleged agreement would show that the stamp papers have been manipulated by erasing the name of the initial purchaser and substitution of the name of the plaintiff. The date of stamp papers have been corrected distinctly by a different person other than the stamp vendor."

34. In the additional written statement filed by the defendants 4 to 6, it is averred as under:--

"The first defendant denied that she ever executed an agreement of sale in favour of plaintiff on verification, it is found that there are no stamp vendors at the places stated in the agreement stamp papers. In addition, the stamp papers were not purchased on the date they bear. The name of the purchaser of the stamps also is seen erased and the name of plaintiff is written. The date of purchase of stamps are also tampered with. Therefore, the plaintiff has not come to the Court with clean hands and the relief prayed for being discretionary should be denied and this suit is dismissed."

35. Further, a perusal of Exs. B. 1 and B. 2, which are the extracts of the stamp register shows no correlation between Ex. A2 and Exs. B1 and B2.

36. From the above, it is very clear that Ex. A2 is a forged and concocted one and it is the burden of the plaintiff to prove that Ex. A2 is true and valid, but such burden of proof has not been discharged by the plaintiff in the manner known to law by adducing oral and documentary evidence. The Courts below have also not considered this aspect in a proper perspective.

37. The production of stamp register through D.W. 2 and the extracts marked as Exs. B1 and B2 clearly demonstrate that the plaintiff had manipulated the stamp papers to file the suit. Though the trial court had referred to Exs. B. 1 and B. 2, it had without any reason rejected the evidentiary value of the same on the ground

that the defendants should have examined Samson, the stamp vendor and that the defendants had not given any other evidence and this view of the trial court was accepted by the first appellate court without any valid reason. When the veracity of the Ex. A. 2 is a doubtful one and the Exs. B1 and B2 corroborates the same, the Courts below should have accepted and considered the same.

38. In this regard, the learned Senior Counsel for the first respondent has relied on the decisions in Thiruvengada Pillai Vs. Navaneethammal and Another, AIR 2008 SC 1541 : (2008) 2 CLT 898 : (2008) 1 CTLJ 324 : (2008) 2 JT 585 : (2008) 2 SCALE 630 : (2008) 4 SCC 530 : (2008) 1 UJ 400 : (2008) AIRSCW 1684 and Kaliyaperumal Nadar Vs. Santhanam Chettiar and Another, (1995) 2 CTC 313 , and the principles laid down are only applicable to the persons, who have approached the Court with clean hands and not otherwise. Since this Court is of view that the first respondent has not approached the Court with clean hands, she is not entitled for any kind of relief.

39. The above aspects would clearly show that Ex. A. 2 is a forged and concocted document and it has been created with an intention to grab the suit property from the first defendant and therefore, it is held to be invalid.

40. Now, another question comes to the fore that the execution of the sale deeds by the first defendant in favour of the defendants 4 to 6 would hit by the principle of lis pendens?

41. Ex. B3 sale agreement was executed by the first respondent in favour of D4 in respect of the suit property. Thereafter, Ex. B. 4 sale deed was executed by the first defendant in favour of D4 on 12.6.1994 and it was registered only on 18.7.1994.

42. Ex. B. 5 sale deed was executed by the first defendant in favour of D5 on 12.6.1994 in respect of the suit property. Ex. B6 is the sale agreement, which was executed by the first defendant in favour of D6 in respect of the suit property. Ex. B7 is the sale deed, which was executed by the first defendant in favour of D6 in respect of the suit property and the same was registered on 18.7.1994. The suit was filed on 8.7.1994.

43. The learned Senior Counsel for the first respondent vehemently contended that the sale deeds executed by the first defendant in favour of D4 and D6 in respect of the suit property would hit by the principle of lis pendens as the sale deed was executed only on 18.7.1994, whereas the suit was filed on 8.7.1994.

44. Further, the learned Senior Counsel has contended that on the date of filing of the suit, the property had not passed to the appellant inasmuch as the sale deed was not registered and that the registration of the sale deed, subsequent to the filing of the suit, amounted to a transfer of the property in the suit and therefore, Section 52 of the Transfer of Property Act applies to the case on hand.

45. On the other hand, the learned Senior Counsel for the appellant has submitted that a document creating title in immovable property executed before

the date of filing of the suit but registered afterwards was not affected by the doctrine of lis pendens.

46. In support of her contention, the learned Senior Counsel has relied on the decision in Akki Guru Basappa and Another Vs. Vuluvathi Setra Santhappa and Others, AIR 1925 Mad 710 : 83 Ind. Cas. 133 : (1925) 48 MLJ 496 :).

47. In the said case, the Division Bench of this Court has elaborately discussed and rendered as under:--

"1. The only point raised in this Letters Patent Appeal is "Is a sale deed executed before but registered after the filing of a suit affected by the doctrine of lis pendens?"

2. The contention of Mr. Narasimhachari for the appellant is that on the date of the filing of the plaint, the property had not passed to the plaintiff inasmuch as the sale deed was not registered and that the registration of the sale deed, subsequent to the filing of the plaint, amounted to a transfer of the property in suit and therefore Section 52 of the Transfer of Property Act applies to the case. In the case of a conveyance or a document creating title to immoveable property registration is necessary to give validity to such document but the question is whether a document creates title from the date of its execution or whether it creates title only from the date of its registration. Section 47 of the Indian Registration Act makes it clear that "a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration." In a competition between two documents creating title to immoveable 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. When the document is presented for registration the executant simply admits execution whereupon the document is registered and if the executant does not admit execution or if he refuses to appear before the Registrar the law provides for compulsory registration of the document. In such a case it cannot be said that the executant by any act of his gives validity to the document.

3. The contention of Mr. Narasimhachari is that a sale can be effected only by a registered instrument and that before the date of registration there was no sale and therefore the suit which was filed before the date of registration does stand in the way of the executant registering the document. This argument overlooks the fact that the vendee has a right to compel a vendor to execute a sale deed in his favour and if he refuses to ask the Court to execute the document. If a document has already been executed, he could present it for registration within four months and if no document had been executed he could sue for specific

performance of the contract of sale. Such a contract would not be affected by the doctrine of lis pendens on account of the filing of a suit subsequent to its date.

4. Under Section 52 of the Transfer of Property "Act any transfer or other dealing with the property in a suit or proceeding is affected by the doctrine of lis pendens. Mere registration of the document cannot be said to be a transfer of the property or dealing with the property in suit. Section 52, therefore, can have no application to the present case where the sale deed was executed before the date of the filing of the suit.

5. Mr. Narasimhachariar relies upon the case of Tilakdhari Singh v. Gour Narain (1920) 5 PLJ 715. There the learned Judges held that a mortgage executed before a suit was filed in "respect of the property covered by the mortgage but registered after the filing of the suit was affected by the doctrine of lis pendens. With great respect, we are unable to agree with the reasoning of the learned Judges. They rely upon the case of Ram Prasad v. Bhikari Das (1903) ILR 26 A 464 as fully supporting the view they take. There was no question of the doctrine of lis pendens in the case in Ram Prasad v. Bhikari Das (1903) ILR 26 A 464 and it is difficult to see how that case could support the "reasoning of the learned Judge in the case in Tilakdhari Singh v. Gour Narain (1920) 5 PLJ 715.

6. In Pingali Venkataramana Reddi by his authorised agent Brahmanda Narasimha Rau Vs. Kotigari M. Rangiah Chetti and Others, AIR 1922 Mad 249 : (1921) 41 MLJ 399 Sadasiva Aiyar and Spencer, JJ. held that a document creating title in immoveable property executed before the date of the filing of the suit but registered afterwards was not affected by the doctrine of lis pendens. The case in Tilakdhari Singh v. Gour Narain (1920) 5 PLJ 715 was quoted before the learned Judges and they declined to follow it. It is contended by Mr. Narasimhachariar that the learned Judge's observation as regards the doctrine of lis pendens is only obiter and not binding upon us. Even if the point was res integra we should have no hesitation in holding that the doctrine of lis pendens does not apply to the case of a document creating title in immoveable property executed before the filing of the suit but registered after. We fully concur with the reasoning of Spencer, J. in Pingali Venkataramana Reddi by his authorised agent Brahmanda Narasimha Rau Vs. Kotigari M. Rangiah Chetti and Others, AIR 1922 Mad 249 : (1921) 41 MLJ 399 ."

48. The learned Senior Counsel has also relied upon the decision in Hamda Ammal Vs. Avadiappa Pathar and Others, (1990) 4 JT 391 : (1990) 2 SCALE 970 : (1991) 1 SCC 715 : (1990) 2 SCR 594 Supp , wherein, the Hon"ble Apex Court has observed that "in the above case this Court has gone even to the extent that not only a sale deed but even an agreement of sale will prevail over attachment before judgment made subsequent to such agreement of sale. We do not want to express any opinion with regard to the case of an agreement for sale, but we are of the confirmed opinion that a sale deed having been executed prior to attachment before judgment, though registered subsequently will prevail over attachment before judgment."

49. The decisions reported in 2001(1) CTC 5 and 2008-4-L.W. 806 relied on by the learned Senior Counsel for the first respondent are not applicable, as, in the case on hand, there is no second sale after the filing of the suit as the alleged first sale agreement was forged and concocted and held as invalid, the question of second sale does not arise and therefore the above decisions are not applicable to the case on hand.

50. In the light of the above discussions and in view of the principles laid down Akki Guru Basappa and Another Vs. Vuluvathi Setra Santhappa and Others, AIR 1925 Mad 710 : 83 Ind. Cas. 133 : (1925) 48 MLJ 496 : and Hamda Ammal vs. Avadiappa Pathar and three others ((1991), this Court is of view that since the sale agreement as well as the sale deeds have been executed before the filing of the suit, but it was registered after the filing of the suit, it does not hit by the principle of lis pendens.

51. As far as the question of means of the plaintiff and the payment of sale consideration are concerned, from the perusal of the records, this Court finds that the plaintiff has not approached this Court with clean hands. Either the perusal of the agreement of sale or the averments of the plaint would clearly show that absolutely, there is nothing as to the details of payment on which date, how much amount, whether it is whole or partial and when it was paid and in whose presence. Though such question has been raised in the reply notice, there is no reply for the same with corroborative evidence.

52. On the other hand, there is evidence to show that the plaintiff had no means to pay such a huge amount to the first defendant.

53. D.W. 1, in her evidence has stated as under:--

54. In the reply notice issued by the first defendant's Advocate, it is stated as under:--

"Your notice has been caused with an intention to create evidence. The allegation of existence of agreement itself is denied. The said agreement is dated 24.2.1987 but your client has not given any reasons for not taking any action all these years. Your notice also will not disclose when Rs. 1,60,000/- was given to my client."

55. Further, it reads as under:--

"10. Apart from the above said facts, my client has paid the following amounts to your client and her husband. My client paid Rs. 22,000/- at the time of disposing of her agricultural land. My client has paid Rs. 10000/- in 1993 by pledging jewels. Another occasion my client paid Rs. 6000/- from the Fixed Deposit amount. A gold weighing 6 sovs. were given to your client and the same was not returned to my client. My client has also given your client 2 Gold Bangles and silver vessels weighing about 2 Kgs. It seems that your client has disposed of the said gold bangles."

56. So, from the above, it is clear that the plaintiff has no means to pay any amount either huge or meager and even she is not in a position to keep along with her the jewels given by the first defendant and therefore, this Court is of view that the plaintiff had no means to pay such a huge amount and that is why, it was not stated about the details of the amount said to be given to the first defendant.

57. In so far as the admission of D.W. 1 as to the admission of her signature in Ex. A2, though she had denied the very sale agreement and her signature, the answer lies in the decision of the learned Single Judge of this Court in *Perumal Vs. V. Balasubramanian*, (2011) 1 LW 949 , which reads as under:--

"I am not in agreement with the practice of the Advocates, during trial showing to the witness, only the signature portion by blocking the rest of the document and I would like to lay down as law hereby that the Advocates shall do well to see that such practice is dropped. Even a well educated person might not be in a position to identify his own signature if it is shown to him in isolation as it has been shown in this case. Here the defendant happened to be a driver and perhaps while he was in the witness box he might have got perplexed and in that context, he might have stated as though those signatures were not that of his own and from that the Court should not jump to the conclusion that the defendant was a man who was having attitude to deny his signatures."

58. In the case on hand, the first defendant being an 85 years old lady, it is very difficult to identify while showing the signature portion alone and even it is difficult for a prudent person, in the Court Hall, to identify his signature, and therefore, the contention of the learned Senior Counsel for the first respondent, in this regard, cannot be accepted.

59. Further, it is the contention of the learned Senior Counsel for the appellant that though it is claimed by the plaintiff that the alleged sale agreement was executed on 24.2.1987 and paid the entire amount of sale consideration, she never asked the first defendant or urged her to execute the sale deed until the filing of the suit after seven years and on this ground also, the plaintiff is not entitled to get the relief of specific performance as per the decision in *P. Jaswant Kumar Vs. M. Rajashekar*, (2013) 7 MLJ 688 , wherein, the learned Single of this Court has held as under:--

"In view of the above said discussion, this Court is of the considered view that the plaintiff could not get the relief of specific performance which is equitable relief. Even though he paid the full sale price, he failed to establish that he was ready and willing to get the sale deed executed from first defendant. In such view of the matter, the Original Suit is liable to be dismissed. The Judgments of the Courts below are also liable to be set aside and they are accordingly set aside. The second appeal deserves to be allowed."

60. Further, the learned Senior Counsel for the first respondent has vehemently argued that when the courts below have given concurrent findings, this Court

sitting in second appeal, shall not interfere with such findings and therefore, the interference of this Court is unwarranted.

61. On the other hand, the learned Senior Counsel for the appellant has contended that it is a well settled law that this Court can interfere in Second Appeal when findings of the Courts below are perverse and therefore, since the Courts below have not considered the very vital aspect of the case, though oral and documentary evidences are available on that aspect, such findings of the Courts below shall be held as perverse.

62. In support of her contention, the learned Senior Counsel has relied on the decision in *Easwari Vs. Parvathi*, (2014) AIRSCW 4406 : (2014) 8 JT 432 : (2014) 3 RCR(Civil) 955 : (2014) 8 SCALE 499 , wherein, the Hon"ble Apex Court has elaborately discussed as under:--

"11. The appellant has first challenged the correctness of the High Court in allowing the Second Appeal under Section 100 of the Code, which is reproduced as under:--

"Section 100 - Second appeal - (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. (2) An appeal may lie under this section from an appellate decree passed ex-parte. (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

A plain reading of the said provision conveys that a second appeal be allowed only when there is a "substantial" question of law involved. However, it is settled law that the High Court can interfere in second appeal when finding of the First Appellate Court is not properly supported by evidence. In *Vidhyadhar v. Manikrao & Anr.* this Court held as under:--

"3. The findings of fact concurrently recorded by the Trial Court as also by the Lower Appellate Court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion."

Furthermore, in *Yadarao Dajiba Shrawane (dead) by LRS v. Nanilal Harakchand Shah (Dead) & Ors.* this Court stated:--

"31. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal."

The above view of the Court must be read in consonance with the decision of this Court in *Rattan Dev v. Pasam Devi* wherein it was specifically stated that:--

"Non-application of mind by the appellate court to other material, though available, and consequent failure of the appellate court to discharge its judicial obligation, did raise a question of law having a substantial impact on the rights of the parties, and therefore, the second appeal deserved to be heard on merits."

In light of the above decisions we are of the opinion that the High Court cannot be precluded from reversing the order and judgment of the Lower Appellate Court if there is perversity in the decision due to mis-appreciation of evidence. This holds good especially in light of the principle that even when both the Trial Court and the lower court have given concurrent findings, there is no absolute ban on the High Court in second appeal to interfere with the facts (See: *Shri Hafazat Hussain Vs. Abdul Majeed and Others*, AIR 2001 SC 3201 : (2001) 6 JT 591 : (2001) 5 SCALE 104 : (2001) 7 SCC 189 : (2001) AIRSCW 2974 : (2001) 5 Supreme 706)."

63. A perusal of the judgments of the Courts below reveals that based on the admission of her signature by D.W. 1 in the alleged agreement of sale, which cannot be construed as an admission, as per the decision of the learned Single Judge of this Court in *Perumal's* case, cited supra, and the evidences of P.Ws. 2 and 3 alone, leaving the evidences of the defendants and the material documentary evidences and as a result, rendered the incorrect findings, which are perverse, as the same are not based on the legal evidence available on record, and therefore, in the light of the above decision and in view of the discussions made above, this Court is of view that the judgments and decrees of the courts below are not sustainable in law as well as on facts and hence, they are liable to be set aside.

64. Accordingly, the second appeal is allowed, setting aside the judgments and decrees of the Courts below. The suit is dismissed. However, there will be no order as to costs.