

(1951) 11 MAD CK 0004

In the Madras High Court

Case No : Second Appeal No. 1007 of 1948

Marina Appa Rao and Others

APPELLANT

Vs

Marina Veeranna

RESPONDENT

Date of Decision : 27-11-1951

Acts Referred:

Specific Relief Act, 1877 — Section 27
Transfer of Property Act, 1882 — Section 40, 54
Trusts Act, 1882 — Section 91

Citation : AIR 1953 Mad 409 : (1952) 65 LW 674 : (1952) 2 MLJ 166

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : K. Rajah Aiyar and N. Bapiraju, for the Appellant; M.S. Ramachandra Rao and K. Rangachari, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is a second appeal against the decree and judgment of the Court of the Subordinate Judge of Rajahmundry confirming

that of the Court of the District Munsif of Ramachandrapur in O. S, No. 212 of 1946.

2. The plaint schedule property originally belonged to one Kondepudi Ramanna. He executed a Khandagutta cowle, Ex. D. 1 dated 9-6-1905, in

favour of Sattiraju for a period of forty-one years. On 4-12-1915, Ramanna entered into an agreement to sell the same property in favour of ½

the plaintiff's grandfather, Marina Veeranna. Marina Veeranna filed O. S. No. 926 of 1916 on the file of the Court of the District Munsif,

Ramachandrapur, for recovery of a sum of money due to him on a promissory note executed by Ramanna. In that suit, on 17-9-1916 he attached

before judgment the suit properties subject to his own right under the aforesaid

agreement. After attachment, on 14-10-1916, Ramanna executed a sale deed conveying the plaint schedule properties to Sattiraju under Ex. D. 2. On 10-11-1916 Sattiraju, in his turn, executed a mortgage deed, Ex. D. 4 in favour of defendant 1 for a sum of Rs. 2000. Veeranna filed O. S. No. 1174 of 1916 for specific performance of the aforesaid agreement to sell and obtained a decree therein. To that suit Ramanna and Sattiraju were made parties. Pursuant to the decree for specific performance, Ramanna executed a sale deed, Ex. P. 1, on 6-4-1918 conveying the property to Veeranna for a sum of Rs. 2000. The -first defendant, in whose favour; Sattiraju executed a mortgage deed dated 10-11-1916. filed twelve years thereafter, O. S. No. 33 of ""1928 for recovery of the amount due under the mortgage and obtained a decree therein. In execution of the decree the said properties were purchased by the other defendants in different shares and subsequently there were exchanges between them. The plaintiff who is the grandson of Marina Veeranna and is presumably named after him, filed O. S. No. 212 of 1940 on the file of the District Munsif of Ramachandrapur for establishing his right to the plaint schedule properties, for possession, and for mesne profits. The defendants raised various pleas which are reflected in the following issues :

1. Whether the agreement dated 4-12-1915 in favour of the plaintiff's grandfather is true and whether the decree in O. S. No. 1174 of 1916 in pursuance of the same is binding on the defendants?
2. Whether the sale deed dated 14-10-1916 in favour of Rimmalapudi Sattiraju the predecessor-in-interest of the defendants and the mortgage by him in favour of the first defendant and the subsequent proceedings O. S. No. S3 of 1928 and the E. P. No. 11 of 1930 are all true, valid and binding on the plaintiff?
3. Whether the defendants are entitled to any relief under Sections 41 of the Transfer of Property Act?
4. In any view whether the claim of the defendants is vitiated by the rule of "lis-pendens"?
5. Whether the schedule properties were attached before judgment in O. S. No. 926 of 3916, and if so what is the effect of the same?
6. What is the effect of the proceedings in O. P. No. 73 of 1928 on the rights of

the plaintiff and defendants?

7. Whether defendants are estopped to question the rights of the plaintiff?

8. Whether the khandagutta cowle in favour of Rimmalapudi Sattiraju is only a usufructuary mortgage and whether the suit of the plaintiff in its present form is not maintainable?

9. To what mesne profits and what rate is the plaintiff entitled?

10. To what relief is the plaintiff entitled?

The learned District Munsif held, on the evidence, that the sale deed executed by Ramanna in favour of Sattiraju was a collusive one and therefore

Ramanna. had validly conveyed title to Veeranna under Ex. P. 1. He also held that the mortgage by Sattiraju in favour of defendant 1 was also

collusive. He also found that the claim of the mortgagee was affected by the doctrine of "lis pendens". In the result the learned District Munsif gave

a decree to the plaintiff as prayed for. The defendants preferred an appeal to the Court of the Subordinate Judge of Rajahmundry. In appeal the

only point argued was that notwithstanding the decree in O. S. No. 1174 of 193C the plaintiff's grandfather did not acquire a valid title under Ex.

P. 1 as Sattiraju also did not join the sale deed. The learned Subordinate Judge held that the sale deed was executed by Ramanna for and on

behalf of all the parties interested in the property at the time it was executed. He dismissed the appeal. The defendants have preferred this second

appeal against that decree.

3. Learned counsel for the appellants contended that Ramanna having sold the property to Sattiraju, could not convey valid title to Veeranna and

that the only person who could do so was Sattiraju. To put in other words, his contention was that if a person enters into an agreement to sell his

property in favour of another and thereafter sells the same to a third party with notice of the prior agreement, the third party acquires a valid title to

the same, subject to the right of the person in whose favour the earlier agreement has been executed to enforce his contract against him, At this

stage it may be convenient to consider the relevant provisions of the various statutes and the cases cited by the learned counsel:

Sections 54, T. P. Act: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled

between the parties. It does not, itself, create any interest in or charge on such property.

Sections 91, Trusts Act: Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Sections 40, T. P. Act:where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property) but not amounting to an interest therein or ease-ment thereon, such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Sections 27, Specific Relief Act: Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against

(b) any other persons claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money, in good faith and without notice of the original contract.

In -- "Subbiah Pillai v. Vellappa Naicken", 22 Mad LJ 124, Benson and Sundara Aiyar JJ. pointed out the proper form of a decree to be passed

in a suit for specific performance of a contract to sell land. There the facts were: The first defendant agreed to sell certain land to the plaintiff. The

first defendant subsequently sold the land to 2 to 4 defendants. The plaintiff asked for a declaration that the sale in favour of defendants 2 to 4 was

void as against him and for a direction that defendant 1 do execute a conveyance of the land in the plaintiffs' favour. The District Court in that case

gave the decree as prayed for. The High Court dismissed the appeal. At page 124 the learned Judges observed :

The sale to defendants 2 to 4 is good in law subject to the plaintiff's right. Sections 91, Trusts Act, enacts that in such a case the subsequent

purchaser is a trustee of the property in law for the person who has a prior agreement for sale. The proper course in such a case would be to

direct a reconveyance to be executed by the subsequent purchaser. We believe that the practice generally in the mofussil Courts is to declare the

subsequent sale void and to direct the vendor to execute a conveyance.

It will be seen from the aforesaid observations that the practice of Courts before 1912 was to declare the subsequent sale void and to direct the

original owner to execute the sale deed in favour of the person with whom he entered into an agreement to sell; though the later practice was to

direct the vendor and the subsequent vendee who purchased with the knowledge of the prior agreement to sell, to convey the property to the

plaintiff. This judgment also establishes the position that the subsequent sale deed is good though subject to the plaintiff's right.

4. Sadasiva Aiyar and Seshagiri Aiyar JJ. in -- "Suryaprakasarayadu v. Lakshminara-simha Charyulu," 26 Mad LJ 518 accepted the said principle

and stated their opinion as follows :

The object of adding the 2nd defendant (subsequent purchaser with notice of the plaintiff's contract) as a party was to enforce specific

performance of the plaintiff's contract as against him, he having become the legal owner of the property since date of the contract to sell the

property made with the plaintiff.

In -- "Thiruvenkatachiar v. Seshadri Aiyangar 30 Mad LJ 559, defendants 1 to 3 who contracted to sell certain immovable property to

defendants 4 and 5 sold the same by registered sale deed to the plaintiff who had notice of the prior contract. Subsequently de-fondants 1 to 3

executed a registered sale deed of the same property to defendants 4 and 5 in pursuance of the prior contract and put them in possession. The

plaintiff, the purchaser with notice of the prior contract in favour of defendants 4 and 5, filed a suit for possession of the property against his

vendors and the persons in whose favour there was a prior agreement to sell and also a sale by the vendors -subsequent to the sale in his favour.

The learned Judges held that in view of Sections 1, Trusts Act, plaintiff was not entitled to recover possession from defendants 4 and 5. The

learned Chief Justice stated at page 560 :

Here the plaintiff has obtained a transfer by a duly, registered document from defendants to 3 with notice of the prior contract by these defendants

to sell the property to de-fondants 4 and 5. In this state of things he is bound by Sections 91, Trusts Act, to hold the-property for the benefit of

defendants 4 and 5 to the extent necessary to give effect to the contract.

Siinivasa Aiyangar J. observed at page 564:

Though at the time of the conveyance to the said defendants they had already executed a sale in favour of the plaintiff, I am inclined to hold that

they were still entitled to fulfill their original contract by executing a conveyance, at the request of the contra tees, and to this extent repudiate the

title conveyed to the plaintiff, not for their own benefit, but for the benefit of the 4th and 5th defendants and to the extent necessary to fulfil their

obligation." " If the original owner who contracted to sell his property in favour of another can subsequently confer title on a third party, it is not

logical to hold that the original owner can confer a valid title if the purchaser in whom the title vests does not join the sale. It is one thing to say that

a person in whose favour there is an agreement can enforce it against a person who purchased the property with notice of the said agreement to

sell; but it is a different thing to say that the owner having parted with the title in favour of another can, without reference to that person, confer

indefeasible right on the person to whom he agreed to sell the property.

5. In -- Madhavarapu Sathiraju and Others Vs. Madhavarapu Venkanna and Others, , the legal position was stated by yaradachariar J. with

clarity as follows : " "As provided in Sections 91, Trusts Act, the natural result of the plaintiffs having purchased tho property with notice of the prior

con tract in defendant 1"s favour was that they must hold the property for the benefit of the latter to the extent necessary to give effect to the

contract. For all other purposes, and as between themselves and their vendors, the plaintiffs were the owners. See --"Subbiah Pillai v. Vellappa

Naicker 13 Ind Cas 176. And this is the reason why several cases have held that in such circumstances the decree for specific performance must

direct the first purchaser also to join in executing the conveyance." " (5A) in -- "Gaffur v. Bhikaji 2G Bom 159, the plaintiff in whose favour there

was an agreement to sell, filed a suit only against the person who agreed to sell for specific performance of the agreement in his favour, and

obtained a decree. In execution of the decree.-conveyance of the land was executed to him by the Court. As the subsequent purchaser did not

give him possession, he filed another suit for possession. The learned Judges decreed the suit. At page 162, Jenkins C. J. observed :

Had the second defendant"s claim of title rested on contract only, then a simple

decree for possession would have sufficed; but an actual

conveyance was executed in his favour whereby the property in the thikan passed to him, though no doubt burdened in the way we have indicated.

Therefore we think the decree should be in this form; there should be a declaration that the second defendant holds the property for the benefit of

the plaintiff to the extent necessary to give effect to the contract of the 25th of June 1895; there should be a decree that the second defendant do

execute to the plaintiff a proper conveyance of the thikan and a decree for possession.

The "raison decree" of this judgment also is that title passed to the subsequent purchaser burdened with a right in favour of the person in whose

favour there was a prior agreement to sell.

6. Sulaiman C. J. described the rights of parties" in -- Kali Charan Singh and Another Vs. Janak Deo Singh and Others , as follows :

When a person with knowledge of a previous contract of sale, purchased the property, the purchase is voidable at the option of the prior

promisee and the contract with him can be enforced specifically against the subsequent purchaser. In such a suit the Court should declare the

second purchase as null and void and cancel it, and order the original promisor to carry out his contract by executing a sale deed in favour of the

plaintiff.

The procedure pointed out by the learned Judge is similar to that followed by the Mad ras High Court prior to the ruling in -- "Sub biah Pillai v.

Vellappa Naicken 22 Mad LJ 124.

7. The legal position may, therefore, be put thus: An agreement to sell immovable property does not create any interest in the said property unless

a sate deed is executed conveying the said property. The vendor, who has not transferred his interest in the property, though he entered into an

agreement with another to sell the same, can certainly confer title on a third party by executing a sale deed in his favour. As between the vendor

and the subsequent purchaser, there can be little doubt that there is a transfer of ownership and, therefore, the title to the pro perty vests in the

latter. But the title of the subsequent purchaser with notice of the prior agreement in favour of another is subject to the obligation under Sections

91, Trusts Act. He holds the property for the benefit of the latter to the extent

necessary to give effect to the contract. The person in whose favour there was a prior agreement can specifically enforce his agreement under Sections 27(2) (Section 27(b)?), Specific Relief Act, and compel him to execute a sale deed in his favour. But till such a sale deed is executed by the subsequent purchaser, the person in whose favour there was a prior agreement cannot acquire any, title to the same. If the contract for the purchase of Immovable property with the original owner does not create any interest in him, the subsequent sale by the owner to a third person cannot confer a better title on him. He can only acquire title to the property by getting a, conveyance from the subsequent purchaser. That is the reason why though at one time Courts were directing only the original owner to execute a conveyance in favour of the plaintiff, they are now adopting the procedure, consistent with principle and the legal title of the parties, directing the subsequent purchaser also to execute the sale deed in favour pf the plaintiff. I must, therefore, hold that the execution of a sale deed by the original owner without the subsequent purchaser joining the same will not confer any title on the person in whose favour there was a prior agreement to sell.

7A. But the view I expressed will not dispose of the appeal for in this case the solution to the problem raised really turns upon the scope of the suit and the effect of the decree in O. S. No. 1174 of 1916. As aforesaid that suit was instituted by Veeranna for speci-fic performance of the agreement to sell the suit property in his favour. To that suit Ramanna, Sattiraju and Ammayj were made parties. After the suit dragged on for two years, on 25-3-1918, Sattiraju filed a petition Ex. P. 5 under Sections 151, C.P.C. In that petition he prayed that the Court may pass a decree according to the statement given by the plaintiff in that suit in the witness-box. The plaintiff gave evidence on 6-4-1918 which is marked as Ex. P.

8. In that he stated that the sales in favour of defendants 2 and 3 by defendants 1 and 2 respectively should be set aside and that defendant 1 should execute a sale deed in his favour for the suit lands according to the draft to be supplied by him and on his failure to do so the sale deed should be executed by the Court. On 6-4-1918 after considering the petition filed by Sattiraju and also the evidence given by the plaintiff, the Court delivered the judgment. The judgment discloses that the plaintiff appeared

by pleader and defendants 1 and 2 appeared in person. It also records that defendants 1 and 2 put in petitions consenting to a decree in terms of the deposition given by the plaintiff. The learned District Munsif accepted the evidence given by the plaintiff and decreed the suit. The decree that followed directed defendant 1 to execute a duly registered sale deed in favour of the plaintiff in respect of the suit lands as per the schedule thereunder given within one week from the date of decree; defendants 2 and 3 were directed to put the plaintiff in possession of the lands after the expiry of the lease in second defendant's favour. It is clear from the aforesaid proceedings that the parties agreed for setting aside the sale by defendant 1 in favour of defendant 2 and for defendant 1 conveying the property to the plaintiff. The parties followed the old procedure that was in vogue prior to the decision in -- "Subbiah Pillai v. Vellappa Naicken 22 Mad LJ 124. If the sale in favour of Sattiraju was set aside, it is manifest that Sattiraju ceased to have any interest and, therefore, he did not join in the sale deed. The decree and judgment are binding on Sattiraju. In this view, Ramanna, by executing the sale deed, validly conveyed the property to the plaintiff.

8. There are other findings given by the District Munsif which afford a complete answer to the defendants' case. He found that the sale in favour of Sattiraju and the mortgage by Sattiraju in favour of defendant 1 were collusive. This finding was not canvassed in the appeal. It is true, as contended by the learned counsel for the appellants, that if that finding was accepted by the appellants, the point argued before the Subordinate Judge would not have arisen for consideration; for if the sale in favour of Sattiraju and the mortgage by him to defendant 1 were collusive and invalid, Ramanna was certainly entitled to sell the property to the plaintiff. But the fact that the learned counsel appearing before the Subordinate Judge and the learned Subordinate Judge missed this obvious point is not a sure indication that the other findings of the District Munsif were also attacked before the learned Judge. He definitely stated in para 2 of the judgment as follows ;

The only point argued in appeal and hence arising for determination is that, in spite of the decree in O. S. No. 1174 of 1916, respondent's grandfather did not acquire a valid title under Ex. P. 1, as it was not executed

also by Sattiraju.

The last paragraph of the judgment shows that another point was also pressed viz., that Ex. D. 1 was a mortgage and that, therefore, the suit

should have been filed for redemption. The learned Judge held against the appellants on both the points. Nor did the appellants take a ground in

the memorandum of second appeal to the effect that the other findings given by the learned District Munsif were also attacked but that the

Subordinate Judge failed to consider them. Ground 19 of the Memorandum of Second Appeal reads :

The Court below is wrong in stating that the only point argued before it is whether Veeranna acquired a valid title under Ex. P. 1 as Sattiraju did

not join in its execution. The point in regard to the collusive character of the decree in O. S. No. 1174 of 1916 was argued before it and it ought to

have held that the said decree was collusive and not binding on the defendants,

The only complaint, therefore, was that another point with which we are not now concerned, viz., that the decree in O. S. No. 1174 of 1916 was

collusive, was raised before the Subordinate Judge but not considered by him. This also shows that other points were not pressed. When the

learned Judge definitely stated that only two points were pressed before him and the -appellants did not take a ground, or file an affidavit stating

that the learned Judge was wrong in observing that only two points were raised, I think I will not be justified at this stage in holding that other points

were raised but were not considered by the learned Subordinate Judge. If the sale in favour of Sattiraju, and the mortgage in favour of defendant 1

were collusive, the plaintiff is certainly entitled to a decree.

9. In the result, the second appeal fails and is dismissed with costs.

10. No leave.