

(1989) 01 KL CK 0050

In the High Court Of Kerala

Case No : Regular Second Appeal No. 10 of 1982-A

Meppallipoyil Ibravi

APPELLANT

Vs

Poolakkandiyil Pokkan and Others

RESPONDENT

Date of Decision : 13-01-1989

Acts Referred:

Transfer of Property Act, 1882 — Section 55(6)

Citation : AIR 1990 Ker 169

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : C.R. Natarajan, for the Appellant;

Final Decision : Allowed

Judgement

K.G. Balakrishnan, J.—The appellant is the decree-holder in O.S. No, 193 of 1972 of Munsiff's Court, Nadapuram. The 3rd respondent herein is the judgment-debtor. The appellant paid Rs. 2,250/- to the 3rd respondent towards purchase money on an agreement to buy one item of property belonging to the 3rd respondent. As the property was not sold by the 3rd respondent to the appellant, suit was filed for the return of the amount. The suit was initially dismissed by the trial Court. The decree was set aside by the appellate Court and the judgment-debtor was directed to pay Rs. 2,250/- to the appellant. Execution was levied and the property belonging to the judgment-debtor, was brought up for sale. Meanwhile respondents 1 and 2 filed claim petitions contending that they are bona fide purchasers of the property. According to them, this property was sold by the 3rd respondent to some third party on 15-10-1973 and from them the respondents 1 and 2 purchased the same. The claimants pleaded that they are bona fide purchasers and hence the property is not liable to be proceeded with in execution. The Courts below accepted this contention and allowed the claim petition.

2. The learned counsel for the appellant pointed out that the decree is for the return of the purchase money paid by the decree-holder and u/s 55(6)(b) of the

Transfer of Property Act, 1882 there is a charge on the property and that charge can be enforced even against bona fide third party purchaser. Section 55(6)(b) reads:

"55. Rights and liabilities of buyer and seller--

XXXXX

(6) The buyer is entitled--

XXXXX

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and when he properly declines to accept the delivery, also for the earnest (if any) and for costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission."

3. u/s 55(6)(b) of the T.P. Act the buyer has got a charge for the price pre-paid, in anticipation of the completion of the agreement. This charge attaches from the moment the buyer pays any part of purchase money and is only lost in case of his own subsequent default. This charge on the property is enforceable not only against the seller but all persons claiming under him. A transferee for value with notice or without would be liable to u/s 56(6)(b) of the Act. The buyer's charge under this section is a statutory charge and he is entitled to enforce against property and the plea of want of notice by third party purchaser is of no avail.

4. This Court in *Avyakutty Chettiar v. Imbichiamine Bi* 1962 Ker LT 728, *Madhava Kammathi v. Gopala Pai* 1965 Ker LT 877 and *Mammad Koya v. Ismayil* 1979 Ker LT 9, has taken the same view and the courts below have seriously erred in allowing the claim petition. One decree-holder is entitled to proceed against the property attached in execution. The execution-court is directed to proceed with the sale proceedings of Ext. A2 property measuring 1 acre 11? cents in R.S. No. 175 of Kavilumpara amsom.

The R.S.A. is allowed. No costs.