
(1965) 04 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition. No. 576 of 1965

M.K. Sundararamier

APPELLANT

Vs

C.M.V. Krishnamachary and Another

RESPONDENT

Date of Decision : 09-04-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Transfer of Property Act, 1882 — Section 55(6)

Citation : AIR 1966 Mad 330 : (1965) 78 LW 456 : (1965) 2 MLJ 478

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Judgement

(1) This revision petition arises out of E.A. 361 of 1964 in E.P. 153 of 1963 in O.S. 30 of 1963, on the file of the Sub-court, Madurai. The suit

O.S. 30 of 1963 was filed by the plaintiff Venkataraman against M. K. Sundararamier, his daughter-in-law and grandson for a certain sum of

money. He exonerated the daughter-in-law and grandson and obtained a decree for Rs. 9000 against Sundararamier. To execute the decree, he

filed E.P. 153 of 1963 and attached a house belonging to the joint family consisting of Sundararamier, his daughter-in-law and his grandson. The

house is said to be worth about Rs. 29000. But in respect of that house. Sundararamier had executed an agreement Ex.A. 1 dated 6-9-1962 for

Rs. 29000 in favour of one C.M.V. Krishnamachary. Under the agreement a sum of Rs. 9000 was advanced. But the sale was not completed. It

is the case of C.M.V. Krihanamachary that the default was with M. K. Sundararamier. He has issued a notice Ex.A. 2 dated 21-2-1963 to M. K.

Sundararamier but to no purpose. C.M.V. Krishnamachari alleged that not merely did Sundararamier fail to complete the sale deed but he set up

his grandson to file a partition suit, O.S. 31 of 1963 in the Sub-court and claimed a half share and that further he set up Venkataraman to file O.S.

30 of 1963 and bring the properties to sale. On such allegations C.M.V. Krishnamachari filed E.A. 361 of 1964 under Order XXI rule 58 C.P.C.

claiming a charge over a sum of Rs. 9000 u/s 55(6) of the Transfer of Property Act and requested the executing court to notify it in the

proclamation of sale. The learned Subordinate Judge accepted the prayer of C.M.V. Krishnamachari and notified the charge to the extent of Rs.

9000. This revision petition has been filed by M. K. Sundararamier against that order dated 10-12-1964.

(2) Section 55(6)(b) of the Transfer of Property Act states that the buyer is entitled ""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 property 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 the 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) Sri S. Kothandarama Nayanar, learned counsel for the petitioner, urges that the above provision cannot be availed of by the buyer before the

sale deed is executed and can be availed of by him only after the sale deed is executed. I am however unable to accept the contention, because if

the sale deed is executed, the title would pass to the buyer and there is no point in giving a charge over the purchase money on the property which

has become that of the buyer. The provision can have meaning only in a case where the title has not yet passed to the buyer in respect of the

purchase money or any portion thereof paid by him. That the provisions of Section 55 will apply to the case of executory contract, that, is, where

the sale deed has not been executed, is clear from the decisions quoted by the learned Subordinate Judge and the observations of the learned

judges therein, namely, Adhikesavan Naidu v. Gurunatha Chettiar, ILR Mad 338: AIR 1918 Mad 1315 , Kathamuthu Pillai Vs. Subramaniam

Chettiar, and Krishnaswami Rao v. Srinivasa Desikan, 71 MLJ 850 : AIR 1937 Mad 261 . Hence the learned Subordinate Judge had jurisdiction

to declare the charge.

(4) In a revision petition it is really not necessary to consider the question whether it was proper to declare the charge. But on the facts of this case,

on the materials available at this stage, it seems to me that the declaration of charge was proper. I have already pointed out that C.M.V.

Krishnamachari sent notice Ex.A. 2 on 21-2-1963, itself and Sundararamier did not send any reply thereto stating that he for his part was ready to

complete the sale and that the default was on the part of C.M.V. Krishnamachari. Further the fact that the two suits O.S. 30 of 1963 and O.S. 31

of 1963 bear consecutive numbers suggests that they were filed at about the same time and thus lends some colour to the suggestion of C.M.V.

Krishnamachari that the first defendant was responsible for the filling of those suits in order to defeat the rights of C.M.V. Krishnamachari. I am

not, therefore, inclined to interfere in revision. This of course does not prevent Sundararamier from canvassing the order of the learned Subordinate

Judge in a regularly constituted suit. It is true that the sale is scheduled to come off on the 12th. But the petitioner has himself to blame for not

having come to this court earlier. The order sought to be revised was passed on 10-12-1964. He got the copy of that order on 23-2-1965. But

the present petition with an application for stay was filed on 5-4-1965. However it is open to him to persuade the decreeholder in O.S. 30 of

1963 to agree for the adjournment of the sale and utilise the interval to pay the sum of Rs. 9000 to C.M.V. Krishnamachari if the latter is willing to

receive it and thereby get rid of the charge which has been ordered to be notified in the proclamation of sale. With these observations this petition

is dismissed.

KI/RSK/RGD

(5) Petition dismissed.