
(1990) 11 MAD CK 0095
In the Madras High Court

Periasami Gounder (died) and Others

APPELLANT

Vs

Chinnaraj Gounder and Others

RESPONDENT

Date of Decision : 02-11-1990

Acts Referred:

Registration Act, 1908 — Section 77

Citation : (1991) 2 LW 350 : (1991) 22 MLJ 1

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The second appeal is at the instance of defendants 3 and 4 in a suit for specific performance and injunction filed by the first respondent herein.

2. The case of first respondent (plaintiff) is that the suit property was sold originally by the father of defendants 1 and 2 to his father in 1933 for a sum of Rs. 500 and since then, it has been in the possession of his father and later himself. According to him, as defendants 1 and 2 were trying to disturb his possession he entered into an agreement in 1961 with the first defendant for purchasing the property for a sum of Rs. 4,000 and peace prevailed for some time thereafter. Again, defendants 1 and 2 started giving troubles which led to another agreement for sale in favour of the plaintiff by defendants 1 and 2 under Ex. A. 1 dated 1.1.1974. At that time the consideration was fixed at Rs. 5,000 and a sum of Rs. 500 was paid in advance. It is the case of the plaintiff that on 3.11.1974 a sale deed was executed on stamp papers by defendants 1 and 2 after receiving the sum of Rs. 4, being the balance of consideration. The said document is marked as Ex. A. 2. Thereafter, defendants 1 and 2 refused to "register the document and the plaintiff approached the court for specific performance and injunction on the ground that he was throughout in possession.

3. Defendants 1 and 2 remained ex parte and the appellants herein (defendants 3 and 4) contested the suit. They claimed title to the property under sale deeds dated 12.11.1973 and 10.12.1973 executed by defendants 1 and 2. The documents are marked as Exhibit B1 and B2. According to defendants 3 and 4

the agreement set up by the plaintiff was not true and the case of oral sale in favour of the plaintiffs father in 1933 was false. Defendants 3 and 4 also disputed the validity of the agreement in favour of the plaintiff. They pleaded that they were bona fide purchasers for valuable consideration without notice of the agreement, if any, in favour of the plaintiff.

4. Both the courts have found against the contentions of defendants 3 and 4 and granted a decree in favour of the plaintiff. It is also found by the Courts below that the sale deeds under which defendants 3 and 4 are claiming title, are not bona fide and though they bear the dates 12.11.1973 and 10.12.1973, they were registered only on 1.2.1974 and 7.2.1974 respectively and it was obvious that they had been brought into existence subsequent to the suit agreement under which the plaintiff claimed the suit property. The concurrent findings of the Courts below on the above questions are findings of fact and they are based on acceptable evidence on record. I do not find any infirmity in the discussion or appreciation of the evidence. Hence, there is no justification to interfere with the said findings.

5. Learned Counsel for the appellants (defendants 3 and 4) contended that the suit by the first respondent (Plaintiff) was not maintainable as a sale deed had been executed by defendants 1 and 2 and the only remedy of the first respondent was to have presented the document for registration and if registration has been refused he should have taken proceedings u/s 77 of the Registration Act. In fact, the substantial question of law framed at the time of admission of the second appeal is based only on the said submission of learned Counsel. Reliance is placed by learned Counsel on the judgment of a Division Bench in K. Hutchi Gowder Vs. H. Bheema Gowder, . It has been observed in that case as follows:

The result of the decisions is that a plaintiff who, having obtained a deed of transfer which requires registration in order that it may become operative, institutes a suit for a decree directing the defendant to execute a fresh deed of transfer, without having presented for registration the deed which had been executed cannot obtain a decree in such suit unless the plaintiff proves that the failure to have the deed registered was not due to any wrongful act or negligence on his part.

The passage extracted above does not really help the appellants. The proposition that is laid down is that in case where there is a document of transfer executed by the vendor, and the vendee approaches the court for specific performance, he should establish that the failure to have the document registered was not due to any fault of his. It would never mean that if on account of any default on the part of the vendor the document would not be registered the vendee is not entitled to approach the civil court to get an equitable remedy of specific performance. It does not also mean that where the vendor refused to register the document, the only remedy of the vendee is to approach the registrar or to take proceedings u/s 77 of the Registration Act. In fact, this position in law has been clearly stated by

a Division Bench of this Court in an earlier case which has been followed in the above Division Bench case. The judgment is reported in Manicka Goundan Vs. Elumalai Goundan minor by guardian Ammakannu Ammal and Others, . The relevant portion of the judgment reads thus:

Taking the case of an agreement to sell, it cannot be said that the contract has been fully performed till there is a properly executed document which is also registered. It cannot be said that the moment a document is executed the contract ceases to be in force. The purchaser is always entitled to insist upon his right to have a proper registered instrument. Every vendor is bound to do all that is necessary to perfect the title of the purchaser, which includes the execution and registration of a proper conveyance.

It is true that the purchaser can resort to proceedings under the Registration Act, and the special statutory remedy u/s 77 of that Act to obtain registration of the executed document. But if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act, then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour.

6. In fact, the above passage has been extracted and relied on by the later Bench in K. Hutchi Gowder Vs. H. Bheema Gowder, .

7. It must be noted that this plea was not raised by the appellants in the Courts below. If they had raised it, first respondent (plaintiff) would have led in sufficient evidence to prove that there was no fault on his part in failing to get exhibit A. 2 registered. Even otherwise, the evidence on record shows that the first and second defendants refused to register exhibit A.1 and that is why the first respondent had to resort to the remedy of filing the suit for specific performance. Thus, the plea cannot be raised as a pure question of law as it has to depend upon the facts to be established in the case.

8. In the facts and circumstances of the case, I am of the view that the courts below have rightly granted a decree in favour of the plaintiff (first respondent) by holding that the plaintiff is entitled to the equitable remedy of specific performance. The second appeal fails and it is accordingly dismissed. No costs.