
(1940) 08 MAD CK 0085
In the Madras High Court

Puranam Eгна Narayanayya

APPELLANT

Vs

Desaboyina Venkatayya and Others

RESPONDENT

Date of Decision : 29-08-1940

Acts Referred:

Citation : (1940) 52 LW 825 : (1940) 2 MLJ 920

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.

1 The petitioner in this revision petition entered into an agreement with one Seshayya to purchase land, paid "the price and got a sale deed executed . When he was about to get the sale deed registered he was approached by the first respondent who himself wanted a conveyance of the same land. There was an agreement whereby the petitioner undertook to get the land conveyed by Seshayya to the first respondent and on that date the first respondent executed in favour of the petitioner a promissory note and paid a certain sum in cash. On the same day at the instance of the petitioner Seshayya executed a registered sale deed in favour of the first respondent and on the following day 11th August, 1921, the first respondent executed a mortgage to the" petitioner to cover the amount embodied in the promissory note of the previous day. In 1937 the petitioner sued on his mortgage and on 6th November, 1937, he got a preliminary decree which was followed on 11th March, 1938 by a final decree for Rs. 2,575 and odd.

2. When Madras Act IV of 1938 came into force the first respondent applied u/s 19 of that Act to scale down the decree debt. The application was resisted on the ground that the debt in question was a liability for which a charge is provided u/s 55(4)(b) of the Transfer of Property Act and therefore by the operation of Section 10(2)(ii) of Act IV of 1938 was excluded from the scaling down provisions. This plea was rejected by the lower Court and the petitioner seeks to revise that order. The only question therefore is whether the liability covered by the

mortgage is one in respect of which a charge is provided u/s 55 (4)(b) of the Transfer of Property Act.

3. Section 55(4)(b) provides that the seller is entitled to a charge upon the property in the hands of the buyer for the amount of the purchase money or any part thereof remaining unpaid. Is the petitioner in this case a seller and is the money in respect of which this mortgage was executed, unpaid purchase money, in the hands of the buyer? It seems to us quite clear that the answer to both these questions must be in the negative. The petitioner was not the seller of the property for he had no interest which he could convey. The title remained with Seshayya at the time of the transfer to the first respondent and though Seshayya was under an obligation to the petitioner, that obligation did not have the effect of vesting any title in the petitioner. So much follows from Section 54 of the Transfer of Property Act which lays down that a contract for the sale of immovable property "does not of itself create any interest, in or charge on such property.

4. The petitioner relies on two decisions of the Privy Council, *Zamindar of Polavaram v. Maharajah of Pittapur* (1936) 71 M.L.J. 347 : L.R. 63 IndAp 304 : ILR 59 Mad. 910 was a case in which property had been purchased at Court auction by the decree-holder and 30 days had elapsed from the sale without objection, at which juncture there was a compromise whereby the sale was confirmed except with reference to one item which was to be left in the hands of the judgment-debtor subject to a payment representing the value thereof. The payment was not made. The mortgage by which it was secured was found to be unenforceable and their Lordships of the Privy Council held that there was a charge in favour of the decree-holder purchaser for the amount due under the agreement of compromise as unpaid purchase price. Their Lordships held that the title of the decree-holder purchaser was complete although there had been no formal order of confirmation and that the recording of the Compromise was a sufficient conveyance of that title to the judgment-debtor without the formalities of confirmation of the sale and a separate conveyance by the Court auction purchaser. That decision proceeded on the special facts of the case which have little or no similarity to the facts before us. It cannot be authority for the view that whenever a person who has no title but merely a right to a conveyance of title, arranges with his prospective vendor for a conveyance in favour of the third party, the rights of a seller subsist in favour of the person who has arranged for the conveyance but has not actually conveyed, anything. The other decision is of *Kalyanasundaram Pillai v. Karuppa Mooppanar* (1926) 52 M.L.J. 346 : L.R. 54 IndAp 89 : ILR 50 Mad. 193, which is merely to the effect that when there is a gift deed registered after an interval of time, title passes as on the date of the execution deed and not as on the date of its registration. This again is no authority for the view that when there is a deed not made effective by registration it conveys title. Clearly there was no title in the petitioner which he could convey to the first respondent. He cannot therefore be regarded as a seller and the amount due from the first respondent to him will not carry any charge

such as is provided in Section 55(4)(6) of the Transfer of Property Act.

5. The decision of the lower Court is correct and the petition is dismissed with costs.