
(1990) 09 MAD CK 0081
In the Madras High Court
Case No : C.M.A. No. 210 of 1983

Raghavan alias Bhagavathikannu Pillai and 6 others	APPELLANT
Vs	
M. Krishnammal and 2 others	RESPONDENT

Date of Decision : 07-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Transfer of Property Act, 1882 — Section 51, 52

Citation : (1990) 09 MAD CK 0081

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : O.K. Sridevi, for the Appellant; P. Ananthakrishnan Nair and Mr. K. Srikumaran Nair, for the Respondent

Judgement

Raju, J.—The above appeal has been filed against the order dated 20.1.1983 made in A.S.Nos.138, 139 and 140 of 1981 on the file of the District Judge, Kanyakumari at Nagercoil with in its turn came to be filed against the order dated 12-11-1981 in E.A. No. 598 of 1980 in O.S. No. 525 of 1970 on the file of the principal Listriet Munsif, Nagercoil. O.S. No. 525 or 1980 was filed by Bagavathi Ammal and Krishnammal for recovery of the property from the lessees, namely, B. Vallinayagam and B. Velu Pillai and other defendants who claimed under defendants 1 and 2. The basis or the suit was that the lease of a vacant land was granted on 9.2.1109 M.E. which was executed in favour of the mother of the plaintiffs referred to above. Under the lease deed, the lessees were permitted to construct buildings on the vacant land there was a provision to receive the value of it while surrendering possession. The said suit was filed on the ground of arrears of rent and for own occupation. On 26.10.1972, the trial Court decreed the suit holding that the value of the building was Rs. 2,854/- and recovery of possession was granted subject to the payment of the said value.

2. At that stage, the first defendant died and his legal representatives were brought on record in the suit. The second defendant and the legal

representatives of the first defendant filed A.S. No. 112 of 1973 against the decree passed in the suit. The Appellate Court, while confirming the decree relegated the question of determining the value of the buildings to final decree proceedings by its judgment and decree dated 28.2.1974. In the final decree proceedings, the value of the buildings was fixed at Rs. 20,136.83 and time for deposit by two months was granted. The final decree was passed on 13.3.1976.

3. In the meanwhile, the Madras city Tenants Protection Act was extended to Nagercoil Municipality by Notification No. G.O.Ms. No. 1965 dated 10-11-1967 published in the Gazette dated 13-12-1967. Hence I.A. No. 942 of 1970 was filed by the lessees defendants in O.S. No. 525 of 1970 claiming benefits u/s 9 of the said Act. Since the lessees could not pay the value of the land the said application was dismissed. But at the same time, an issue was raised in the suit as issue No. 3 in the following terms: Whether defendants are entitled to protection of the Madras City Tenants Protection Act". The Court below held that the defendants were entitled to the value of improvements only. By then, the second defendant died and his legal representatives were brought on record as defendants 11 to 17.

4. While matters stood thus, the plaintiffs filed E.P. No. 215 of 1976 for delivery and they got delivery of the building belonging to the first defendant. The plaintiffs in the suit then filed E.P. No. 223 of 1977 depositing Rs. 13,045.63 into Court for delivery in respect of the building of the second defendant. But the legal representatives of the second defendant, namely, defendants 11 to 17 resisted the execution petition. The plaintiffs deposited Rs. 9,304.45 on 27.4.1977 and Rs. 3,741.48 on 11.6.1977 amounting to Rs. 13,045.63 as referred to above and claimed delivery of the buildings bearing Nos. 28/11-12 and 13. The legal representatives of the second defendant raised an objection that u/s 4(4) of the Act that the amount ought to have been deposited into court within three months from the date of the decree which was made on 13-8-1976 and the amount not having been paid within that time, the suit stood dismissed and no execution could be levied. The executing Court overruled the objections and allowed the execution petition on 12.9.1977 holding that the Act was not extended to Nagercoil then and since the same was extended during the pendency of the suit, the defendants are not entitled to the benefits of the Act.

5. The legal representatives of the second defendant filed C.M.A. No. 73 of 1977 on 20-9-1977 against the order dated 12-9-1977 before the lower appellate Court. Since the provisions of the CPC were amended as on 1-2-1977, the District Court returned the papers for proper presentation on 10.2.1978. Thereupon, the legal representatives of the deceased second defendant, who filed the appeal, presented the same in this court in C.R.P. No. 1347 of 1978 against the order passed in E.P. No. 223 of 1977. On 11-9-1980 the above revision was allowed and the execution petition was dismissed and the suit also stood dismissed in terms of section 4(4) of the Act. The plaintiffs thereupon filed SLP No. 11212 of 1980 on the file of the Supreme Court and the same was also

dismissed on 31-8-1981. It may be stated at this stage that though E.P. No. 223 of 1977, came to be dismissed by this Court by an order passed in C.R.P. No. 1347 of 1978, during the period between the return, of the civil miscellaneous appeal and the filing of the civil revision petition, the plaintiffs took delivery of the property through Court on 16.2.1978. Therefore, the legal representatives of the deceased second defendant filed E.A. No. 598 of 1980, after the disposal of the revision by this court, for restitution of the three buildings taken delivery on 16-2-1987.

6. During the pendency of the revision petition before this court, the present respondents in the above appeal appear to have purchased the three buildings in question from the plaintiffs. Consequently, the respondents were brought on record in E.A. No. 1080 of 1980 as successors-in-interest and transferees from the plaintiffs respondents 1 and 2 in the court below. They claimed the value of certain improvements claimed to have been made for repairs etc. The third respondent in the court below did not file any counter and the fourth respondent filed a counter claiming a sum of Rs. 4,000/- for improvements in building 28/12 and the fifth respondent filed a counter claiming Rs. 10,500/- for improvements for the building 28/13. Their claim was on the basis of section 51 of the Transfer of Property Act.

7. The executing court rejected the claim of the respondents for the value of improvements and ordered restitution. While so, the second respondent in E.A. No. 598 of 1980 filed A.S. No. 140 for 1981 claiming that she had purchased three-fourth cent in the northern portion in the southern half of the entire property on 15-4-1977 and also claiming that the building 28/11 formed as part or the building with her. It may be stated that the said respondent was a party to the suit and all proceedings therein. The fifth respondent in the court below filed A.S. No. 139 of 1981 claiming relief for improvements on the basis that she was a bonafide purchaser. The fourth respondent filed A.S. No. 138 of 1981 making a similar claim. It is to be noted that none of these claimants filed their respective sale deeds before the Court below to establish the actual date of purchase as well as the terms of the sale. The lower appellate Court, by its common order dated 20-1-1983, allowed the appeal and directed the remand of E.A. No. 598 of 1980 to the trial Court for giving an opportunity to the appellants before the lower appellate Court to prove their claim possession for compensation for improvements in the light of the observations made by the said court. It may also be stated that the lower appellate Court came to the conclusion that the re-delivery ordered by the trial court was justified. Aggrieved against the orders of the lower appellate Court, the above appeal has been filed.

8. Miss. O.K. Sridevi, learned counsel appearing for the appellants referred to the decisions reported in Kedar Nath Lal and Another Vs. Ganesh Ram and Others, , Rajender Singh and Others Vs. Santa Singh and Others, , Lakshmi Kutty Amma v. Muhammad Ali 1958 KLT 557 and S.P. Sahul Hamid Vs. P.M. Abdul Majid and Others, and submitted that the respondents are not entitled to claim the value

for the alleged improvements they are said to have made to the property purchased by them and the lower appellate Court was wrong in sustaining their claim in this regard. Learned counsel also submitted that to a matter to which the provisions of section 52 of the Transfer of Property Act are attracted an added right in the parties concerned to have the benefit of section 144 C.P.C. for restitution, the claims of the party entitled for restitution cannot be jeopardised or undermined by a plea for value of improvements by the persons claiming to be purchasers during the pendency of the court proceedings.

9. Mr. P. Ananthakrishnan Nair, Mr. S. Jagadeesan and Mr. K. Sreekumaran Nair, learned counsel appearing for the respondents, while reiterating their stand taken before the lower appellate Court, placed reliance upon the decisions reported in Pappu Reddiar Vs. P.S.V. Rm. Ramanatha Iyer, and Central Bank of India Ltd. Vs. S. Chattanath Karavalar, and contended that as bonafide purchasers for value, their clients are entitled to be paid the value of the improvements and that while ordering restitution the Courts are obliged to consider the equities as well as the interests of both parties.

10. After careful consideration of the respective submissions of the learned counsel on either side, I am not persuaded to accept the submissions of the learned counsel for the respondents. In my view, the lower appellate Court committed a grave error in recognising the claim of the respondents for payment of the value of the improvements claimed to have been made as a condition for redelivery. It is needless to point out that the doctrine of *lis pendens* was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a Court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree and that the alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the said doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine was held to be to subject the parties to the litigations as well as others who seek to acquire right in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

11. The relative scope and effect of sections 51 and 52 of the Transfer of Property Act came up for consideration many times before Courts. In *Moti Chand and Another Vs. British India Corporation Ltd. and Others* a Division Bench of the Allahabad High Court held that section 51 of the Transfer of Property Act cannot be taken advantage of by a person to whom the provisions of section 52 applied. While considering the said question, the division bench also adverted to another aspect of the matter as to how long the *lis* supposed to continue and subsist and in deciding the said issue, the learned Judges have also come to the conclusion that the active prosecution of a suit must be deemed to continue as long as the

suit is pending in appeal, since the proceedings in the appellate court are merely continuation of those in the suit and that the lis continues even after the final decree and subsists during the judgment of the proceedings in execution. In *Krishnaji Pandharinath Vs. Anusayabai and Another*, Justice Shah as he then was, had an occasion to consider the issue as to how long the lis is supposed to continue. The learned judge held, after noticing the amendment effected to section 52 of the Transfer of Property Act by Act XX of 1929, that the lis continues so long as final decree or order has not been obtained and complete satisfaction there of has not been rendered. The learned Judge also observed that if after the dismissal of a suit and before an appeal is presented, the lis continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, and that there is absolutely no reason for holding that between the date of dismissal of the suit and the date of its restoration, the lis does not continue. Consequently, the fact that the transfer is claimed to have been made during the period between the return of the papers before the court below and its presentation in the High Court does not in any manner obviate the respondents of their liabilities u/s 52 of the Transfer of Property Act.

12. The very issue in the form in which it is now raised had come up before a learned judge of the Kerala High Court and in the decision reported in *Lekshmikutty Amma v. Muhammad Ali* 1958 K.L.T. 557, it has been held that the provisions of S.51 is controlled by S.52 of the Transfer of Property Act and in coming to the said conclusion, the learned Judge relied upon the decision of this Court reported in *Veluswami Naicker v. Bommachi Naicker* 25 M.L.J. 324 wherein a Division Bench of this Court held that a person who has been put into possession of the properties under a decree of Court which was subsequently reversed is not entitled to be paid the value of improvements effected by him while in possession. In my view, there could be no difference on principle between the case considered by the Division Bench of this Court in *Velusami Naicker v. Bommachi Naicker* 25 M.L.J. 324 and the case on hand. The reasoning of the decision of the Kerala High Court as well as that of the Allahabad High Court appears to be sound and commends my acceptance.

13. The decisions relied upon by the learned counsel for the respondents, in my view, are inappropriate and not relevant for the point in issue before this Court. The adjustment of equities or rights of parties should not have the effect of undermining the very executability of the decree passed in favour of a party and that is why the provisions of S.52 of the Transfer of Property Act have been specifically enacted. Even that apart, in my view no sufficient material appears to have been produced before the Court to substantiate the claim that the respondents are bonafide purchasers. As a matter of fact, as referred to already, even the sale deeds under which the properties have been purchased, were not produced before the Court. Under the pretext of claiming for value of the improvements claimed to have been made, the party who is entitled to restitution, should not be made to suffer any disability and consequently the submission of the learned counsel for the respondents deserves reference only to

be rejected. Consequently, the order of the lower appellate Court is set aside in so far as it sustained the claim for value of improvements claimed to have been made, The appeal stands allowed. But there will be no order as to costs. The learned counsel appearing for the respondents made a submission that the respondents should be permitted to remove the improvements or additions put up by them. Even the lower appellate Court has sustained the order in so far as re-delivery is concerned. I am not sure as to whether the request of the respondents could be allowed without damage to the property to be delivered in tact to the appellants in the process of removing the alleged improvements made by them. Except making it clear that it will be for the executing Court to consider as to in what manner the delivery is to be effected, I cannot countenance the claim made by them before me.