
(2013) 10 MAD CK 0220

In the Madras High Court

Case No : C.R.P.(PD) No. 154 of 2011 & M.P. No. 1 of 2011

S. Baskar

APPELLANT

Vs

Palanisamy (died)

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 1 MadWN(Civil) 61

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : T.R. Rajagopalan, Senior Counsel for D. Ravichander, Advocate, for the Petitioner; R. Baiakrishnan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R. Subbiah, J.—The present Civil Revision Petition has been filed as against the Order of the learned Principal District Judge, Villupuram, dated 2.12.2010 in O.S. No. 102 of 2008, refusing to grant permission to the Petitioner to mark the unregistered Sale Agreement dated 20.1.2008.

2. The Plaintiff is the Petitioner and the Defendants are the Respondents herein.

3. For the sake of convenience, the parties are referred to as they are referred in the Suit.

4. The brief facts, which are necessary to decide the issue involved in this Civil Revision Petition, are as follows:

(a) The Plaintiff/Petitioner herein has filed a Suit for a Specific Performance, to direct the Defendants to execute a Sale Deed in the name of the Plaintiff or in the name of persons nominated by him on receipt of balance amount of Rs. 1,35,86,000/- towards sale consideration at his costs or in the alternative, to direct the Defendants to pay a sum of Rs.20,55,666.66 as damage with subsequent interest at 12% per annum on Rs.20,00,000/- from the date of Suit till the date of realisation;

(b) The case of the Plaintiff is that the deceased First Defendant and Defendants 2 to 4 viz., Respondents 1 to 3 herein have agreed to sell the Suit property at the rate of Rs.6,000/- per cent to the Plaintiff and thus, a sum of Rs.1,45,86,000/- was fixed as total sale consideration for an extent of 24.31 acres. For this purpose, the Plaintiff had entered into an Agreement with Defendants 1 to 4 on 20.1.2008. On the same day, the Plaintiff had paid a sum of Rs. 10,00,000/- as advance. It was agreed between the parties that the balance amount of Rs. 1,35,86,000/- would be paid within three months from the date of producing the Parental Deeds. Defendants 1 to 4 have also handed over possession of the Suit property to the Plaintiff on the date of execution of the Sale Agreement. Pursuant to the same, the Plaintiff had levelled the entire Suit property and reclaimed the same and also closed three dilapidated wells. He has also divided the Suit property into plots and fixed stones and formed roads and thus, formed a layout. In spite of the fact that the Plaintiff is ready and willing to perform his part of contract, Defendants 1 to 4 have failed to execute the Sale Deed. Hence, after issuing a legal Notice, the Plaintiff has filed the present Suit for the relief stated supra.

(c) In the said Suit, the Plaintiff has also filed an Application in I.A. No.327 of 2008 for an Order of ad-interim injunction restraining the Defendants from interfering with his possession and enjoyment over the Suit property. But, the said Application was dismissed by the learned Principal District Judge, Villupuram, on 10.8.2009.

(d) Aggrieved over the same, the Plaintiff has filed a Civil Miscellaneous Appeal in C.M.A. No.2600 of 2009 before this Court. This Court, by an Order dated 19.12.2009, set aside the Dismissal Order dated 10.8.2009 passed by the learned Principal District Judge, Villupuram in I.A. No. 102 of 2008 and granted an interim injunction in favour of the Plaintiff and directed the learned Principal District Judge, Villupuram to dispose of the Suit within a period of six months.

(e) Aggrieved over the said Order, the Defendants have filed a Appeal in Civil Appeal No.6553 of 2010 (arising out of S.L.P.(C) No.7886 of 2010) before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by an Order dated 9.8.2010, directed both the parties to maintain status quo regarding the possession of the Suit property.

(f) After that, when the Suit was taken up for trial, the Defendants objected to mark the Sale Agreement dated 20.1.2008 as a document on the side of the Plaintiff, since it is an unregistered document. The Trial Court, after hearing both sides, by a detailed Order dated 2.12.2010, refused to grant permission to the Plaintiff to mark the Sale Agreement dated 20.1.2008 for the reason that it is an unregistered document.

(g) Aggrieved over the same, the present Civil Revision Petition has been filed.

5. Learned Senior Counsel appearing for the Plaintiff submitted that the Court below refused to grant permission to the Plaintiff to mark the Sale Agreement

dated 20.1.2008 as a document in the Suit, mainly on the ground that the said Sale Agreement is an unregistered document. In this regard, the learned Senior Counsel appearing for the Plaintiff, by inviting the attention of this Court to Section 17(1-A) of the Registration Act, submitted that only in the circumstances when the transferee had taken possession of the property as a part performance of the contract as defined under Section 53-A of the Transfer of Property Act, the document needs registration. In the instant case, possession was not handed over to the Plaintiff pursuant to the Sale Agreement dated 20.1.2008 and the Plaintiff was permitted only to level the property and divide the same into plots and to form a layout. For the said purpose, at no point of time, actual physical possession was handed over to the Plaintiff and only an entry to the property was allowed by the Defendants to enable the Plaintiff to level the property and to divide the same into plots. Since the actual physical possession of the property was not given to the Plaintiff, the registration of the Sale Agreement is not necessary. Hence, there cannot be any objection to mark the Sale Agreement dated 20.1.2008 as a document in the Suit. But, the Trial Court, without considering these aspects properly, has refused to grant permission to the Plaintiff to mark the said document.

6. That apart, the learned Senior Counsel appearing for the Plaintiff submitted that the present Suit has been filed by the transferee/proposed purchaser as against the transferor/owner of the property and this Court has also granted an Order of interim injunction in C.M.A. No.2600 of 2009 pending the Suit before the Trial Court, by observing that the Plaintiff was only permitted to level the Suit property and to lay stones and his possession is only a permissive possession. The observation made by this Court in the Order dated 19.12.2009 passed in C.M.A. No.2600 of 2009 would clearly show that the Plaintiff has not taken actual physical possession of the property and on the other hand, he was permitted by the Defendants only to enter into the land, for the limited purpose of levelling the land and to lay stones. Therefore, under these circumstances, the Sale Agreement needs absolutely no registration.

7. It is yet another submission of the learned Senior Counsel appearing for the Plaintiff that under Section 53-A of the Transfer of Property Act, the transferor is debarred from exercising any right against the transferee, once the transferee has, in part performance of the contract, taken possession of the property and has done some act in furtherance of the contract. When that being the legal position, the right under Section 53-A of the Transfer of Property Act can be enforced by the transferee only as a shield in the event of transferor initiates any legal action against the transferee, in the cases where the transferee had taken actual physical possession of the property" and had done some acts in furtherance of contract. So far as the present case is concerned, neither the actual physical possession of the property was taken by the Plaintiff nor the transferor of the property has initiated any legal action against the Plaintiff exercising his right in the Suit property. The Suit was filed only by the proposed purchaser for Specific Performance. Therefore, the question of applying the

Principle of Part Performance as defined under Section 53-A of the Transfer of Property Act does not arise in this case. Therefore, the Sale Agreement dated 20.1.2008 needs no registration. Under such circumstances, the Trial Court ought to have permitted the Plaintiff to mark the unregistered document in the Suit filed by him for Specific Performance. Hence, by setting aside the order of the Trial Court dated 2.12.2010, a direction may be given to the Trial Court to permit the Plaintiff to mark the unregistered Sale Agreement dated 20.1.2008.

8. In support of this contention, learned Senior Counsel appearing for the Plaintiff has also relied on the Judgments reported in *Javvadi Koteswara Rao v. Sonti Sambasiva Rao*, 2004 (1) ALD 629; *Shrimant Shamrao Suryavanshi and another v. Pralhad Bhairoba Suryavanshi (dead) by LRs. and others*, 2002 (3) SCC 676; and *Huvappa Irappa Ballari v. Basava and another*, 2005 (12) SCC 164.

9. Per contra, learned Counsel appearing for the Defendants submitted that in the Plaint itself, the Plaintiff has admitted that on the date of execution of the Sale Agreement, possession was handed over to the Plaintiff. Pursuant to the same, the Plaintiff has also levelled the land and divided it into plots and fixed stones. Therefore, it is incorrect to state that possession was not handed over to the Plaintiff. Since the transferee had taken possession of the property and had done some act in furtherance of contract within the meaning of Section 53-A of the Transfer of Property Act, as per Section 17(1-A) of the Registration Act, the document needs registration. Since it is an unregistered document, the Trial Court has correctly refused to mark the said document. Further, the learned Counsel appearing for the Defendants submitted that it is not necessary that only when the transferor initiates action, the transferee can take defence under Section 53-A of the Transfer of Property Act. In order to protect his interest in the property, the proposed purchaser can also initiate an action by filing a Suit and obtain injunction. Therefore, it is incorrect to state that since the injunction was obtained only in the Suit filed by the transferee, the Principle of Part Performance as defined under Section 53-A of the Transfer of Property Act cannot be applied.

10. I have heard the submissions on either side and perused the materials available on record.

11. The submissions of the learned Senior Counsel appearing for the Plaintiff are on two grounds viz.,-

(i) The possession of the Suit property was not taken by the Plaintiff pursuant to the Sale Agreement dated 20.1.2008 entered into with the owner of the property, the Defendant in the Suit. Since the possession of the property was not taken by the Plaintiff, the Sale Agreement needs no registration as required under Section 17(1-A) of the Registration Act. Hence, the Court below ought not to have refused to permit the Plaintiff to mark the Sale Agreement as document in the Suit.

(ii) As per Section 17(1-A) of the Registration Act, the document containing

contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act should be registered. The transferee can exercise his right under Section 53-A of the Transfer of Property Act only as a defence when transferor initiates any legal action against the transferee to enforce his right in respect of the property for which contract was entered into and possession was handed over to the transferee. But, in the instant case, the transferor/owner of the property has not initiated any legal action as against the transferee/agreement holder. Hence, the Principle of Part Performance cannot be applied to the Suit filed by the transferee for Specific Performance. As per Section 17(1-A) of the Registration Act, registration of the document is mandatory only for the purpose of Section 53-A of the Transfer of Property Act. Since the Principle of Part Performance could not be applied to the Suit filed by the transferee, the Sale Agreement dated 20.1.2008 needs no registration as required under Section 17(1-A) of the Registration Act.

12.(A) As far as the first submission with regard to the possession of the property is concerned, according to the Plaintiff, he was only permitted to enter into the property for the limited purpose of levelling the land and to form a layout to plot out the land. But, actual physical possession of the property was not taken over by him. Hence, the Sale Agreement dated 20.1.2008 needs no registration. But, according to the Defendant, on the date of Sale Agreement itself, the possession of the property was handed over to the Plaintiff. In view of the submissions made on either side with regard to the possession of the property, it would be appropriate to extract the averments made in the Plaint to understand the nature of the transaction that had taken place between the parties. The relevant paragraphs from the Plaint are as follows:

"3. The Plaintiff states that the Defendants 1 to 4 have handed over the Suit properties to him on the date of execution of Agreement of Sale. The Plaintiff states that the properties were uneven with full of Velikathan trees, shrubs and bushes.

4. The Plaintiff states that he has levelled up the entire properties and reclaimed the same and also closed three dilapidated wells. The Plaintiff further states that he has divided the properties into plots and fixed stones and formed roads and thus, he has formed a layout. The Plaintiff states that he has spent not less than Rs. 10,00,000/-(Rupees ten lakhs) towards the reclamation and formation of layout. The Plaintiff states that he has entered into an Agreement of Sale with third parties to sell the plots and also received advance amount as per the terms of the Agreement of Sale entered into between the Defendants 1 to 4 and Plaintiff. On perusal of documents, it is found that 1st Defendant (since deceased) have no right to execute a Sale Deed dated 8.3.2007 in favour of 2nd Defendant in respect of 3/10th share belongs to Elumalai, Harishkumar and Mathanalal Paradia."

A mere reading of the above averments made in the Plaint would clearly reveal that there is an admission on the side of the Plaintiff that the Suit property was

handed over to him on the date of execution of Sale Agreement itself and after taking possession of the property in furtherance of the contract, he has also performed certain act such as levelling the land and forming of the layout. Moreover, it is common knowledge that without taking possession of the property, the Plaintiff cannot form a layout to plot out the property. Further, the very fact that the Plaintiff has sought for an Interim Injunction in I.A. No.327 of 2008 pending the Suit filed by him as against the Defendant from interfering with his peaceful possession of the property, would show that possession of the property is only with the Plaintiff pursuant to the Sale Agreement dated 20.1.2008 entered by him with the Defendant. Therefore, I am of the opinion that the Sale Agreement dated 20.1.2008 ought to have been registered since the possession was taken by the Plaintiff pursuant to the said Sale Agreement. Since it is a unregistered document, I do not find any infirmity in the Order passed by the Court below in not permitting the Plaintiff to mark the unregistered Sale Agreement dated 20.1.2008.

(B) It is the further submission of the learned Senior Counsel appearing for the Plaintiff that this Court, while granting interim injunction in C.M.A. No.2600 of 2009, has observed that the Plaintiff was given only permissive possession to form a layout for plotting out the Suit property. Hence, according to the Plaintiff, the said observation made in C.M.A. No.2600 of 2009 would show that actual physical possession was not taken by the Plaintiff. But, I find that this Court, while granting interim injunction has not dealt with the averments made in the Plaint with regard to the possession of the property. Further, in the same Order, the learned Single Judge of this Court has observed that actual physical possession of the property is only with the Plaintiff and the said possession is a lawful one. Hence, I am not inclined to accept the submission made by the learned Senior Counsel appearing for the Plaintiff based on certain observations made by this Court in the Order passed in C.M.A. No.2600 of 2009.

13. It is the next fold of submissions of the learned Senior Counsel appearing for the Plaintiff that as per Section 17(1-A) of the Registration Act, the documents containing contracts to transfer for consideration, any immovable property needs to be registered only for the purpose of Section 53-A of the Transfer of Property Act. Under Section 53-A of the Transfer of Property Act, the transferor is debarred from exercising any right against the transferee, once the transferee has, in part performance of the contract, taken possession of the property and has done some act in furtherance of the contract. When that being the legal position, the transferee can exercise his right under Section 53-A of the Transfer of Property Act only as a defence when the transferor initiates any legal action as against the transferee to enforce any right in respect of the property for which the contract was entered into and possession was handed over to the transferee. Hence, according to the learned Senior Counsel appearing for the Plaintiff that the Principle of Part Performance as defined under Section 53-A of the Transfer of Property Act cannot be applied in the Suit filed by the transferee for Specific Performance. Under such circumstances, the Court below ought to have allowed

the Plaintiff to mark the unregistered Sale Agreement dated 20.1.2008 in the Suit filed by him.

14. For the above said submission made by the learned Senior Counsel appearing for the Plaintiff, the Judgment relied upon by the learned Counsel appearing for the Defendant reported in S.F. Munuswami Gounder and others v. Erusa Gounder, AIR 1975 Mad 25, gives a fitting answer, wherein it has been held as follows:

"2. ... As pointed out in AIR 1957 AP 854, which is representative of (@ page-Mad 26), a large volume of judicial opinion, Section 53-A of the Transfer of Property Act does confer some right on the transferee, if the conditions of that Section are fully satisfied, and what is that right is also clear from the provisions of Section 53-A. The right is to have the transferor or any person claiming under him debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession. This right can be enforced by the transferee always as a shield and not as an independent claim either in the capacity of Plaintiff or Defendants, that is to say, he cannot ask for title basing his claim on the fact that he has fulfilled the conditions of Section 53-A. But he can, as a shield, ask for protection of the right envisaged by Section 53-A by debarring; in other words, by getting an injunction against the transferor and those claiming under him from interfering with his possession."

From the dictum laid down in the above Judgment, it is clear that it is not necessary for the transferee always to exercise his right under Section 53-A of the Transfer of Property Act only as a shield. The transferee can also ask for protection of the right envisaged under Section 53-A of the Transfer of Property Act as a Plaintiff by getting an injunction against the transferor and those claiming under him from interfering with his possession. However, the transferee cannot ask for title basing on his claim on the fact that he has fulfilled the conditions of Section 53-A of the Transfer of Property Act. Therefore, it is not necessary for the transferee to wait for exercising his right under Section 53-A of the Transfer of Property Act till the transferor initiates legal action to enforce any right in respect of the property as against the transferee, for which contract was entered into between the parties, which right of the transferor is debarred under Section 53-A of the Transfer of Property Act, if possession of the property was handed over to the transferee and the transferee has done some act in furtherance of the contract.

15. In the instant case, the materials available on record would show that possession was handed over to the Plaintiff by the Defendant on 20.1.2008, i.e., the date on which the Agreement of Sale was entered into. The Plaintiff has also done some act in the property in furtherance of the said Agreement of Sale.

16. In the present Suit, interim injunction was obtained by the Plaintiff as against the Defendant from interfering with his peaceful possession of the property only

to protect his right envisaged under Section 53-A of the Transfer of Property Act. Under such circumstances, I am of the opinion that the Sale Agreement dated 20.1.2008 needs registration as required under Section 17(1-A) of the Registration Act.

17. Though the learned Senior Counsel appearing for the Plaintiff has relied upon some Judgments with regard to the Principle of Part Performance, I am of the opinion that the Judgments cannot be made applicable to the facts of the present case.

18. Hence, in the light of the above discussions, I am of the opinion that since the Plaintiff had taken possession of the property pursuant to the Sale Agreement dated 20.1.2008 and had done some act in the property, the Sale Agreement needs registration. Since Sale Agreement dated 20.1.2008 is an unregistered document, the same cannot be permitted to mark in evidence. Therefore, I do not find any infirmity in the Order passed by the Trial Court.

19. In fine, the Order of the learned Principal District Judge, Villupuram dated 2.12.2010 in O.S. No. 102 of 2008 is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.