

(1974) 01 MAD CK 0020

In the Madras High Court

Case No : Letters Patent Appeal No. 75 of 1966

S.F. Munuswami Gounder and Others

APPELLANT

Vs

Erusa Gounder

RESPONDENT

Date of Decision : 22-01-1974

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1975 Mad 25

Hon'ble Judges : K. Veeraswami, C.J.;Varadarajan, J

Bench : Division Bench

Advocate : R. Shanmugham, for the Appellant; R. Sundaralingam, for the Respondent

Judgement

Veeraswami, C.J.—The defendants appeal under the Letters Patent from a judgment of Venkatadri J. who reversed the judgment of the first

appellate court and restored the decree of the trial court. There is no dispute that the suit properties belong to the first defendant on the basis of a

purchase made by him on 31-1-1935. He entered into a contract with one Lakshmiammal as the guardian of the present plaintiff and

Krishnaswami who were minors, for sale of the properties to them for a consideration of Rs. 500 within two years. The suit was for declaration of

title and for an injunction from interference. This was on the basis that Lakshmiammal and the minors were put in possession of the properties in

partial performance of the agreement to sell the properties. Defendant 2 and 4 who were among the appellants, had obtained a sale from the 1st

defendant and attempted to trespass. That was the case of the plaintiff. The trial court found that there was an agreement of sale and the plaintiff

had been put in possession, and, on that basis, it granted the prayers asked for

in the plaint. The first appellate court proceeded upon the view that

Section 53-A of the Transfer of Property Act by itself did not confer title on the plaintiff, and that, therefore he could not rest the claim, on the

basis of part performance, for title. As to possession, it considered that the finding of the trial court, in the circumstances, was unnecessary and

discharged the finding. When the matter came up in second appeal, Venkatadri J. said:--

After going through the documentary and oral evidence in the case, I am of opinion that the appellant continued to be in possession of the suit

properties in spite of the sale in favour of defendants 2 and 3 by the first defendant.

He referred to Yenugu Achayya and Another Vs. Ernaki Venkata Subba Rao and Others and finally held that the appeal should be allowed and

the trial courts decree should be restored.

2. It seems to us that the judgment in second appeal cannot be supported. Subba Rao, C. J. (as he then was) himself observed in that case-

It is settled law, that, u/s 53-A of the Transfer of Property Act, no title passes to a transferee. He cannot file a suit for declaration of his title to the

property or seek to recover possession of the same on the basis of any title conferred on him.

Venkatadri J. was, therefore, not right in allowing the appeal, which would mean that he was giving declaration of title sought for. As pointed out in

AIR 1957 Andh Pra 854 which is representative of 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.

3. In this case, the first appellate Court had discharged the trial court's finding as to the plaintiff's possession. No doubt, Venkatadri, J. purported

to look into the oral and documentary evidence and find that the finding was correct. But, sitting as he did in second, appeal, we think that the

proper thing which the learned Judge should have done was to remit the matter to the first appellate court to find whether the trial court's finding as

to possession was justified and well-founded. The learned Judge also should have satisfied himself, before restoring the first court's judgment, that

the conditions of Section 53-A had been fully satisfied.

4. We, therefore, allow the appeal and direct that the appeal before the first appellate court be restored to its file and disposed of in the light of this

judgment. If the first appellate court finds that, pursuant to the contract to sell the properties, the plaintiff had been put in possession as part

performance and the other conditions of Section 53-A have been complied with, then it would be justified in granting a decree to the plaintiff for

injunction debarring or preventing the defendants from interfering with the plaintiff's right which has accrued to him u/s 53-A, including his right to

be continued in possession. Costs of this appeal will abide the result.

(This appeal having been set down for being mentioned the court ordered) as follows:--

1. That in the first page of the judgment of this court dated 24-10-1972, and made herein for the lines 3 and 4 viz., "the first appellate court and

restored the decree of the trial court" the following be substituted: "The court's below"; and

2. That the last line in the first para of page 3 of the said judgment viz., "and the trial court's decree should be restored" be deleted.