Raju Naidu vs Chenmouga Sundra on 19 March, 2025

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Bench: Sudhanshu Dhulia

2025 INSC 368

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO (s). 3616/2024

RAJU NAIDU Appellant(s)…

VERSUS

CHENMOUGA SUNDRA & ORS. Respondent(s)…

JUDGMENT

PRASANNA B. VARALE, J:-

1. The present appeal arises from the judgement and order dated 18.01.2018 passed by the High Court of Judicature at Madras in C.R.P. No. 4385 of 2014 wherein the High Court dismissed the revision petition filed by the appellant herein.

BRIEF FACTS

2. The brief facts of the case are as follows:

2.1 One Chenmougam Aroumugam, father of respondent Nos. 1 to 8, had purchased ½ share of 'A' Schedule property under a sale deed dated 31.01.1959. Subsequently, on 15.12.1959 Tiranti Tam, mother of respondent Nos. 1 to 8 purchased another ½ share of 'A' property and on the same day, the father donated his half share of 'A' Scheduled property to his wife. Hence, the mother became the absolute owner of 'A' Schedule property bearing Door No. 10, Mariamman Kovil Street Thiruvalluvar Nagar, Pondicherry. 2.2 On 11.02.1976, the mother expired leaving behind respondent Nos. 1 to 8 as her legal heirs. Thereafter, on 19.12.1977, father of respondent Nos. 1 to 8 purchased 'B' Schedule property bearing Door No. 49, Chetty Street, Pondicherry, under a sale deed dated 12.12.1977. He bequeathed this 'B'

schedule property by way of a Will (Exhibit A7) dated 12.06.1978 in favour of respondent No. 9 allegedly after developing intimacy with her. 2.3 Subsequently, respondent No.2 filed OS No. 262 of 1980 against his father before Principal District Munsif Court at Pondicherry for permanent injunction restraining the father from alienating the suit properties therein.

2.4 On 22.06.1981, the father executed a sale agreement (Exhibit B1) with regard to 'B' schedule property in favour of the appellant for a sale consideration of Rs. 60,000 and an amount of Rs.10,000 was paid as an advance on the same day itself and Rs.30,000 was paid later on. The balance amount of Rs.20,000 was left unpaid and the appellant was put in possession of the 'B' schedule property.

2.5 The Principal District Munsif Court at Pondicherry decreed the suit filed by respondent No. 2(O.S. No. 262 of 1980) on 30.09.1981 with a direction to the father of respondents Nos.1 to 8 that he shall not alienate Item 2 of the suit properties to the extent of 7/8th share. As regards Item 1 of the suit property, the Trial Court held that no injunction is necessary as the property cannot be alienated without the consent of the co-sharers.

2.6 On 19.11.1981, the father of respondent Nos. 1 to 8 executed another Will (Exhibit A8) in favour of respondent No. 9 in respect of 'A' schedule property.

2.7 On 16.11.1982, during the pendency of appeal in AS No.46 of 1982 filed by the father, against the judgment & decree in OS No.262 of 1980, the father of respondent Nos. 1 to 8 died. Subsequently, respondent Nos. 1 to 8 filed OS No. 4 of 1983 in the Court of Principal Subordinate Judge at Pondicherry, against respondent No. 9 and the appellant to declare that (Exhibit A7) Will dated 12.06.1978 and (Exhibit A8) Will dated 19.11.1981 both executed by their father in favour of respondent No. 9 are void and unenforceable and that respondent Nos. 1 to 8 are the rightful owners of 'A' and 'B' schedule properties and to direct the appellant herein to pay rent for 'B' schedule property.

2.8 On 01.08.1986, Principal Subordinate Judge at Puducherry in OS No. 4 of 1983 passed judgment and decree declaring Exhibit A7 Will as void and not binding on respondent Nos. 1 to 8 and exhibit A8 Will was declared void and unenforceable to the extent of 7/8th share. It was observed that respondent Nos. 1 to 8 are the rightful owners of 7/8th share of 'A' schedule property and absolute owners of 'B' schedule property. Further, respondent Nos. 1 to 8 were held jointly and severally liable to refund the advance money of Rs. 40,000 to the appellant within a period of three months and they were held entitled to recover possession of 'B' schedule property within one month after such payment to the appellant.

2.9 Aggrieved by the said decree and judgment of the Trial Court, both the parties filed their respective appeals which were heard together by the Court of Ld. III Additional District Judge at Pondicherry and vide common judgment dated 06.08.1993 it was held that Ex A8 Will dated 19.11.1981 covering 'A' Schedule property was valid to the extent of 1/9th share in favour of the respondent No. 9 irrespective of the fact that the respondent No. 9 was the legitimate widow of the

deceased or not, and the (Exhibit A7) Will dated 12.06.1978 covering 'B' Schedule property valid to the extent of 1/4th share. The appeal was partly allowed by the Court in the favour of the respondents and the Appeal No. 145 of 1989 filed by the appellant herein i.e A.S. No. 145 of 1989 came to be dismissed. 2.10 Dissatisfied by the common order passed by the Appellate Court, the appellant filed two review applications in C.R.A. No 3/94 and 4/94 before the III Additional District Judge, at Pondicherry to review the above-mentioned order. During the pendency of the review applications, respondent Nos. 1 to 8 filed E.P. No. 286 of 1999 in O.S. No.4 of 1983 for execution along with the same they filed E.A. No. 364 of 1999 for enlarging 3 months period for depositing the advance money of Rs. 40,000. The Ld. III Additional Judge vide order dated 13.12.2001 dismissed both the review applications holding that these are not the matters which are covered under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). 2.11 On 08.09.2014, the Executing Court allowed the application for execution and the respondent Nos. 1 to 8 deposited the advance amount of Rs 40,000 in the Court and by order the Execution Petition came to be allowed and the Court directed the delivery of possession of 'B' Schedule property by the appellant.

2.12 Aggrieved by the order of delivery passed by the Executing Court, the appellant filed a C.R.P No 4385 of 2014 before the High Court Judicature at Madras. The High Court while dismissing the review petition observed that the decree was modified by the Appellate Court and hence the doctrine of 'merger' came into effect. Therefore, the question of executing the decree immediately would not arise. The review petition was pending before the Appellate Court for a considerable period of time and came to be disposed of by a common order only on 13.12.2001 and therefore, the expiry of period of 12 years for filing of the execution is not correct. The High Court also observed that due to the import of Section 148 of CPC and there being no time limit fixed by the Appellate Court and that since the decree of Trial Court merged with the Appellate Court, there was no embargo on the part of the Executing Court to extend the time. 2.13 The High Court further observed that Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as 'TP Act') will not be applicable to the facts and circumstances of this case as the appellant had knowledge about the pendency of the suit and had entered into agreement with the father of the respondent Nos. 1 to 8. SUBMISSIONS 3.1 Ld. Counsel appearing for the appellant submitted that extension of time amounts to alteration of the decree granted by the Trial Court and therefore, such order passed by the Executing Court is non-est and impermissible in law. It was submitted that the decree holder ought to have approached the Trial Court for extension of time for deposit of earnest money. Ld. counsel relied on the judgment in the case of Pradeep Mehra vs. Harijivan J Jethwa1 to state that the executing court can never go behind the decree. The Ld. counsel 1 [2023 (4) SCALE 887].

also relied upon an order dated 08.12.2023 passed by this Court in the case of Sanjay Shivshankar Chitkote vs. Bhanudas Dadaeao Bokade (Died) through L.Rs.2 wherein it was held that the order passed by the Executing Court was without any jurisdiction since the appellant-decree holder had filed an application seeking permission to deposit balance sale consideration before the Executing Court and the judgment debtor had also filed application for rescission of the contract under sub-section (1) of Section 28 of the Specific Relief Act, 1963 before the Executing Court which did not have the jurisdiction to entertain the same.

3.2 Per contra, the Ld. counsel appearing for respondent No. 1 to 8 contended that Section 53A of TP Act is not applicable and the appellant's possession as part performance of the sale agreement does not apply as they entered the property under a lease agreement prior to the sale agreement making Section 53A of TP Act as inapplicable. It was submitted that the decree of the Appellate Court supersedes that of the Trial court and hence, the execution petition is within the limitation period and the conditions imposed by the Trial Court are overridden by the decree of the Appellate Court. It was further submitted that since the Appellate Court did not specify a time frame, extension granted by the Executing Court is valid and does not alter the decree which has merged with the Appellate Court's decision. It was submitted that applying the doctrine of lis pendens, the appellant's claim to the property based on the sale agreement during litigation is not recognised. The appellant's continued possession of the property under the guise of part performance does not confer any right against the respondents, who are the rightful heirs. It was contended that the personal laws applicable to the respondent's father due to his French nationality and the limitation on his rights to alienate property without the consent of the co- sharers further invalidated the appellant's claim of the property. It was also submitted that the Revision Petition challenging the order of delivery is not maintainable as the order granting extension for the deposit had become final since it was not contended.

4. Feeling aggrieved and dissatisfied by the judgment of the High Court, the appellant is now before us.

ANALYSIS

5. We have heard the submission of learned counsel representing the parties. We have also gone through the material placed on record.

6. As stated above, the two major grounds raised by the learned counsel for the appellant, while challenging the judgement and order passed by the High Court impugned in the present petition, are as follows:

> (i) As the decree granted by the trial court became final, there was no reason for the executing court to allow the application seeking extension of time. The course as such adopted by the executing court, is unsustainable as the same resulted in modifying the decree, and the executing court could not have gone beyond the decree.
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> (ii) The second ground urged was of inordinate delay.

In our opinion, the learned High Court dealt with these grounds in detail and recorded that there is no merit in the Revision Petition, and resultantly the Revision Petition was dismissed. The learned High Court in Para 24 of the judgement and order observed that:

> "..the said submission made on behalf of the learned senior counsel may look attractive in the first blush nevertheless when the same is critically examined in view of the decisions cited on behalf of the learned counsel appearing for the respondent

> Nos. 1 to 8, the decree passed by the trial Court had been appealed against and the appellate Court has passed judgment in Appeal Suits in A.S.Nos.146 of 1986 and 145 of 1989 only on 6.8.1993 and in the appeals, the appellate Court had modified the decree passed by the Trial Court. Once the decree is modified by the Appellate Court, the doctrine of 'merger' comes into effect and therefore, the question of executing the decree immediately would not arise. Even otherwise, as held by the Courts as stated supra, irrespective of the fact whether there was modification or not, once the decree and judgment passed by the Appellate Court, the decree and judgment of the Trial Court merges with the same."

7. On perusal of the material placed before this Court, we are unable to find any fault with these observations of the High Court and the conclusion arrived at by the High Court. Similarly, the other ground raised was of an inordinate delay. It was vehemently submitted by the learned counsel for the appellant that the original decree was passed on 01.08.1996 and the execution petitions were filed after much lapse of the time and beyond the period of 12 years. Now dealing with this ground also, the High Court was pleased to observe that the objection raised by the counsel appearing for the appellant that the execution petition was beyond the period of 12 years from the date of original decree dated 1.8.1996, cannot be countenanced both on law and on facts for the simple reason that the Appellate Court has passed decree and judgment in 1993. In fact thereafter, the revision petitioner filed the revision before the Appellate Court and that the revision petition was pending before the Court and ultimately the same were disposed of by the common order dated 13.12.2001 in C.R.A. Nos.3 and 4 of 1994. Thus considering, the sequence of the facts, the learned High Court could not find any force in the submission of the appellant that there was an inordinance delay and on that ground itself, the appeal ought to be rejected.

8. The High Court also dealt with the submissions raised by the learned counsel for the appellant qua the applicability of Section 53A of the TP Act. It is the admitted fact that the Revision Petitioner having the knowledge of the pendency of the suit, had entered into agreement with the father of the respondent Nos.1 to 8 and he could not have better and valid right over the rights of the original transferer and in that situation, no recourse could have been taken.

9. The High Court rightly observed that the Courts have uniformly held that the limited rights of the transferee pendent lite on the principle of lis pendens. Such limited rights cannot be stretched to obstruct and resist the full claim of the decree holders to execute the decree in their favour. In fact, the Courts have deprecated such obstruction.

10. It may not be out of place to refer to the judgment of this Court in support of the submission that the Trial Court decree was merged in the decree passed by the Appellate Court. In the case of Chandi Prasad & others versus Jagdish Prasad & others3, in regard to the doctrine of 'merger', the Hon'ble Supreme Court has observed as under:

> "MERGER:

> The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any 2004(8) SCC 724.
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> modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court. …."

11. Thus, the appeal is devoid of any merit. Accordingly, the same is dismissed.

12. Pending application(s), if any, stand(s) disposed of accordingly.

13. No order as to costs.

.....J. [SUDHANSHU DHULIA] .....J. [PRASANNA B. VARALE] NEW DELHI;

MARCH 19, 2025.