

Madras High Court

Velayudham vs Perumal And Anr. on 3 January, 2001

Author: A Ramamurthi

Bench: A Ramamurthi

ORDER A. Ramamurthi, J.

1. The unsuccessful defendant in both the Courts below has preferred the second appeal aggrieved against the judgment and decree passed by the District Court, Tiruvannamalai in AS 112/98 dated 14-7-99, confirming the judgment and decree of the Trial Court dated 21 -8-98 in OS. No. 65/92.

2. The case in brief is as follows :--The plaintiff filed the suit for specific performance of the agreement of sale dated 14-2-92. The schedule mentioned properties belong to D1 and he agreed to sell the property to plaintiff for a consideration of Rs. 40,700/- and a sum of Rs. 6000/- was paid by way of advance. It was agreed between the parties that the plaintiff has to pay the balance of the sale consideration within 14-8-92 and get the sale deed executed and registered. In spite of repeated demands made by the plaintiff to receive the balance amount and execute the document, D1 evaded. The plaintiff issued a lawyer's notice on 17-3-92 and it was served on 18-3-92. The plaintiff also objected before the Sub-Registrar, Kannamangalam when the 1st defendant executed a sale deed in favour of the 2nd defendant with regard to the suit property. The plaintiff was always ready and willing to perform his part of the contract, knowing fully well about the agreement of sale between the plaintiff and D1 and as such the sale in favour of D2 is invalid and will not bind the plaintiff.

3. The 1st defendant remained ex parte.

4. The 2nd defendant alone filed a written statement and contended that he was not aware of the alleged agreement of sale dated 14-2-92. D2 had purchased the property for a valid consideration and he is a bona fide purchaser without notice of the earlier agreement. He was not aware of the notice sent by the plaintiff to D1 or the objections raised before the Sub-Registrar.

5. The learned Subordinate Judge, Arani decreed the suit in favour of the plaintiff granting the relief of specific performance and aggrieved against this, the 2nd defendant preferred an appeal before the District Court, Tiruvannamalai and the appeal was also dismissed. Aggrieved against this, the 2nd defendant has preferred the present second appeal.

6. The 2nd defendant/appellant had raised the following substantial questions of law :--

a. Whether the purchaser is a bona fide purchaser for valuable consideration as defined under Section 51 of Transfer of property Act, who has made improvements by the purchaser Balachandran v. Hamentha Nath (54) A.C. 356.

b. Whether the purchaser, Second Appellant, has purchased the property in good faith as the state of Man's mind is question of fact as contemplated in Girdarlal v. Jethmal, .

7. The points:--The 1st defendant being the owner of the property agreed to convey the same to the plaintiff for a sum of Rs. 40,700/- under an agreement dated 14-2-92. A sum of Rs. 6000/- was paid by the plaintiff by way of advance and the balance of the amount has to be paid by the plaintiff on or before 14-8-92 and get the sale executed and registered. Although the plaintiff always ready and willing to perform his part of the contract, D1 is said to have evaded and thereupon the plaintiff issued a legal notice and in spite of that D1 had conveyed the property to the 2nd defendant. The plaintiff also is said to have objected before the Sub-Registrar, Kannamangalam. The relief of specific performance was granted to the plaintiff by the trial Court as well as the Lower Appellate Court.

8. The learned counsel for D2/Appellant contended that both the Courts below were not correct in granting the relief to the plaintiff. The appellant is a bona fide purchaser for a valid consideration without notice of the earlier agreement of sale and he has also made improvements and is in possession. The plaintiff is said to have sent a telegram to the purchaser, son-in-law Perumal, who was nothing to do with the property in question and as such the finding given by the Courts below based upon the telegram is not proper and correct. There is absolutely no legal evidence to come to the conclusion that the appellant has got knowledge about the agreement of sale dated 14-2-92. The plaintiff has not issued any notice to the appellant regarding the agreement. The appellant had purchased the property in good faith and as such the suit ought to have been dismissed. The various decisions cited on behalf of the appellant also have not been considered by the Courts below.

9. The plaintiff has come forward with a specific case that D1 agreed to convey the property for a valid consideration and the agreement of sale was entered into on 14-2-92. The plaintiff by examining himself has positively proved about the execution of the agreement of sale as well as other details. The appellant pleads ignorance about the agreement of sale dated 14-2-92 and he claims himself to be a bona fide purchaser of the property for a valid consideration. It has come out in evidence that the appellant is only the son-in-law of D1. He had purchased the property under Ex. B1 dated 6-4-92. The plaintiff also sent a telegram under Ex. A1 to D1 as early as 17-3-92 and on the very same date legal notice was also sent under Ex. A3 to D1 as well as to the office of the Sub-Registrar. However, the sale in favour of the appellant took place on 6-4-92 i.e. long after the issue of notice. In view of the relationship between D1 and D2, the Courts below came to the conclusion that the appellant has purchased the property with full knowledge about earlier agreement of sale. It has also come out in evidence that the defendants 1 and 2 are neighbours and this has been admitted by DW 2 in the course of evidence. There is enough evidence to come to the conclusion that D1 and D2 joining together have executed the sale deed to defeat the right of the plaintiff. When D1 is admittedly the son-in-law of D1 and as there is no evidence to show that there are any strained feelings, knowledge can be impugned to D2/Appellant. PW 1 already sent a telegram to the appellant in respect of the agreement of sale and the copy of the telegram was also marked as Ex. A5.

10. The learned counsel for the appellant now contended that the telegram was sent only to his son-in-law and therefore, he may not have any knowledge. As adverted to D2 is the son-in-law of D1 and the telegram has been sent by the plaintiff to son-in-law of D2 and when the parties are related and closely interconnected, there is every reason to come to the conclusion that D2 also has got

knowledge. Moreover, as the telegram has been sent in the name of son in-law of D2 the sale must have been taken in the name of D2 in order to give a colour of reality and to take a stand that D2 is a bona fide purchaser. Under the circumstances only, both the Courts came to the conclusion that D2 is not a bona fide purchaser and he has got knowledge about the earlier agreement of sale and hence the suit filed by the plaintiff was decreed. There is no illegality or infirmity in the order passed by the Courts below calling for interference.

11. For the reasons stated above, the second appeal fails and is dismissed. Consequently, the connected CMP is also dismissed.