

V.L. Dhandapani Vs Revathy Ramachandran and Others

Court: Madras High Court

Date of Decision: Jan. 12, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 22 Rule 10, 142, 146, 47
Transfer of Property Act, 1882 – Section 52

Citation: (2011) 2 CTC 366

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: V. Lakshminarayanan, for the Appellant; Revathy, Government Advocate for R3 to R5, Ravikumar Paul, for Paul and Paul for R6, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The Petitioner is a third party to the suit in O.S. No. 254 of 2002 on the file of District Munsif Court, Chengalpet. One

Gopinathan has filed the suit against these Respondents for permanent injunction with regard to the suit property. During the pendency of the suit,

the Petitioner herein purchased the property from the Plaintiff on 3.5.2006. He came forward with a petition under Order 1 Rule 10 r/w 151

C.P.C to implead him as second Plaintiff in the suit.

2. In the affidavit he has mentioned that he purchased the property from the Plaintiff on 3.5.2006 for valuable consideration. The sale deed is true,

valid and acted upon. Since the sale, he became absolute owner of the suit property and he is in possession and enjoyment of the same. He owns

more extent on the south of the suit property and he put up compound wall including his other property and put up terraced house with E.B.

connection as well. Since the Plaintiff together with other sharers alienated the suit property, he has no subsisting interest in prosecuting the matter

and on the basis of the purchase the Petitioner is entitled to continue the suit. He is bona fide purchaser of the property. No prejudice will be

caused to the Defendants if the Petitioner is impleaded as second Plaintiff.

3(a). In the counter filed by the 6th Respondent, it is stated that the alleged purchase, taking of possession are all false. The suit property is lying as

vacant land. The Petitioner has no title or interest over the suit property. The Petitioner purchased the property with the knowledge of pendency of

suit. He is not a bona fide purchaser of the property for value and his purchase is subject to the verdict of the Court. To avoid litigation, his alleged

vendor would have alienated without valid title. The alleged purchase is invalid which will not bind this Respondent. This petition is filed belatedly.

Since the Plaintiff has no subsisting interest in continuing the suit, the same has to be dismissed.

3(b). The Petitioner cannot continue the suit with the same cause of action as stated in the plaint. The petition is not maintainable. The petition is

filed with intention to harass this Respondent. The sale is invalid and the Plaintiff has no right to convey the suit property. Hence the petition may be

dismissed.

4. After hearing both sides, the learned District Munsif, dismissed the application by observing that previous cause of action cannot be the cause of

action for the Petitioner against the Defendants, that the remedy for the Petitioner is to file a fresh suit with new cause of action and that since the

suit is for permanent injunction the Petitioner cannot continue the present suit with the same cause of action stated in the plaint. This is the order

challenged before this Court.

5. Mr. V. Lakshminarayanan, the learned Counsel for the Petitioner would contend that Section 52 of Transfer of Property Act does not apply to

the present case, that since it is a suit for permanent injunction, the Plaintiff's title need not be gone into, that the issue of title is not directly and

substantially in the suit, that 6th Defendant purchased the property on 23.1.2003 and even though she is a subsequent purchaser, she has been imp

leaded in the suit and that cause of action in the plaint will not be altered.

6. Repelling the contentions, Mr. Ravikumar Paul, the learned Counsel for 6th Respondent would submit that two prayers available in the plaint are

directly connected to the title, that the issue of title primarily has to be gone into in this case and that as per the settled principles, the purchaser

Pendente lite cannot be brought on record.

7. The learned Counsel for the Petitioner, in support of his contention placed much reliance upon two decisions of the Supreme Court. In Raj

Kumar Vs. Sardari Lal and Others, . it is held that Order 22 Rule 10 confers a discretion on the court hearing the suit to grant leave for joinder of

party concerned, bringing of a lis pendens transferee on record is not as of right but in the discretion of the court and but, though not brought on

record, the lis pendens transferee remains bound by the decree. Their Lordships have referred and followed the principles laid down by a decision

of four-Judges Bench of the Supreme Court in Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, . The following is the discussion of

Their Lordships in Rajkumar's case (supra) as regards Saila Bala Dassi's case:

10. The law laid down by a four-Judges Bench of this Court in Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, , is apt for resolving

the issue arising for decision herein. A transferee of property from Defendant during the pendency of the suit sought himself to be brought on

record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order 22 Rule 10 of the Code of

CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the

scope of Order 22 Rule 10. In an appeal preferred by such transferee this Court upheld the view of the High Court that a transferee prior to the

filing of the appeal could not be brought on record in appeal by reference to Order 22 Rule 10 of the CPC. However, the Court held that an

appeal is a proceeding for the purpose of Section 146 and further the expression ""claiming under"" is wide enough to include cases of devolution

and assignment mentioned in Order 22 Rule 10. Whoever is entitled to be but has not been brought on record under Order 22 Rule 10 in a

pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an

appeal, there being no prohibition against it in the Code. A person having acquired an interest in suit property during the pendency of the suit and

seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of the Code of CPC which provision being a

beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that

being a purchaser pendente lite, a person will be bound by the proceedings taken by the successful party in execution of decree and justice

requires that such purchaser should be given an opportunity to protect his rights.

The view taken above is that since the purchaser even pendente lite, is bound by the decree passed in a suit and hence he must be given an

opportunity to protect his interests.

8. In the above said Saila Bala Dassi's case, earlier decision of the Supreme Court in Jugalkishore Saraf Vs. Raw Cotton Co. Ltd., was referred,

in which during the pendency of the suit for recovery of debt, the Plaintiff had transferred to a third person all the books and debts. As per the

provisions under Sections 47, 146 and Order 22 Rule 10 C.P.C., such transferee was regarded as a representative of the Plaintiff and hence he

was imp leaded as a party to the suit.

9. In Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, , the Apex Court along with the above said provisions, also took up a

discussion u/s 52 of Transfer of Property Act. Their Lordships have held that the transferee pendente lite should be made as party to the pending

second appeals and the presence of the Appellants is absolutely necessary in order to decide the appeals on merits since the Appellants are the

only persons who have got subsisting right, title and interest in the suit. The following is the operative portion of the judgment:

16. The doctrine of lis pendens applies only where the liti pending before a Court. Further pending the suit, the transferee is not entitled as of right

to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper

party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired

interest from the Defendant is vitally interested in the litigation, where the transfer is of the entire interest of the Defendant; the latter having no more

interest in the property may not properly defend the suit. He may collude with the Plaintiff. Hence, though the Plaintiff is under no obligation to

make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court

has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his

interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from

whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a

party to the litigation; he is entitled to be heard in the matter on the merits of the case.

10. The learned Counsel for 6th Respondent garnered support from two decisions of mine. They are in Rajalakshmi Sivakumar Vs. N. Rajavelu

and Others, . and CDJ 2009 MHC 799 : 2009 (4) L.W. 264 Chennai Jananayaga Madhar Sangam Rep. by its Secretary Tmt.J. Juliet v. S.R.

Naidu and Anr. wherein I have followed the Supreme Court decisions and reached a conclusion that transferee pendente lite could not get impleaded

in the suit and whatever the adjudication her transferor receives in the decree shall govern her. The following are the decisions of the Apex

Court followed by me:

1 Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another,

2. Sanjay Verma Vs. Manik Roy and Others, .

11. In both the cases, earlier decision of the Supreme Court in Sarvinder Singh Vs. Dalip Singh and Others, has been referred. The relevant

portion in Sarvinder Singh's case is as follows:

6. Section 52 of the Transfer of Property Act envisages that:

"During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right

to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or

proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of

the court and on such terms as it may impose." It would, therefore, be clear that the Defendants in the suit were prohibited by operation of Section

52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the Appellant except with the order or

authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the

alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the Respondents cannot be

considered to be either necessary or proper parties to the suit.

12. The observation of the Supreme Court in Sanjay Verma's case is as under:

The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an

equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A

transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of

the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating

party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of

the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in

no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the

permission of the Court.

13. In one line of decisions by the Supreme Court, it has been held that the transferee pendente lite has got substantial interest in the subject matter

of the case and hence his presence is necessary and so he has to be impleaded as a party. In another set of decisions by the Apex Court cited on

behalf of the 6th Respondent it has been held that the transferee pendente lite need not be included as a party to the suit in the absence of leave of

the Court for transfer of the property during its pendency and that such purchaser can neither be termed as a necessary party nor proper party. In

view of the above said position, I deem it fit to refer the matter to a larger bench for deciding the legal issue to be followed by Courts.

14. The issue to be decided:

Whether the transferee pendente lite is entitled to be impleaded in the suit?

15. In view of the above, the registry is directed to place the matter before My Lord, the Honourable the Chief Justice for referring the same to a

larger Bench for decision.