

Susila Vs. R.K.Kumar

Susila Vs. R.K.Kumar

SooperKanoon Citation : sooperkanoon.com/1167620

Court : Chennai

Decided On : Jul-10-2013

Judge : S.Tamilvanan

Appellant : Susila

Respondent : R.K.Kumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 10.07.2013
CORAM THE HONOURABLE MR.JUSTICE S.TAMILVANAN C.R.P. (PD)
No.2164 of 2013 and M.P. No.1 of 2013 1. Susila 2. Dhanakodi 3. Manohar ...
Petitioners versus 1. R.K.Kumar plaintiff 2. M.Perumal 3. Sankar ... Respondents
Civil Revision Petition filed under Article 227 of the Constitution of India against
the order dated 05.11.2012 made in I.A. No.624 of 2012 in O.S. No.32 of 2011 on
the file of Additional District Munsif, Cuddalore. For Petitioners :
Mr.R.Muralidharan

ORDER

Heard the learned counsel appearing for the petitioners.

2. The Civil Revision has been preferred under Article 227 of the Constitution of India challenging the order dated 05.11.2012 made in I.A. No.624 of 2012 in O.S. No.32 of 2011 on the file of Additional District Munsif, Cuddalore.

3. It is seen that the suit was filed by the first respondent herein against the petitioners and the third respondent, seeking declaration of title and consequential other reliefs. During the pendency of the suit, Interlocutory Application in I.A. No.624 of 2012 was filed under Order 1 Rule 10 read with Order 22 Rule 10 of C.P.C. by the original plaintiff to implead the second respondent herein as second plaintiff in the suit on the ground that he purchased the property, subsequently that was allowed by the Court below. Aggrieved by which, the revision has been preferred by the petitioners/defendants 1 to 3.

4. In the accompanying affidavit relating to I.A. No.624 of 2012, the first respondent/original plaintiff has stated that after filing of the suit, he had executed a settlement deed in favour of his daughter Meena on 06.03.2012 in respect of the suit property and that property was subsequently purchased by the second respondent M.Perumal, by way of a sale deed dated 02.06.2012. In view of the same, the second respondent became the owner of the property and therefore, the second respondent has to be impleaded as second plaintiff in the suit. As per order passed in the Interlocutory Application in I.A. No.624 of 2012, the second respondent herein was impleaded as second plaintiff.

5. Learned counsel appearing for the petitioners relying on a decision Thomson Press (India) Ltd. vs Nanak Builders & Investors P. Ltd. and others reported in 2013-2 Law Weekly page 748 contended that as per Section 52 of Transfer of Property Act, 1882, transferee pendente lite, has right to be impleaded as proper and necessary party, is subject to rights that was available to the transferor. The decision at page No.769 reads as follows: ".41. This Court again in the case of Dwarka Prasad Singh and others vs. Harikant Prasad Singh and others (1973) SC655 subscribed its earlier view and held that in a suit for specific performance against a person with notice of a prior agreement of sale is a necessary party.

42. Having regard to the law discussed herein above and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

43. Before parting with the order, it is clarified that the appellant after impleadment as party-defendant shall be permitted to take all such defences which are available to the vendor Sawhneys as the appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit.".

6. As submitted by the learned counsel for the petitioner, it is well settled proposition of law that subsequent purchaser cannot claim any right more than the right that was available to his vendor. Hence, the second respondent being the subsequent purchaser cannot claim any right that was not available to his vendor, as per the sale deed. Even the vendor can restrict the right under the sale deed, however, such right cannot be expanded over and above the right that was available to his vendor. Respondents 1 and 2 herein who are petitioners in the I.A. have categorically stated that the property was originally owned by the first respondent/plaintiff and by virtue of a settlement deed executed by him, his daughter Meena became the absolute owner of the property and subsequently, the second respondent herein purchased the property from the said daughter of the first respondent/plaintiff. On the aforesaid circumstances, the claim of the second respondent is that he became absolute owner, by virtue of the sale deed executed in favour of the second respondent, hence, he became a necessary party to the suit. The subsequent purchaser need not depend on his vendor to safeguard his right pertaining to the property, purchased by him.

7. In the light of various decisions rendered by Hon'ble Supreme Court and the decision of this Court referred to by both the learned counsel, there is no error or infirmity in the impugned order allowing the interlocutory application so as to implead the second respondent the subsequent purchaser as second plaintiff in the suit from the daughter of the original plaintiff, however, the subsequent purchaser cannot have a better right than the right that was conveyed by his vendor.

8. Considering the submission made by both sides, it is made clear that the Court below shall dispose the suit, according to law, un-influenced by the findings, if any, by this Court in this order, within a period of six months from the date of receipt of

a copy of this order. S. TAMILVANAN,J.

vga 9. With the above observation, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected M.P. is also dismissed. 10.07.2013
Index : Yes/No Internet : Yes/No vga To The Additional District Munsif, Cuddalore
C.R.P. (PD) No.2164 of 2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com