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Court : Chennai

Decided On : Apr-22-2016

Judge : The Honourable Dr. (Mrs). Justice. S. Vimala

Appeal No. : Civil Revision Petition (NPD) Nos. 3824 & 3825 of 2013 & M.P. No. 1 of 2013

Appellant : Suguna

Respondent : Subramani and Another

Judgement :

(Prayer in CRP (NPD) No.3824 of 2013:-Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure to set-aside the fair and decreetal order made in I.A.No.130 of 2013 in I.A.No.140 of 2006 in O.S.No.192 of 2000 on the file of the District Munsif Court, Ponneri, dated 16.07.2013.

Prayer in CRP (NPD) No.3825 of 2013:-Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure to set-aside the fair and decreetal order made in I.A.No.135 of 2013 in I.A.No.140 of 2006 in O.S.No.192 of 2000 on the file of the District Munsif Court, Ponneri, dated 16.07.2013.)

1. The suit in O.S.No.192 of 2000 was filed by the deceased-Subramani against deceased-Munusamy Naidu, seeking the relief of partition and separate possession. The said suit was decreed exparte on 25.02.2003.

1.1. On the death of Subramani on 27.04.2003, the second plaintiff, namely, the first respondent herein came to be impleaded, as the second plaintiff, on 25.10.2006. She filed an Application for Final Decree, in I.A.No.140 of 2006.

1.2. Pending the final decree proceedings, the sole defendant in the suit, Munusamy Naidu, died. The second respondent herein (Maaleeswari) came to be impleaded, as the sole legal heir of the deceased defendant.

1.3. Pending the final decree proceedings, the proposed party / the Revision Petitioner, in both the petitions, filed I.A.Nos.130 of 2013 and 135 of 2013, seeking to reopen the petition and to implead herself, as a party, respectively and both applications having been filed in the same Interlocutory Application, i.e., I.A.No.140 of 2006.

1.4. The claim for impleadment was made on the ground that the Revision Petitioner herein purchased the suit property, by virtue of the sale deed, dated 27.12.2004.

1.5. The said application was opposed on the ground that the application for impleadment has been filed, after the passing of the preliminary decree and that the proposed party is not a necessary party.

1.6. The Court, by the order, dated 16.07.2013, dismissed both the petitions. Challenging the same, these two Revision Petitions have been filed.

2. It is the case of the Revision Petitioner, in both these petitions that she is in possession and enjoyment of the suit property right from the year 1992, i.e., prior to the purchase, even though she purchased the property only in the year 2004; several documents have been filed, i.e., Exs.P-1 to P-6, to show that she has been in possession and enjoyment of the suit property even prior to the sale; it is not in dispute that Ex.P-8, sale deed, stands in the name of the Revision Petitioner herein and that in the sale deed, her vendor's daughter is an attesting witness as well as identifying witness.

3. Under such circumstances, it has to be decided whether the proposed party ought to have been impleaded as the party in the final decree application.

4. A perusal of the order passed by the lower Court reveals that the petition to implead has been dismissed mainly on the grounds that: (a) when there was an order of injunction, restraining alienation, the Revision Petitioner herein had purchased the property, without obtaining permission of the Court; and (b) the Revision Petitioner has purchased the property after the passing of the preliminary decree.

5. Whether these two grounds are tenable is the issue raised in these Revision Petitions.

6. Contending that the impleadment / presence of the petitioner herein would be in the interest of justice, especially when the defendant remained *ex parte* in the suit, the learned counsel for the Revision Petitioner relied upon the decision reported in (2016) 1 SCC 388 (Dilbag Singh and another v. Ravinder Kaur and another), where-under it has been held as follows:-

2. Having regard to the facts and circumstances of the case, particularly the original defendant being set *ex parte*, we are of the view that the presence of the appellants in the suit would be in the interest of justice.....

6.1. Contending that the petitioner herein is a proper and necessary party to the suit, in order to workout the equity, in her favour, the decision reported in (2007) 10 Supreme Court Cases 719 (Dhanalakshmi and Others v. P.Mohan and Others) is relied upon, where-under it has been held as follows:-

5. Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings."

6.2. Therefore, from the decisions, cited *supra*, it is evident that the Revision Petitioner is the proper and necessary party to be imp leaded for the purpose of working out the equity in the final decree proceedings.

6.3. The main ground of dismissal of the application for impleadment is that the transaction was against the order of injunction granted by the Court. Explaining that the party who violated an order of injunction is liable to be punished for the breach committed but the sale is not invalid, is the dictum laid down in the case reported in 2013 (5) Supreme Court Cases 397 (Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others). The relevant paragraph reads thus:-

53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

6.3.1. The reason as to why the transferee pending litigation has to be added as a party has been detailed in the same decision (Thomson Press (India) Limited case), by quoting the case of Amit Kumar Shaw v. Farida Khatoon MANU/SC/0284/2005 : (2005) 11 SCC 403 where the Hon 'ble Apex Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the Plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so, where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. The Apex Court observed:

'16... The doctrine of lis pendens applies only where the lis is 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 22 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.'

7. Per contra, the learned counsel for the first respondent / plaintiff contended that the plea for impleadment made by the Revision Petitioner herein is belated and that the alleged purchase was made in contravention of the order of injunction granted and therefore rightly the Court below dismissed the claim for impleadment and that it has to be upheld. In support of his contentions, the following decisions are relied upon:-

(i) 1992-II-M.L.J. 55 (SC) (Ramesh Hiranchand Kundammal v. Municipal Corporation of Greater Bombay and Others):-

14.The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

(ii) (1996) 5 Supreme Court Cases 539 (Sarvinder Singh v. Dalip Singh and Others):-

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 right 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 *lie pendens* by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

(iii) AIR 1996 Supreme Court 135 (1) (Surjit Singh and Others v. Harbans Singh and Others):-

4. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is *per se* property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property *per se* had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy, When the Court intends a particular state of affairs to exist while it is in *seizin* of a *lis*, that state of affairs is not only required to be maintained, but it is presumed to exist till

the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes.....

(iv) 2001-10-L.W. 615 (Bakthavatsalam v. Anjapuli and 5 others):-

10) The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle and questions involved in the suit. If the question at issue between the parties can be worked out without any one else being brought in, the stranger should not be added as a party. In the light of the language used in Order 1, Rule 10(2) of C.P.C. as well as various decisions and in the light of factual position in our case that preliminary decree has already been passed and application for passing of final decree is pending before the Court below, I am of the view that purchasers of properties during the pendency of the suit are neither necessary nor proper parties inasmuch as they would be bound by the decree in the suit in view of the principle enunciated in Section 52 of the Transfer of Property Act. I hold that the parties sought to be impleaded as defendants in the suit and respondents in the final decree application are neither necessary nor proper parties. I have already stated that the alienees respondents 4 to 6 herein are not want to be made a party and they are willing to take the risk. It is settled law that any alienation subsequent to the filing of the suit is hit by the doctrine of lis pendens. The subsequent purchasers are aware of the proceedings and they are definitely bound by the decision in the suit and the proceedings.

(v) (2012) 8 Supreme Court Cases 384 (Vidur Impex and Traders Pvt. Ltd., and others v. Tosh Apartments Private Limited and others):-

38. ... Although, the appellants have pleaded that at the time of execution of the agreements for sale by respondent No.2 in their favour in February 1997, they did not know about the suit filed by respondent No.1, it is difficult, if not impossible, to accept their statement because the smallness of time gap between the agreements for sale and the sale deeds executed by respondent No.2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe

that respondent No.2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating agreement for sale dated 13.9.1988 executed in favour of respondent No.1 and the suit pending before the Delhi High Court. In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No.161/1999 filed by respondent No.2 for annulment of the agreements for sale and the sale deeds in which respondent No.2 had clearly made a mention of Suit No.425/1993 filed by respondent No.1 for specific performance of agreement for sale dated 13.12.1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No.625/2001 filed by respondent No.1 and restrained respondent Nos.2 and 4 from transferring possession of the suit property to the appellants. However, in the application for impleadment filed by them, the appellants did not offer any tangible explanation as to why the application for impleadment was filed only on 4.2.2008 i.e. after 7 years of the passing of injunction order dated 22.1.2001 and, in our considered view, this constituted a valid ground for declining their prayer for impleadment as parties to Suit No.425/1993....

7.1. So far as Vidur Impex case, is concerned, there is a proof to show that the party had knowledge regarding the order of injunction on receipt of summons in Suit No.161/1999 (filed by respondent No.2 for annulment of the agreements for sale). But, that is not the case here. This is a case, where the defendant remained exparte in the suit from whom the Revision Petitioner has purchased the property. Therefore, direct knowledge cannot be attributed to the Revision Petitioner herein and at the most, deemed knowledge alone can be attributed.

7.2. Contending that the date on which sale deed was executed, order of injunction passed by trial court was operative and the sale deed executed in favour of the transferee would not to have any legal sanctity, because same was executed in violation of order of temporary injunction, the learned counsel for the respondents relied upon the decision reported in (2013) 14 Supreme Court Cases 689 (Jehal Tanti and Others v. Nageshwar Singh (Dead) through L.Rs.) and the relevant paragraph reads thus:-

Alienation made in violation of order of injunction. Order of injunction passed by trial court restraining defendant from alienating suit property. Sale deed executed during currency of order of injunction. Not in dispute that date on which sale deed was executed, order of injunction passed by trial court was operative. Sale deed executed in favour of respondent No. 1 not to have any legal sanctity because same executed in violation of order of temporary injunction. Sale deed hit by doctrine of lis pendens. One of questions of law raised in second appeal filed by appellants was substantial question of law within meaning of Section 100(1). Single Judge of High Court committed serious error by summarily dismissing second appeal relying upon judgment of Apex Court in Amar Chand Inani v. Union of India, (1973) 1 SCC 115. Therefore, the impugned order was set aside. Second appeal remitted to High Court for fresh disposal. High Court to frame appropriate substantial question of law and decide appeal with reference to substantial question of law.

7.3. As the dictum laid down in Jehal Tanti's case did not directly deal with the legality and validity of the sale deed, which was obtained during the currency of the order of injunction and the Hon 'ble Apex Court has only directed the High Court to decide it treating it as a substantial question of law. Therefore, this decision will not help the case of the plaintiff / the first respondent herein.

7.4. Out of all the decisions, cited supra, the decision reported in Thomson Press case, cited supra, is directly on the point and that decision being the latest one, by the Hon 'ble Apex Court, is binding and if the case has to be decided in accordance with this decision, the case of the Revision Petitioner has to succeed.

8. When the decisions relied upon the learned counsel for the petitioner clearly have laid down the dictum that the interest of the transferee pendete lite can be better protected, if the transferor pendete lite omit / neglect to take care of the case. The transferee can workout his right in equity. Based upon these reasons, the impleading petitions ought to have been allowed. But it is not so. Under such circumstances, both the Civil Revision Petitions, challenging the dismissal of reopen petition and impleading petition have to be allowed.

9. In the result, the orders, dated 16.07.2013, passed by the Court below in I.A.Nos.130 and 135 of 2013 in I.A.No.140 of 2006 in O.S.No.192 of 2000, are hereby set-aside and these Civil Revision Petitions are allowed. No costs. Consequently, the connected MP is closed.

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