

Kasipathi Vs. E. Subba Rao Pauer

Kasipathi Vs. E. Subba Rao Pauer

SooperKanoon Citation : sooperkanoon.com/372283

Court : Karnataka

Decided On : Apr-12-1960

Reported in : AIR1961Kant62; AIR1961Mys62

Judge : K.S. Hegde, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 51; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100 and 101

Appeal No. : Second Appeal No. 86 of 1954

Appellant : Kasipathi

Respondent : E. Subba Rao Pauer

Advocate for Def. : A.R. Srinivasa Rao, Adv.

Advocate for Pet/Ap. : B. Vedanta Iyengar, Adv.

Judgement :

1. Two questions of law have been, urged by Sri Vedant Iyengar, the learned Counsel for the appellant, in support of his appeal. Firstly he contended that on the proved facts of the case the Courts below were wrong in opining that the respondent (first defendant) is a bona fide purchaser of (be suit property and that he is entitled to any benefit under Section 51 of the Transfer of Property Act, Secondly he urged that under any circumstances the plaintiff should have been

given the option of either paying the value of the improvements effected by the respondent or to sell the suit property to him; The Courts below were not right in directing the respondent to purchase the right of the plaintiff.

2-3. As found by the Courts below, the plain-riff appellant is the prior purchaser of the suit property and thus he had acquired a valid title to the suit property. The sale in Favour of the predecessor-in-title of the respondent under Exhibit IV being of a later date, the same cannot affect the validity of the sale in favour of the plaintiff under Exhibit A dated 8-6-1938. Both the Courts below have come to the conclusion that the respondent is a bona fide purchaser for value without notice of the sale in favour of the plaintiff. The appellant contends that this conclusion, is on the face of the records, unsustainable and the same has been arrived at by ignoring important pieces of evidence.

4. The trial Court refused to grant a decree for possession in favour of the plaintiff on certain fallacious grounds. It stated:

'In view of my finding that that the plaintiff is the owner of the site in question normally there should be a decree in This favour for possession of the property. Although the plaintiff has purchased this property in the year 1938 at a time when the entire area was a rocky and undefined locality, tile plaintiff has done nothing upto the time of filing the suit to make it appear that he was theowner of this property. He has made no attempt to put up any compound wall, fence or any other demarcation around his property; he admits that about two years prior to the filing of the suit where he had come to Bangalore in connection with his mother's ceremony, he saw that stones being cut in his site. He admits that it was an uneven site consisting of boulders. It is clear from his evidence that it is only subsequent to the 1st defendant built the house, the plaintiff went and remonstrated with him. There is nothing in this case to suggest any lack of bona fides on the part of the defendant. At the time the 1st defendant purchased the plot of land and sale deed was registered in the Bangalore City Sub-Registrar's Officer whereas the sale deed in favour of the plaintiff has been registered in the Taluk Sub Registrar's Office. Therefore it cannot be urged on account of the registration the 1st defendant had notice that this site had been previously disposed of. It

appears as if even for constructing the house in this area licenses from the Municipality have not been considered obligatory at any rate on the parties concerned. I am satisfied that at the time of the 1st defendant constructed the house, he believed himself in good faith to be the owner.'

None of these reasons can be justified in law. There are extra legal considerations. It is for the subsequent purchaser to prove that he was a bona fide purchaser for value without notice of the alienation in favour of the plaintiff. The learned trial Judge was clearly in the wrong when he observed 'there is nothing in this case to suggest any lack of bona fides on the part of the defendant'.

The entire approach to the case was wrong-Similar was the approach of the learned Subordinate Judge. Moreover in this case the respondent claimed title to the suit property under Exhibit II, which in its turn has to fall back on Exhibit IV the sale deed in favour of the predecessor-in-title of the respondent. Exhibit IV unequivocally refers to the alienation in favour of the plaintiff though its validity was contested therein. Hence the respondent cannot be permitted to contend that he had no notice of the alienation in favour of the plaintiff.

5. The Courts below were also wrong in directing the plaintiff to sell the property in question to the respondent. Section 51 of the Transfer of Property Act provides:

'When the transferee of immovable property makes any improvement on the property, believing' in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement."

(Underlining (here in ' ') is mine).

This section leaves the option to the person having better title either to pay the value of the improvements or to sell his interest to the subsequent purchaser. The choice is that of the evictor. See *Moti Chand v. British India Corporation Ltd.*,

Cawnpore : AIR1932 All210 . Further he is required to sell his interest in the property to the subsequent purchaser at the then market value. The case reported in : AIR1928 All41 Lachmi Prasad v. Lachmi Narain is clearly distinguishable.

6. To sum up the Courts below are entirely wrong in opining that the respondent and his predecessor-in-title were bona fide purchasers without notice of the prior alienation. Further they had no power to direct the plaintiff to sell the suit property to the respondent.

7. In the course of the arguments, the learned Counsel for the respondent contended that the sale deed Exhibit A is invalid as the same was registered in a wrong registration office. This contention does not appear to have been urged in the Courts below. The evidence on record is not sufficient to come to the conclusion that no portion of the property included in Exhibit A was within the registration District of the Bangalore Taluk Sub-Registrar at the time of the registration. Hence this new plea cannot be decided on the basis of the material on record.

8. In the result, the judgments and the decrees of the Courts below are set aside. There will be a decree against the respondent (1st defendant) directing him to deliver possession of the property purchased by him under Exhibit II, to the plaintiff. It is open to the respondent to remove the building put up by him without injuriously affecting the property. In the circumstances of this case, the parties will bear their own costs in all the Courts.

9. Appeal allowed.