

Sethurama Aiyar Vs. Ramachandra Aiyar

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Court : Chennai

Decided On : Jan-30-1936

Reported in : AIR1936Mad528

Appellant : Sethurama Aiyar

Respondent : Ramachandra Aiyar

Judgement :

Venkataramana Rao, J.

1. Defendant is the appellant in this second appeal. He purchase a house from two persons Vedathamman and Chinnaswami Iyer by a sale-deed, Ex. A, dated 29th January 1924. They said property was obtained by Vedathammal by inheritance and her father Chinnaswami Iyer was the next reversioner. On the date of sale one Varadaraja Iyer had obtained a decree in O.S. No. 38 of 1923 on the file of the District Munsif's Court of Valangiman against Vedathammal wherein attachment before judgment of the said property was pending. There was another decree obtained by one Swaminathaier against both Vedathammal and her father Chinnaswami Iyer in S.C.S. No. 1740 of 1928 of the Kumbakonam Small Cause Court and there was also an attachment in the said suit of the said house. Vedathammal and Chinnaswami Iyer filed O.S. No. 83 of 1923 in the District Munsif's Court of Valangiman against the said Swaminatha Iyer for a declaration that the said attachment and sale of the said house were fraudulent and illegal.

The sale of the said house to the defendant was for a sum of Rs. 1,000. That was the price, it is stated, fixed for the property. A sum of Rs. 150 was either paid or adjusted towards certain debts and the balance of the consideration, namely Rs. 850, was retained in the hands of the defendant. The litigation of Varadaraja Iyer was recited in the sale deed, and in regard to the said litigation it is stated therein as follows:

And, as at the time of the said suit, the under mentioned house was attached before judgment in respect of the said plaint amount, etc., and as appeal would be filed in respect of the said suit, we would receive the amount in the event of our emerging successfully in the said original suit and appeal, and in the event of the said T. Varadaraja Iyer emerging successfully, you yourself should pay and discharge the amounts due under the decree herein.

2. Again reference was made to the litigation in the said O.S. No. 83 of 1923 and a similar recital was made. With reference to both litigations it was stipulated thus:

If after the complete disposal of both the said proceedings-the original and appeal proceedings-the same are favourable to us, we shall get and deliver to you copies of each Court decree therein and receive the amount relating to each suit on granting a proper written document in respect of the same. If favourable to him, you yourself shall pay the amount through the Court and discharge the same. And in the above matter the sum retained is Rs. 850.

No interest need be paid on Rs. 850 retained on being received after the complete disposal of each of the Court proceedings as aforesaid. we are to receive the said amount, Chinnaswami Iyer out of us will receive Rs. 150 and Vedathammal Rs. 700 according to the said arrangement.

3. It appears that the decree in S.C.S. No. 1740 of 1928 was adjusted by payment of Rs. 75. So far as Varadaraja Iyer's litigation is concerned, the appeal against the decree in the said suit was unsuccessful. Execution proceedings were taken for the enforcement of the said decree and while they were pending Vedathammal died on 27th September 1926. After the death of Vedathammal the defendant obtained another sale deed in confirmation of the original sale deed from

Chinnaswami Iyer on 14th October 1926. Varadaraja Iyer sought to bring the defendant as the legal representative in the execution proceedings for the sale of the property. There was an order in favour of Varadaraja Iyer, but ultimately it was set aside by the High Court in A.A.A.O. No. 27 of 1930: vide Sethurama v. Varadaraja 1932 Mad 185. The ground on which it was set aside was that defendant 4 was not the legal representative of Vedathammal inasmuch as Vedathammal had only a limited interest in the property and the defendant can in no sense after her death be said to be her legal representative and the decree obtained by Varadaraja Iyer could not be said to be one which prima facie bound the reversionary interest. The result of that litigation was that the property which the defendant purchased became exonerated from the liability of being sold in execution of the decree obtained by Varadaraja Iyer. The plaintiff obtained a decree in S.C.S. No. 1352 of 1926 on the file of the Small Cause Court of Kumbakonam against Vedathammal and in execution thereof on 26th August 1926 attached the moneys due and payable to Vedathammal by the defendant in virtue of the sale deed and after her death brought her husband as the legal representative and had the debt sold and became its purchaser in court-auction and on the strength of that purchase has filed the suit for the recovery of a sum of Rs. 300 only, waiving the balance. Both the Courts have decreed the plaintiff's claim and defendant has preferred this second appeal.

4. Mr. Bhashyam Iyengar on behalf of the appellant has raised a number of contentions. His first contention is that under the terms of the sale deed, Vedathammal was not entitled to the money except on strict fulfilment of the conditions of the sale deed and in the event which has happened Vedathammal or her representative would not be entitled to the same and in any event the defendant only purchased the property subject to the risk of attachment and any benefit that he might get by the removal of the attachment would ensure to him, and no claim for refund of any moneys by virtue of such removal can be claimed against him. In my opinion the contention is unsustainable. What is relied on is as the document recites that if the proceedings original and appellate in the litigation were to prove unsuccessful Vedathammal was entitled to get the money and as it ended successfully in favour of Varadaraja Iyer, Vedathammal could not demand the amount. No doubt a literal reading of the document may lend support to Mr.

Bhashyam Iyengar's contention, but a true construction of the document as a whole does not warrant such an interpretation. As observed in *Kaliyammal v. Kolandavela Gounder* 1918 5 MLW 228, apart from any general principles of construction, we have to place ourselves in the position of the parties and to ascertain in the best way we can what was the intention of the parties when they entered into the transaction.

5. On the date of sale the attachments were pending. It was to the interests of the purchaser to see that the property which he purchased is not proceeded against in pursuance of those attachments and is rendered harmless and free of them. That was the main intention which guided the parties. The sum of Rs. 850, but for the attachment, would have been received by Vedathammal and Chinnaswami Iyer and the said money was retained in the hands of the purchaser for payment of the amounts due under the decree if the property was sought to be sold. The defendant was constituted an agent for the said purpose in which the defendant may be deemed to be interested. He was in fact an agent coupled with an interest and when the interest ceased to exist he became a bare agent accountable to Vedathammal and Chinnaswami Iyer for the moneys retained in his hands. It is clear from the document that the money was their money.

6. In this case the attachment proceedings against the property having proved abortive, there was no longer any danger of the property being sold. A number of cases were relied on by Mr. Bhashyam Iyengar for showing that the sum of Rs. 850 was merely indicated as the probable amount of money that would be required for discharging the two decrees mentioned in the document, that the vendee took the property subject to a risk, the contract which he entered into was essentially a contract of indemnity and that in such a case, unless it is proved that the vendor has sustained any loss, he may not be entitled to recover the said moneys. He relied very strongly on the decision of Pandalai, J., in *Nawamani Nadar v. Vedamanicka Nadar* 1933 56 Mad 724, where the learned Judge seems to draw a distinction between cases where the property is sold and the consideration money is retained for discharging simple debts or encumbrances on property other than the one which was sold and where 'a reservation may be for payment of debts in which the purchaser as owner of the property purchased

becomes solely primarily interested,'

7. I do not think that the learned Judge meant to lay down an inflexible rule that in the one case the vendor can claim the amount and in the other he cannot. He was only trying to distinguish those two classes of suits which might be brought by a vendor for refund of the moneys retained with the vendee. To my mind the correct test which is clearly deducible from the cases is to find out whether the covenant entered into by the vendee was a pure contract of indemnity. If it is a contract of indemnity pure and simple, the vendor will not be entitled to claim any money as the balance of the purchase money still remaining with the vendee and as being payable to him. But if it is not a contract of pure indemnity, he may have to pay the purchase money in accordance with the directions of the vendor, and the vendor would be entitled to receive the same if either the directions are not complied with or the purpose for which the said money was retained in the hands of the vendee became incapable of full fulfilment. In this case it will be seen from Ex. A that it was throughout contemplated that the moneys were the moneys of the vendor and there was a clear direction to apply the said money in discharge of the two decrees only in the event of those litigations ending successfully in favour of the decree-holders, the object being to prevent the property from being sold in execution of those decrees. There is this additional factor that the payment of interest for the retention of the money was expressly waived and the clause relating thereto is in my opinion decisive of the fact that the money was contemplated to be that of the vendor. The clause is:

No interest need be paid on Rs. 850 retained for being received after the complete disposal of each of the Court proceedings as aforesaid.

8. If it is a pure contract of indemnity, no question of the return of the money will ever be contemplated, and the only right which the vendor will have is a right to damages for non-fulfilment of the contract of indemnity. The following observations in *Raghunatha Chariar v. Sadagopa Chariar* (1913) 36 Mad 348, with reference to the case in *Izzabtun-Nisa Begam v. Kunwar Pertab Singh* (1909) 31 All 583, clearly support the test which I have indicated:

It is perfectly clear that the Judicial Committee was dealing with a case where a vendee pays a certain price for the equity of redemption-and agrees to indemnify the vendor against the claims of the incumbrances, and not one where he agrees to pay a certain sum of money for the land sold to him and undertakes to pay a portion thereof to incumbrances. Their Lordships observe that in such a case an express promise to discharge incumbrances against which the purchaser covenants to indemnify the vendor does not change the nature of the vendor's right which is only to be indemnified' against certain claims, and not to have certain sums of money belonging to him paid to another.

9. Therefore in this case it is not a contract of indemnity pure and simple and Vedathammal and her representatives-are entitled to demand the money in the events which have happened. It is contended by Mr. Bhashyam Iyengar that it may be still open to Varadaraja Iyer to, attach the said moneys, but it is not the concern of the defendant as long as they have not been attached, and it seems to be unlikely that there is any such prospect of attachment. It is not open to the defendant to refuse to pay the moneys to the persons really entitled, and the plaintiff having purchased the right to the said moneys in Court-auction is therefore entitled to recover the same.

10. The next contention advanced by Mr. Bhashyam Iyengar is that Vedathammal had only a limited interest and her right to recover the sum of Rs. 700 ceased on her death and therefore there is nothing which the plaintiff could have purchased at Court-auction and he is therefore not entitled to recover the money. This argument is not open to the defendant. He had undertaken to pay the amount of Rs. 700 to Vedathammal and Rs. 150 to Chinnaswami Iyer. As between Vedathammal and Chinnaswami Iyer it would not be open to Chinnaswami Iyer to contend that Vedathammal and her representatives are not entitled to the said sum of Rs. 700. The defendant was a party to the said arrangement and he also claims under Chinnaswami Iyer who is the only party entitled to claim the said amount and who is precluded from asserting his title as against the plaintiff who claims by virtue of a title under Vedathammal. In the result the decrees of the lower Courts are right and the second appeal is dismissed with costs.

11. (Leave refused.)

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