

K. Ponnambalam Vs. Subdra Devi

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Court : Chennai

Decided On : Sep-29-1993

Reported in : (1994)1MLJ309

Appellant : K. Ponnambalam

Respondent : Subdra Devi

Judgement :

ORDER

Janarthanam, J.

1. Vacant site measuring 60 feet east-west and 20 feet north-south, totalling to 1200 square feet, with a thatched hut comprised in Old R.S. No. 248/2A/2 and new R.S. No. 248/242 in Rathiriam Nagar - Old Plot No. 17-A (New Plot No. 17) originally belonged to One Nagarajan. He it is said, agreed to sell the same to one Subadra Devi (respondent herein) for Rs. 15,000 He was stated to have received an advance of Rs. 10,000 and agreed to receive the balance of sale consideration on the date of execution of the sale deed. An agreement of sale was, in fact, entered into between them on 20.7.1981, evidencing those aspects. It seems, despite issuance of a notice by the respondent demanding execution of the sale deed expressing her readiness and willingness to perform her part of the contract, the original owner Nagarajan did not comply with the demand so made. Consequently, she, filed the suit in O.S. No. 687 of 1984 on the file of the XII

Assistant Judge, City Civil Court, Madras. The said Nagarajan remained *ex parte* and consequently an *ex parte* decree came to be passed on 2.5.1985.

2. Consequently, the respondent was stated to have got the sale deed executed through court in her favour on 22.12.1987. The respondent filed E.P. No. 145 of 1989 on the file of the X Assistant Judge, City Civil Court, Madras for delivery of vacant possession of the vacant site and delivery of the same, it is said, had been ordered. When she went to take possession along with the bailiff, there was some obstruction and consequently, she moved the executing court for removal of the same.

3. At this stage, One K. Ponnambalam (revision petitioner), claiming to have purchased the suit vacant site from the judgment-debtor original owner Nagarajan on 15.2.1989 filed E. A. No. 5537 of 1992 in the said execution proceedings under Order 1, Rule 10(2), C.P.C., praying for his being impleaded as a necessary party thereto.

4. He also filed E.A. No. 5532 of 1992 under Order 21, Rule 29, C.P.C., praying for stay of all further execution proceedings pending disposal of the suit in O.S. No. 7829 of 1992 on the file of the VI Assistant Judge, City Civil Court, Madras, filed by him for setting aside the decree passed in O.S. No. 687 of 1984, and consequent sale deed executed through court on 22.12.1987 and for permanent injunction.

5. Both the said applications were dismissed giving rise to the present actions.

6. Even at the outset, I may state that there are absolutely no merits for the entertainment of these civil revision petitions. Admittedly, as adverted to earlier, on the *ex parte* decree coming to be passed on 2.5.1985 and on behalf of the original title-holder Nagarajan, the court executing a sale deed in favour of the respondent on 22.12.1987, whatever right, title or interest, he had in the suit vacant site, the same had been irretrievably lost, inasmuch as he has not chosen to agitate the matter any further and in such a situation, the petitioner, who was stated to have purchased the same vacant site by means of a sale deed dated 15.2.1989 at a later point of time cannot have any title to the vacant site better than that of his vendor Nagarajan-the original title-holder, going by the maxim *nemo dat qua non*

habit. That being so, he cannot be stated to be a necessary or a proper party to be impleaded for effective adjudication of the matter involved in the execution proceedings levied by the respondent. Under such circumstances, the dismissal of both the execution applications by the court below cannot be stated to be not sustainable in law. Further, there is no irregularity or illegality in the impugned orders passed.

7. Both these civil revision petitions, as such, deserve, to be dismissed, even at the admission stage and they are accordingly dismissed. Consequently, C.M.P. No. 12869 of 1993 is also dismissed.

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