

Rm.Subbiah Vs. S.Ramakrishnan and ors.

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Court : Chennai

Decided On : Dec-14-2011

Judge : K.Venkataraman, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : C.R.P.(PD).Nos.1928 to 1930 of 2011 and M.P.Nos.1,1 & 1 of 2011

Appellant : Rm.Subbiah

Respondent : S.Ramakrishnan and ors.

Advocate for Def. : Mr.K.P.Gopalakrishnan, Adv.

Advocate for Pet/Ap. : Mr.A.P.S.Kasturi Rangan, Adv.

Judgement :

These revisions were filed seeking to struck off the suits filed by the first respondent herein in O.S.No.2287 of 2000 pending on the file of the learned VIII Assistant Judge, City Civil Court, Chennai, O.S.No.4602 of 1989 pending on the file of the learned XVI Assistant Judge, City Civil Court, Chennai and O.S.No.10307 of 2010 pending on the file of the learned VI Additional Judge, City Civil Court, Chennai.

2. The suit in O.S.No.2287 of 2000 was filed by the first respondent herein for permanent injunction restraining the petitioner herein from alienating or

encumbering the suit property.

3. The suit in O.S.No.4602 of 1989 was filed by the first respondent for a declaration that the sale deed dated 14.12.1988, executed by the second respondent in favour of the petitioner is invalid, null and void and not binding on the first respondent herein.

4. The suit in O.S.No.10307 of 2010 was filed by the first respondent for a declaration that the first respondent herein is the absolute owner of the entire suit property and for a declaration declaring that the agreement dated 02.11.1986, entered into between the first respondent and the second respondent in respect of the undivided = share of the suit property is unenforceable in pursuance of the registered release deed dated 24.11.1977, and for a permanent injunction restraining the petitioner and the second respondent herein from in any manner interfering with his peaceful possession and enjoyment over the suit property.

5. The facts in nutshell is set out here under:

(a) One Mr.Sundaresan, father of the respondents 1 and 2 has purchased the suit property. He died leaving behind his wife Mrs.Alamelu Ammal, his two sons the respondents 1 and 2 herein and two daughters. On 16.04.1966, the mother and two sisters of the respondents 1 and 2 executed a release deed in favour of the respondents 1 and 2. It is also alleged by the petitioner that on 02.11.1986, the respondents 1 and 2 entered into two separate agreements of sale with the petitioner to sell their respective undivided shares in the suit property. The second respondent in pursuance of the said agreement executed a registered sale deed in favour of the petitioner in respect of the ground floor portion on 13.12.1988.

(b) The first respondent has received consideration on various dates except a meager amount of Rs.74,499/-. Since he has evaded to execute the sale deed in favour of the petitioner, the petitioner has filed the suit in C.S.No.1586 of 1988, before this Court for specific performance. In the meanwhile, the first respondent has filed a suit for bare injunction to restrain the petitioner from interfering with his possession and the suit was numbered as C.S.No.130 of 1990.

(c) The suit in C.S.No.1586 of 1988, preferred by the petitioner for specific performance was decreed on 07.12.1995. Against the said decree, the first respondent preferred an appeal in O.S.A.No.250 of 1996. The suit in C.S.No.130 of 1990 preferred by the first respondent was dismissed and an appeal in O.S.A.No.251 of 1996 was filed. Both the appeals were dismissed by the Division Bench of this Court on 28.06.1999. The first respondent filed Special Leave Petitions in S.L.P.Nos.5703 and 5704 of 1999 against the orders passed in O.S.A.Nos.250 and 251 of 1996 and they were dismissed as withdrawn on 28.04.2000.

(d) Thereafter, the petitioner filed an execution petition in E.P.No.19 of 2000 in C.S.No.1586 of 1988 for execution of the sale deed and delivery of possession. On 05.03.2008, the E.P. was allowed by the learned Master. On 30.10.2009, the sale deed was executed by this Court on behalf of the first respondent. On 25.11.2009, the learned Master ordered delivery of possession of the first floor in occupation of the first respondent herein as per the decree referred to above.

(e) The first respondent preferred an application in Appln.No.6389 of 2009 against the order passed by the learned Master ordering delivery of possession to the petitioner on 25.11.2009, in E.P.No.19 of 2000. He has also filed an application in Appln.No.6390 of 2009 for stay of all further proceedings pursuant to the order passed by the learned Master. The applications came to be dismissed on 01.12.2009. The first respondent preferred appeals in O.S.A.Nos.419 and 420 of 2009 against the said orders. The said appeals were dismissed on 11.12.2009. (f) Thereafter, the petitioner filed Sub Applications in Sub.Appln.Nos.3893 and 3894 of 2010 for return of the key by the first respondent. On 01.04.2010, orders have been passed directing the first respondent to return the key.

(g) The petitioner thereafter alleging that the key was not handed over as directed by this Court in the applications referred to above, filed a contempt petition in Cont.P.No.621 of 2010. The same was ordered on 23.07.2010, directing the Deputy Registrar (Computers) to over lock the premises of the first respondent as he has not handed over the key as per the direction of this Court dated 01.04.2010. On 16.12.2010, final order was passed directing the first respondent

to hand over possession of the ground floor to the petitioner within ten days from the date of receipt of the order and the Deputy Registrar (Computers) was also directed to remove the over lock. On 03.01.2011, the Deputy Registrar (Computers) removed the over lock and possession of the ground floor was handed over to the petitioner on 08.01.2011.

(h) In the meanwhile, several proceedings were initiated by the first respondent and all ended against the first respondent. Those proceedings are not necessary for adjudicating the present matter in issue.

6. On the above backdrop of the matter, it has to be seen whether the suits filed by the first respondent referred to above are liable to be struck off.

7. In the first suit in O.S.No.4602 of 1989, preferred by the first respondent for declaration that the sale deed dated 14.12.1988, executed by his brother, the second respondent herein is not valid, it was contended by the first respondent that after the death of their father, their mother and their two sisters have relinquished their share in favour of them on 16.04.1966 and thereafter, they became the absolute owners of the property.

8. It is further contended by the first respondent that the execution of the sale deed dated 13.12.1988, by the second respondent, brother of the first respondent, in favour of the petitioner is not valid. He has contended that the sale deed is not valid on the following grounds: (a) The second respondent has no valid and subsisting title over the suit property.

(b) The recitals in the sale deed are false.

(c) Since there was no partition between themselves, the second respondent cannot convey a specific portion.

(d) The second respondent has no right to convey his undivided share since the same is hit by the provisions of the Partition Act.

(e) Possession could not have been delivered to the petitioner in respect of the first floor since there was no division among themselves.

(f) The petitioner is not a bona fide purchaser for value.

9. The second suit in O.S.No.2287 of 2000 was filed by the first respondent alleging that when suit in O.S.No.4602 of 1989 is pending and the petitioner herein is attempting to alienating the property and hence the said suit was filed for permanent injunction restraining the petitioner from alienating the suit property.

10. The next suit was filed by the first respondent originally before this Court in C.S.No.1129 of 2007 and later transferred to the file of the learned VI Additional Judge, City Civil Court, Chennai and renumbered as O.S.No.10307 of 2010. The said suit was filed for the following reliefs viz.,: (a) Declaring that the plaintiff is the absolute owner of the entire suit property morefully described schedule hereunder and subsequently;

(b) Declaring that the agreement dated 02.11.1986 entered between the plaintiff and the 2nd defendant herein in respect of the undivided half share of the suit property is unenforceable in any manner in pursuance of the registered release deed dated 24.11.1977, in the light of the findings rendered by the Hon'ble Division Bench of this Hon'ble Court in O.S.A.Nos.250 & 251 of 1996. (c) Grant a decree for a injunction restraining the defendants their men or agents, or persons claiming right through them from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property morefully described schedule hereunder."

11. In the said suit, for the first time the first respondent has claimed that the second respondent, his brother, has executed a release deed dated 24.11.1977 in his favour. No where in the earlier suits in O.S.Nos.4602 of 1989 and 2287 of 2000, the first respondent herein as taken such a plea.

12. In view of the above stated position, I am of the considered view that the first respondent is trying to drag on the proceedings endlessly by taking out one proceedings or other against the petitioner in order to see to it that the petitioner herein do not get the fruits of the decree.

13. The first respondent who has not taken the plea about the release deed executed by his brother, the second respondent herein, in the earlier suits cannot now put forth the plea that a release deed was executed by the second respondent in his favour. The first respondent cannot endlessly re-litigate the matter at every point of time.

14. In fact, the first respondent has filed various applications in Appln.Nos.3022 to 3025 of 1999 in C.S.No.1586 of 1988 for the following reliefs:

- (a) Direct the petitioner to hand over the key.
- (b) Direct the petitioner to hand over the title deeds.
- (c) Rescind the contract dated 02.11.1986.
- (d) Receive a sum of Rs.3,87,500/- from the respondent.

These applications were dismissed by the learned Trial Judge and appeals in O.S.A.Nos.339 and 340 of 2003 were filed and they also came to be dismissed on 18.08.2009. Paragraphs 14 & 15 of the judgment made thereunder are usefully extracted hereunder: "14. From the very reading of the above as found in the judgment of the Division Bench made earlier in OSA Nos.250 and 251 of 1996, it would be quite clear that the Court has observed that the respondent has purchased only an undivided half share in the sale deed executed by the brother of the appellant, while the other undivided half belonged to the appellant, and thus the plaintiff cannot get an injunction against the defendant, and the remedy open to the plaintiff for getting possession was only to seek the relief of partition of the properties. The Division Bench has found so since at the time when the appeals came up for consideration, the plaintiff/respondent became the owner of the undivided half share by purchasing the same from Mr.Rathnam the brother of the appellant, and in respect of the other undivided half share, the respondent is only having a decree for specific performance, but did not become its owner in view of the non-completion of the transaction by execution and registration of a sale deed. It is because of which the Division Bench in order to avoid any confusion and also to avoid any such contention, as now made by the appellant's side, has observed

“The plaintiff has already purchased undivided half share of the property belonging to the other co-owner Mr.Rathnam. This suit is in respect of the remaining undivided half share and the plaintiff has been granted relief of specific performance of the contract and the plaintiff is entitled to the entire property.” Hence the appellant cannot be permitted to take advantage of the observation found that the plaintiff was only a co-owner and in order to get possession he must go for a separate proceedings which can, at no stretch of imagination, be allowed.

15. It is pertinent to point out that by purchase of an undivided half share from Mr.Rathnam, the brother of the appellant, the plaintiff has become the co-owner of the property with the appellant with whom he has entered into an agreement for sale in respect of the other undivided half share, and the litigations were pending that time. As on today, by virtue of the undivided share from Mr.Rathnam, the brother of the appellant, and by virtue of the decree granted by the trial court in C.S.No.1586 of 1988 and thereafter, affirmed by the Division Bench by a common judgment in OSA Nos.250 and 251/96 which has reached finality, the respondent has become the owner of the entire property. Under the stated circumstances, if the contention of the appellant's side has got to be accepted, the respondent/plaintiff must be driven to initiate proceedings and litigate for decades to get the fruit of the decree. It is pertinent to point out that the undivided half share was purchased from Rathnam the brother of the appellant, in the year 1986, and in respect of the other half C.S.No.1586 of 1988 was filed in the year 1988, and thus the litigation between the parties is pending for more than two decades. This Court is of the considered opinion that in order to avoid the multiplicity of proceedings and also avoidable litigation, it would not be just or proper or worthwhile to drive the respondent/plaintiff to go for further round of litigation. This Court is unable to agree with the contentions put forth by the appellant's side since they do not carry any merit whatsoever, and they are liable to be rejected and accordingly rejected. The appeal in that regard has got to be dismissed.”

15. Normally a plaint cannot be rejected exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and re-agitate the matter again and again, the Courts are not powerless to exercise its discretion in putting a full stop to the same. The suits that have been filed by the

first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly. There is no rhyme or reason to allow the first respondent to proceed with the suit in spite of the fact that in various proceedings initiated at his instance he has lost in all the Forums.

16. In view of the above stated position, I am of the considered view that the suits that have been filed by the first respondent in O.S.Nos.4602 of 1989, 2287 of 2000 and 10307 of 2010 pending on the files of the learned XVI Assistant Judge, City Civil Court, Chennai, learned VIII Assistant Judge, City Civil Court, Chennai and learned VI Additional Judge, City Civil Court, Chennai respectively are liable to be struck off and accordingly struck off.

17. In fine, the civil revision petitions stand allowed. Consequently, the connected miscellaneous petitions are closed. However, no order as to Costs.

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