

CASE NO.:
Appeal (civil) 5923\0265924 of 1999

PETITIONER:
K.G. Arumugham & Ors.

RESPONDENT:
K.A.Chinnappan & Ors.

DATE OF JUDGMENT: 24/02/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

BHAN, J.

These appeals are directed against the common order dated 24.3.1998 passed by a Single Judge of the Madras High Court in CRP No. 2695 and 2696 of 1993 arising from an order dated 2.7.1993 passed by the Principal Sub Judge, Coimbatore in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 and I.A. No. 2100 of 1987 in O.S. No. 526 of 1987. The High Court has set aside the order passed by the Principal Sub Judge and remitted the case to the Munsif Court for a fresh decision in the light of the observations and directions given in the impugned order.

The facts are complicated and required to be set out in detail to appreciate the controversy arising in these proceedings.

The defendants \026appellants (hereinafter referred to as "the appellants") who were the owners of suit property measuring 4 acres 7 cents in Kurinchi Village, Coimbatore entered into an agreement with the plaintiffs-respondents (hereinafter referred to as "the respondents") to sell the suit land for a sum of Rs. 2,15,710/- at the rate of Rs. 53,000/- per acre. Respondents paid a sum of Rs. 10,001/- as earnest money and the balance sale consideration was to be paid at the time of registration of sale deed which was to be completed within four months. As the respondents did not come forward to get the sale deed registered, the appellant No. 2 by his letter dated 10.6.1979 informed the respondents that they have lost their right to get the sale deed executed under the agreement of sale. Notice terminating the agreement was also sent to the respondent through a lawyer on 12.9.1979.

Respondents filed OS No. 187 of 1980 in the Court of Principal District Munsif, Coimbatore seeking permanent injunction restraining the appellants from causing any obstruction or interference or prejudice to the plaintiffs/respondents by undertaking any construction activities on the suit land or by giving any access to the land or connecting the land with public road etc. Appellants in their written

statement raised a preliminary objection regarding the maintainability of the suit. It was pleaded that a simple suit for permanent injunction was not maintainable in the absence of a prayer seeking specific performance of the agreement. In view of the objections raised by the appellants, respondents filed I.A. No. 1982 of 1980 to amend the plaint and seek specific performance of the agreement of sale dated 13.12.1978. Amendment as sought for was allowed vide order dated 13.12.1978. As the Munsif Court did not have the pecuniary jurisdiction to try a suit of the value of Rs. 2,15,710/-, plaint was ordered to be returned for presentation in the court of competent jurisdiction within a period of two months. The order reads :

"I.A.No. 1982 of 1980 allowed. Plaint claim Rs. 2,15,710/- pecuniary jurisdiction. Hence plaint returned for presentation to proper court. Time two month."

Respondents kept quiet for seven years. On 27.4.1987 respondents filed I.A. No. 1919 of 1987 in the Court of District Munsif, Coimbatore with a prayer to return the plaint. Prayer was in the following terms:

"For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to issue necessary orders for effecting delivery of the amended plaint in O.S. No. 187 of 1980 ordered by this Hon'ble Court to be returned to the petitioners and to grant other relief just and necessary in the circumstances of the case."

On the very next day, i.e., 28.4.1987 the Principal District Munsif without giving any notice to the appellants passed the following order:

"plaint may be returned to the advocate as requested. One week time for re-presentation given."

Respondents after paying the court fee on Rs. 2,15,710/- re-presented the plaint before the Vacation Civil Judge, Coimbatore and it was registered as O.S. No. 526 of 1987.

Aggrieved against the order dated 28.4.1987 in I.A. No. 1019 of 1987 the appellants filed CRP No. 3226 of 1987 in the High Court of Madras. High Court allowed the revision petition and set aside the order passed by the Munsif Court in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 both on merits as well as being violative of principles of natural justice. It was held that the Munsif Court having ordered return of the plaint on 28.11.1980, it was not open to it to pass another order of return of plaint after a lapse of 7 years. Further it was held that the Munsif Court was not entitled to entertain and pass any order on the application/petition without giving a prior notice to the other side. It was further held that the appellants, in the meanwhile, had sold a part of the

property to third parties who were put in possession. Because of the changed circumstances the relief of specific performance could not be granted. It was observed that the order passed by the Munsif Court had caused great prejudice to the appellants and the respondents were not entitled to the relief of specific performance.

Aggrieved against the order of the High Court, the respondents filed SLP (C) No. 3786 of 1988 which was dismissed on 11.5.1988 with the following observations:

"Special Leave Petition is dismissed. The petitioner may take resort to some legal remedy as may be available to him."

Another fact which needs to be highlighted is that after the order passed by the High Court in CRP No. 3226 of 1987 the appellants filed I.A. No. 2100 of 1987 in O.S. No. 526 of 1987 in the subordinate court praying that the suit had become infructuous in view of the order passed by the High Court in CRP No. 3226 of 1987 and, therefore, the same be dismissed as such. Respondents filed Review Petition No. 2769 of 1988 in the High Court and the same was dismissed.

Respondents filed I.A. No. 1168 of 1989 in O.S. No. 526 of 1987 to treat the suit as a fresh suit. Appellants in their reply to I.A. No. 1168 of 1989 stated that the application was an abuse of the process of the Court and amounted to circumventing and flouting the orders of the High Court. It was also pleaded that the respondents had abandoned their right under the agreement and the relief of specific performance was barred by limitation. The Principal Sub Judge (Transferee Court) disposed of I.A. No. 2100 of 1987 filed by the appellants and I.A. No. 1168 of 1989 filed by the respondents by passing a common order and held that I.A. No. 1168 of 1989 was not maintainable in view of the order passed by the High Court in I.A. No. 1019 of 1987 in CRP No. 3226 of 1987 dated 6.11.1987. It was held that the suit for specific performance could be filed within a period of three years and even assuming that the suit in O.S. No. 526 of 1987 was considered as a separate suit and not a continuation of O.S. No. 187 of 1980, there was no fresh cause of action for the present suit and the suit was barred by limitation. Accordingly, the Principal Sub Judge allowed I.A. No. 2100 of 1987 filed by the appellants and dismissed I.A. No. 1168 of 1989 filed by the respondents.

Respondents, being aggrieved by the order passed by the Principal Sub Judge, filed two separate CRPs. numbering 2695 and 2696 of 1993 against the order passed by the subordinate court in I.A. No. 2100 of 1987 and I.A. No. 1168 of 1989. By the impugned order, the High Court has allowed the revision petition and remitted I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 to the Munsif Court for a fresh decision in the light of the observations and directions given in the impugned order. Registration of Suit No. 526 of 1987 in the

subordinate court was cancelled. It was observed that the re-registration of the suit shall have to abide by the order that shall be passed in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 by the District Munsif, Coimbatore. It was held:

"I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 will stand remitted back to the learned Trial Judge, i.e., District Munsif Coimbatore, for disposal in accordance with law after giving notice to the opposite parties in that application.....the registering of the suit as O.S. No. 526 of 1987 on the file of the Subordinate Court, Coimbatore, consequent to the return dated 28.11.1980 in O.S. No. 187 of 1980 on the file of District Munsif, Coimbatore, is cancelled and such re-registration will have to abide by the order that will be passed in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 on the file of the District Munsif, Coimbatore. The Subordinate Court, Coimbatore is directed to send the original plaint and the other connected records in O.S. No. 526 of 1987 immediately to the file of the District Munsif, Coimbatore."

The High Court gave the above direction on the following premises:

(i) that Order dated 6.11.1987 passed by the High Court in CRP No. 3226 of 1987 was incorrect inasmuch as the only order that could have been passed in CRP No. 3226 of 1987 was to remit I.A. No. 1019 of 1987 to the Munsif Court with a direction to issue notice to the opposite parties and dispose it of on merits;

(ii) that the question whether the plaintiffs are entitled to the relief of specific performance or not, is a matter to be decided in the suit namely O.S. No. 526 of 1987 and definitely not in that Civil Revision Petition. In that Civil Revision Petition, the above referred question did not arise at all and, therefore, anything said by the learned Single Judge in that order can only be 'obiter dicta'.

It was also held that the Court which fixed the time for performing an act by Order dated 28.4.1980 was competent to extend the time for the purpose of that act and it is only that Court and no other Court could do such an act. It was observed that the learned Judge drew his source of inspiration to pass the impugned order from the observation of the Supreme Court which reserved the liberty with the respondents to 'take resort to some legal remedy as may be available to them.'

We have heard counsel for the parties at length.

In our view, the High Court erred in reversing the order passed by the Principal Sub Judge. The impugned order cannot be sustained because that the earlier order dated 6.11.1987 passed by the High Court setting aside the order dated 28.4.1987 passed in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980 by

the Munsif Court had become final and binding between the parties with the dismissal of the Special Leave Petition by this Court on 11.5.1988. The said order could not be re-opened at the instance of the respondents by merely filing an application i.e. I.A. No. 1168 of 1989 and that too with a prayer to treat O.S. No. 526 of 1987 as a fresh suit.

The respondents because of their own conduct have amply demonstrated that the suit for specific performance would not be maintainable. This would be evident by the fact that the Munsif Court, while returning the plaint, had directed the respondents to re-present the plaint within a period of two months. The respondents did not comply with the said order. After seven long years, respondents chose to file I.A. No. 1019 of 1987 before the Munsif Court with a prayer that the plaint be returned to the plaintiff. The order passed by the Munsif Court on this application on 28.4.1987 granting a week's time to re-present the plaint was held to be without jurisdiction by the High Court. Respondents by their default and long lapse of time had allowed third party rights to set in respect of the suit properties rendering the passing of the decree of specific performance inequitable and unjust. The grant of specific relief is a discretionary relief and is not as a matter of right. The High Court in its previous order had held that the prices had gone up a few times over the original price. Third party rights had also come into existence. Passing of a decree for specific performance would cause great prejudice to the appellants and that the respondents were not entitled to the relief for specific performance. This had become final between the parties. Review Petition No. 276 of 1988 filed by the respondents seeking review of the order dated 6.11.1987 was dismissed on 29.4.1998. The present attempt of the respondents was an attempt in the nature of a second review of the order dated 6.11.1987 which could not be permitted. By the impugned order, the Single Judge has virtually reviewed the earlier order passed by the High Court which it could not do. The learned Single Judge has proceeded in the matter as if it was hearing an appeal against the earlier order passed by the Single Judge in CRP No. 3226 of 1987 or as if it was sitting in review jurisdiction.

Further the High Court by the impugned order remitted the case back to the District Munsif, Coimbatore which did not have the jurisdiction to pass any order in the suit because of lack of pecuniary jurisdiction. The plaint had already been returned by the District Munsif to the petitioner for re-presentation to a court of competent jurisdiction which the respondent did after paying the requisite court fee and the subordinate court having territorial and pecuniary jurisdiction had already assigned a new number to the suit i.e. O.S. No. 526 of 1987. The learned Single Judge has gone beyond the relief claimed in the IAs in ordering that the registration of the suit as O.S. No. 526 of 1987 on the file of the

Subordinate Court, Coimbatore is cancelled and such a re-registration will have to abide by the order that may be passed by the District Munsif in I.A. No. 1019 of 1987 in O.S. No. 187 of 1980. The learned Judge who passed the impugned order was not sitting in appeal over the earlier order passed by the High Court. He could not set aside the earlier order. Rather he was bound by the same as sitting in the co-ordinate jurisdiction since the earlier order had already attained finality.

The impugned order, under the circumstances, cannot be sustained and the same is set aside and the order passed by the Munsif Court is restored. Accordingly, the appeals are allowed. There shall be no order as to costs.

JUDIS