

KERALA HIGH COURT

Parameswaran Pillai Kumara Pillai

Vs

Chinna Lakshmi

(P.Subramonian Poti,J.)

19.02.1970

JUDGEMENT

P.Subramonian Poti,J.

(1.) THE suit out of which the Second Appeal arises is one for redemption of Ex.P4.mortgage dated 5 -9 -1123 executed by the plaintiff in favour of the husband of the first defendant.Plaint item No.1 is 35 cents of land comprised in Sy.No.1801 of Madathuvilakam Village and item No.2 is 23 cents out of the above said 35 cents.What is sought to be redeemed is plaint item No.2 though the original mortgage was in respect of plaint item No.1.the entire 35 cents.The husband of the first defendant who was the mortgagee under Ex.P4 assigned his mortgage right over 12 cents out of item No.1 in favour of one Parameswaran Pillai who later took a sale deed from the plaintiff for the abovesaid 12 cents under Ex.P2 dated 14 -7 -1951.The mortgage thus became split up and the plaintiff on his own title and as power of attorney holder of his son therefore claims redemption of the remaining 23 cents which is item No.2 in the plaint.The first defendant's husband is dead and the first defendant is his heir.The second defendant is impleaded as a person in possession under the first defendant.The claim of the plaintiff,entitling him to redeem,is admitted by the first defendant in her written statement.According to her she is in possession of item No.2 except a small portion of about 3 cents,which,according to her,was leased out to the second defendant by her husband.She has also set up a claim for value of improvements effected in the suit property.The second defendant has filed a written statement disputing the title of the plaintiff to the plaint item.His case of independent title to the plaint item is traced as follows:Plaint item 1.35 cents in extent was obtained by 3 persons in the partition of the family to which the property belonged.That property was.at that time,subject to a hypothecation in favour of one,T.Madhavan Pillai who filed suit on the bond as O.S.1651 of 1106 of the Trivandrum Munsiff's Court and obtained a decree for the hypothecation amount.In execution of the decree so obtained by him he brought this 35 cents to sale and in the court auction he purchased it.The sale was on 25 -2 -1111.Pursuant to the court sale the property was delivered over to him through court on 20 -12 -1111 and he was in possession and enjoyment thereafter.While so,in the year 1117 he hypothecated the property and in 118 he executed a

mortgage of the property in favour of one Krishnan Vydiyan. In 1119 under Ex.P6 sale deed he sold the property to one Rozario, who in his turn, sold it to the plaintiff and his son in the year 1122 under Ex.P1. On the strength of Ex.P1 sale deed they executed a mortgage Ex.P4, in 1123, after taking a release from Krishnan Vydiyan of the earlier mortgage of 118. It is this mortgage, Ext.P4, that is sought to be redeemed in this suit. But in view of the sale of 12 cents, of the mortgage property thereafter it is only the remaining 23 cents, which is plaint item 2, that is sought to be so redeemed.

(2.) THE 3rd defendant in the suit O.S.1651 of 1108, one Krishna Pillai, filed an application to set aside the ex parte decree against him on 17 -4 -1123. On this application he obtained orders restoring the suit to file and thereafter the suit itself was posted and for default of the plaintiff it was dismissed on 14 -10 -1949. The 3rd defendant, thereafter, applied for re delivery of the property, possibly on the strength of the dismissal of the Suit O.S.1651 of 1106 and assuming that thereby the sale pursuant to the execution of the decree also was set aside. The court ordered redelivery and when the Amin went to the spot, Parameswaran Pillai, who had obtained assignment of the mortgage and subsequent sale in respect of 12 cents, obstructed the Amin in taking possession. Due to his resistance the 3rd defendant was satisfied with the delivery of the rest of the property and 23 cents was delivered over to him under Ex.D1 delivery report. With regard to 12 cents, which was subject to the resistance of Parameswaran Pillai, an understanding seems to have been reached later between the 3rd defendant in O.S.1651 of 1106 and the said Parameswaran Pillai as a result of which a consent deed is seen to have been executed in favour of Parameswaran Pillai. Based on the delivery obtained under Ex.D1, Krishna Pillai executed Ex.D2 mortgage in respect of item No.2, 23 cents, on 7 -1 -1954 in favour of second defendant. He later executed Ex.D3 purakkadam on 6 -6 -1957 in favour of second defendant and soon thereafter Ex.D4, a deed of sale of item No.2, was executed on 29 -8 -1960. The claim of the second defendant in the suit is based upon Ex.D2 to D4. The case of the 2nd defendant was that, by reason of the dismissal of the suit O.S.1651 of 1106 after it was restored to file pursuant to the application under O.9 R.13 of the Code of Civil Procedure, the sale which was held in execution of the decree automatically stood set aside, with the result that, the plaintiff had no title to the suit property and he had no possession also because of the redelivery effected in O.S.1651 of 1906. The question that had to be, therefore, considered was how far the decree dismissing the suit O.S.1651 of 1106 on 14 -10 -1949 would affect the court sale held in 1111 pursuant to the execution of the decree in O.S.1651 of 1106 and how far the redelivery proceedings would affect the right of the plaintiff to redeem the mortgage executed by him on the strength of his title. It has to be noticed here that the plaintiff, along with his son, took the sale deed from Rozario in the year 1122. This Rozario himself is seen to have taken the sale from Madhavan Pillai nearly eight years after the courtauction purchase and delivery. The plaintiff claims to be a bona fide purchaser for value of the property sold in court auction, though, at the court auction, the purchase was the decree holder himself. The question for consideration is whether the subsequent alteration, reversal or modification of a decree would affect an earlier court sale held in execution of a valid decree by a competent court at which auction the decree holder himself purchases and

later assigns it to a bona fide purchaser for fair value. In the circumstances of this case, where there were no proceedings challenging the decree pending at the time of the sale in favour of Rozario in 1119 M.E. and the title of the court auction purchaser was in no way, apparently, in jeopardy at that time, the sale taken by Rozario and later by the plaintiff and his son cannot but be bona fide and there is nothing to indicate or even suggest that such sale was not supported by consideration. Therefore it can be safely assumed that the plaintiff and his son are bona fide purchasers for value from the court auction purchaser of the properties sold in court auction in 1111.

(3.) WHEN a property is purchased by the decree holder himself in court auction and the decree is subsequently modified or reversed, the sale in favour of the decree holder is liable to be set aside. This rule does not hold good in the case of a stranger auction purchaser who purchases bona fide for fair value. These propositions have become well settled by now. The question in this case is whether the rule that a stranger auction purchaser acting bona fide will not be affected by subsequent reversal or variation of the decree in execution of which property was sold will hold good also in the case of a vendee from the decree holder auction purchaser who takes the sale bona fide and for value. Authorities on this question are not too many. ;