



A.S.No.439 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.439 of 2014
and
C.M.P.No.17500 of 2021

Judgment reserved on 05.03.2024	Judgment pronounced on 04.06.2024
--	--

R.Ramasamy

... Appellant

Vs.

1. K.Marappan

2. R.Balakrishnan

... Respondents

Prayer:

This First Appeal is filed under Section 96 and Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 12.06.2014 in O.S.No.36 of 2012 on the file of the Court of the Principal District Judge at Tiruppur.

For Appellant : Mr.T.Saikrishnan
For Respondents : Mr.M.S.Krishnan, Senior Counsel
for Mr.K.S.Karthik Raja, for R1



A.S.No.439 of 2014

WEB COPY

JUDGMENT

The defeated second defendant is the appellant herein. The first respondent herein is the plaintiff and the second respondent herein is the first defendant in the suit in O.S.No.36 of 2012.

2. The brief facts leading to filing of the above AS are hereunder:

The suit filed by the first respondent / plaintiff in O.S.No.36 of 2012 is for specific performance of the suit sale agreement dated 29.03.2010 entered into between the plaintiff K.Marappan and R.Balakrishnan / first defendant, who is the brother of the second defendant. The said agreement was entered into between the parties on the strength of the registered Power of Attorney executed by the second defendant - R.Ramasamy in favour of first defendant - R.Balakrishnan on 25.03.2010 - Ex.A1. The sale consideration was fixed at Rs.12,00,000/-. As per the terms of settlement, Rs.10,00,000/- is said to have been paid on the date of agreement and the balance of Rs.2,00,000/- was agreed to be paid within a period of 11 months from the date of agreement. After exchange of notices, the suit was filed. The first defendant is the Power



A.S.No.439 of 2014

of Attorney of the second defendant / landlord and he remained *ex parte* without filing written statement.

3. Mr.M.S.Krishnan, learned Senior counsel appearing on behalf of the plaintiff / 1st respondent herein would contend that the plaintiff before the trial Court was ready and willing to perform his part of contract and was ready to deposit the balance amount of Rs.2,00,000/- within the stipulated time. However, the first defendant has not come forward to execute the sale deed.

4. Per contra, in the written statement, the specific case of the landlord / second defendant / appellant is that under Ex.A1 - registered Power of Attorney dated 25.03.2010, there is a specific clause that on the said date, the entire suit property was mortgaged to Tiruppur Land Development Bank and the said mortgage is by deposit of title deed and the same was subsisting. The Power Agent undertook to discharge the entire principal amount to the Bank and since the condition was not complied with, Ex.A2-Agreement is not enforceable in law.



A.S.No.439 of 2014

WEB COPY

5. Mr.T.Saikrishnan, learned Senior counsel appearing on behalf of the 2nd defendant / appellant would contend that the defeated second defendant is the owner of the suit schedule property, who had preferred this appeal against the order of grant of specific relief in respect of the suit property. The 1st respondent herein, who was the plaintiff before the trial Court, has filed the suit for specific performance of the suit sale agreement dated 29.03.2010 - Ex.A2, entered between the 1st defendant and the plaintiff. The 1st defendant is the general Power of Attorney of the 2nd defendant. In the general Power of Attorney deed, there is a specific recital that in the event of selling the property, the amount due to the Cooperative Bank viz., Tiruppur Land Development Bank has to be settled and only thereafter, the property has to be sold and hence, he has resisted the claim. After trial, the suit was decreed. Hence, the appeal.

6. In the written statement, the 2nd defendant / appellant has specifically pleaded that there is a legal dispute between his wife and children and in order to protect his interest, he had entered into a general Power of



A.S.No.439 of 2014

Attorney with first defendant / brother and hence, necessary clause has been incorporated in Ex.A1 - Power of Attorney and secondly, the first defendant and plaintiff are business partners and hence, the agreement of sale itself is fraudulent.

7. Mr.M.S.Krishnan, learned Senior counsel appearing on behalf of plaintiff /first respondent would state that the defendants 1 and 2 are the brothers. The second defendant is the owner of the property, who had executed Ex.A1 - Power of Attorney in favour of his brother, first defendant and thereafter, on his representation, the plaintiff entered into an agreement of sale and as per the negotiation, sale consideration was fixed at Rs.12 Lakhs, an advance amount of Rs.10 Lakhs was received by the first defendant and the balance amount of Rs.2 Lakhs to be paid, after issuing legal notice, the suit has been filed in time and the plaintiff had demonstrated his readiness and willingness on his part and after trial, the suit was decreed and made submissions in support of the judgment of the trial Court.



A.S.No.439 of 2014

8. It is seen from the records that in the trial Court, plaintiff examined himself as PW1 and Attestor of the agreement was examined as PW2. The Sub-Registrar, who had registered the suit sale agreement - Ex.A2 dated 29.03.2010 was examined as PW3. Ex.A1 to Ex.A6 were marked. Bank Passbook of PW1 was marked as Ex.A6. On the side of the defendants, second defendant was examined as DW1 and his son was examined as DW2. Ex.B1 to Ex.B32 were marked. After trial, learned Principal District Judge, Tiruppur, based upon oral and documentary evidence, came to the conclusion that the suit sale agreement namely, Ex.A2 is true and genuine and the plaintiff is ready and willing to perform his part of the contract and Ex.A1 - Power of Attorney is a valid document and accordingly, granted the main relief of specific performance of the suit sale agreement and negatived the alternate relief and decreed the suit and hence, the appeal.

9. After hearing the rival submissions, the following points arise in this appeal for determination:

- (i) Whether Ex.A1 Power of Attorney dated 25.03.2010 was obtained by the first defendant from the second defendant



A.S.No.439 of 2014

WEB COPY

(owner) is true and valid;

(ii) Whether the alleged sale agreement namely, Ex.A2 dated 29.03.2010 is true and valid binding upon the second defendant (owner / appellant);

(iii) Whether the plaintiff is ready and willing to perform his part of the contract;

(iv) Whether the plaintiff is entitled for a decree of specific performance of suit sale agreement;

(v) Whether the order passed by the trial Court is sustainable in law?

10. Heard both sides. Perused the records.

11. The records reveal that Ex.A1 ad Ex.A2 are the registered documents. PW3 is the Sub-Registrar, who had registered Ex.A2 - Sale Agreement. The second defendant / appellant is the owner of the schedule mentioned property. It is an agricultural land. The first defendant is the brother of the second defendant [land owner (appellant)]. R1 remained *ex*



A.S.No.439 of 2014

parte before the trial Court. The appellant / second defendant both in his pleadings as well as evidence would depose that Ex.A1 - Power of Attorney was obtained by coercion in view of the relationship and while he was in a drunken state.

12. My attention is drawn to Ex.A3(legal notice), Ex.B24, Ex.B29 and Ex.B30 . Ex.B24 and Ex.B29 are the complaints given by the family members of the second defendant - land owner (appellant) to the police regarding the very same transaction and Ex.B30 is an FIR registered against the complaint given by the family members wherein they never raised the plea that while the second defendant/ appellant was in drunken state, his brother first defendant had obtained Ex.A1 - Power of Attorney and hence, taking into consideration the admission of DW1 and DW2 in this regard coupled with the above stated B series documents, the trial Court has rightly came to the conclusion that such a plea was raised only as an afterthought at the time of filing the written statement appears to be just and fair. Merely because, the appellant and the first defendant are the brothers, their relationship alone will not be a criteria to infer that he was subjected to



A.S.No.439 of 2014

fiduciary capacity.

WEB COPY

13. It remains to be stated that under Section 17 of Indian Evidence Act, 1872, when there is an admission made by a party in a document available on record, such a party is totally bound by the said document and no contra evidence can be let in against such admission.

14. Furthermore, when a document is registered, it is a solemn act and it is the duty cast upon the Court to proceed with the officers attached to the document who are legally involved in registration of the document. Besides this, the Sub-Registrar, who had registered Ex.A2 - suit sale agreement was examined as PW3 on the side of plaintiff to support the case of the plaintiff and therefore, the burden of proof is on the shoulders of the defendants to disprove the fact. Though the appellant / second defendant would contend that Ex.A1 was obtained by the first defendant by influencing him with the relationship while he was under the influence of Alcohol as stated supra, no such allegation was made in Ex.B24 - police complaint, Ex.B29 - another police complaint and Ex.B30 - FIR in Crime No.1934 of 2011. Yet another



A.S.No.439 of 2014

point is, Ex.B6 is the cancellation of Power of Attorney of Ex.A1 and even in Ex.B6, no such plea has been recited as a reason for cancellation of Power of Attorney assumes significance. It is trite in law that mere existence of relationship between the parties is not sufficient to support a plea of undue influence.

15. In the instant case, the relationship of principal and agent in the case of power deeds will only arise after the execution of Power of Attorney in favour of agent by the principal. The first defendant is alleged to be in dominant position, who is none other than his own brother and for the reasons best known to him, he remained *ex parte* and hence, I find that the execution of Power of Attorney by the appellant / second defendant in favour of first defendant is proved in the manner known to law. In the absence of any contra evidence being let in by the appellant / second defendant, the finding rendered by the trial Court to this effect is hereby confirmed. Accordingly, Ex.A1 is held to be true and valid binding between the parties.



A.S.No.439 of 2014

16. The first respondent / plaintiff has come forward with the specific plea that the first defendant in the suit had executed Ex.A2 - suit sale agreement. The first defendant remained *ex parte*. The second defendant has no direct knowledge about coming into the existence of Ex.A2 - sale agreement entered between the first defendant and the plaintiff. The other person, who is connected with Ex.A2 - Sale Agreement is PW2, namely, the attester of Ex.A2 - sale agreement. He had clearly narrated the coming into the existence of Ex.A2, preparation of Ex.A2, reading over the contents of documents between the plaintiff and the first defendant and passing of the consideration and also deposed about the receipt of his commission for the sale. There is nothing in the cross examination worthwhile to discriminate his evidence assumes significance.

17. PW2 - Arunachalam in his cross examination had categorically stated that நிலவள வங்கியில் கடன் வாங்கியிருப்பதாகவும் மற்ற இடங்களில் கடன் வாங்கியிருப்பதாகவும் இந்த சொத்தை விற்க வேண்டும் என்பதற்காக பவர் பத்திரம் எழுதிக் கொடுத்தார். கடன்கள் பற்றி பொது அதிகாரப்பத்திரத்தில் குறிப்பிடப்பட்டுள்ளதா



A.S.No.439 of 2014

என்றால் நிலவள வங்கி கடன் பற்றி குறிப்பிடப்பட்டுள்ளது. பவர் பத்திரம் பதிவு செய்ய போகுமபோது ராமசாமி மது அருந்தியிருந்தார் என்றால் இல்லை. அவர் மது அருந்தியிருந்தார் என்றும் அதனால் சார்பதிவாளர் இந்த பத்திரத்தை பதிவு செய்ய முடியாது என்று சொன்னார் என்றும் சொன்னால் சரியல்ல. நான் பவர் பத்திரத்தை பிறகு எப்போது பார்த்தேன் என்றால் கிரைய ஒப்பந்தம் போடப்படும்போது பார்த்தேன். 28.03.2010 அன்று பார்த்தேன். ராமசாமியும் பாலகிருஷ்ணனும் இடத்தை விற்க வேண்டும் என்று சொன்னார்கள். எனவே இது பற்றி நான்தான் பாரப்பனிடம் சொன்னேன். 28.03.2010 அன்று சொன்னேன். அவர் என்னிடம் பேசியபோது நான் இந்த தகவலைச் சொன்னேன். இடத்தை பார்க்கலாம் என்று அவர் சொன்னார். நான் அவரை கூட்டிச் சென்றேன். திருப்பூர் வந்து அவர் என்னைக் கூப்பிட்டார். நான் வந்து அவரை கூட்டிச் சென்றேன். நான் பாலகிருஷ்ணனிடம் இதுபோன்று இடத்தைப் பார்க்க ஒருவர் வருகிறார் என்று சொன்னேன். அந்த இடத்திற்கு மூவரும் ஒரே சமயத்தில் சென்றோம். இடத்தைப் பார்த்துவிட்டு அன்றைய தினமே பாரப்பனுக்கு இடம் பிடித்துப்போய்விட்டது and thus, I find that coming into the existence of Ex.A2 - suit sale agreement and the evidence of PW1



A.S.No.439 of 2014

and PW2 appears to be clear and cogent. The oral evidence of PW2 with regard to the site inspection along with the first defendant and the plaintiff's persons present there when the site negotiation took place, preparation of Ex.A2, perusal of Ex.A2, deposit of the original document with Cooperative Bank and subsequent registration are clear and cogent.

18. Accordingly, this Court finds that the evidence of PW2 passes the test of credibility and reliance. PW3 is the Sub-Registrar, who had registered Ex.A1. He had categorically deposed affirming the version of the plaintiff and hence, in the presiding paragraph, this Court has held that coming into the existence of Ex.A1 is legally proved in the manner known to law so also Ex.A2 and hence, I have no hesitation in coming to the conclusion that Ex.A2 suit sale agreement is true and genuine which was entered between the plaintiff and the first defendant (brother of D2 / appellant / land owner) and hence, the allegation raised by the appellant / plaintiff does not merit consideration.



A.S.No.439 of 2014

19. Though several points have been raised regarding the alleged relationship between the parties, the evidence of PW1 is clear and cogent.

Further, regarding the sale transaction between the plaintiff and first defendant, in the cross examination of PW1, he had categorically stated that after retirement at the age of 58, 11 months leave salary was credited and including the GPF amount, totally Rs.12 Lakhs was received, paid the income tax and also paid the advance amount of Rs.10 Lakhs from his account.

20. Furthermore, the plaintiff came to know about the sale of the suit property through Arunachalam (PW2) and on spot inspection, he also found that the power loom is in running condition and with regard to specific question as to why the period of 11 months is fixed for the purpose of completion of the suit sale transaction, he gave a clear and convincing reason that in the inter concerned period, the mortgage has to be discharged and hence, I find that the payment of consideration under Ex.A1 - sale agreement, payment of Rs.10 Lakhs, fixation of the time schedule of 11 months has been clearly spoken to by PW1 in the cross examination and hence, I find that Ex.A2 is true and valid binding between the parties to the contract since on



A.S.No.439 of 2014

the date of execution of Ex.A2 - Sale Agreement, Ex.A1 - Power of Attorney given by the second defendant to his brother first defendant is subsisting as a principal of the agent. The second defendant is bound by Ex.A2. The Act of the agent is that of a Master. Accordingly, the second defendant is bound to execution of sale deed as per the terms of Ex.A2.

21. After perusing the evidence of PW1 and the answer elucidated in the cross examination of PW1 coupled with Ex.A6 Bank Passbook, it appears that the trial Court has rendered finding that the plaintiff is ready and willing to perform his part of the contract. Thus, this Court finds that PW1 has admitted that at the time of the sale agreement, he has not seen the original document of title of the 2nd defendant. But PW1 has stated that since the said document was in the bank, he has not seen the document. In Ex.A1, Power of Attorney, there is a recital that the original sale deed has been handed over in Land Development Bank, Tiruppur in respect of a mortgage. PW1 has stated that since there is such a recital, he has not seen the original document of title and has seen the copy of the said document. It is true that PW1 has stated that he purchased the stamp paper for writing this agreement



A.S.No.439 of 2014

on 29.03.2010 and the stamp paper contains the date as 26.03.2010. But simply because the document writer has written an earlier date as the date on which the stamp paper was sold, we cannot say that the document itself is not a genuine one. So it is held that the 1st defendant, as the power agent of the 2nd defendant, who is the owner of the property, has executed Ex.A2 agreement to sell in favour of the plaintiff. The sale price fixed is Rs.12,00,000/-. As per the document, Rs.10,00,000/- has been paid as advance. From the evidence of PW1, it is seen that he is always ready and willing to purchase the property by paying the balance consideration and it is only due to the fault on the side of the defendants, the sale deed was not executed. It may be true that the 2nd defendant and his family members have filed complaints as if the Power of Attorney itself was obtained by misrepresentation and cheating the 2nd defendant, it could be seen that the complaints to the police were made by them only after the plaintiff has sent legal notice demanding execution of sale deed as per the agreement. So, their case cannot be taken into consideration.

22. Hence, the findings rendered by the trial Court on all these three points are just and fair as the same does not suffer from any irregularity or



A.S.No.439 of 2014

illegality warranting interference in the appellate stage.

WEB COPY

23. Accordingly, I find that no merits in this case and the Appeal Suit is dismissed and the judgment and decree dated 12.06.2014 passed in O.S.No.36 of 2012 on the file of the Court of the Principal District Judge at Tiruppur are hereby confirmed.

24. C.M.P.No.17500 of 2001 has been filed to permit the petitioner to file additional documents under Order XLI Rule 27 of CPC. The proposed document is a paper publication effected in one of the daily. After perusing the said document, I find that the same does not advance the case of the appellant / essential document to determine the *lis* between the parties and hence, CMP No.17500 of 2021 is also dismissed. There shall be no order as to costs.

.06.2024

Index : Yes / No

Neutral Citation : Yes/No

Speaking / Non-speaking order

mk



WEB COPY



A.S.No.439 of 2014

RMT.TEEKAA RAMAN, J.

mk

To

1. The Principal District Judge,
Tiruppur.
2. The Section Officer,
VR Section, High Court,
Madras.

A.S.No.439 of 2014

.06.2024