

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal Nos.1173 and 1174 of 2014
& M.P.Nos.1 of 2014

Shagul Hammed

... Appellant in both Second Appeals/3rd Defendant

-Versus-

1.Khader Beebi ...I Respondent/Plaintiff in S.A.No.1174/2014
1.Mohammed Hussain ...I Respondent/Plaintiff in S.A.No.1173/14
2.Saraswathy Kittu
3.Thiyagarajan ...2 & 3 Respondents in both Second Appeals/
Defendants 2 and 3

Prayer in S.A.No.1173 of 2014:- This second appeal is filed against the judgment and decree dated 28.03.2013 passed in A.S.No.107 of 2010 by the learned II Additional Subordinate Judge, Villupuram, confirming the judgement and decree dated 30.03.2010 passed in O.S.No.8 of 2008 by the learned II Additional District Munsif, Villupuram.

Prayer in S.A.No.1174 of 2014:- This second appeal is filed against the judgment and decree dated 28.03.2013 passed in A.S.No.108 of 2010 by the learned II Additional Subordinate Judge, Villupuram, confirming the judgement and decree dated 30.03.2010 passed in O.S.No.151 of 2008 by the learned II Additional District Munsif, Villupuram.

For Appellant : Ms.S.Kala for appellant in both
the second appeals

JUDGMENT

The 1st respondent in S.A.No.1173 of 2014 is the plaintiff in O.S.No.8 of 2008 on the file of the learned Additional District Munsif at Villupuram. The appellant herein is the 3rd defendant in the suit. The respondents 2 and 3 herein are the defendants 1 and 2 in the suit. The 1st respondent had filed the said suit claiming compensation. The trial court, by decree and judgement dated 30.03.2010 dismissed the suit as against the defendants 1 and 2 and decreed the suit as against the 3rd defendant directing him to pay a

sum of Rs.63,659/- to the plaintiff as compensation. As against the same, the appellant herein filed an appeal in A.S.No.107 of 2010 before the learned II Additional Subordinate Judge at Villupuram.

2. Similarly, the 1st respondent in S.A.No.1174 of 2014 filed a suit in O.S.No.151 of 2008 before the learned Additional District Munsif at Villupuram. The appellant herein is the 3rd defendant in the suit and the respondents 2 and 3 are the defendants 1 and 2 in the suit. The 1st respondent had filed the said suit for compensation. The learned Additional District Munsif, by decree and judgement dated 30.03.2010, dismissed the suit as against the defendants 1 and 2 and decreed the suit against the 3rd defendant directing him to pay a sum of Rs.98,441/-. Challenging the same, the appellant herein filed an appeal in A.S.No.108 of 2010 before the learned II Additional Subordinate Judge at Villupuram.

3. The learned II Additional Subordinate Judge, heard both the appeal suits viz., A.S.Nos.107 and 108 of 2010, jointly and by a common judgement dated 28.03.2013 allowed both the appeals in part thereby confirming the grant of compensation but, directing the defendants 2 and 3 to pay the said compensation to the plaintiffs jointly and severally. Challenging the decree and the common judgement in A.S.No.107 of 2010, the 3rd defendant has come up with S.A.No.1173 of 2014 and challenging the decree and the common judgement in A.S.No.108 of 2010, the 3rd defendant has come up with S.A.No.1174 of 2014. That is how, both the appeals are now before me for consideration.

4. These two second appeals have come up today for admission. I have heard the learned counsel for the appellant in both the appeals and also perused the records carefully.

5. The case of the plaintiffs in both the suits is that they purchased the respective suit property by means of registered sale deeds executed by the appellant herein in the capacity of the Power of Attorney of the 3rd respondent - Mr.Thiyagarajan. Admittedly, the 3rd respondent herein had executed a general power of attorney in favour of the appellant herein in respect of the suit properties claiming himself to be absolute owner thereby empowering the appellant to develop the properties. The appellant herein, acting as the power agent, developed the properties into a lay out and sold the plots to various persons. The plaintiffs in the suits had purchased plots from the appellant herein, who had acted on behalf of the 3rd respondent herein. It is the further case of the plaintiffs that the appellant and the 3rd defendant made representation to them that the 3rd respondent had title for the suit properties and that the appellant herein is the power agent of the 3rd respondent and thus, the appellant had power to deal with the suit properties. Believing these words and acting on such representations, according to the

plaintiffs, they have purchased the suit properties and they were also put in possession of the properties. Later on, the 1st defendant - Mrs.Saraswathy, who is the sister of the 3rd respondent herein suddenly put up fence on all four sides of the suit properties and took possession. When it was questioned, it came to light that Mr.Thiyagarajan, the 1st defendant in the suits, claiming absolute title in the suit properties. The inquiry further revealed that earlier Mrs.Saraswathy filed a suit in O.S.No.54 of 1986 before the Subordinate Judge at Villupuram, for declaration of title and for other reliefs against the 3rd respondent herein. The said suit was decreed thereby declaring that the 2nd respondent / 1st defendant Mrs.Saraswathy alone as the absolute owner of the suit properties. It is the case of the plaintiffs that by suppressing the said legal proceedings and by suppressing the decree passed by the Sub Court, Villupuram, in favour of Mrs.Saraswathy declaring her as the absolute owner, the plots were sold to the plaintiffs. They also came to know that the said decree and judgement in O.S.No.54 of 1986 was confirmed later by this court also. In these circumstances, now, the plaintiffs have lost their properties. With these allegations, they filed the suits for compensation.

6. The contention of the 3rd respondent before the trial court was that it is true that he had executed a general power of attorney in favour of the appellant herein, but, subsequently, he had cancelled the said general power of attorney, since the appellant herein acted against his interest. Thus, as on the date when the sales were made in favour of the plaintiffs by the appellant, he did not have power to sell the suit properties to the plaintiffs. Therefore, according to the 3rd respondent, he is not liable to pay any amount as compensation. The case of the appellant in his written statement filed before the trial court was that he was not aware of the earlier civil court proceedings including the decree in O.S.No.54 of 1986. According to him, he himself was made to believe that the 3rd respondent - Mr.Thiyagarajan had absolute title and accordingly the 3rd respondent appointed him as the power agent to deal with the suit properties. Based on the same only, he sold away the plots to the plaintiffs in both the suits. It is his further case that he was not aware of the cancellation of the power given to him by Mr.Thiyagarajan. It is his further case that he was not put on notice of the cancellation of the power. Had the same been brought to his notice, according to him, he would not have sold away the plots to the plaintiffs. It is his further case that the sale consideration which he received from the plaintiffs were all paid by him to Mr.Thiyagarajan, the 3rd respondent viz., his principal. Thus, he did not appropriate any portion of the sale consideration and therefore, he is not at all liable to pay compensation.

7. Based on the above pleadings, the trial court framed appropriate issues. Both the parties were called upon to let in

evidence. In both the suits, the respective plaintiff was examined as P.W.1 and one Mrs.Jayalakshmi was examined as P.W.2 and Ex.A1 to Ex.A.7 were exhibited. On the side of the defendants, the 2nd defendant was examined as D.W.1 and 3rd defendant was examined as D.W.2 in both the suits and two documents were exhibited. In addition to the above, two witness documents were marked as Exs.X-1 and X-2. Having considered the above, the trial court found that the appellant was aware of the cancellation of the power and thus, as on the date when he executed the sale deed in favour of the plaintiffs, he had no power. The trial court further held that knowing fully well that he had lost his power to deal with the plots, the appellant has sold away the plots to the plaintiffs and he has appropriated the sale consideration. The trial court further found that the appellant had not proved that he paid the sale consideration to the 3rd respondent - Mr.Thiyagarajan. Thus, according to the trial court, the appellant is liable to repay the sale consideration, which he received from the plaintiffs. Accordingly, the trial court decreed the suits in part as against the appellant herein alone directing him to pay the sale consideration to the respective plaintiff.

8. The first appellate court in the common judgement concurred with the findings of the trial court that as on the date when the sale deeds were executed by the appellant in favour of the respective plaintiff he had no right as the power had already been cancelled. But, from the evidences available on record, the first appellate court found that the appellant and the 3rd respondent made representations to the plaintiffs that the 3rd respondent had absolute title and that the appellant was the power agent of the 3rd respondent to deal with the properties. The first appellate court on considering the said oral evidence and the other evidences available on record found that both the appellant and the 3rd respondent are jointly and severally liable to pay the compensation. Accordingly, the first appellate court modified the decree and judgement of the trial court respectively. That is how, the appellant is before this court with these second appeals.

9. In these appeals, at the outset, I should say that there is no substantial question of law at all involved warranting admission of of the same for the following reasons.

10. The courts below have come to the concurrent finding that as on the date of execution of the sale deed in favour of the plaintiffs, the appellant had no power to sell the properties because the power had already been cancelled by the 3rd respondent. According to the appellant, he was not put on notice of such cancellation. But, from the evidences, the courts below have held that the appellant was aware of the cancellation of the power and still, he made false representations to the plaintiffs that he had power and accordingly sold the plots to them. This is essentially a question of fact.

11. Next, the first appellate court, after carefully considering the oral evidence, has found that not only the appellant, but, the 3rd respondent also made false representations to the plaintiffs that he had absolute title and that the appellant was his power agent. It was only on such representations, the plaintiffs were lured to purchase the plots. This conclusion is also based on facts and there is no law involved at all in this issue.

12. It is not in dispute that in O.S.No.54 of 1986, the learned Subordinate Judge, Villupuram had declared that the 1st defendant - Mrs.Saraswathy is the absolute owner of the suit properties. The said decree and judgement was confirmed by the appellate courts also. That suit was filed against the 3rd respondent - Mr.Thiyagarajan. The 2nd defendant is, after all, the brother of Mrs.Saraswathy, the 1st defendant in the suits. There is no denial of the above legal proceedings and the decree passed in favour of Mrs.Saraswathy declaring her to be the absolute owner of the properties. It is not at all the case of the appellant and the 3rd respondent that they informed the plaintiffs about the above said decree of the civil court in favour of Mrs.Saraswathy. Thus, it is the admitted case of the appellant and the 3rd respondent that the plaintiffs were not apprised of the decree of the civil court. But, by making false representations, the appellant and the 3rd respondent made the plaintiffs to part away with money and accordingly, the appellant had executed the sale deeds in favour of the plaintiffs. Thus, the conduct of the appellant and the 3rd respondent is so deliberate. Therefore, in my considered opinion, the plaintiffs have suffered huge loss on account of the above litigations, mental agony, etc. But, the trial court granted compensation only to the extent of sale consideration. There was, however, no appeal filed by the respective plaintiff challenging the quantum. Therefore, I am not in a position to enhance the quantum of compensation though in my considered opinion, the plaintiffs are entitled more amount as compensation. The first appellate court has directed the appellant and the 3rd respondent to repay the entire sale consideration. In this, I do not find any infirmity. Further, in this finding, there is no question of law also involved.

13. From the foregoing discussions, it is crystal clear that all the grounds raised in these second appeals are only on question of facts and there is no question of law, much less, substantial question of law warranting admission of the second appeals. Therefore, I do not find any merit at all in the second appeals and the same deserve only to be dismissed.

14. In the result, both the second appeals are dismissed and the decrees and judgments of the first appellate court are hereby confirmed. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

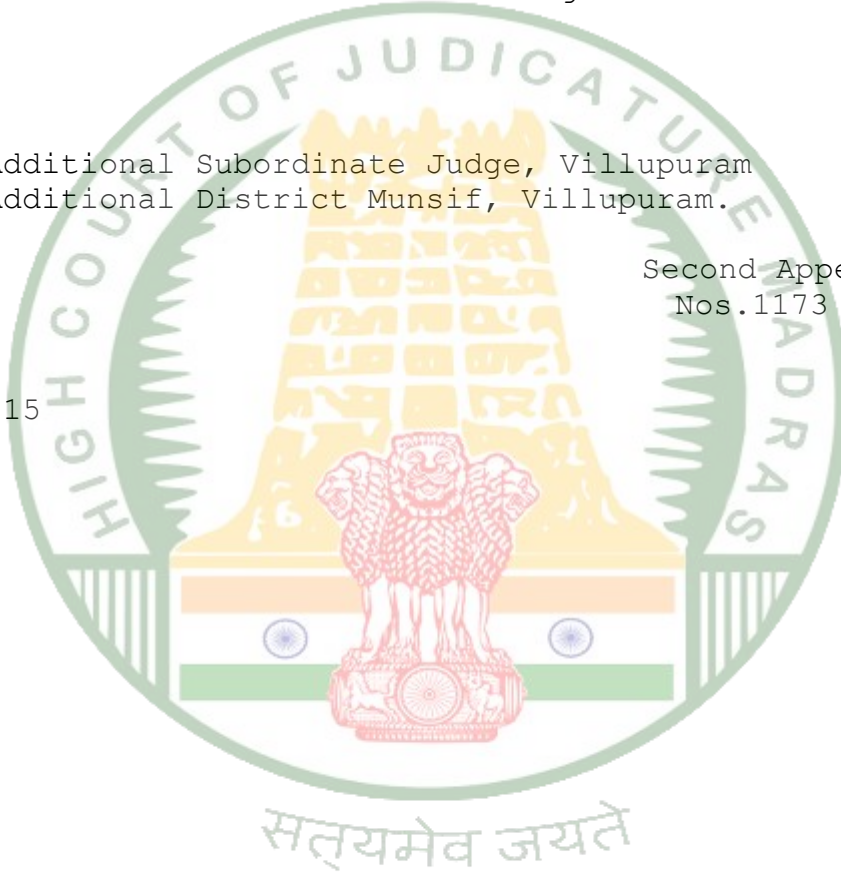
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To

- 1.The II Additional Subordinate Judge, Villupuram
- 2.The II Additional District Munsif, Villupuram.

Second Appeal
Nos.1173 and 1174 of 2014

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