

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.354 of 2013

Mrs.Bhoologam

... Appellant/Plaintiff

Vs.

Mrs.M.Maragatham

... Respondent/Respondent

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of dismissal in A.S.No.257 of 2009 dated 20.12.2011 passed by the learned VII Additional City Civil Judge, Chennai confirming the judgement and decree of dismissal of the suit in O.S.No.8755 of 2006 dated 14.10.2008 passed by the learned VIII Assistant City Civil Judge, Chennai and for praying setting aside the same and to decree the suit as prayed for.

For Appellant : Mr.S.Jaganathan

JUDGEMENT

The plaintiff in O.S.No.8755 of 2006 on the file of the learned VIII Assistant City Civil Judge, Chennai is the appellant herein. The respondent is the sole defendant in the suit. The plaintiff filed the said suit for permanent injunction to restrain the defendant in any manner from alienating the suit property in favour of any third party. The said suit was dismissed by the trial Court by decree and judgement of the trial Court dated 14.10.2008. As against the same, the appellant herein filed an appeal in A.S.No.257 of 2009 on the file of the learned VII Additional City Civil Judge, Chennai. The said appeal was also dismissed by the First Appellate Court by decree and judgement dated 20.12.2011. Challenging the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff is that admittedly, the suit property was originally owned by the defendant. The defendant had executed a General Power of Attorney in favour of her husband on 19.04.2000. Based on the said power given, the Power of Attorney of the defendant has sold away the suit property in favour of the plaintiff under two sale deeds dated 16.12.2002 and 20.12.2002. Thus, the defendant has got no title or interest on the suit property. But, now the defendant is making attempts to alienate the suit property to somebody by creating some false documents. With this apprehension, the plaintiff filed the said suit for the relief mentioned above.

4. In the written statement, the defendant contended that she never executed any deed of Power of Attorney in favour of her husband and the sale if at all made in favour of the plaintiff is not binding on her, as the same is void. Therefore, according to the defendant, the plaintiff has got no right whatsoever over the suit property.

5. Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in oral as well as documentary evidence. On the side of the plaintiff as many as 1 witness was examined and 6 documents were exhibited. On the side of the defendant as many as 1 witness was examined and 3 documents were exhibited.

6. Having considered the above oral as well as documentary evidences, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellant/plaintiff is before this Court with this second appeal.

7. In this second appeal, it is contended by the learned counsel for the appellant that subsequent to the present suit, the defendant has filed yet another suit for declaration declaring that the Power of Attorney as well as the subsequent sale deeds are null and void and for other reliefs.

8. In my considered opinion, if that is so, it is always open for the plaintiff herein to have effective contest in the said suit to establish that the Power of Attorney and the subsequent sale deeds are valid and she has got title and thus, her possession is also valid. I have only clarified that the dismissal of the present suit will not be an impediment for the plaintiff in any manner to establish her case that the Power of Attorney and the subsequent sale deeds are valid and by virtue of the same, she has become the absolute owner of the suit property and her possession is lawful.

9. So far as the present second appeal is concerned, I find no substantial question of law warranting admission. The issues have been resolved on facts by the Courts below. Thus, I do not find any merit at all in this appeal.

10. In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The VIII Assistant City Civil Judge,
Chennai.

2.The VII Additional City Civil Judge,
Chennai.

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+ 1 cc to Mr.S. Jaganathan, Advocate SR.6440

SSI(CO)
EU 05.03.2015



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