

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.405 of 2015

and

M.P.No.1 of 2015

1. P.Nagaraj
K.P.Ganesan (Deceased)
 2. G.Sasikala
 3. Minor G.Kaviya
 4. P.Papathi
- ... Appellants/1st Defendant
and Lrs of 3rd Defendant.

(Cause title accepted as per the order dated 12.11.2014 made in M.P.No.1 of 2014 in S.A.(SR).83791 of 2014)

Vs.

1. K.Rajam
 2. R.Sivaraman
 3. The Sub Registrar
Sub Registrar's Office,
Bhavani
- ... Respondents/Plaintiff/
Defendants 2 and 4.

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 04.07.2012 made in A.S.No.89 of 2010 on the file of the Principal Subordinate Judge, Erode, confirming the judgment and decree dated 06.08.2010 made in O.S.No.303 of 2008 on the file of Principal District Munsif Court, Erode.

For Appellants : Mr.D.Balachandran
For Respondents : Mr.V.Lakshminaryanan
for Mr.M.Guruprasad for R1

J U D G M E N T

The 1st defendant and the legal heirs of the 3rd defendant are the appellants. The suit has been filed for declaration of the sale deeds dated 27.11.2000, 28.12.2006 and 30.06.2008 are null and void and unenforceable in law.

2. The plaintiff claimed to be the absolute owner of 'A' schedule property which originally belonged to the first defendant. The first defendant received a sum of Rs.6,00,000/-, as sale consideration for 'A' schedule property from the husband of the

plaintiff and executed a Power of Attorney in favour of the husband of the plaintiff giving all powers to deal with the properties. The receipt of Rs.6,00,000/- was also acknowledged by the first defendant. On 15.12.1999, the plaintiff's husband executed a sale deed in favour of the plaintiff based on the Power of Attorney. Therefore, the plaintiff has been in possession and enjoyment of the property as the owner of 'A' schedule property.

3. The third defendant is elder brother of the first defendant, who tried to trespass into the suit property that resulted in plaintiff filing O.S.No.680 of 2006, against the third defendant and his parents for permanent injunction. In the said suit, the third defendant claimed to have purchased $\frac{1}{2}$ share in the suit property by virtue of sale deed dated 27.11.2000. However, the third defendant allowed the suit to get decreed ex parte on 06.02.2007. Thereafter, the first defendant filed O.S.No.479 of 2007 against the plaintiff for cancellation of the sale deed dated 15.12.1999. In the meanwhile, the first defendant also had executed a sale deed in favour of the second defendant conveying the entire extent on 28.12.2006. While the suit was dismissed for default on 11.02.2008, the counter claim for injunction made by the plaintiff was decreed. Therefore the plaintiff has been in possession and enjoyment of the suit property in his own right.

4. The Power of Attorney deed executed by the first defendant in favour plaintiff's husband Kandasamy was in force when the sale deeds dated 27.11.2000 and 28.12.2006 were executed by the first defendant. When the Power of Attorney was not cancelled, the first defendant did not have the right to sell the property to the second and third defendants. When admittedly, the sale consideration of Rs.6,00,000/- was paid to the first defendant by the Power of Attorney for the sale made by him in favour of the plaintiff, the first defendant cannot have any right or title over the suit property. Therefore, the sale deeds are void.

5. Before the trial Court, the plaintiff examined herself as PW-1 and one more witness as PW-2 and marked Exhibits A1 to A14. On the side of the defendants, first defendant examined himself as DW-1 and two more witnesses as DW-2 and DW-3 and marked Exhibits B1 to B20.

6. The Trial Court, after considering both the oral and documentary evidence had decreed the suit.

7. Aggrieved over the same, the defendants preferred first appeal before the Principal Subordinate Judge, Erode, in A.S.No.89 of 2010 and the same was dismissed, against which, this second appeal has been filed by the defendants.

8. This Court heard the submissions of the learned counsel for both the parties and also perused the material records placed.

9. The appellants have not disputed the Power of Attorney, which is marked as Ex.A.1. It is also admitted by them that the Power of Attorney was given the right to sell the property. It is also admitted that the Power of Attorney was not cancelled and was in force till the death of the Power of Attorney. As per Ex.A2, the first defendant had received a sale consideration of Rs.6 Lakhs from the plaintiff's husband, namely, the Power of Attorney. After the receipt of the said money on 15.07.1998, the sale deed was executed in favour of the plaintiff under Ex.A.3 only on 15.12.1999. The 1st defendant / 1st appellant, who alleged that the sale executed by the Power of Attorney was unenforceable, has not challenged the same or taken any steps to avoid the same. The suit filed by the first defendant in O.S.No.479 of 2007 was also allowed to be dismissed for default. Admittedly, after Exs.A1 to A3 came into existence only, Exs.A4 to A6 were executed. Therefore, the Lower Appellate Court had held that the defendants cannot approbate and reprobate and rightly dismissed the appeal. In the given factual matrix, there is no substantial question of law arising for consideration and I find no reason to interfere with the well founded judgment of the Courts below and the same are confirmed.

10. In the result, the Second Appeal is dismissed and the judgment and decree dated 04.07.2012 passed in A.S.No.89 of 2010 on the file of the Principal Subordinate Judge, Erode, confirming the judgment and decree dated 06.08.2010 passed in O.S.No.303 of 2008 on the file of the Principal District Munsif, Erode are affirmed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petition is closed.

srn

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Judge, Erode

2.The Principal District Munsif, Erode

+ 1 cc to Mr.M.Guruprasad, Advocate SR 33089

+ 1 cc to Mr.D.Balachandran, Advocate SR 32746

tej(co)

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