

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.887 of 2015

Chandrasekaran

... Appellant/Appellant/
Plaintiff

Vs.

1. Shanmugam

2. D.N.Gandhi

... Respondents/Respondents/
Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree of the Principal District Judge, Vellore in A.S.No.29 of 2014 dated 06.04.2015, confirming the judgment and decree on the file of the Subordinate Judge, Thirupathur in O.S.No.34 of 2010 dated 19.11.2013.

For Appellant : Mr. V.Raghavachari

JUDGEMENT

The plaintiff in O.S.No.34 of 2010 on the file of the learned Subordinate Judge, Thirupathur, is the appellant herein. The respondents herein are the defendants in the suit. The said suit was filed by the plaintiff for specific performance of a contract of sale allegedly entered into between the plaintiff and the first defendant on 20.03.2008. The trial court by decree and judgment dated 19.11.2013, dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.29 of 2014 on the file of the learned Principal District Judge, Vellore. By decree and judgment dated 06.04.2015, the First Appellate Court dismissed the appeal, thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant 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 as follows: -

The suit property originally belonged to the first defendant. The first defendant entered into a sale agreement with the plaintiff on 20.03.2008, thereby, agreeing to sell the suit property to the plaintiff for a total sale consideration of

Rs.2,00,000/- . A sum of Rs.1,25,000/- was paid on the same day towards part satisfaction of the sale consideration. The balance of sale consideration was Rs.75,000/-. Incorporating the terms and conditions of the said sale agreement, an unregistered deed of sale agreement was also executed on 20.03.2008. It is further stated that though the plaintiff was all along ready and willing to pay the balance sale consideration of Rs.75,000/-, the first defendant did not come forward to receive the said amount and to perform his part of contract.

4. According to the further case of the plaintiff, on 20.03.2008 itself, a General Power of Attorney was executed by the first defendant in favour of the plaintiff, thereby giving him power to deal with the suit property. It is the further case of the plaintiff that during the month of December 2009, the first defendant attempted to disturb the possession of the plaintiff. It is the further case of the plaintiff that possession was handed over to him under the sale agreement itself. Thereafter, the first defendant issued a legal notice on 07.12.2009, for which, the plaintiff issued a reply notice. In the said legal notice, the first defendant did not admit the sale agreement, instead, he said something about a loan transaction. In the said notice, it was further stated that the first defendant had borrowed a sum of Rs.1,25,000/- as loan from the plaintiff, thereby, agreeing to pay interest at the rate of 5% p.a. In the said notice, it was further stated that subsequently, the General Power of Attorney dated 20.03.2008 was cancelled on 22.09.2009 and then, the first defendant sold away the suit property on 19.11.2009. From and out of the said amount, he repaid the loan amount borrowed from the plaintiff. Thus, according to the first defendant, the sale agreement in question was never executed by him, as a matter of fact, under threat, his signature alone was obtained in a blank paper, which has been subsequently misused by the first defendant.

5. The first defendant in his written statement has contended that there was no such sale agreement. He reiterated the stand taken in his legal notice. According to him, he executed only the General Power of Attorney in favour of the plaintiff on 20.03.2008 and it was executed as a security for the loan secured by the first defendant from the plaintiff. It was also contended that when the said document was executed, his signature was obtained in few blank papers also. According to him, one such stamp paper in which, his signature was obtained when the same was blank has been now misused by the plaintiff to create the sale agreement in question.

6. The second defendant took the stand that the General Power of Attorney executed by the first defendant in favour of the plaintiff was cancelled as early as on 22.09.2009. Thereafter, for a valuable consideration of Rs.84,000/-, which he paid, he purchased the suit property from the first defendant. Thus, he has been in possession and enjoyment of the suit property and hence, he is the absolute owner of the suit property.

7. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined. The plaintiff is the first witness and one Mr.Selvaraj, an attester to the sale agreement has been examined as PW2. On the side of the plaintiff, as many as 9 documents were exhibited. Ex.A1 is the disputed sale agreement dated 20.03.2008. Ex.A2 is the General Power of Attorney executed by the first defendant in favour of the plaintiff. Ex.A3 is the Legal notice issued by the first defendant on 07.12.2009 and Ex.A4 is Reply notice issued by the plaintiff. Ex.A5 is the postal acknowledgment. Ex.A6 is the complaint given by the first defendant to the police. Ex.A7 is the original title deed in name of the first defendant. Ex.A8 and Ex.A9 are the caveat petitions. On the side of the defendants, three witnesses were examined and as many as 3 documents were marked. Ex.B1 is the Cancellation deed dated 22.09.2009 canceling the General Power of Attorney earlier executed by the first defendant in favour of the plaintiff on 20.03.2008. Ex.B2 is the sale deed executed by the first defendant in favour of the second defendant dated 19.11.2009 and Ex.B3 is the sale agreement executed by the plaintiff in favour of his wife Mrs.Prema on 01.10.2009 acting as the Power Agent of the first defendant, based on the general power of attorney dated 20.03.2008.

8. Having considered all above, the trial Court dismissed the suit, which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

9. The learned counsel for the Appellant would submit that both the Courts below have erred grossly in not appreciating both oral as well as documentary evidence let in by the parties. According to the learned counsel, though, it is admitted by the first defendant that the signature found in Ex.A1 was made only by him, the Courts below ought to have cast the burden upon the first defendant to disprove Ex.A1. The learned counsel would further submit that the execution of Ex.A1 has been duly proved by oral evidence of Pws.1 and 2. He would further submit that according to Ex.A1, the sale consideration was fixed at Rs.2,00,000/-, whereas, the sale deed executed by the first defendant in favour of the second defendant is only for a paltry sum of Rs.84,000/-. This according to the learned counsel would go to show that the said sale deed executed by the first defendant in favour of the second defendant is only to defraud the plaintiff. The learned counsel would further submit that the conduct of the parties have not been duly appreciated by the Courts below. Thus, according to the learned counsel, the dismissal of the suit, which was confirmed by the First Appellate Court is not at all sustainable in law and therefore, the same is liable to be interfered with by this Court.

11. At the out set, I should say that the questions raised by the learned counsel for the appellant are all pure questions of fact and there is no question of law much less a substantial question of law involved in the second appeal warranting admission of the same. Similarly, on going through the records, the evidence as well as the judgments of Courts below, I find that there is no perversity or unreasonableness in the conclusions arrived by the Courts below warranting interference at the hands of this Court. Let me now go into the facts of the case to some extent.

12. Admittedly, the suit property originally belonged to the first defendant. It is the positive case of the plaintiff that on 20.03.2008, Ex.A2, the General Power of Attorney was executed by the first defendant in favour of the plaintiff. The said document was a registered one. The stamp papers were all purchased only in the name of the first defendant for the execution of the said Power of Attorney. It is the case of the first defendant that the said General Power of Attorney was executed by him in favour of the plaintiff going by the usual practice of the Money Lenders to get such sale agreement instead of getting mortgage deed or some other deed in respect of the loan.

13. It is the case of the first defendant that while the said document was executed, his signature was obtained in few blank papers including the stamp papers. When the execution of the said deed of sale agreement is disputed by the first defendant, the burden is certainly on the plaintiff to prove the execution. In order to prove the same, the plaintiff has let in oral evidence of himself and that of PW.2. The courts below have appreciated said oral evidence and have come to the conclusion that their evidences cannot be believed in the light of various circumstances and doubts in the case of the plaintiff. The trial court has found that the stamp papers for the execution of General Power of Attorney (Ex.A2) bear the numbers 8919 to 8923, thus, it runs to five pages, drafted in five stamp papers. The sale agreement (Ex.A1) has been drafted on the stamp paper bearing No.8924. The trial court has appreciated the said document and has found that in respect of the person in whose name it was purchased there is correction. This has not been explained by the plaintiff. The Courts below have found that when the General Power of Attorney executed on 20.03.2008 was registered, there is no explanation as to why the sale agreement dated 20.03.2008, which was allegedly executed simultaneously was not registered. It is also not explained as to why the General Power of Attorney was executed by the first defendant in favour of the plaintiff when there is a sale agreement executed on the same day. It is not explained as to what was the need for executing two different deeds on the same day that too simultaneously. Absolutely, there is no explanation for the same anywhere in the evidence of the plaintiff. This is the first circumstance, which creates doubt in the case of the plaintiff.

14. The Courts below have again considered Ex.B3. Ex.B3 is the sale agreement executed by the plaintiff in favour of his wife Mrs.Prema in respect of the suit property. This document has been executed on 01.10.2009 by the plaintiff in the capacity of the power agent of the first defendant, based on the General Power of Attorney executed on 20.03.2008. Had it been true that the plaintiff had the benefit of Ex.A1, the sale agreement in his favour executed by the first defendant, certainly, he would not have executed the sale agreement in favour of his wife exercising his power as the agent of the first defendant. There is no mention anywhere in the plaint about the execution of Ex.B3, which is a registered document. It was only during the trial, the document in question was produced by the defendant and the same was marked as Ex.B3. As I have already pointed out, had it been true that the plaintiff had the benefit of the sale agreement dated 22.09.2009, there would have been no need for him or occasion for him to execute a sale agreement in favour of his wife on 01.10.2009 using the power of attorney executed on 20.03.2008. This has also created doubt in the case of the plaintiff.

15. The Courts below have also considered the oral evidence of the defendants' side to hold that the loan transaction, for which the general power of attorney was executed is true. It is on record that the General power of attorney was cancelled on 22.09.2009 itself, whereas the sale agreement was executed by the plaintiff in favour of his wife on 01.10.2009. A legal notice was issued by the first defendant on 07.12.2009. It was in that notice, the first defendant had mentioned about the sale made by him to the second defendant. All these facts have been clearly appreciated by the Courts below to come to the conclusion that the sale agreement under Ex.A1 was never executed by the first defendant and therefore, the same cannot be enforced.

16. The learned counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in Silvey vs. Arun Varghese and another ((2008) 11 SCC 45), wherein, it has been held that the conduct of the parties is a relevant fact which should also be appreciated by the Courts while considering the issue as to whether the sale agreement is true or not. I have got no doubt in respect of the said principle laid down by the Hon'ble Supreme Court. Under Section 8 of the Evidence Act, the conduct of the parties is very much relevant to decide the facts in issue. In other words, the conduct of the party to a lis is a relevant fact in order to prove or disprove the facts in issue. In the instant case, the Courts below have appreciated the conduct of, not only the plaintiff, but also the defendants. From out of the conduct of the parties, which I have discussed herein above, the Courts below have come to the right conclusion that the sale agreement is not true, in which I do not find any

17. From the foregoing discussions, I find that all the questions raised by the plaintiff in this second appeal are all only on facts and there is no question of law much less a substantial question of law warranting admission of the second appeal. Further, I do not find any perversity at all in the judgments of the Courts below warranting interference at the hands of this Court. In such view of the matter, I do not find any merit in this second appeal warranting admission and therefore, I am inclined to dismiss this second appeal.

18. In the result, the second appeal is dismissed and the decree and judgment of the First Appellate court confirming the decree and judgment of the trial court is confirmed. There shall be no order as to cost.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jbm/mrp

To

1.The Principal District Judge,
Vellore.

2.The Subordinate Judge, Thirupathur.

+1 cc to Mr.V.Raghavachari, Advocate, sr.62731

Second Appeal No.887 of 2015

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kra 22.12.2015

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