

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.10.2016

Judgment pronounced on : 20.10.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.238 of 2008
& M.P.1 of 2008

Parthiban ... Appellant/ Plaintiff/Respondent

Versus

Ibrahim ... Respondent/Defendant/Appellant

Prayer: Petition filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.27 of 2006 dated 31.10.2007 on the file of the learned Subordinate Judge, Chidambaram reversing the well founded judgment and decree as made in O.S.No.484 of 1999 dated 26.11.2004 on the file of the Additional District Munsif, Chidambaram.

For Appellant : Mr.R.Karthikeyan

For Respondent : No Appearance

Heard Mr.S.Rajasekar, learned counsel appearing for the Appellant.

2. The appellant herein is the plaintiff in the suit filed for relief of permanent injunction. While the trial court decreed the suit in favour of the appellant, the first appellate court has reversed the findings of the trial Court. Therefore, aggrieved by the judgment and decree made in A.S.No.27 of 2006 on 31.10.2007, the present second appeal is filed. For the sake of better understanding, the parties are described according to their litigative status found in the plaint.

3. The brief facts as found in the plaint:-

The suit property for which the plaintiff seeks injunction, was rightfully purchased by one Devi Lakshmi on 12.02.1978. She died leaving behind her husband Govindarasu, who is none other than her maternal uncle. After the death of Devi Lakshmi, her husband Govindarasu mortgaged the suit property in favour of the plaintiff and received a sum of

Rs.50,000/-. The said Govindarasu was unable to redeem the mortgage. Therefore, he put the plaintiff in possession of the suit property in the year 1996. The plaintiff has paid tax and obtained water connection and enjoying the property since 1999. Govindarasu has also executed an agreement for sale of the suit property in favour of the plaintiff and had received a sum of Rs.50,000/- as part of sale consideration out of total of Rs.6,00,000/-. The defendant claiming himself as the owner of the property, trespassed into the suit property with the help of police and damaged the superstructure on 20.10.1999. Hence the suit for permanent injunction.

4. Per contra, the defendant in his written statement, has denied the plaintiff's averment, except that, the suit property originally purchased by Devi Lakshmi in the year 1978. She was married to one Valliappan and gave birth to a son named as Rajalingam. On the death of Devi Lakshmi, the property was inherited by her husband and son. The house tax register has been mutated in the name of Valliappan. Valliappan and Rajalingam gave Power of Attorney to one Periakaruppan, who is none other than son-in-law of Valliappan. Since both decided to leave India and settle at Malaysia, Periakaruppan, as Power Agent of Valliappan and Rajalingam, entered into an agreement with the defendant for sale consideration of Rs.2,85,000- for the property. The plaintiff who has no right over the property, has trespassed into the property and threatened to kill. Therefore this defendant gave complaint to the police and case registered against the plaintiff. Conceding the above facts suit is filed to harass the defendant.

5. Considering the above rival pleadings, the trial court framed the following issues:

1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. What are the relief the plaintiff is entitled?

6. On behalf of the plaintiff, 4 witnesses were examined and 70 documents were marked. On behalf of the defendant, 2 witnesses were examined i.e., Ibrahim the defendant and Periakaruppan were examined as Dw1 and Dw2 and 100 exhibits were marked.

7. The trial court, after considering the pleadings and appreciating the evidence, decreed the suit and granted permanent injunction. Aggrieved by the judgment and decree of the trial court passed in O.S.No.484 of 1999 on the file of the Additional District Munsif, Chidambaram, the defendant filed first appeal and the first appellate court, on re-appreciation of facts and law, has reversed the finding, allowed the appeal and dismissed the suit. Therefore, aggrieved by the judgment and decree of the first appellate court, the plaintiff is before this court by way of Second Appeal.

8.This court, at the time of admission of second appeal, considering the pleadings and grounds of appeal, has framed the following substantial questions of law:

".....1. Whether the findings of the lower appellate Court, that the plaintiff had failed to produce the sale agreement dated 22.09.1999 is perverse as the plaintiff has marked the same as Exhibit A.2 before the trial Court which was not disputed by the defendant/respondent and hence it is crystal clear that the plaintiff is in lawful possession of the suit property?

2. Whether the lower appellate Court is correct in coming to the conclusion that the appellant is a trespasser and illegal occupier by citing the judgment of this Court made in Latha and another vs. Selvaraj reported in 2006 (2) CTC 24 where the plaintiff admits the title of the defendant but in the present case the plaintiff never admits this respondent/defendant as owner of the suit property?

3. Whether the finding of the lower appellate Court that the certified copy of the sale deed in favour of Devi Lakshmi @ Lakshmi marked as Exhibit A.1 is inadmissible in evidence as secondary evidence and the non-production of the original will disqualify a person from claiming title to the property when the original sale deed is marked on the defendant side as Exhibit B.91?

4. Whether the lower appellate Court is right in dismissing the suit when the agency created in 1996 through Exhibit B.86 between the so-called principal (namely, Valliappan and Rajalingam) and the agent namely, Periakaruppan was terminated by virtue of Section 201 of the Indian Contract Act, Since one of the principal namely, the Valliappan was died on 8.01.1997 itself and consequently the document marked as Exhibit B.67 through which the respondent herein is made as a substituted agent had become null and void?

5. Whether the lower appellate Court is right in placing reliance on the document Exhibit B.86 through which the respondent claim himself as substituted agent, which is not valid and reliable since it, contains many

discrepancies like the attestation of the Notary was dated as 18.06.1996 whereas the date on the stamp paper was stated as 07.07.1996?....."

9. Upon hearing the counsel for the appellant, and on perusal of the judgments of the courts below, this court is of the opinion that when both the parties admit that the suit property was purchased by Devi Lakshmi @ Chellam on 12.02.1978. The first appellate court has given undue weightage to the fact that the defendant is in possession of the original sale deed of the suit property and marked as Exhibit B91. Whereas the plaintiff has marked only the certificate copy of the sale deed, which anybody can get and erroneously held against the plaintiff regarding title to the property.

10. In a suit for bare injunction, it is the actual possession of the property that matters more than the possession of the title deed. Further, as pointed out by the learned counsel for the appellants, on the death of Valliappan on 08.01.1997, the power of attorney deed Exhibit B86 loses its validity and enforceability. Therefore, Exhibit B67, the power of attorney deed executed by Periakaruppan in favour of Ibrahim (defendant in the suit) dated 10.08.1999 is non est in the law. The first appellate court has miserably failed to appreciate the Exhibit B86 and Exhibit B67 in the light of Exhibit B100 the death certificate of Valliappan.

11. While plaintiff claims that Devi Lakshmi @ Chellam was married to Govindarasu, the case of the defendant is that Devi Lakshmi @ Chellam was married to one Valliappan and she gave birth to a son by name Rajalingam. Except certain letter communication between the parties, there is no reliable documentary evidence to show as to who married Devi Lakshmi. The defendant has produced tax receipts between the year 1989 and 1996, which stands in the name of Valliappan and Rajalingam, While the plaintiff has produced Exhibit A31 dated 13.02.2004, the water tax receipt, for the suit property issued in the name of plaintiff.

12. Since the plaintiff and defendant claims their right over the property not directly from Devi Lakshmi, but through some 3rd parties claiming themselves as husband of Devi Lakshmi, the first appellate court has concluded that the plaintiff is not entitled for injunction, since the occupation into the premises itself is not legal, as the plaintiff being a trespasser and illegal occupant, he is not entitled for permanent injunction. In support of the said conclusion, the first appellate court has relied upon the judgment of the Court reported in 2006 (2) CTC 24 in the matter of Lalitha and another vs. Selvaraj.

13. The learned counsel for the appellant/ plaintiff, referring Exhibit B67 and 86, submitted that the alleged Power of Attorney relied upon by the defendant Ibrahim, are not reliable documents and they have no legal force. Exhibit B67 is the Power of Attorney executed by Periakaruppan in favour of Ibrahim in respect of the suit property. Periakaruppan claims to be the Power Agent of Valliappan and Rajalingam through Exhibit B86.

14. According to the respondent /defendant, Periakaruppan was appointed as Power Agent by Valliappan and Rajalingam, vide Exhibit B86, which is dated 06.09.1996. The learned counsel for the appellant, reading through the Exhibits B67 and B86 submitted that though Periakaruppan was appointed as Power Agent of Valliappan and Rajalingam in the year 1996, he cannot further delegate the power in the absence of such power conferred in the Power of Attorney deed Exhibit B86. Therefore, following the principal delegate cannot further delegate the power of attorney (delegatus non potest delegare). The Power of Attorney document Exhibit B67 in favour of the defendant, is unenforceable and any agreement in respect of the suit property between Periakaruppan and Ibrahim, is sham and nominal.

15. Further learned counsel for the appellant submitted that Valliappan died on 08.01.1997 at Malaysia as per Exhibit P100. While so, on the death of the one of the principal, the power of attorney deed Exhibit B86 dated 06.09.1996 becomes void and unenforceable. Hence, Exhibit B67 executed in favour of the defendant by Periakaruppan on 12.08.1999 based on Exhibit B67 has no legal validity. Furthermore, DW2 Periakaruppan in the cross examination, has conceded that there is no evidence to show that Valliappa Chettiar and Devi Lakshmi lived as husband and wife. It is also elicited in the cross examination that Devi Lakshmi and Valliappan belonged to different caste, whereas Valliappa and Govindarasu are related to each other. It is pointed out by the learned counsel for the appellant that both the Courts below have confirmed that the plaintiff is in possession of the suit property, having held so, on the wrong premise that the possession of the plaintiff is not legal, the first appellate court has erroneously reversed the decree of the trial court referring the judgment reported in 2006 (2) CTC 24 which is factually different from the case in hand.

16. The Power of Attorney deeds are executed on the basis of Principal and Agent. Such deeds get terminated on specific circumstances as prescribed under Section 201 of Indian Contract Act. The death of a Principal is one such circumstance, which terminates the agency. Such an eventuality can be compared to an object and its shadow, once an object goes, automatically the shadow disappears. Indian Contract Act further provides under Section 209, the steps should be taken by the agent in case of death of the principal. In this case,

after the death of Valliappa Chettiar, the agent namely Periakaruppan, has not taken any steps as contemplated under Section 209 of the Indian Contract Act. However, the first appellate court has miserably failed to look into the legal provisions which governs the facts of the case and thereby erred in reversing the judgment of the trial court.

17. On considering the evidence and materials placed before this Court, this Court concludes that having held that the appellant is in possession of the property, there is no justifiable legal cause for the first appellate court to decline the prayer of injunction sought by the appellant, more-fully, when the contra claim made by the defendant has no valid or legal basis, in view of the document executed by Power of Attorney after the death of the principal. Therefore the substantial questions of law framed, are held in favour of the appellant and the Second Appeal ought to be allowed.

18. In the light of the aforesaid reasons, the Second Appeal is allowed, and the judgment and decree of the first appellate court are set aside, and the judgment and decree of the trial Court, are confirmed. No Costs throughout. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Subordinate Judge,
Chidambaram.

2.The Additional District Munsif,
Chidambaram.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.59873

S.A.No.238 of 2008
& M.P.1 of 2008

ALA (CO)
CA(21/12/2016)