

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.27 of 2017

1.T.E.Venkataraman
2.C.R.Ravikrishnan
3.R.Eswaran
4.C.R.Jayarajan
5.N.N.Subramanian
6.A.Venkatachalam
7.C.S.Visalam
8.C.R.Venkatesan
9.T.S.Eswaran

... Appellants/Plaintiffs

Vs

1.Meenakshisundaram
2.C.Sathanandam

... Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 23.06.2014 passed in A.S.No.20 of 2010 on the file of the Additional District Judge, Chengalpattu, partly allowing/partly reversing the judgment and decree dated 31.12.2009 made in O.S.No.26 of 2008 on the file of the Sub Court, Tambaram.

For Appellants : Mr.T.Thiyagarajan

For Respondents : Mr.T.R.Ramesh for R1

JUDGMENT

The plaintiffs, who suffered a decree of reversal at the hands of the lower appellate Court, are the appellants herein and they have filed the present second appeal by raising the following substantial questions of law:

(a)Whether the lower appellate Court erred in law in holding that the first defendant is not liable for the suit claim when the second defendant was admittedly his power agent and the deed of power was in force when

the second defendant had entered into an agreement of sale with the plaintiff?

(b)Whether the lower appellate Court erred in law in dismissing the suit against the first defendant, when his power agent, the second defendant was admittedly his agent and he was authorised to sell the major portions of his property?

(c)Whether the lower appellate Court is right in holding that the principal viz., the first defendant was not liable for the acts committed by the second defendant namely for recovery of money due to the plaintiff under an agreement of sale?

(d)Whether the lower appellate Court erred in law in holding that the plaintiff ought to have filed a suit for recovery of money against the second defendant for the amount advanced to him when the said amount was adjusted towards the sale consideration and agreement of sale was executed by the second defendant in favour of the plaintiff?

(e)Whether the lower appellate Court erred in law in holding that the plaintiff should have filed suit for recovery of loan amount from the second defendant where the said amount was adjusted towards the sale consideration and the second defendant was authorised to sell the major portion of the suit property?

(f)Whether the lower appellate court has misconstrued and misappreciated the pleadings and the evidence on record?

2.From the records, it appears that the power deed was executed by the first defendant in favour of the second defendant being the owner and the builder respectively. This power deed is for the purpose of effecting the sale of the suit property and realise the amount by way of consideration either in part or full as the case may be. The third defendant is a subsequent purchaser from the first defendant. Unfortunately, the plaintiffs/appellants have given up the third defendant. Now, the suit has been laid for creation of charge over the suit property pursuant to the sale agreement entered into between the second defendant on the one hand and the plaintiffs on the other hand under Ex.A3. This agreement, though not disputed, is not registered. The appellants have neither filed a suit for recovery of money as mentioned under Ex.A3 nor sought for specific performance. On the contrary, they seek charge over the suit property.

3.The trial Court, by placing reliance upon Ex.A3 decreed the suit. The lower appellate Court reversed the judgment and decree of the trial Court on the premise that there cannot be a suit for creation of charge in the absence of agreement inter se the plaintiffs/appellants on the one hand and the first defendant/first respondent on the other hand. The power deed is only for the purpose of effecting the sale and not connected with the loan between the plaintiffs and the second defendant. Incidentally, it was held that the subsequent purchaser, though made as a party, has been given up. Challenging the same, the present second appeal has been filed.

4.Though the learned counsel appearing for the appellants contends that inasmuch as the power deed under Ex.A5 and the sale agreement under Ex.A3 are not in dispute, the suit will have to be decreed, the learned counsel for the first defendant submits that in the absence of any privity of contract between the plaintiffs and the first defendant, the lower appellate Court is right in dismissing the suit.

5.The power deed between defendants 1 and 2 is only for the purpose of effecting the sale of the suit property. It is the specific case of the plaintiffs themselves that there was an earlier money transaction between them and the second defendant. Thus Ex.A3 has been entered into by giving credence to the said amount. There is absolutely no material to hold that the said amount has in fact been given to the first defendant. If it is not in dispute that there was a money transaction between the plaintiffs and the second defendant and for that purpose, Ex.A3 is entered into between them, the same will not bind the first defendant. Perhaps that is the reason why the plaintiffs have not come forward to file a suit either for recovery of money based upon Ex.A3 or for specific performance.

6.From the records, it appears that the sale deed in favour of the third defendant (since given up) is subsequent. Therefore, even the contention, which is sought to be raised that in view of the subsequent sale deed only, a suit for creation of charge has been filed, cannot be accepted. Further more, the appeal, as of now, is also not maintainable. The sale deed in favour of the third defendant (since given up) has ever been put into challenge. Therefore, a charge cannot be created over the property, which has already been alienated. Thus, looking at from any angle, this Court does not find any substantial question of law involved in the appeal, warranting interference.

7.In the result, the second appeal is dismissed. However, it is made clear that the dismissal of this appeal will not stand in the way of the appellants to proceed against the second defendant for recovery of money. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Additional District Judge,
Chengalpattu.
2. The Subordinate Judge,
Tambaram.

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.4725
+1cc to Mr.P.Ramamurthy, Advocate, S.R.No.4386

RJ(CO)
CA(20/02/2017)

S.A.No.27 of 2017

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