

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.412 of 2017  
and  
C.M.P.No.10069 of 2017

1 V.Prema  
2 V.Shanthi ... Appellant/Appellants/Defendants 2 & 4

Vs.

1. N.Ramesh ...1st Respondent/1st Respondent /Plaintiff  
2. C.Mathiazhagan ... 2ndRespondent/2ndRespondent/  
1st Defendant

Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Principal District Judge, Vellore dated 05.04.2017 made in A.S.No.15 of 2015 confirming the Judgment and Decree of the Sub Judge, Vellore, dated 28.9.2012 made in O.S.No.129 of 2000.

For Appellants : Mr.S.Mohan

JUDGMENT

The brief facts of the case as follows:

The appellants are the second and 4<sup>th</sup> defendant in the suit. The first respondent filed a suit in O.S.No.129 of 2000 for specific performance and permanent injunction.

2 The case of the plaintiff/first respondent is that the schedule mentioned property is absolutely belongs to one Viswanathan. Viswanathan died intestate on 16.7.1992 leaving behind his wife V.Prema, Son V.Murugesan and his daughter V.Shanthi as his legal heirs to succeed his property. The legal heirs of the deceased Viswanathan have executed a general Power of Attorney on 23.4.1997 in favour of G.Mathiyazhagan appointing him to deal with their scheduled mentioned property as a Power Agent. On 28.4.1997, the aforesaid Power of Attorney

Mathiyazhagan had entered into sale agreement with the plaintiff for a sale consideration of Rs.4,95,000/-. The plaintiff/first respondent paid the advance amount of Rs.4,50,000/- to the first defendant and the terms and conditions of the sale agreement are reduced into writing. As per the sale agreement, sale has to be completed on or before 27.4.2000 by paying the balance sale consideration to the first defendant. Plaintiff is willing to perform his part of the contract, but the first defendant is not willing to perform his part of the contract. Therefore, the above suit has been filed by the first respondent/plaintiff for specific performance and permanent injunction.

3 The learned Sub Court, Vellore decreed the suit in favour of the first respondent/plaintiff. Challenging the judgment and decree of the trial Court, the appellants/defendants preferred an appeal in A.S.No.15 of 2015 and the said appeal suit was dismissed. Aggrieved by the dismissal of the said appeal, the appellant has preferred the present Second Appeal before this Court.

4 According to the learned counsel for the appellants/defendants, both the Courts below have lost its sight by not considering the oral and documentary evidence adduced on the side of the defendants. The Power of Attorney executed under Ex.A2, dated 3.4.1997 and Ex.A3 sale agreement, dated 28.4.1997 were obtained under the coercion towards loan transaction between the appellants and the deceased 3<sup>rd</sup> defendant. The learned counsel for the appellants would submit that Ex.A2 executed by the appellants/defendants 2 to 4 for borrowing money from the plaintiff. Therefore, there is no sale consideration took place as alleged by the plaintiff/first respondent. Therefore, the judgment and decree passed by the Courts below are liable to be set aside.

5 Heard the learned counsel for the appellants/defendants 2 to 4 and perused the materials available on record.

6 The first respondent/plaintiff filed the suit in O.S.No.129 of 2000 for specific performance of contract and for permanent injunction. Originally, the schedule mentioned property belongs to one Viswanathan. Viswanathan purchased the suit schedule mentioned property on 10.10.1973 by way of registered sale deed. Viswanathan died intestate on 16.7.1992 leaving behind the defendants 2 to 4 as his legal heirs of the schedule mentioned property. The deceased Viswanathan executed

a Deed of Power of Attorney on 22.4.1994 in favour of the first defendant/second respondent. Pursuant to the execution of the general Power of Attorney in favour of the second respondent/first defendant, a registered sale agreement was entered into between the plaintiff and the first defendant for a total sale consideration of Rs.4,95,000/-. As per the terms and conditions of the sale agreement, dated 28.4.1999, the plaintiff has to execute sale deed on or before 27.4.2000 by paying the entire sale consideration to the first defendant. The plaintiff was ready and willing to perform his part of the contract, but the first defendant is not willing to perform his part of the contract. Hence, the present suit has been filed for specific performance of the contract. Written statement has been filed by the defendants 1 and 2 in the suit wherein the defendants denied the averments found in the plaint. The defendants 2 to 4 filed additional written statement by contending that the second defendant did not execute any Power of Attorney in favour of the first defendant. The suit is filed only to snatch away the defendant's property. According to the defendants 2 and 4, at the time of signing the general Power of Attorney, these defendants were staying for summer vacation in the house of her mother V. Prema and brother Murugesan. Deceased Murugesan wanted to raise finance for his business, the defendants signed the general Power of Attorney authorising the first defendant to sell the suit property on her behalf. Therefore, the aforesaid Power of Attorney executed by the second defendant in favour of the first defendant, only under undue influence of the deceased brother as well as misrepresentation of facts amounting to fraud. Considering the averments made in the plaint and the written statement, the following issues were framed by the trial Court.

(1) Whether it is true that there is a sale agreement entered into between the plaintiff and the first defendant for a sale consideration on 28.4.1997 ?

(2) Whether the plaintiff is entitled for the relief under Specific performance Act and permanent injunction as prayed for ?

7 On 27.1.2009, the trial Court also framed following additional issues:

(1) Whether the defendants 2 to 4 executed general Power of Attorney on 28.4.1997 in favour of the first defendant ?

(2) Whether it is true that there is a sale agreement entered into between the plaintiff and the first defendant on

28.4.1997 on the basis of general power of attorney ?

8 On the side of the plaintiff, P.W.1 and P.W.2 were examined. Ex.A1 to A11 were marked as documents. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 was marked. After the demise of the deceased Viswanathan, the defendants 2 to 4, the legal heirs of late Viswanathan executed the Power of Attorney in favour of the plaintiff. The defendants 2 to 4 are entitled for 1/3<sup>rd</sup> share in the suit schedule property. They have executed Power of Attorney in favour of the first defendant. The Courts below rejected the contention of the defendants 2 and 4 that as soon as they signed the deed of power of attorney in favour of the first defendant, they filed a suit for partition in O.S.No.236 of 1998 before the trial Court and the suit was decreed in their favour. The trial Court also considered the amount paid to the defendants 2 and 4. Considering the value of the partition suit filed by Shanthi, fourth defendant, one of the legal heirs of the deceased Viswanathan and the guidelines, the trial Court rejected the contentions of the appellants/defendants that by force and undue influence, Ex.A2 and A3 were executed and decreed the suit. D.W.2 namely, the second defendant in her cross examination admitted the execution of Ex.A2 and A3.

9 In view of the admission of documents exhibited as Ex.A2 and A3 by D.W.2, the appellate Court dismissed the appeal suit. Aggrieved by the dismissal of the said appeal, the present Second Appeal has been filed by the defendants raising the following substantial questions of law.

- (1) Have not the trial Court and Lower Appellate Court failed to appreciate the evidence on record that Ex.A2 and A3 were obtained by using force by the plaintiff as security for a loan of Rs.1,00,000/- advanced to the deceased 3rd defendant with abnormal interest at 4% p.m. and that no advance amount was paid as recited in Ex.A3 ?
- (2) Has not the Court below failed to consider that the agreement in Ex.A3 is voidable under Sec.19 of the Contract Act as it was obtained by coercion and void under Sec.25 of the Act for absence of consideration ?

10 The learned counsel for the appellants/defendants would submit that Ex.A2 and A3 were obtained by using force by the plaintiff as security for the loan. The contentions of the appellants/defendants discussed by the Courts below and on the basis of the evidence of D.W.2 in her cross examination

admitting Ex.A2 and A3 were executed by the defendants 2 to 4, decreed the suit in favour of the plaintiff/first respondent herein. Even in partition suit there is no denial of execution of Ex.A2 and A3 or such documents were obtained by force. It is an admitted fact that signature has not been disputed by the appellants/defendants. On the basis of the findings of the trial Court, the second appellant filed suit for partition. The value of the suit and the guidelines also reflects that value of the property is higher than the sale agreement. Therefore, the contentions raised by the appellants/ defendants are discussed by the Courts below while dismissing the suit and the appeal suit respectively.

11 D.W.2 in his cross examination admitted the execution of Ex.A2 Power of Attorney in favour of the second respondent/first defendant and execution of Ex.A3 sale agreement entered into between the first defendant/second respondent herein and the plaintiff/first respondent herein. The contention of the plaintiff/first respondent is not disputed in the evidence. By considering the evidence of D.W.2 who admitted the execution of Ex.A2 and Ex.A3, the appellate Court confirmed the judgment and decree passed by the Court below. The learned counsel for the appellants/defendants is not in a position to deny the evidence of D.W.2. The learned counsel for the appellants strongly relied upon Ex.A2 and A3 which were stated to have been obtained by using force by the plaintiff/first respondent as security for Rs.1,00,000/- advanced to the deceased 3<sup>rd</sup> defendant. By considering the oral and documentary evidence, both Courts concurrently held that the appellants have not produced any materials to substantiate their claim that Ex.A2 and Ex.A3 were obtained as security for the loan amount by using force. Accordingly, the substantial question of law is answered against the appellants. Hence, the judgment and decree passed by the Courts below are confirmed.

Accordingly, the Second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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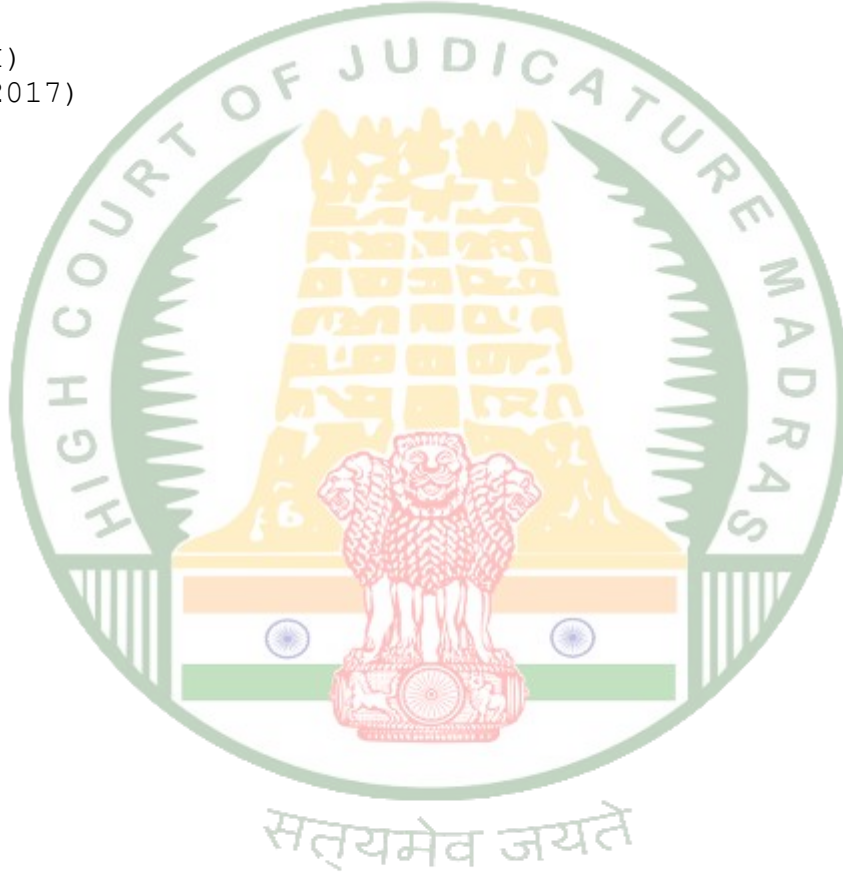
1 The Principal District Judge, Vellore

2 The Sub Judge, Vellore

+1cc to M/s.S.Mohan, Advocate, S.R.No.46402

S.A.No.412 of 2017

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