

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1318 of 2017

and

CMP.No.6856 of 2017

1. P.Vijayalakshmi
2. S.Sharmila
3. Vidhya Rekha
4. Kala Shalini
5. K.E.Sudharsanam
6. K.E.Lakshmipathy
7. S.Paranthaman

...Appellants/Defendants

Vs

Shoba Malini

... Respondent/Plaintiff

This appeal is filed under Section 104 C.P.C. R/W Order 43 Rule 1 CPC to set aside the fair and decretal order in I.A.No.16639 of 2016 in OS No.6114 of 2016 dated 15.03.2017 on the file of the learned XVIII Additional City Civil Court, Chennai.

For Appellants : Mr.M.Devaraj

For Respondent : Mrs.Gajalakshmi Rajendran

J U D G E M E N T
सत्यमेव जयते

This appeal challenging the order of injunction granted by the Trial Court restraining the appellants from alienating or encumbering or putting up any construction in the suit property.

2. The sole respondent in this appeal, as the plaintiff, has filed the suit in O.S.6114 of 2016 seeking a declaration that the power of Attorney executed by her on 23.04.2014 registered as document No.1908 of 2014 on the file of the Sub Registrar, Konnur, in favour of her mother is null and void, as well as for declaration that the construction agreements entered into by the power of Attorney, on 25.08.2014, registered as document Nos.4242 of 2014, 4243 of 2014, 4244 of

2014, 4245 of 2014, 4246 of 2014 and 4247 of 2014 with the other defendants as null and void, to declare the sale deeds dated 25.08.2014 registered as document No. 4257 of 2014, 4258 of 2014, 4259/2014, 4260/2014, 4261/2014 and 4262/2014 as null and void, and for partition of her 1/5th share in the suit schedule property.

3. According to the plaintiff, the suit schedule property belongs to one G.Subramaniam, who died leaving behind the plaintiff and defendants 1 to 4 as his Legal representatives. While the first defendant is the wife, the plaintiff and the defendants 2 to 4 are the daughters. The plaintiff as well as the three sisters had executed a power of attorney in favour of their mother on 23.04.2014 and the same has been registered in accordance with law. Exercising the said power and acting under the said power, it is stated, that the mother had entered into other construction agreements and sale deeds refer to supra.

4. Nearly after two years of the execution of the sale deeds the plaintiff has now come to court contending that she executed the power of attorney, but the mother had not acted as promised and paid her share of the value of the property. Hence the power of attorney, the construction agreements and the sale deeds are liable to be declared as null and void.

5. The said suit is pending. Along with the suit, the plaintiff has filed an application in I.A.No.16639 of 2016 seeking an injunction restraining the defendants from alienating or encumbering or putting up the construction of the suit property.

6. The said application was opposed by the defendants contending that the construction is almost over. Therefore, the application itself is not maintainable. The trial court however considering the averments made in the affidavit filed in support of the application and the counter affidavit concluded that the plaintiff has made out a prima facie case and granted injunction as prayed for.

7. Aggrieved the defendants are on appeal.

8. I have heard Mr.M.Devaraj, learned counsel for the appellants and Mrs.Gajalakshmi Rajendran, learned counsel appearing for the respondent.

9. As per Order 39 Rule 1 of C.P.C. the plaintiff has to essentially show a prima facie case and that the balance of convenience is on her side. Apart from the above she also has to established the prejudice that may be caused to her would be more than the advantage gained by the defendants.

10. On the facts set out I am of the considered opinion that the plaintiff has not made out a prima facie case. The execution of power of attorney is admitted. According to her the mother power Agent has not complied with the terms of power of attorney and certain promises which were made at the time of execution of the power of attorney were not kept.

11. In my considered opinion it is not a ground for setting aside the transactions entered into by the power Agent. Even assuming the said allegations are true remedy of the plaintiff is only against the mother the power Agent and not against the purchasers, though the purchasers are sisters and the husbands of the sisters of the plaintiffs.

12. It is also seen from the photographs produced that the construction of the building is almost complete. Therefore, the order of injunction granted by the trial court would only cause disadvantage to the defendants. In the event of success the plaintiff would be entitled to a share in the newly constructed building also and the defendant's cannot claim any preferential right because of any construction have been put up at their instance.

13. In view of the above the appeal is allowed. The order of injunction granted by the trial court is set aside. There shall be no order as to costs in the appeal. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

av/jv

To

The XVIII Judge
The XVIII Additional City Civil Court,
Chennai.

+1 CC to Mr.M. Devaraj, Advocate sr 49570

+1 CC to MrS. Gajalakshmi Rajendran, advocate sr 49302.

CMA.No.1318 of 2017

EV (CO)
sp(10/08/2017)