

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Appeal Suit No. 1008 of 2012

Ilango ... Appellant/Defendant

Versus

1.Subramanian
2.Angammal @ Chandra
3.Keerthiveeran

... Respondents/Plaintiffs

Appeal filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 02.09.2010 made in O.S. No. 49 of 2007 on the file of III Additional District Judge, Puducherry

For Appellant : Ms.G.Sumithra

For Respondents : Mr.G.Ashokpathy
for M/s.Pass Associates

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The respondents herein, as plaintiffs, have filed the suit in O.S. No. 49 of 2007 before the learned III Additional District Judge, Puducherry praying to direct the defendant/appellant herein to pay the sum of Rs.42,74,500/- with interest at 12% per annum from the date of plaint till realisation with costs. The trial court, by Judgment and Decree dated 02.09.2010, decreed the suit with costs and also directed the defendant/appellant herein to pay the sum of Rs.42,74,540/- with subsequent interest at 6% per annum on Rs.31,46,900/- from the date of plaint till realisation. It is as against the said decree and Judgment passed by the Court below, the sole defendant in the suit has filed the present appeal.

2. The case of the plaintiffs, as could be unfolded from the plaint filed before the trial court, is that they are the lawful owners of the suit property. During the year 2004, on behalf of promoters of a Dental College and Hospital, the defendant approached the plaintiffs for getting the suit property for development of the above institution. Accordingly, on 18.08.2004, the plaintiffs executed a General Power of Attorney in favour of the defendant for the purpose of

transferring the suit property in favour of the promoter. The said power of attorney deed was also registered in the office of the Sub-Registrar, Oulgaret. It is clearly stated in the power of attorney deed that the defendant shall furnish the particulars of the prospective purchaser, in whose favour, the plaintiffs shall execute the sale deed upon fixing the sale price of the land. On execution of the power of attorney deed, the defendant has paid a sum of Rs.30,00,000/- to the plaintiffs as advance. Thereafter, according to the plaintiffs, the whereabouts of the defendant was not known to them. According to the plaintiffs, they have retained the possession of the suit property with them and continued to cultivate the suit property. While so, during June 2007, some third parties entered into the suit property and attempted to measure the land, which was prevented by the plaintiffs. Apprehending encroachment of the suit property, the plaintiffs have caused a paper publication in one issue of "Dhinamalar" Tamil daily on 30.06.2007 informing the general public not to purchase the property from the defendant/appellant herein.. On the next day, the defendant has caused a paper publication containing misleading facts inter alia stating that the plaintiffs have given their consent to sell the property in favour of a Trust. In such circumstances, the plaintiffs have applied for encumbrance certificate and came to know that on 19.08.2004, the next day of executing the general power of attorney deed dated 18.08.2004, the defendant has sold the suit property in his capacity as a Power of attorney agent in favour of one Madammal Sheela Charitable Trust. The property described in the schedule of the sale deed contains six items, including five items of the suit property and another item of the property comprised in RS No. 35/2006 measuring 24 acre and 54 cents which stood in the name of one Jayabalan, Son of Parasuraman. According to the plaintiffs, they have only executed a power of attorney deed dated 18.08.2004 in favour of the defendant authorising him to deal with the property and received Rs.30 lakhs on the date of execution of the same. However, on the next day, the defendant has sold all the 5 items of suit property along with the property of one Jayabalan for a sale consideration of Rs.70,73,000/-. The sale consideration relating to five items of the suit property alone comes to Rs.61,46,900/-, hence, the defendant gained illegally to the tune of Rs.31,46,900/-. As a power of attorney, the defendant is bound to render true and proper accounts to the plaintiffs with respect to any transaction relating to the suit property. Since the defendant did not pay the remaining amount received as sale consideration, the suit was instituted for recovery of money of Rs.31,46,900/- after deducting the sum of Rs.30,00,000/- already paid by the defendant.

3. The suit was resisted by the defendant/appellant by filing a written statement. In the written statement, the defendant has admitted the execution of the power of attorney deed by the plaintiffs in his favour on 18.08.2004 and on the basis of the same, he has alienated the suit property in favour of Madammal Sheela Charitable Trust on 19.08.2004 by executing a sale deed in his capacity as power of attorney deed.

However, it is contended that the entire transaction took place with the consent and knowledge of the plaintiffs. It is further stated that there is no specific or restricted authority cast upon the defendant in the power of attorney deed dated 18.08.2004 which would restrain him from executing the sale deed in favour of the Trust. The deed of power of attorney only contained general clauses like maintenance of the land, guarding the lands, leasing out the lands etc., There was no obligation cast on the defendant to furnish the details of the intended land owners to the plaintiffs, as stated in the plaint. While so, what was not agreed between the plaintiffs and defendants will not give rise to a cause of action for the plaintiffs to file the suit. The defendant therefore prayed for dismissal of the suit.

4. Before the trial Court, the first plaintiff examined himself as PW1 and Exs. A1 to A4 were marked. On behalf of the sole defendant, one Murali was examined as DW1 and Muthuraman was examined as DW2 and Ex. B1 was marked. The trial court, upon analysing the oral and documentary evidence framed as many as four issues and held that the plaintiffs appointed the defendant herein as their power of attorney for sale of the suit property. While so, as a power of attorney agent, it is the duty of the defendant to render true and proper account of the sale transaction to the plaintiffs. It is also admitted by the defendant that except the payment of Rs.30,00,000/- made on 18.08.2004, he has not paid the balance amount of Rs.31,46,900/- from and out of the sale consideration received by executing Ex.A2, sale deed in favour of the Trust. Therefore, the trial court decreed the suit as prayed for with costs.

5. The learned counsel appearing for the defendant/appellant would contend that the plaintiffs were fully aware of the execution of the sale deed, Ex.A2 executed by the defendant in favour of the Trust. The defendant, after discussing with the plaintiff regarding the sale deed to be executed in favour of the Trust, has paid the sum of Rs.30,00,000/- and obtained the power of attorney in his favour. While so, the trial Court, without any evidence, has erred in holding that the transaction under Ex.A2 is suspicious and that the defendant has made unlawful gain. Even according to PW1, he has admitted that the power of attorney was executed only for the purpose of alienating the suit property, while so, the defendant/appellant is empowered to execute the sale deed in favour of the Trust. The court below also failed to note that there is no express obligation cast on the defendant to disclose the intending purchaser to the plaintiff or to deal with the property only in a specified manner. The conditions contained in the general power of deed are generic while so, there is no cause of action for filing the suit and consequently the decree and judgment passed by the Court below has to be set aside.

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6. Countering the submissions mde by the learned counsel for the defendant/appellant, the learned counsel for the

plaintiffs/respondents would submit that subsequent to the execution of the power of attorney deed dated 18.08.2004 in favour of the defendant/appellant, the plaintiffs have received a sum of Rs.30 lakhs towards advance sale consideration. Thereafter, nothing was heard from the defendant/appellant and the plaintiffs/respondents continued to remain in possession of the suit property. While so, only during June 2007, the plaintiffs came to know about the execution of the sale deed dated 19.08.2004, Ex.A2 in favour of a Trust for Rs.61,46,900/- and it was executed by the defendant/appellant in his capacity as a power of attorney of the plaintiffs/respondents. As a power of attorney, the defendant is bound to render true and correct account to the plaintiffs. There is no clause in the power of attorney to the effect that the defendant can sell the suit property for any amount over and above Rs.30 lakhs paid by him. The defendant without properly furnishing the account with respect to the sale transaction, has unlawfully misappropriated the sum of Rs.31,46,900/- payable to the plaintiffs. Furthermore, the defendant did not step into the witness box to disprove the claim made by the plaintiffs, rather, DW1, who was the power of attorney agent of the defendant was examined. When the defendant has filed written statement and repudiated the claim made in the plaint, equally he has an obligation to depose before the court below and the non-examination of the defendant is fatal to the defence of the defendant. In any event, the trial court has appreciated the oral and documentary evidence and has come to a correct conclusion that the liability of the defendant, power of attorney of the plaintiff, to repay the balance sum of Rs.31,46,900/- has been proved by the plaintiffs and such a well considered decree and judgment passed by the court below need not be interfered with.

7. We have heard the learned counsel appearing for both sides and perused the materials placed on record, including the decree and Judgment passed by the trial court. Admittedly, the plaintiffs have executed Ex.A1, power of attorney deed dated 18.08.2004 in favour of the defendant authorising him to deal with the suit property. While so, the defendant, as power of attorney agent, is duty bound to render true and correct accounts to the plaintiffs with respect to the sale transaction covered under Ex.A2, sale deed dated 19.08.2004. It is the vehement contention of the plaintiffs that they were not aware of the execution of Ex.A2, sale deed dated 19.08.2004 executed by the defendant in favour of a Trust until June 2007 and till such time they continued to remain in possession of the suit property. This was repudiated by the defendant in his written statement stating that the plaintiffs were fully aware of the execution of Ex.A2, sale deed dated 19.08.2004 in favour of the Trust. The trial court also pointed out the inconsistent plea made by the defendant in para Nos. 11 and 13 of the written statement. In Para No.11, it is contended by the defendant that Ex.A2, sale deed was executed in favour of the Trust only in the presence of the plaintiffs and the entire sale consideration covered under Ex.A2 was paid to the plaintiffs by him. On the contrary, in para No.13, it was stated that the

sale consideration was paid by the Trust directly to the plaintiffs, in whose favour Ex.A2 was executed by the defendant, The trial court apart from pointing out the above inconsistent stand taken by the defendant in the written statement has also rightly pointed out that the defendant did not step into the witness box to disprove the claim of the plaintiffs that they were not aware of the sale transaction covered under Ex.A2 and they were not present in the office of the Sub-Registrar at the time when defendant has executed Ex.A2, sale deed in favour of the Trust. Instead of stepping into the witness box, the defendant has authorised his power of attorney agent to depose in the suit, who was examined as DW1 before the trial Court. DW1, admittedly, has no personal knowledge about the transaction between the plaintiffs and the defendant and therefore, no significance could be attached to his evidence. In such circumstances, the trial court is wholly justified in arriving at a conclusion that the defendant, as a power of attorney agent, has unlawfully retained the balance sale consideration of Rs.31,46,900/- covered in the sale transaction dated 19.08.2004 which the plaintiffs are lawfully entitled to. We are also of the opinion that the liability of the defendant to pay the suit claim has been proved by the plaintiffs by adducing oral and documentary evidence before the trial Court. While so, we hesitate to interfere with the well considered decree and judgment passed by the trial court and consequently, the Appeal Suit deserves only to be dismissed.

8. In the result, we confirm the decree and judgment passed by the Court below. Consequently, the Appeal Suit is dismissed, however, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1.The III Additional District Judge
Puducherry.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Pass Associates, Advocate, S.R.No.46102

+1cc to M/s.G.Sumitra, Advocate, S.R.No.45967

A.S.No.1008 of 2012