

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Second Appeal No.934 of 2011

Kayalvizhi ... Appellant/ Appellant/1st Defendant

-Vs-

1. R.S.Govindhan

2.Babu alias Sivagurunathan
... Respondents/ Respondents/Plaintiff

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 09.04.2011 in A.S.No.4 of 2010 on the file of the Subordinate Judge, Harur, confirming the judgment and decree dated 20.11.2009 made in O.S.No.237 of 2004 on the file of the District Munsiff Court, Harur.

For Appellant : Mr.Muthuramalingam

For Respondent : Mr.N.Anand Venkatesh
assisted by Mr.J.Hariharan

J U D G M E N T

Aggrieved over the concurrent findings by the Courts below the unsuccessful first defendant has preferred the above Second Appeal.

2. According to the first respondent/plaintiff, he had borrowed money from the appellant's/first defendant's husband for urgent family needs. Her husband insisted the first respondent/plaintiff to execute a General Power of Attorney in favour of his brother the second respondent/second defendant. The first respondent/plaintiff had no other go, other than executing the Power of Attorney and handing over the Original title deeds. Thereafter the first respondent repaid the entire loan amount and requested the appellants husband for return of original title deeds. But they demanded a further sum of Rs.50,000/- for return of documents. The first respondent on 27.03.2003 informed the second respondent that he was going to cancel the Power of Attorney and actually executed a

cancellation deed on 03.04.2003 and registered the same on 25.04.2003. On 30.03.2004, the defendants and their men attempted to trespass into the land, which was thwarted and hence filed the suit for declaration and injunction.

3. The first defendant defended the suit by filing a written statement and the 2nd defendant remained ex-parte. The Trial Court framed appropriate issues and after elaborate trial, decreed the suit in favour of the first respondent/plaintiff. The Lower Appellate Court has confirmed the decree and judgment of the Trial Court against which the present Second Appeal has been preferred and admitted on the following question of law on 26.08.2011.

" 1) Whether in case execution of sale deed by the Power Agent during the period between the date of execution of cancellation Deed and Registration of the same will also come under the Doctrine of Relating Back as envisaged under Section 47 of the Registration Act?

2) Whether Registration of a Cancellation Deed canceling a Power of Attorney after execution of Sale Deed by the Power Agent to 3rd Party will constitute valid cancellation?

3) Whether the Doctrine of Relating Back as envisaged under Section 47 of the Registration Act will prevail over Section 204 of the Indian Contract which categorically says that the Principal cannot revoke the authority given to his agent after the authority has been exercised by the Agent?"

4. Thereafter the following additional questions of law have been added to it and both counsel have advanced their arguments on all the questions of law:-

Additional questions of Law:

1) Whether the plaintiff is not estopped under Section 91 r/w Section 114 of Evidence Act to make claim contrary to Ex.A5?

2) When the plaintiff is a party to the Sale Deed under Ex.B1, whether his suit for declaration of his title and permanent injunction is maintainable, in the absence of prayer for cancellation of said Sale Deed in

accordance with law?

3) Whether documents under Ex.A 10 & 11, which are not connected to suit property, could be legal evidence for proof of discharge of alleged debt under Ex.B2?

4) In the absence of proof of registered notice of cancellation of power under Ex.A6 to 2nd defendant prior to exercise of power by him, whether Sale Deed in favour of 1st defendant under Ex.B1 could be nullified?

5. The questions of law raised above revolve around the core issue as to whether the relation ship between the appellant and the first respondent is that of Lender and Borrower or that of purchaser and vendor. The main contention advanced by the parties are two fold. According to the first respondent/plaintiff, the transaction was purely a loan transaction and he was compelled to execute a General Power of Attorney and hand over original title deeds out of urgent needs and he had no intention to sell. On the other hand, the contention of the appellant is that the sale transaction is bonafide and cancellation of the Power of Attorney would not nullify the valid sale made by the agent and the principal cannot revoke the sale by cancelling the Power of Attorney. The materials placed before the Courts show that Ex.A5 the general Power of Attorney was executed in favour of the second respondent/ second defendant on 12.10.1998. There is no dispute as to the relationship between the appellant and the second respondent. The second respondent is the brother of appellant's husband. In other words he is the brother-in-law of the appellant. On the other hand the first respondent/plaintiff does not have any relationship with the appellant or the second respondent. The case of the plaintiff is that he was introduced by P.W.2- Ulaganathan, the brother of the appellant for the purpose of getting loan from the husband of the appellant. Eventhough P.W.2 is the brother of the appellant, he would depose in favour of first respondent/plaintiff to the effect that the transaction between the appellant and first respondent was only a loan transaction and there was intention for sale. It is evident from the deposition of the appellant that the relationship between her and her brother (P.W.2) was cordial and no motive to depose against. Ex.A11 is the receipt issued by the appellant for having received the repayment of the loan amount. Though the contents of the receipts were not admitted, her signature was admitted by the appellant during cross-examination. Hence, from the evidence of the parties it can be inferred that there was loan transaction between the parties.

The above inference is further fortified by the clear admission made by her that the appellant and her husband are doing money lending business.

6. In order to prove that the general Power of Attorney was executed for the purpose of sale of property and the principal had intention to sell, the concerned party is the agent. The second defendant in whose favour the general Power of Attorney was executed and who executed the sale deed in favour of the appellant, remained ex-parte without filing written statement. As observed earlier he is the brother-in-law of the appellant and a crucial witness to prove the transaction between the plaintiff and the defendants. In the absence of any evidence of the agent, the intention of the principal to sell the property cannot be proved. It does not stop with that. The specific details of sale consideration, mode of payment, adjustments towards loan, receipt of consideration of sale by principal and acknowledgement and ratification of sale are matters to be proved. But as observed there is no evidence to that effect. On the contrary, there is evidence that the first respondent had made payments through Ex.A11 to the appellant. If the sale transaction is true, payment shall have been made by the appellant to the first respondent. There is no iota of evidence that sale consideration was paid or adjusted towards debt.

7. Apart from this, notice and knowledge of the cancellation of Power of Attorney is another crucial issue to be proved. On the side of the plaintiff it is stated that on 27.03.2003, the second defendant was informed of cancellation in the presence of witnesses and a deed of cancellation was executed on 03.04.2003. There is positive evidence that the second defendant had knowledge about the cancellation. To refute the said averment, the second defendant is the concerned party, who remained absent. He was not even examined as witness. There is no evidence to prove that the deed of cancellation of general power was not valid and the execution of sale deed was bonafide. Ex.A.10 is a cancellation of a sale agreement between the appellant and first respondent at an earlier instance. It is admitted by the appellant during cross-examination that the first respondent was introduced by her brother Ulaganathan (P.W.2) and Ex.A.10 was made by her husband in the course of their money lending business. It is also admitted that P.W.2 and P.W.1 came to her house for borrowing money. In that event it is crystal clear that Ex.A.5 was executed as security for loan purposes and the finding of the Courts below that the sale was made collusively with knowledge of cancellation of Power of Attorney after its cancellation is not bonafide and invalid.

8. In so far as possession is concerned, the case of the appellant is that she had taken possession on 17.04.2003 itself

and therefore the allegation that there was interference of possession of the first respondent is false. But on the contrary she herself admit that all the revenue documents stand in the name of first respondent himself. He has paid the kist and the same has been proved by the evidence of P.W.3 and exhibits A2-A4. On the other hand the appellant in her own evidence admits that since she had not taken possession, patta was not transferred in her favour and since she did not cultivate, she had not paid the kist to the land. Therefore, by the categorical admission it is proved that possession is with the first respondent. Curiously the husband of the appellant was not also examined as witness. There is no denial for the averments that appellant's husband misused official position as Inspector of Police and he had threatened the first respondent.

9. In view of the above materials, it is clear that Ex.A5 = B2 was executed as security to loan transaction and the debt was discharged as substantiated by the evidence of P.W.2, the brother of the appellant. The general Power of Attorney was cancelled after due intimation to the agent and he remained ex-parte without denying the same. In such circumstance, the cancellation is valid and it relates back to the date of its execution as per Sec.47 of the Registration Act, 1908. Once it is found that the cancellation of Ex.A5 is valid, it goes without saying the Ex.B1 sale deed dated 17.04.2003 is invalid and hence Sec.204 of the Indian Contract Act, 1872 will not have any impact on the sale transaction. Further, it is well settled that the latter enactment will prevail over the previous enactment. As such the Registration Act will prevail over the Contract Act in the event of repugnance. But there is no such occasion. Therefore, the sale is not binding upon the first respondent and it need not be challenged in the suit. When appellant as D.W.1 herself admit signature in Ex.A.11, it is proved that there being no other transaction between the parties, the debt get discharged. Admittedly possession lies in the hands of the first respondent plaintiff and therefore suit for permanent injunction is maintainable. Since it is clearly proved that the transaction is a loan transaction and the general Power of Attorney (Ex.A5) was executed for security purposes, without any intention to sell, Sec 91 and 114 of Evidence Act will not be attracted to the case on hand. Likewise, the judgments cited by the appellant deals with a situation where the transfer or original title deeds to the hands of the purchaser and burden of proof of cancellation of Power of Attorney on the plaintiff. In the instant case, the above factual aspect of entrusting the title deeds with the lender has been proved by acceptable positive evidence, which was not refuted. Further prior intimation of cancellation of Power of Attorney was also pleaded and proved. But the concerned party namely the second respondent/Agent neither denied the

factum of notice through written statement or by oral evidence. In the absence of contrary evidence, it shall be construed that the case of the first respondent/plaintiff of complying with the legal requirements are satisfied. In such circumstances, the judgments relied on by the appellant in respect of factual matters do not come to her and hence not discussed.

In the result, the questions of law raised by the appellant does not stand the scrutiny of law and fail. Consequently the Second Appeal stand dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

at/kpr

To

1. The Subordinate Judge, Harur.
- 2.The District Munsiff Court, Harur.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.V.Nicholas, Advocate SR.No. 88090

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AD(CO)

A.SK(08.07.2021)