

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**

C.M.P.No.5197 of 2016
in
S.A.SR. No.99305 of 2012

1.Munusamy
2.V.Baskar
3.A.Geetha
4.V.Vijay
5.Gejaamal
6.Anandakrishnan
7.Rani

.. Petitioners/
Appellants

Vs

Subramanian

.. Respondent

(Cause title accepted vide
order dated 13.03.2015 made in
M.P.No.1 of 2015 in
SA SR. No.99305 of 2012)

C.M.P.No.5197 of 2016 has been filed to condone the delay of
841 days in filing the second appeal.

Second Appeal filed under Section 100 C.P.C. against the
judgment and decree dated 26.10.2009 passed in A.S.No.23 of 2008

on the file of the Sub Court, Poonamallee, modifying the judgment and decree dated 31.08.2007 made in O.S.No.442 of 1996 on the file of the District Munsif cum Judicial Magistrate, Ambattur.

For Appellants	..	Mr.H.Adaikala Arockiaraj
For Respondent	..	Mr.S.Ramajayam

JUDGMENT

By consent, both the application for condonation of delay as well as the appeal has been taken up for hearing.

2.The present appeal has been filed by the appellants, who are the defendants in the suit. The suit has been filed for declaration and possession with alternative prayer for return of amount. Under Ex.A3, a power deed has been executed by the plaintiff in favour of the first defendant (since deceased). Under Ex.A8, the power deed executed by the plaintiff in favour of the first defendant was cancelled between 2.00 p.m. and 3.00 p.m. On the very same day, under Ex.A9, a sale deed was executed using the very same power deed by the first

defendant in favour of the second defendant between 4.00 p.m. and 5.00 p.m. The trial Court granted a decree for alternative prayer on the premise that the plaintiff has not established the factum of cancellation of the power deed by putting the first defendant on notice. The lower appellate Court reversed it by holding that on the very same day, within an hour, before the very same Sub Registrar office, it has been done and therefore, it cannot be said that defendants 1 and 2 were not aware of it. Thus, the said suit has been decreed as prayed for. Challenging the same, by framing the following substantial questions of law, the present appeal has been filed:

(1).Whether the lower appellate Court is right in decreeing the suit in respect of declaratory relief, when the plaintiff failed to send any notice to the first defendant informing the cancellation of power of attorney, as required under Sections 201 to 210 of Contract Act?

(2)Whether the lower appellate Court is right in decreeing the suit as prayed for without considering the alternative relief prayed by the plaintiff, while plaintiff himself admitted in the cross-examination that he has prayed for alternative relief since the suit property was sold?

3.The suit was decreed by the lower appellate Court on 26.10.2009. Even pending the suit, the first defendant died. In the year 2010, the plaintiff levied execution proceedings by serving notices on all the defendants including those who are impleaded pursuant to the death of the first defendant. The fact remains that the execution proceedings got completed in the year 2012 with the delivery being ordered and effected. Thereafter, the present appeal has been filed in the month of November, 2012 with the delay of 841 days in filing the appeal. In the affidavit filed in support of the petition filed in C.M.P.No.5197 of 2016 in S.A.SR.No.99305 of 2012, it has been stated that the second defendant died on 07.02.2010 and that is the reason why the appeal could not be brought up for hearing within time.

4.Learned counsel for the defendants/appellants submits that as per Section 208 of the Power of Attorney Act, it is mandatory on the part of the owner/principal to inform the power holder about the cancellation. Thus, in the absence of any such material, the judgment and decree rendered by the court below would require interference. On the question of delay, it is submitted that the averments made would

entitle the appellants to condone the delay occasioned.

5.Learned counsel appearing for the respondent/plaintiff submits that the delay is unexplained and the appeal has been filed, admittedly after the execution petition was ordered and executed, resulting in possession being handing over. Thus the reason assigned cannot be sustained. On merit, learned counsel submits that in view of the categorical finding of the lower appellate Court no interference is required.

6.This Court does not find any merit both in the petition for condonation of delay and in the appeal. Insofar as the petition for condonation of delay is concerned, admittedly, execution petition has been filed in the year 2010 and thereafter ordered. The execution petition was closed after satisfaction in the month of January, 2012. Thereafter, the present appeal has been filed with the petition for condonation of delay in the month of November, 2012. Thus, the averments made, seeking condonation of delay cannot be accepted. Further more, the appeal has been filed not only by the legal representatives of the deceased second defendant, who are also parties to the execution petition, but also by the legal heirs of the

deceased first defendant, who died even pending the suit. Therefore, the affidavit filed in support of the petition to condone the delay cannot be accepted.

7. Coming to the merits of the case, admittedly, the judgment and decree of the trial Court has not been challenged by the appellants, meaning thereby the fact that the amount which forms part of the consideration in the sale effected by the first defendant in favour of the second defendant has not been given in favour of the plaintiff. Looking from that context, there is nothing wrong in the judgment and decree rendered by the lower appellate Court as the only other issue was the first defendant was aware of the cancellation of the power deed. The lower appellate Court, being a final Court of fact and law, took notice of the fact that within an hour, the sale deed was executed after cancellation of the power deed, before the very same Sub Registrar office. In other words, cancellation followed by registration, which has taken place within an hour before the very same Sub Registrar office and therefore, it cannot be said that defendants 1 and 2 could plead ignorance of the factum of cancellation. It is the specific case of the plaintiff that it was made known to defendants 1 and 2 as well as the registering authority, who said that the matter can be

agitated before the Civil Court. The said stand appears to be probable in view of the admitted facts about the place and timing of cancellation and registration. The first one is prior in time by one hour to the second one.

8. In such view of the matter, this Court does not find any substantial question of law, warranting interference. Accordingly, the C.M.P. is dismissed and the second appeal stands dismissed at the S.R. stage itself. No costs.

09.02.2017

Index: Yes/No
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To

1. The Subordinate Court,
Poonamallee.
2. The District Munsif cum Judicial
Magistrate, Ambattur.

M.M.SUNDRESH, J.

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