

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..01..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Original Side Appeal No.334 of 2013

and M.P.No.1 of 2013

N.Palani

... Appellant/Defendant
-Versus-

R.Varadarajan [Deceased]

1.K.C.Jayashree
W/o.Late R.Varadarajan

2.Seema Varadarajan
D/o. Late R.Varadarajan
[Cause title accepted vide order dated 23.09.2013
made in M.P.No.1 of 2013 in OSA SR NO.81317 of 2013]

.... Respondents/Plaintiffs

Original Side Appeal under Order 36, Rule 9 of
Original Side Rules r/w Clause 15 of Letters Patent, praying
to set aside the Decree and Judgement dated 12.09.2012 made
in C.S.No.256 of 2007.

C.S.No.256/2007:Civil Suit filed prays for a Judgment & decree
against the defendant directing the defendants to execute a
sale deed in favour of plaintiff for the suit schedule
property; or to direct the defendant to pay a sum of Rs.75
lakhs which was received from the plaintiff as a sale
consideration and for the cost of the suit.

For Appellant : Mr.K.Venkatakrishnan

JUDGMENT

(Judgement of the Court was delivered by S.NAGAMUTHU. J.)

The deceased sole plaintiff filed C.S.No.256 of 2007
for specific performance of contract of sale of the suit
schedule immovable property or for a direction to the
defendant/appellant herein to pay a sum of Rs.75,00,000/-
which was received from the plaintiff as a sale consideration.

2. When the above said suit came up for hearing on
12.09.2012, the plaintiff filed a memo withdrawing the suit.

Acting on the same, the learned single Judge has dismissed the suit as withdrawn. The original application filed along with the civil suit was also dismissed. Challenging the dismissal of the suit in C.S.No.256 of 2007, the defendant has come up with the present original side appeal.

3. We have heard the learned counsel appearing for the appellant/defendant and there is no representation for the respondent. We have also perused the records carefully.

4. The learned counsel appearing for the appellant would submit that during the pendency of the suit in C.S.No.256 of 2007, the plaintiff had created a forged power of attorney in the name of his wife and had also created sale deeds. Suppressing all these facts, the plaintiffs had withdrawn the suit. Thus, according to the learned counsel, the learned single Judge ought not to have allowed the plaintiff to withdraw the suit.

5. We are not at all persuaded by the above said argument. The said civil suit has got nothing to do with the fraud, forgery or any other malfeasance allegedly committed by the deceased plaintiff. If really, any power of attorney has been created fraudulently and based on the same, sale deeds have also been created, they would give rise to a separate cause of action for which the appellant/defendant can have remedy in accordance with either under the civil law or criminal law. Since the suit has been dismissed as withdrawn and as the suit is concerned only with the claim for specific performance of the contract of sale agreement, subsequent events such as creation of power of attorney or sale deeds would not have any bearing at all. In such view of the matter, we do not find any merit at all in this appeal and the same deserves only to be dismissed.

6. In the result, the original side appeal fails and the same is accordingly dismissed. It is, however, made clear that the appellant can workout his remedy as against the creation of power of attorney and the sale deeds as against the respondents herein in the manner known to law. Consequently, connected MP is closed. Considering the facts and circumstances of the case, the appellant shall bear his own costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kmk

To:

The Sub Assistant Registrar, Original Side,
High Court, Madras.

+lcc to Mr.K.Venkatakrishnan, Advocate sr.1999

O.S.A.No.334 of 2013

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