

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 13.10.2017****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.No.365 of 2013**

J.Gunavathy Baby ... Plaintiff

Versus

B.Baleeshwari Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of C.P.C praying to pass a judgment and decree:-

a) directing the defendant to vacate and deliver vacant possession of the suit property No.10, Old No.60, Jegannatha Nagar II Main Road, Arumbakkam, Chennai - 106 to the plaintiff;

b) directing the defendant to pay damages for use and occupation of the property at Rs.75,000/- per month from the date of the plaint till date of actual delivery of possession and

c) directing the defendant to pay costs of the suit.

For Plaintiff : Mr.T.Viswanatha Rao
For Defendant : Mr.T.V.Vineeth Kumar

J U D G M E N T

The suit is one filed by the plaintiff for recovery of possession and damages for use and occupation of the suit property. According to the

plaintiff, the suit property belonged to the defendant. The defendant agreed to sell the suit property to the plaintiff during September 2002 and a general power of attorney was executed by the defendant in favour of the plaintiff's husband, as the property was in occupation of seven tenants apart from the defendant herself. On 30.09.2002, an agreement of sale was entered into between the plaintiff and the defendant in and by which the defendant agreed to sell the suit property to the plaintiff for a consideration of Rs.18,00,000/- and received Rs.1,00,000/- as advance. The said agreement also recites that possession has to be handed over at the time of execution of the sale deed. Since the property was occupied by the defendant and her seven tenants, the plaintiff insisted on vacant possession being handed over. However, the defendant took time repeatedly for handing over possession. The plaintiff would claim that she had paid the entire balance of sale consideration of Rs.17,00,000/- to the defendant in two installments on 15.03.2003 and 08.01.2005. Having waited for a long time, the plaintiff's husband in his capacity as power agent of the defendant executed the sale deed in favour of the plaintiff on 25.01.2012 conveying the suit property to

the plaintiff. Even after such conveyance, the defendant did not vacate and hand over possession. Therefore, the plaintiff caused a legal notice on 19.11.2012 requiring the defendant to vacate and hand over vacant possession of the property. The said notice was addressed to the defendant as well as the four of the tenants in the suit property. Upon receipt of the notice, the defendant sent reply on 10.12.2012 denying the agreement and contended that she had signed the documents without knowing the contents of the documents on the representation of her husband that the documents were required for some loan transaction. According to the defendant, she was never informed that she was signing the agreement of sale in respect of the suit property. She would also contend that worth of the property is Rs.36,00,00,000/- in the year 2002 and therefore, the sale itself has been brought about by undue influence and suppression of material facts. Upon receipt of the said notice, the plaintiff issued re-joinder and has come forward with the present suit.

2. The defendant filed written statement reiterating the allegations contained in her reply notice. It is the contention of the defendant that though she signed the documents viz., the agreement of sale and general power

of attorney in favour of the plaintiff and her husband respectively, she was not aware of the contents of the documents and she signed on the instructions of her husband. She never knew the nature of the documents executed. It is also claimed that the plaintiff's husband is a financier, he had taken the title deeds and got signatures in blank papers and blank cheques as security for moneys advanced by him to the husband of the defendant. It is the further contention of the defendant that the plaintiff cannot claim title under sale deed, which was executed by her husband without paying any sale consideration using the general power of attorney executed by the defendants on 23.09.2002. It is also contended that the alleged sale deed dated 25.01.2012 does not confer any title on the plaintiff and therefore the plaintiff is not entitled to a decree for possession.

3. On the above pleadings, this Court had framed the following issues:

1. Whether the registered sale agreement dated 23.09.2002 is true and valid?

2. Whether the defendant, who had admittedly executed the registered sale deed conveying the suit property to the plaintiff under document No.264 of 2012 dated

25.01.2012 through her agent under validly executed Registered General Power of Attorney document No.1367 of 2002 is now entitled to claim that the sale deed allegedly does not confer title for the suit property on the plaintiff?

3. Whether the defendant having sent letters dated 20.01.2005, 05.10.2007 and 18.08.2009 under her signature is entitled now to contend that they are all created by the plaintiff for filing the suit?

4. Is not defendant liable to pay damages for use and occupation of the property at the amount claimed in the plaint till date of actual delivery of possession?

5. To what relief or reliefs the parties are entitled to?

4. At trial, the son of the plaintiff was examined as P.W.1 and her husband was examined as PW2 and Exs.P1 to P13 were marked on the side of the plaintiff. The sole defendant was examined as DW1 and her husband T.Balachandaran was examined as DW2 and no documentary evidence was filed on the side of the defendant.

Issue No.1:

5. The sale agreement dated 30.09.2002, is a registered agreement. PW1 and PW2 have spoken about the said document. The execution of the document is not in

dispute. In fact, the defendant in her evidence as DW1 has admitted her signatures in the said document. She has also stated that she knows the consequences of registration of a document as she had gone to the Registrar's Office for purchase of the property. She claims that she does not know the details of the tenants occupying the property. She would further depose that even at the time she was tendering evidence she does not know the purpose for which she went to the Registrar's Office and the purpose for which her signatures were taken before the Sub-Registrar. She would also claim that she has not enquired her husband about the details. But as regards her signatures in Ex.P2 sale agreement dated 30.09.2002, her evidence is as follows:

"The signatures found in Ex.P2 are that of mine. I signed Ex.P2 in all pages. In Ex.P2 also signed by me before the Sub-Registrar and my thumb impression also taken. At that time my husband was also present I have not objected to signing the documents. "

6. The husband of the defendant, who was examined as DW2 would depose in his chief examination that, he had borrowed monies from the plaintiff's husband as security for the said borrowings and documents were taken by the

plaintiff's husband from him. In his cross examination, he had admitted that he has no documentary evidence to show that he had financial dealings with the plaintiff's husband. He has also admitted the signatures of the defendant and himself in Ex.P2.

7. In the light of the above admission by both DW1 and DW2 in their evidence, the agreement Ex.P2 is proved in accordance with law by the plaintiff. Even in respect of the registered agreement of sale, I do not think that the defendant has proved her contention that the document was taken from her without her knowledge of the contents of the document. It is trite proposition of law that a person of full age signing the document, that too a registered document in the presence of the Registrar cannot turn around and contend that she did not know the contents of the document. In the course of the registration, the registering officials make an endorsement as per Section 59 and 60 of the Registration Act and in fact Sub-Section 2 of Section 60 provides that such endorsement shall be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Registration Act and that the facts mentioned in the endorsements referred to in

Section 59 have occurred as mentioned therein. Therefore, if the plaintiff wants to contend that she was not aware of the contents of the documents, it is for her to prove beyond doubt that she was not apprised of the contents of the documents by the Registering Official. The statutory presumption attached to the functions of the Registrar under Section 114 of the Evidence Act cannot be slightly brushed aside. Hence, question No.1 raised in the suit is answered in favour of the plaintiff to the effect that the agreement dated 23.09.2002 is true and valid.

Issue No.2:

8. As regards the sale deed dated 25.01.2012, the said document was executed by the power of attorney agent of the defendant, who also happens to be husband of the plaintiff in favour of the plaintiff. The execution and registration of power of attorney is not denied by the defendant. Again her contention is only that she did not know the contents of the documents. Admittedly, she has not cancelled the power of attorney dated 23.09.2002 executed by her in favour of the husband of the plaintiff. The husband of the defendant is the first witness to the document. Both the defendant as well as her husband have admitted their signatures in the said document also. The registration of document, being an

official act, as already pointed out, while dealing with the first issue, the statutory presumption that arises under Section 114 of the Evidence Act would apply to the power of attorney also.

9. Ex.P10, sale deed has been executed by the power agent in favour of the plaintiff. This suit has been laid on the basis of the Ex.P10, sale deed dated 22.04.2013 and it is now stated by the learned counsel for the defendant that the defendant had come forward with the suit in C.S.No.272 of 2017 seeking declaration that the sale deed is null and void. Unless the sale deed is set aside by the process known to law, the defendant would be bound by the said sale deed and she cannot now contend in this suit for possession, that the sale deed is invalid without seeking to set aside the same. Therefore, the second issue is also answered in favour of the plaintiff to the effect that the defendant is not entitled to claim that the sale deed dated 25.01.2012 does not confer title on the plaintiff.

Issue No.3:

10. This issue relates to the letters dated 20.01.2005, 05.10.2007 and 18.08.2009, which have been marked as Exs.P7, P8 and P9. In all these letters, the plaintiff and her husband have sought for more time to

vacate the property so that the possession can be handed over to the plaintiff when the sale deed is executed. The first defendant as DW1 as well as her husband as DW2 have in their evidence admitted their signatures in all these letters. Therefore, it is futile for them to now turn around and contend that these letters were obtained in pre-signed blank papers. During the cross examination DW1 has depose as follows:

"In Ex.P7 also I have signed on the revenue stamp and my husband signed below me. In Exs.P8 and P9 both myself and my husband signed"

11. Apart from the above three letters, there were also other documents viz., Exs.P4, P5 and P6, which contain the signatures of the defendant and her husband. In Ex.P4 letter dated 11.03.2003, the defendant and her husband confirmed execution of sale agreement dated 30.09.2002 and sought time for handing over vacant possession and to register the sale deed. Ex.P5 is the stamped receipt evidencing payment of Rs.14,50,000/- by the plaintiff to the defendants on 15.03.2003. Ex.P6 is another receipt evidencing payment of Rs.2,50,000/- by the plaintiff to the defendant on 08.01.2005. Both the Exs.P5 and P6 are stamped receipts. In her evidence as

DW1, the defendant has admitted her signatures in these documents also. DW1 in her evidence regarding Exs.P4, P5 and P6 has deposed in cross examination as follows:

"The signatures found in Ex.P4 is that of my husband and also I signed it. I have signed in Ex.P5 as well as my husband also signed"

"In Ex.P6 I signed on the revenue stamp and my husband signed below me"

12. The husband of the defendant as DW2 would also admit the signatures in the said documents. Therefore, I do not see any reason to disbelieve the truth and genuineness of these documents. Issue No.3 is answered in favour of the plaintiff to the effect that she cannot now be heard to contend that these documents were created by the plaintiff.

Issue No.4:

13. Once the sale deed has been executed by the Agent of the defendant in favour of the plaintiff, the occupation of the defendant becomes unlawful. Therefore, the defendant is liable to pay damages for use and occupation of the property from the date of plaint till date of delivery of possession. The plaintiff has claimed

a sum of Rs.75,000/- per month towards damages and there is no documentary evidence on the side of the plaintiff to prove the quantum of damages. However, the husband of the defendant has deposed that he is receiving rent from seven tenants to the tune of Rs.30,000/- per month. Considering the above evidence it will be just and proper that the plaintiff would be entitled to the decree for damages at the rate of Rs.10,000/- per month. Hence, the issue No.4 is answered in favour of the plaintiff holding that the plaintiff is entitled to damages for use and occupation at the rate of Rs.10,000/- per month from the date of suit till date of delivery of possession.

14. In the result, the suit is decreed as follows:

There will be a decree for delivery of possession in favour of the plaintiff. The defendant shall vacate and hand over the vacant possession of the suit property bearing No.10, Old No.60, Jegannatha Nagar II Main Road, Arumbakkam, Chennai - 600 106 within a period of 3 months from today. The defendant shall also pay damages for use and occupation at the rate of Rs.10,000/- per month from the date of plaint till the date of actual delivery of possession. The plaintiff would be entitled to the cost of the suit also.

List of the witnesses examined on the side of the plaintiff:

- P.W.1- J.Sandeep Bafna, son of the plaintiff.
P.W.2- Jawarilal Bafna, husband of the plaintiff.

List of Exhibits marked on the side of the plaintiff:

- Ex.P1- Authorisation letter dated 09.12.2015.
Ex.P2- Power of attorney executed by the plaintiff dated 23.09.2002.
Ex.P3- Registered Agreement of Sale executed by the defendant to the plaintiff dated 30.09.2002.
Ex.P4- Letter from the defendant to the plaintiff dated 11.03.2003.
Ex.P5- Receipt issued by the defendant in favour of the plaintiff for the sale consideration of Rs.14,50,000/-.
Ex.P6- Receipt issued by the defendant in favour of the plaintiff for the balance of sale consideration of Rs.2,50,000/-.
Ex.P7- Letter from the defendant to the plaintiff dated 20.01.2005.
Ex.P8- Letter from the defendant to the plaintiff dated 05.10.2007.
Ex.P9- Letter from the defendant to the plaintiff dated 18.08.2009.
Ex.P10- Copy of the sale deed dated 25.01.2012.
Ex.P11- Copy of the notice by the plaintiff's counsel dated 19.11.2012.

Ex.P12- Acknowledgment card.

Ex.P13- Reply by the defendant's counsel dated
10.12.2012.

**List of the witnesses examined on the side of the
defendant:**

D.W.1 - B.Baleeshwari, defendant.
D.W.2 - T.Balachandran, husband of the
defendant.

List of Exhibits marked on the side of the defendant:

Nil.

sd/-R.S.M.J

13.10.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/29.11.2017

COURT OFFICER

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