

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2018

Delivered on : 11.01.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.315 of 2017

and

C.M.P.No.12044 of 2017

M.Rajkumar ... Appellant/1st Defendant
vs.

S.Easwaramoorthy ...1st Respondent/Plaintiff

R.Poovendran(died) ...2nd Respondent/2nd
Defendant in O.S.

Appeal suit filed under Section 96 read with Order 41 Rule 1 and 2 of Civil Procedure Code, 1908 against the judgment and decree dated 21.10.2016, passed by the Additional District Judge-III, Dharapuram, in O.S.No.222 of 2013.

For Appellant : Mr.K.Sridhar

For Respondent : Mr.S.Vinothkumar

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 21.10.2016, passed in O.S.No.222 of 2013, by the Additional District Court, No.III, Dharapuram.

2.The first respondent herein, as plaintiff, has instituted O.S.No.222 of 2013, on the file of the trial Court, praying to pass a decree of specific performance, in pursuance of the sale agreement dated 05.09.2012, or alternatively to pass a money decree to the tune of Rs.45 lakhs with 12% interest, wherein, the present appellant has been arrayed as the first defendant.

3.The material averments made in the plaint are that the suit properties are the absolute properties of the first defendant. The second defendant has been appointed by the first defendant as his General Power of Attorney Agent, by virtue of Power Deed dated 30.03.2011. The second defendant has entered into a sale agreement in respect of suit properties with plaintiff on 05.09.2012. The total

consideration has been fixed at Rs.55 lakhs. The plaintiff has offered to pay a sum of Rs.10 lakhs by way of an advance. But the second defendant, after having consultation with the first defendant, has demanded a sum of Rs.45 lakhs, by way of an advance and accordingly, the plaintiff has given the same. It is agreed to execute a registered sale deed within a period of eleven months, after receipt of balance of sale consideration. The plaintiff has always been ready and willing to perform his part of the contract. The plaintiff has approached the defendants to execute a registered sale deed after receipt of balance of sale consideration, but they evaded. Under the said circumstances, a legal notice has been issued on 23.07.2013. After receipt of the same, the first defendant has given a false reply notice dated 29.07.2013. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4.The material averments made in the written statement filed by the first defendant are that the suit properties are the absolute properties of the first defendant. It is true that the first defendant has executed a deed of General Power of Attorney on 30.03.2011. It is false to say that the second defendant has executed the suit sale agreement in favour of the plaintiff on 05.09.2012, after receipt of Rs.45 lakhs. Further it is averred in the written statement that the first defendant has received a sum of Rs.10 lakhs on 07.01.2011, by way of debt from one Dhandapani. At the time of receipt of loan, he executed a sale agreement in his favour. On the same day, he received another sum of Rs.5 lakhs and executed another sale agreement in his favour. The first defendant has executed a General Power of Attorney in favour of the second defendant. The first defendant has settled all the amounts and therefore, the said Dhandapani has cancelled the sale agreements on 17.3.2011 and on the same day, the first defendant has cancelled the Power of Attorney Deed, executed in favour of the second defendant. On 30.03.2011, the first defendant has received another sum of Rs.15 lakhs from the said Dhandapani by way of loan and executed a sale agreement for a sum of Rs.18 lakhs. On the same day, he executed another Power Deed in favour of the second defendant. On 25.03.2013, the first defendant has discharged the entire loan. On the same day, the sale agreement has been cancelled. On 03.11.2012, the first defendant has cancelled the Power of Attorney Deed dated 30.03.2011. The first defendant has not known the plaintiff. The second defendant and plaintiff have falsely created the suit sale agreement. There is no merit in the suit and the same deserves to be dismissed.

5.The second defendant has supported the averments made in the plaint by way of filing a separate written statement.

6.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the

suit in respect of alternative relief sought therein. The judgment and decree passed by the trial Court are being challenged in the present appeal suit.

7.The sum and substance of the case of the plaintiff is that the suit properties are the absolute properties of the first defendant. The first defendant has appointed the second defendant as his General Power of Attorney Agent by virtue of Power Deed dated 30.03.2011 and by utilising the same, the second defendant has executed the suit sale agreement in favour of the plaintiff on 05.09.2012, wherein, total sale consideration has been fixed at Rs.55 lakhs and on the date of its execution, the plaintiff has paid a sum of Rs.45 lakhs by way of an advance. Further it is agreed that the plaintiff should pay balance of sale consideration within a period of eleven months and the defendants should execute a Registered sale deed in his favour. Since the defendants have not come forward to execute a Registered sale deed in favour of the plaintiff, after receipt of balance of sale consideration, a legal notice has been issued on 23.07.2013 and after receipt of the same, the first defendant has given a false reply notice. Under the said circumstances, the present suit has been instituted for the relief sought therein.

8.The defence put forth on the side of the first defendant is that the first defendant has received loans from one Dhandapani, after executing sale agreements on two occasions and at that time, he executed a General Power of Attorney Deed in favour of the second defendant and immediately after discharge of the entire loan amount, both the sale agreements and also General Power of Attorney Deed have been cancelled. The second defendant has colluded with the plaintiff and thereby created the suit sale agreement dated 05.09.2012. The first defendant has not received the alleged advance amount of Rs.45 lakhs and since there is no privity of contract between the plaintiff and first defendant, through second defendant, the plaintiff is not entitled to get the relief sought in the plaint and therefore, the present suit deserves to be dismissed.

9.As adverted to earlier, after analysing the available evidence on record, the trial Court has decreed the suit only in respect of alternative relief sought therein.

10.The learned counsel appearing for the appellant/first defendant has contended to the effect that on 07.01.2011, the first defendant has received loans from one Dhandapani and on the same day, he executed sale agreements in his favour and also executed a General Power of Attorney Deed in favour of the second defendant and subsequently, he discharged the entire loan amount and both the sale agreements and General Power of Attorney Deed have been cancelled and likewise, on 30.03.2011 he received loan from the said Dhandapani by way of

executing sale agreement. On the same day, he executed a General Power of Attorney Deed in favour of the second defendant. On 25.03.2013, the entire loan has been discharged. On 03.11.2012, the General Power of Attorney Deed executed in favour of the second defendant by the first defendant has been cancelled and further, the stamp papers found in the suit sale agreement, dated 05.09.2012, have been purchased in the name of a third person and the same have been utilised for the purpose of creating the sale agreement dated 05.09.2012. The trial Court has given a specific finding to the effect that the transaction between the plaintiff and first defendant is nothing but a loan transaction. Under the said circumstances, the trial Court has decreed the suit in respect of alternative relief. It is not the case of either party that the transaction mentioned in the plaint is a loan transaction. Under the said circumstances, the judgment and decree passed by the trial Court are liable to be set aside

11.To controvert the contentions put forth on the side of the appellant/first defendant, the learned counsel appearing for the first respondent/plaintiff has meticulously contended to the effect that the suit properties are the absolute properties of the first defendant. The first defendant has executed a General Power of Attorney Deed in favour of the second defendant on 30.03.2011 and on the basis of the same, the second defendant has executed a sale agreement on 05.09.2012 in favour of the plaintiff, wherein, the total sale consideration has been fixed at Rs.55 laskhs and on the date of its execution, the plaintiff has advanced a sum of Rs.45 lakhs; further it is recited in the sale agreement to the effect that the plaintiff should pay balance of sale consideration within a period of eleven months and the defendants should execute a registered sale deed in his favour and despite of repeated demands made by the plaintiff, the defendants have not come forward to execute a registered sale deed in his favour. Under the said circumstances, on 23.07.2013, a legal notice has been issued to the defendants and after receipt of the same, the first defendant has given a false reply notice and under the said circumstances, the present suit has been instituted for getting relief of specific performance or alternatively to get a money decree to the tune of Rs.45 lakhs with subsequent interest and the trial Court, after considering the overall circumstances available on record, has rightly decreed the suit in respect of alternative relief sought therein and therefore, the judgment and decree passed by the trial Court do not require any interference.

12.Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts:

13.The suit properties are the absolute properties of the first defendant. The first defendant has received loans from one Dhandapani on two occasions and to that effect, he executed some sale agreements and also General Power of Attorney Deed in favour of the second defendant and subsequently, after discharge of the entire loan, the sale agreements executed in favour of the said Dhandapani are cancelled and the same is evidenced from Exs.B1 to B9. Further it is seen from the records that the General Power of Attorney Deed executed in favour of the second defendant by the first defendant on 30.03.2011 has been cancelled on 03.11.2012.

14.The main contention put forth on the side of the plaintiff is that on the strength of the General Power of Attorney Deed dated 30.03.2011, the second defendant has executed the suit sale agreement dated 05.03.2012 in favour of the plaintiff. The defence taken on the side of the first defendant is that after knowing the cancellation of General Power of Attorney Deed, both the plaintiff and second defendant have falsely created the suit sale agreement dated 05.09.2012. The suit sale agreement has been marked as Ex.A1. The General Power of Attorney Deed executed by the first defendant in favour of the second defendant on 30.03.2011 has been marked as Ex.A2.

15.The only point that comes up for consideration in the present suit is as to whether Ex.A1 has been falsely created by the plaintiff and second defendant, as pleaded on the side of the first defendant.

16.On the side of the plaintiff, he has been examined as P.W.1 and his specific evidence is that on the strength of General Power of Attorney Deed dated 30.03.2011, the second defendant has executed Ex.A1 in his favour and total consideration has been fixed at Rs.55 lakhs and on the date of its execution, the second defendant has received a sum of Rs.45 lakhs by way of an advance. One of the witnesses, by name, Sampath, has been examined as P.W.2 and his specific evidence is that on 05.09.2012, the second defendant, as a General Power of Attorney Agent of the first defendant, has executed Ex.A1 in favour of the plaintiff, after receipt of an advance amount of Rs.45 lakhs and in Ex.A1 he and one Kathirvel have put their signatures as witnesses.

17.In fact this Court has closely analysed the entire evidence given by P.W.2 and ultimately found that no animosity has been in existence between him and first defendant and under such circumstances, his evidence can be admitted in toto.

18.The main contention put forth on the side of the appellant/first defendant is that the stamp papers found in Ex.A1 are not purchased by the plaintiff and the same have

been purchased in the name of a third person and after knowing cancellation of General Power of Attorney Deed dated 30.03.2011, on 03.11.2012, Ex.A1 has been falsely created by the second defendant in the name of the plaintiff.

19.The first defendant has been examined as D.W.1 and his specific evidence is that he executed a General Power of Attorney Deed on 30.03.2011 in favour of the second defendant and the loans obtained from Dhandapani have already been discharged and after that on 03.11.2012, he cancelled the Power of Attorney Deed dated 30.03.2011 by virtue of Ex.B10. Further he deposed to the effect that at the time of execution of Ex.B10, the second defendant has also been present in the Sub-Registrar Office. If really such occurrence has taken place, the second defendant would have also joined in the cancellation deed dated 03.11.2012. Therefore, the evidence given by the first defendant is highly artificial and further, no intimation has been given to the second defendant with regard to Ex.B10.

20.Now the Court has to analyse the evidence given by D.W.3, by name Palanisamy, the alleged stamp paper vendor. Even in Chief examination, he has categorically admitted to the effect that the stamp papers found in Ex.A1 have been sold in favour of one Eswaramurthy, Kadarampalayam. Further he deposed to the effect that he has not obtained his signature in the concerned Register. But no Register has been filed.

21.Considering the fact that the specific evidence given by D.W.3 is that the stamp papers found in Ex.A1 have been sold in the name of the plaintiff, it is needless to say that the contentions put forth on the side of the appellant/first defendant is totally erroneous.

22.As adverted to earlier, the entire case of the plaintiff proceeds on the basis of recitals found in Ex.A2, wherein it has been clearly mentioned to the effect that if the said Dhandapani has not come forward to purchase the properties, the second defendant is at liberty to sell the same in favour of third persons.

23.Considering the recitals found in Ex.A2 and also considering the fact that on the side of the plaintiff, replete evidence is taken for the purpose of coming to a conclusion that Ex.A1 is a genuine document, it is very clear that the entire defence taken on the side of the appellant/first defendant is totally devoid of merits.

24.The plaintiff has filed the suit mainly for getting relief of specific performance or alternatively for getting refund of advance amount to the tune of Rs.45 lakhs with interest.

25.The trial Court, without considering the available evidence on record, has erroneously found that the transaction mentioned in the plaint is nothing but a loan transaction. As rightly pointed by the learned counsel appearing for the appellant/first defendant, it is not the case of either party that the transaction mentioned in the plaint is a loan transaction.

26.Further, this Court has independently decided the genuineness of Ex.A1. After making thorough discussion, this Court has taken a definite view that Ex.A1 is a genuine document. Since Ex.A1 is a genuine document and the trial Court has decreed the suit only in respect of alternative relief, this Court is of the view that the judgment and decree passed by the trial Court are perfectly correct and the same do not warrant any interference.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.222 of 2013 by the trial Court are confirmed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msk
To

The Additional District Judge-III,
Dharapuram.

Copy to: The Section Officer,
Vr Section, High Court, Madras.

+ 1 cc to MR. K. Govi Ganesan, Advocate Sr.2676
+ 2 ccs to Mr. K. Sridhar, Advocate Sr.2504

Appeal Suit No.315 of 2017

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