

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.270 of 2018

J.Bhuvaneswari

.. Appellant/Appellant/Plaintiff

Vs.

1.P.Tamil Selvi

2.P.K.Jayaprakash

.. Respondents/Respondent/Defendents

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 07.04.2017 made in A.S.No.38 of 2013 on the file of the II Additional District Judge, Tiruippur, confirming the judgment and decree dated 11.01.2013 made in O.S.No.255 of 2006 on the file of the Subordinate Court, Tiruppur.

For Appellant : Mr.C.Murali

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 07.04.2017 made in A.S.No.38 of 2013 on the file of the II Additional District Court, Tiruppur, confirming the judgment and decree dated 11.01.2013 made in O.S.No.255 of 2006 on the file of the Subordinate Court, Tiruppur.

2.The appellant is the plaintiff, who lost in both the Courts below. The appellant filed O.S.No.255 of 2006 for declaration, recovery of possession and permanent injunction, alternatively, to grant a decree of specific performance of agreement of sale dated 12.12.2005 directing the first defendant to execute the sale deed. According to the appellant, the first respondent is the owner of the suit property. She appointed the second respondent as a Power Agent with power to sell the suit property. The second respondent entered into an agreement of sale with the appellant on 12.12.2005 agreeing to sell the property for total sale consideration of Rs.2,25,000/-

and received a sum of Rs.10,000/- as advance. The second respondent on 15.09.2006 executed and registered sale deed in favour of the appellant. The first respondent issued notice dated 10.10.2006 stating that she has borrowed a sum of Rs.25,000/- from the second respondent and at his instance, executed a Power of Attorney. She paid the amounts borrowed together with interest in May 2006 and she cancelled the Power of Attorney on 11.09.2006. The appellant contended that the contentions in the said notice are false. On the other hand, the first respondent received the entire sale consideration from the appellant and the second respondent and after receipt of sale consideration, fraudulently cancelled the Power of Attorney. The appellant and the second respondent came to know about the cancellation of Power of Attorney only after execution of the sale deed.

3.The first respondent filed a written statement denying all the averments made in the plaint. According to the first respondent, she borrowed a sum of Rs.25,000/- from the second respondent, husband of the appellant, who is an unregistered money lender. At his instance, she executed a general Power of Attorney and handed over the original documents of title to him in respect of her property by giving power. She repaid the amounts borrowed in monthly instalments from January 2006 to May 2006 together with interest at the rate of 60% per annum. After discharging the loan, the first respondent requested the second respondent to return the documents of title. He was evading to return the document. The first respondent cancelled the Power of Attorney given to the second respondent and issued notice through her Advocate. The second respondent refused to receive the said notice. On verification of records, in the Sub Registrar Office, the first respondent came to know that the second respondent, using the Power of Attorney dated 05.12.2005 as a security for loan, executed an agreement of sale dated 12.12.2005 in favour of the appellant, who is his wife. Subsequently, after the cancellation of the Power of Attorney, the first respondent executed a sale deed in favour of the appellant on 15.09.2006. The first respondent issued notice dated 16.09.2006 through her Advocate to the appellant and the appellant refused to receive the said notice. The appellant was trying to get patta in her name. The first respondent issued notice to the authorities and issued a warning notice in the news paper namely, Dina Malar on 02.10.2006.

4.Earlier, the first respondent borrowed a sum of Rs.20,000/- from one Sampath Kumar, who is the friend of the second respondent. The first respondent executed a Power of Attorney in favour of the said Sampath Kumar on 07.11.2005. At that time, the said Sampath Kumar obtained signature of the first respondent in blank stamp papers. The first respondent

repaid amount borrowed from Sampath Kumar and cancelled the Power of Attorney given to him. The said Sampath Kumar did not return the blank stamp papers with signature of the first respondent. The second respondent, who is the friend of Sampath Kumar, using the said stamp papers has fabricated a stamped receipt as though the first respondent received a sum of Rs.2,25,000/- from the appellant on 28.08.2006. The first respondent did not have any intention to sell the property. She gave Power of Attorney only as a security for the loan availed by her. She gave power to the second respondent to deal only with the vacant land and not with superstructure standing therein. The second respondent executed agreement of sale dated 12.12.2005 in favour of the appellant, who is his wife, only with regard to vacant land. On the contrary, by sale deed dated 15.09.2006, the second respondent sold the land with superstructure to the appellant. In the sale deed, it has been stated that a sum of Rs.2,15,000/- was paid to the first respondent on that date and possession was handed over to the appellant. The agreement of sale, receipt and sale deed reveal that documents are fabricated one and not binding on the first respondent.

5. The second respondent filed written statement and denied all the averments made by the first respondent in her written statement. According to the second respondent, based on the Power of Attorney, he executed agreement of sale with the appellant on 12.12.2005. The appellant paid entire sale consideration to the first respondent on 28.08.2006. The second respondent, who is the power agent of the first respondent, executed sale deed dated 15.09.2006 in favour of appellant. The same is valid and prayed for decreeing of the suit.

6. Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned trial Judge, the appellant examined herself as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. The appellant marked ten documents as Exs.A.1 to A.10. The first respondent examined herself as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3 and 25 documents were marked as Exs.B.1 to B.25.

7. The learned trial Judge after considering the pleadings, oral and documentary evidence in proper perspective dismissed the suit.

8. Against the said judgment and decree dated 11.01.2013 made in O.S.No.287 of 2002, the appellant filed A.S.No.38 of 2013 on the file of the II Additional District Judge, Tiruppur.

9. The learned first Appellate Judge framed necessary points for consideration. The learned First Appellate Judge,

independently considering all the materials on record, pleadings, oral and documentary evidence, judgment of the trial Court and arguments of the learned counsel for the appellant and respondents, dismissed the appeal holding that the learned trial Judge has considered the oral and documentary evidence in proper perspective and dismissed the appeal as there is no error of law warranting interference for setting aside the judgment and confirmed the judgment of the learned trial Judge.

10. Against the said judgment and decree dated 07.04.2017 made in A.S.No.38 of 2013, the appellant filed the Second Appeal.

11. The learned counsel for the appellant contended that the Courts below have not properly appreciated the contentions of the appellant and the documents marked and relied on by the appellant. The learned First appellate Judge without properly appreciating the materials on record confirmed the judgment of the trial Court without giving proper reasons. The Courts below failed to see that the claim of the appellant is based on the sale deed dated 15.09.2006, which was registered on the same day before the knowledge about the cancellation of Power of Attorney. The sale deed was registered on 15.09.2006 and after payment of deficit stamp duty, registered sale deed was handed over to the appellant in October 2006. The document was retained by the registering authority under Section 47-A of the Indian Stamp Act 1899 and after payment of the deficit stamp duty, the document was returned.

12. Heard the learned counsel for the appellant and perused materials available on record.

13. The appellant has sought for declaration of her title, recovery of possession and permanent injunction not to alienate in respect of the suit property or in the alternate for a decree of specific performance of agreement of sale.

14. According to the appellant, she purchased the property for valuable consideration of Rs.2,25,000/- through the second respondent, who is the Power Agent of the first respondent. On the other hand, it is the contention of the first respondent that the said Power of Attorney was executed as a surety for the amount of Rs.25,000/- borrowed by her from the second respondent, who is the husband of the appellant and an unregistered money lender and she repaid the amount together with interest at 60% per annum. The second respondent was evading to return the document of title handed over to him. The second respondent did not let in any evidence to deny the above contention of the first respondent. In his written statement he has supported the case of averments of the

appellants contained in the plaint. The first respondent also contended that earlier, she has borrowed a sum of Rs.20,000/- from one Sampath Kumar, who is the friend of the second respondent and executed a Power of Attorney. The said Sampath Kumar took signature in blank stamp papers. According to the first respondent, the second respondent utilised the said stamp papers to create receipt as though the appellant paid a sum of Rs.2,25,000/- to the first respondent and she has no objection for second respondent for executing the sale deed in favour of the appellant. She also pointed out the name of the stamp vendor and the dates of the stamp papers as the same is that of Power of Attorney executed by her in favour of Sampath Kumar and alleged stamped receipt Ex.A.6. The second respondent has not deposed denying these allegations and the appellant has not examined the said Sampath Kumar to disprove the contention of the first respondent. Ex.A.6 receipt for Rs.2,25,000/- is dated 28.08.2006 written on the stamp papers of nine months earlier. The appellant examined the witnesses to said receipt and explanation as to why the stamp papers were purchased nine months earlier or why the appellant paid Rs.2,25,000/- to the first respondent while second respondent is the Power of Attorney of the first respondent. The first respondent cancelled the Power of Attorney on 11.09.2006 and immediately issued a notice Ex.B.3 dated 11.09.2006 to the second respondent. The second respondent refused to receive the said notice and within four days, executed the sale deed in favour of the appellant. The sale deed dated 15.09.2006 is after cancellation of Power of Attorney executed by the first respondent appointing the second respondent as her Power Agent. The sale deed executed after cancellation of the Power of Attorney by the second respondent is not a valid document and the appellant has not acquired any title over the said property. Recitals in the receipt Ex.A.6 create suspicion about the genuineness of the said document and the contentions of the first respondent in respect of the said document are acceptable one. The Courts below, have considered pleadings all the oral and documentary evidence in proper perspective and have dismissed the suit as well as the first appeal filed by the appellant by giving valid reasons. The concurrent findings of the Court below are findings of fact and there is no error of law warranting interference by this Court. There is no question of law much less than the substantial question of law arises in this Second Appeal. The learned counsel for the appellant has not made out any question of law to be decided in the Second Appeal.

In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Judge,
Tiruppur.

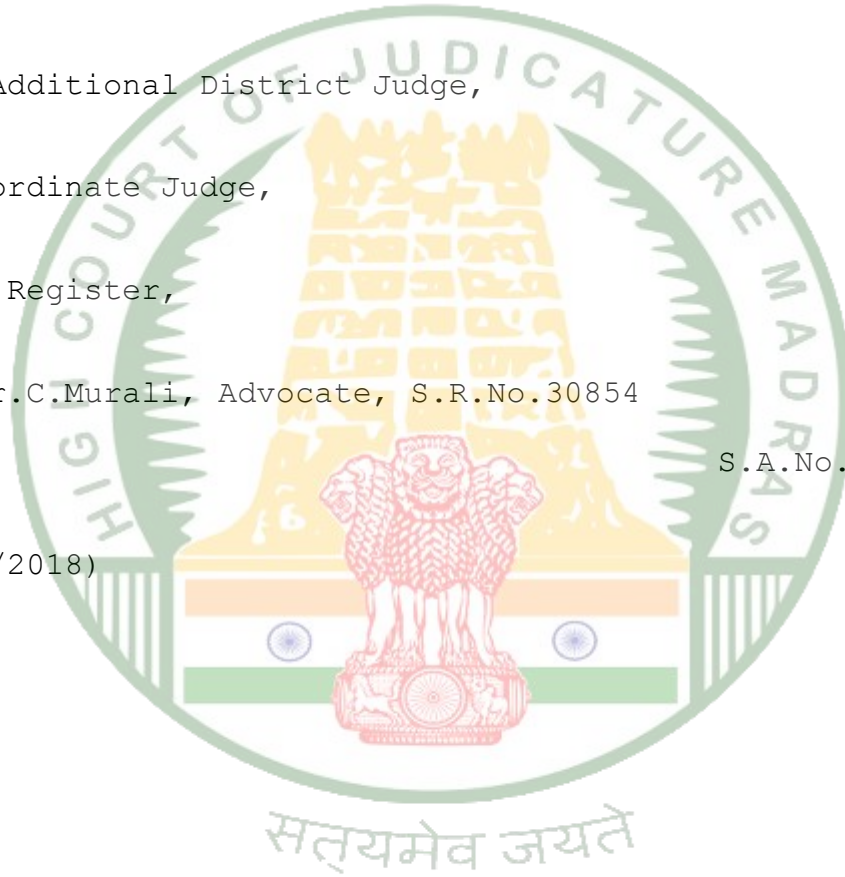
2.The Subordinate Judge,
Tiruppur.

3.The Sub Register,
Tiruippur.

+1cc to Mr.C.Murali, Advocate, S.R.No.30854

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PPA(CO)
GSP(02/08/2018)



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