

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.375 of 2018

S.Elangovan

.. Appellant

Vs.

1.Raja
2.Eswari

.. Respondents

PRAYER:-

Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 01.08.2017 made in A.S.No.43 of 2015 on the file of the Sub Court, Arakkonam, confirming the judgment and decree dated 25.02.2015 made in O.S.No.244 of 2007 on the file of the District Munsif Court, Arakkonam.

For Appellant : Mr.N.Subburayalu

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 01.08.2017 made in A.S.No.43 of 2015 on the file of the Sub Court, Arakkonam, confirming the judgment and decree dated 25.02.2015 made in O.S.No.244 of 2007 on the file of the District Munsif Court, Arakkonam.

2.The appellant/plaintiff who is unsuccessful in both the Courts below has come out with the present Second Appeal. The appellant filed suit O.S.No.244 of 2007 on the file of the District Munsif Court, Arakkonam against the respondents/defendants for declaration of title, consequential injunction restraining the respondents from interfering with the appellant's peaceful possession and enjoyment of the suit property and for a declaration to declare the sale deed dated 25.04.2007, bearing document number 9482/2007 executed by the first respondent in favour of the second respondent as null and void.

2(a).According to the appellant, the suit property was assigned by the Government to one Natarajan on 02.08.1979. He settled the property on his wife Kasturi by deed of settlement dated 02.11.1995, bearing document No.1779/1995. From the date

of said settlement, Kasturi was in peaceful possession and enjoyment of the suit property without any interruption from anybody. The said Kasturi appointed the first respondent as her power agent by Power of Attorney, registered as document No.50/2003. The first respondent has not acted upon the said Power of Attorney and there arose difference of opinion and misunderstanding between the first respondent and said Kasturi. The said Kasturi cancelled the Power of Attorney by cancellation deed dated 23.04.2007, bearing document No.502/2007.

2(b).The appellant purchased the suit property from Kasturi on 04.05.2007 for a valid sale consideration bearing document No.3820/2007. On the same day, the said Kasturi delivered possession of the suit property to the appellant and he is in peaceful possession and enjoyment of the property from that date. On 20.05.2007, the second respondent attempted to interfere with appellant's peaceful possession and enjoyment of the property, claiming that she purchased the property from the first respondent. The same was resisted by the appellant with the help of neighbours. On obtaining encumbrance certificate, the appellant came to know that the first respondent after cancellation of power granted to him, has sold the property to the second respondent by the deed of sale dated 25.04.2007. The sale in favour of the second respondent is invalid as the first respondent on that date did not have power to sell the suit property. On the above averments, the appellant has filed the suit for the relief stated above.

3.The second respondent filed written statement, which was adopted by the first respondent and denied all the averments. According to the respondents, unilateral cancellation of Power of Attorney by Kasturi was not valid. No notice was given to the first respondent before cancellation. The sale in favour of the second respondent by the first respondent as Power of Attorney is valid. The Power of Attorney executed by Kasturi and Natarajan is valid and legal. On the date of execution of Power of Attorney by Natarajan and Kasturi, they received entire sale consideration of Rs.70,000/- and executed letter dated 23.04.2003 on a Non-Judicial Stamp paper acknowledging the receipt of said sum of Rs.70,000/-. The Power of Attorney is coupled with interest. Cancellation without notice is not valid. The said Kasturi and Natarajan handed over the possession of the suit property. The first respondent was in peaceful possession and enjoyment of the suit property in his capacity as Power Agent of the said Kasturi. From the date of purchase vide the sale deed dated 25.04.2007, the second respondent is in peaceful possession and enjoyment of the suit property by constructing a house.

4.Based on the above pleadings, the learned Trial Judge

framed necessary issues. Before the learned Trial Judge, the appellant examined himself as P.W.1 and three others were examined as P.Ws.2 to 4 and 13 documents were marked as Exs.A1 to A13. The husband of the second respondent was examined as D.W.1 and first respondent was examined as D.W.2 and marked 11 documents as Exs.B1 to B11.

5.The learned Trial Judge considering the pleadings, oral and documentary evidence and arguments on behalf of the parties, dismissed the suit. Against the said judgment and decree, the appellant has filed A.S.No.43 of 2015. The I Appellate Judge framed necessary points for consideration. Considering the materials on record, the judgment of the Trial Court and arguments of the counsel for parties, the learned I Appellate Judge dismissed the appeal, confirming the judgment of the Trial Court.

6.Against the said judgment and decree dated 01.08.2017 made in A.S.No.43 of 2015, the appellant has preferred the present Second Appeal.

7.The learned counsel for the appellant contended that Ex.B4, the alleged sale letter is infact a sale deed and it is unregistered. The said document is inadmissible in evidence as the same is unregistered and unstamped as per provisions of Section 49 of the Registration Act. The learned I Appellate Judge having held that Ex.B4 is inadmissible in evidence as per Section 49 of the Registration Act, is not right in dismissing the appeal based on Ex.B4. The appellant has examined P.W.4 and proved that Kasturi and her husband met the first respondent on the very next day of cancellation of Power of Attorney and informed about the cancellation of power given to the first respondent. The Courts below erroneously rejected the evidence of P.W.1, inspite of the deposition of P.W.4. The Courts below are not correct in holding that appellant did not plead that Kasturi and her husband along with P.W.4, met first respondent and informed about the cancellation and therefore, the contention of the Courts below that the evidence of P.W.4 is not acceptable is erroneous. Ex.B4 is unstamped and unregistered and the same cannot be relied on for any purpose. The Courts below erred in holding that the Power of Attorney is coupled with interest and as per provisions of Transfer of Property Act, any immovable property valued more than Rs.100/- can be conveyed only by registered document. As per Section 207 of the Indian Contract Act, the agency can be terminated by giving notice.

8.In support of his contentions, the learned counsel for the appellant relied on the following judgments:

(i)2004 (4) CTC 324 (P.Shanmugasamy Vs. Kausalya alias

Krishnaveni):

"8.This revision petition is filed challenging the order of the trial Court refusing to accept the document dated 20.01.1970 styled as receipt and as such, the revision as filed is not maintainable. Further, the revision petitioner is not a party to the said document. The document since unregistered cannot be received and looked into for any purpose. As such, the document cannot be received and marked. Considering all these aspects, the trial Court has rightly refused to receive the receipt in question. The order does not require any change."

(ii)(2013) 2 MLJ 668 (S.Subramanian and others Vs. R.Dayananathan and others):

Head note: "..... Power of Attorney (POA) deed is only agency/power and simple one, capable of being revoked by principal without any notice - Plaintiff has no right to question cancellation of power of attorney - Power of attorney is not coupled with interest - Plaintiff has no cause of action to file suit for declaration to declare revocation deed as void"

(iii)AIR 1985 Andhra Pradesh 30 (M.John Kotaiah Vs. A.Divakar and others):

"20.....If on a construction of the power of attorney and in the light of the facts and circumstances, obtaining in the case, the document does not prima facie satisfy the requirements for the creation of a power coupled with interest, then merely because the document itself describes the Agency to be an irrevocable one, it does not become an irrevocable Agency....."

(iv)1969 (1) Supreme Court Cases 497 (Raghunath and others Vs. Kedar Nath):

"2.....As we have already said Ex.A26, was required to be registered under Section 54 of the Transfer of Property Act. In the absence of such a registration this document cannot be received in evidence of any transaction affecting the property in view of Section 49 of the Registration Act....."

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

10.The appellant has purchased the suit property by the deed of sale dated 04.05.2007 executed by Kasturi, owner of the property. Earlier, Kasturi and her husband, by the registered Power of Attorney, appointed the first respondent as the Power

Agent of Kasturi. The second respondent has purchased the property from Natarajan and Kasturi through their power of attorney, first respondent. According to the appellant, the first respondent has sold the property after cancellation of Power of Attorney and after first respondent ceased to be Agent of Kasturi. The contention of the respondents is that the Power of Attorney cannot be unilaterally canceled and Power of Attorney in this case is coupled with interest as both Natarajan and Kasturi admitted their signature in Ex.B4, wherein it has been stated that they have received Rs.70,000/- from the first respondent.

11.From the materials available on record, it is seen that Kasturi and Natarajan did not issue any notice to the first respondent before cancellation of Power of Attorney. According to them, on the very next date of cancellation, they met the first respondent along with P.W.4 and informed him about the cancellation. Natarajan and Kasturi deposed about the same as P.Ws.2 and 3. They are interested witnesses and their oral evidence in this regard cannot be accepted. To substantiate the case that the first respondent was informed about the cancellation on the very next day, the appellant was examined as P.W.4. P.W.4 deposed his ignorance about the date when he met the first respondent and informed him about the cancellation. The Courts below have rightly rejected the evidence of P.W.4, informing the first respondent about the cancellation of Power of attorney. The finding of the Courts below are after proper appreciation of pleadings and evidence and there is no error of law warranting interference. Further the appellant has produced Exs.A7 to A9, the notices issued through Advocate, informing the first respondent. The appellant has not produced any document to substantiate that these notices were issued and first respondent has received these notices. The Trial Court in view of lack of proof, rejected these documents.

12.As far as the contention of the respondents that Power of Attorney is coupled with interest is concerned, they have produced Ex.B4. From the records, it is seen that in Ex.B4, it has been stated that Natarajan and Kasturi received Rs.70,000/- from the first respondent on the date of Power of Attorney. Natarajan and Kasturi while having admitted their signature in Ex.B4, denied having received the said sum of Rs.70,000/-. The denial of receipt of Rs.70,000/- while admitting the signatures in Ex.B4 is not believable. Even otherwise, a registered document cannot be unilaterally cancelled without notice. The learned counsel for the appellant contended that as per Section 207 of the Indian Contract Act, agency can be cancelled or revoked. In the present case, from the materials available, it is seen that no notice was issued either before cancellation or after cancellation. The finding of the Courts below are after

appreciation of pleadings, evidence and on proper appreciation of facts and there is no error of law warranting interference by this Court. For the above reasons, no Substantial Questions of Law arises, warranting interference by this Court. In view of the above, the judgments relied on by the learned counsel for the appellant do not advance the case of the appellant.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge, Arakkonam.

2.The District Munsif, Arakkonam.

+1cc to Mr.G.Jeremiah, Advocate, S.R.No.46787

S.A.No.375 of 2018

GMR (CO)

CS/03/09/18



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