

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.417 of 2018
and
CMP.No.11470 of 2018

K.R.Jeyachandran

.. Appellant

Vs.

Mr.R.Selvaraj (deceased)

1. Mrs.Geethamani
2. Mr.S.Babu
3. Ms.S.Jayanthi

... Respondents

(Cause Title accepted vide order
of this Court dated 4/6/2018
made in CMP.No.6170/2018 in
SASR.17761/2018)

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 31.01.2017 made in A.S.No.101 of 2013 on the file of the learned IV Additional District Judge, Coimbatore confirming the judgment and decree dated 21.08.2013 made in O.S.No.1146 of 2010 on the file of the learned Principal Subordinate Judge, Coimbatore.

For Appellant : Mr.G.Rajkumar

WEB COPY
J U D G M E N T

Second Appeal is filed against the Judgment and decree dated 31.01.2017 made in A.S.No.101 of 2013 on the file of the learned IV Additional District Judge, Coimbatore confirming the judgment and decree dated 21.08.2013 made in O.S.No.1146 of 2010 on the file of the learned Principal Subordinate Judge,

Coimbatore.

2. The unsuccessful Plaintiff in both the Courts below is the appellant. The first defendant in the suit viz., Selvaraj died and his Legal Heirs are shown as respondents 1 to 3 in this Second Appeal.

3.The parties are referred to as Plaintiff and defendants as arrayed in O.S.No.1146 of 2010.

4. The Plaintiff filed a suit in O.S.No.1146 of 2010 against the deceased first defendant for a direction to vacate and handover the vacant possession of the suit property and for the declaration declaring that the sale deed dated 03.09.2007 executed by the first defendant in favour of the second defendant is null and void and not binding on the Plaintiff and for permanent injunction restraining the defendants from alienating or encumbering the suit property and also for a direction to the defendants to pay a sum of Rs.5,000/- per month to the Plaintiff as damages from the date of suit till the delivery of possession.

5.According to the Plaintiff, Plot bearing No.HIG-1652, Ganapathy, Phase-I in S.F.No.49 part of Ganapathy Village was allotted to the Plaintiff on 04.03.1994, by Tamil Nadu Housing Board. He paid an advance of Rs.1,51,500/- to Tamil Nadu Housing Board and the balance amount is payable in monthly instalment of Rs.2,335/-. The Plot was handed over to him on 10.02.1995. The Plaintiff after obtaining approved building plan from the Assistant Commissioner, North Coimbatore Corporation put up RCC construction measuring 1200 sq.ft. in the plot allotted to him. The first defendant is doing money-lending business. During July 2005, the Plaintiff approached the first defendant for a loan of Rs.3,00,000/- (Rupees Three Lakhs only). The first defendant agreed to lend money provided the Plaintiff executes agreement of sale besides signing loan documents like pronotes etc.and handing over of the original allotment order lease cum sale agreement to the first defendant. As he was in urgent need of money, the Plaintiff agreed for the same. The first defendant obtained signature from the Plaintiff in the sale agreement dated 11.07.2005 prepared by him and also obtained signatures in a blank pronote and blank stamp and plain papers. The sale agreement is not genuine, as it was taken only as a security for the loan advanced by the first defendant. The Plaintiff has put the first defendant in possession of the suit property under leave and license in the month on July 2005. During September 2005, the first defendant demanded the appellant to execute the Power of Attorney in his favour to deal with the property such as Management and entering into sale agreement and execution of sale deed etc., The

Plaintiff on account of the fact that he borrowed money from the first defendant executed Power of Attorney dated 26.09.2005 in favour of the first defendant. On that date, the Plaintiff was not owner of the property as the Tamil Nadu Housing Board has not executed the sale deed in his favour and he thought that execution of Power of Attorney will not affect his interest in the property. During June 2006, the Plaintiff came to know that the first defendant executed a registered sale agreement on 19.06.2006 in favour of his wife, the second defendant, fixing the sale price at Rs.20,00,000/- (Rupees Twenty Lakhs only), receiving a sum of Rs.50,000/- as advance. The period of completion of transaction was fixed at 3 years. The market value of the property was only Rs.5,00,000/- (Rupees Five Lakhs only) and to defraud the plaintiff, the first defendant executed Sale agreement for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only). The Plaintiff by the deed of cancellation dated 07.07.2006 cancelled the Power of Attorney executed by him. The Plaintiff has intimated the same to the defendants and they were aware of the cancellation of the Power of Attorney. The Plaintiff paid the entire balance amount to the Tamil Nadu Housing Board and the Tamil Nadu Housing Board on 06.06.2007 executed and registered sale deed in favour of the Plaintiff. The first defendant knowing fully well that Power of Attorney executed in his favour was cancelled, fraudulently executed a registered sale deed dated 03.09.2007 in favour of the second defendant. The said Sale deed is sham and nominal and created by the defendants to defeat and defraud the Plaintiff's right over the property. The said Sale deed is not binding on the Plaintiff as it was executed after the cancellation of Power of Attorney Deed. The defendants 1 and 2 did not vacate and handover the vacant possession of suit property to the Plaintiff and hence they are liable to pay a sum of Rs.5,000/- per month towards damages, till they vacate and handover the possession. With these averments, the Plaintiff filed the above suit.

2(a). The first defendant filed the written statement denying the averments made in the Plaint. The Plaintiff executed the sale agreement dated 11.07.2005 in favour of the first defendant agreeing to sell the suit property to the first defendant for a total sale consideration of Rs.12,00,000/- (Rupees Twelve Lakhs only) and executed an agreement of sale dated 11.07.2005. He had also executed the Power of Attorney dated on 26.09.2005 in favour of the first defendant empowering him to enter into sale agreement with third parties and execute deed of conveyance and register it on his behalf. After Tamilnadu Housing Board executed Sale Deed in favour of the Plaintiff on 06.06.2007, the appellant started re-negotiation with the first defendant and it resulted in execution of fresh sale agreement dated 19.06.2006 in favour of the second

defendant. As per the fresh agreement, the second defendant agreed to purchase the suit property for a sum of Rs.20,00,000/-. The Plaintiff handed over the possession of the suit property to the second defendant as part performance of the contract. The second defendant had improved the property by spending huge amount and then the first defendant as per Power of Attorney dated 26.09.2008 bonafidely executed a sale deed for the schedule mentioned property on behalf of the plaintiff in favour of the second defendant on 03.09.2007 for valid consideration. The first defendant is not doing any finance business and the sale agreement dated 11.07.2005 and the Power of Attorney are all valid and genuine documents. The first defendant has acted as per the power given to him. The appellant has not given any notice of cancellation of Power of Attorney to the first defendant or issued any publication. The suit is not properly valued and hence prayed for dismissal of the suit.

6. Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the learned trial Judge, Plaintiff himself was examined as P.W.1 and one Mr.G.Sanker was examined as P.W.2 and 14 documents were marked as Exs.A1 to 14 on the side of the Plaintiff. On the side of the defendants, the first and second defendants were examined as D.W.1, D.W.2 and one Viswanathan, Babu and S.Sakthivel (Advocate) were examined as D.W.'s 3 to 5 and 18 documents were marked as Exs.B1 to Ex.B18.

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

8. Against the said Judgment and decree dated 21.08.2013 made in O.S.No.1146 of 2010, the Plaintiff filed A.S.No.101 of 2013. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the Appeal, confirming the judgment of the Trial Court.

9. Against the said judgment and decree dated 21.08.2013 made in A.S.No.101 of 2013, the appellant/plaintiff has come out with the present Second Appeal.

10. The learned counsel for the appellant/plaintiff contended that the first defendant was a money lender and the appellant never intended to sell the suit property to the first defendant. The agreement of sale marked as Ex.A7/Ex.B1 was executed only as a security for loan availed from the first defendant and the first defendant was put in possession by the Plaintiff under leave and license. The Courts below failed to

consider the contention of the appellant. The appellant has examined P.W.2, who deposed that Ex.A7/Ex.B1- Agreement of sale was executed by the plaintiff only as a security of the loan availed. The Courts below on erroneous grounds, rejected the evidence of P.W.2 and erroneously held that the plaintiff had handed over the possession of the suit property to the first defendant after executing Ex.B2- receipt on 09.07.2005. In the alleged receipt- Ex.B2 as well as in Ex.B8 Power of Attorney, it is not mentioned that possession has been handed over by the first defendant to the Plaintiff. The Courts below ought not to have relied upon Ex.B2- receipt dated 09.07.2005, as the same is clouded with suspicion. The Courts below erroneously held that the Power of Attorney under Ex.A8/Ex.B3 is an instrument coupled with interest as per Section 202 of the Contract Act and the same cannot be terminated without notice. The first defendant did not pay any stamp duty as per Section 42 (d) of Stamp Act. If Power of Attorney is coupled with interest, then necessary Stamp has to be paid at the time of registration of the said Power of Attorney. The appellant informed orally and by letter 12.07.2006 - Ex.A13 about the cancellation of Power of Attorney registered as Ex.A10 and the first defendant has no authority to execute and register the Sale Deed dated 03.09.2007- Ex.A2 in favour of the second defendant. The Courts below failed to see that the appellant only has paid entire amounts due to the Tamil Nadu Housing Board. The first defendant has not paid any amount as alleged by him. The first defendant has admitted that after execution of Sale Deed by the Tamil Nadu Housing Board in favour of the Plaintiff, there were negotiations between the appellant and the first defendant, which shows that there was communication with first defendant. When the first defendant executed the sale agreement dated 19.06.2006- Ex.A9, the same amounts to novation of the earlier alleged contract dated 11.07.2005 under Ex.A7, which stands cancelled on the execution of the agreement dated 19.06.2006.

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

12. The Plaintiff has come out with the Second Appeal claiming that agreement of sale- Ex.A7 executed by him is not genuine as it is only a security document for the loan taken by him, from the first defendant who is the money lender. The Plaintiff failed to prove that the first defendant is a money lender and only at his insistence, the plaintiff executed the sale agreement. From the materials available on record, it is seen that subsequently the Plaintiff had executed Power of Attorney on 26.09.2005 appointing the first defendant as his agent. The first defendant has produced Ex.B2 dated 09.07.2005 - receipt and Ex.B9- cash receipt to show that the Plaintiff received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and

executed Power of Attorney. The Plaintiff has admitted the signature in the said receipt and contended that he has not received the said sum of Rs.10,00,000/- (Rupees Ten lakhs only). The Plaintiff is not illiterate person and responsible officer of the Tamil Nadu Housing Board. The contention that he signed the receipt and did not receive the money is not believable.

13. Considering these facts, the Courts have rightly concluded Ex.A8/Ex.B3 dated 26.09.2005 is not simple Power of Attorney and it is Power of Attorney coupled with interest. The Plaintiff has not stated the rate of interest agreed upon in the loan transaction. He has not paid any interest or principal during the time. He has not offered to pay loan amount to the defendants and failure to furnish the details of loan transaction would go to show that agreement of sale is genuine and it is not loan transaction. The Plaintiff has claimed to have informed the first defendant after cancellation of the Power of Attorney by the Deed of cancellation dated 07.07.2006 marked as Ex.A10. To substantiate his contention that the plaintiff has produced Ex.A13 letter dated 12.07.2006 addressed to the first defendant and the Plaintiff has produced Ex.A14-Postal receipt dated 12.07.2006 for having sent the said letter by Certificate of Posting. Now, it is well settled that receipt for Certificate of Posting is not having any evidentiary value to prove that the letter was sent on the alleged date. The Plaintiff ought to have communicated through proper mode i.e., through RPAD or notice through his counsel.

14. The next contention of the learned counsel for the plaintiff is that denial of receipt of money from the first respondent. The Plaintiff admitted his signature in the receipt but denied receipt of amount. As held already it is unbelievable that an officer of Tamil Nadu Housing Board has signed the receipt without receiving money. From the material on record it is seen that Plaintiff received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and executed the Power of Attorney and also handed over possession to the first defendant. The Plaintiff is bound to inform the first defendant about the cancellation of Power of Attorney. It is pertinent to note that the Plaintiff has not issued pre-suit notice and not taken steps for recovery of possession from the defendants 1 and 2. After cancellation of deed dated 07.07.2006, the plaintiff has approached the Court in the year 2010, after three years of cancellation of deed, three years after the execution of Sale Deed by the first defendant in favour of the second defendant. The Courts below have considered all the above facts in proper perspective and dismissed the suit and the Appeal, filed by the appellant/Plaintiff, by giving cogent and valid reasons. There is no error in the said judgment warranting interference by this Court. No question of law much less than the substantial

question of law has arisen in this Second Appeal.

15. In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

arr

To

1.IV Additional District Judge, Coimbatore.

2.The Principal Subordinate Judge, Coimbatore

Coyp To

The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Ms.R. Anitha, Advocate SR.No.49208

GMV (06/09/2018)

S.A.No.417 of 2018

सत्यमेव जयते

WEB COPY