



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.637 of 2017

1.R.Damodharan
2.Shanmugakani

.. Appellants/Appellants/Defendants

Vs.

Jeyanthi Sekar

.. Respondent/Respondents/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 19.12.2016 made in A.S.No.74 of 2013 on the file of Sub Court, Tambaram confirming the judgment and decree dated 21.11.2013 made in O.S.No.130 of 2009 on the file of District Munsif Court, Tambaram.

For Appellant : Ms.Lesi Saravanan

For Respondent : Ms.Vijayakumari Natarajan

J U D G M E N T

Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 19.12.2016 made in A.S.No.74 of 2013 on the file of Sub Court, Tambaram confirming the judgment and decree dated 21.11.2013 made in O.S.No.130 of 2009 on the file of District Munsif Court, Tambaram.

2. The appellants are defendants in O.S.No.130 of 2009 on the file of District Munsif Court, Tambaram, who lost in both the Courts below. The respondent/plaintiff filed the above suit for permanent injunction restraining the appellants from interfering with her peaceful and enjoyment of the suit property. According to the respondent, the suit property was inherited by the appellants from the father of the first appellant and father-in-law of the second appellant as per the will dated 07.10.1998. The property originally assessed to the predecessor of the title to the appellants is six cents. The appellants agreed to sell the suit property to one B.R.Sekar or his nominee for total sale consideration of Rs.1,55,00,000/- (Rupees one crore fifty five lakhs) and entered into an



agreement of sale which was executed and registered on 03.08.2007. The appellants also executed a power of attorney dated 03.08.2007 in favour of B.R.Sekar in respect of the suit property. The said B.R.Sekar paid huge amounts to the appellants as advance. On measuring the property, the extent was found to be 4.25 cents and not six cents. The appellants agreed to reduce the sale consideration to Rs.1,10,00,000/- (Rupees one crore ten lakhs). The total amount was also paid to the appellants by the husband of the respondent and possession was handed over by B.R.Sekar and the agreement of sale entered into with B.R.Sekar reduced the terms into writing. The said B.R.Sekar by deed of sale dated 24.09.2008 sold to the respondent and handed over the possession to the respondent. The respondent got permission from the municipality to demolish the existing superstructure and put up new construction. The appellants, tried to interfere with the possession of the respondent, hence the suit.

3. The appellants filed written statement and denied all the averments in the plaint. According to the appellants, they appointed the said B.R.Sekar only to develop the property. The appellants handed over the original documents, the appellants vacated the tenants and retained the possession of the suit property. The said B.R.Sekar delayed developing the property and did not gave accounts to the appellants. The appellants cancelled the power of attorney on 03.10.2008 and issued notice to B.R.Sekar, husband of the respondent. The said B.R.Sekar, husband of the respondent did not return the original documents and on 15.10.2008, he came along with rowdy elements and threatened the appellants to re-execute the power of attorney. The appellants filed O.S.No.285 of 2008 against B.R.Sekar, the husband of the respondent. The said B.R.Sekar entered appearance through advocate and filed written statement with false averments. From the written statement, the appellants came to know that encumbrance was created by B.R.Sekar in favour of his wife, the respondent herein and the present suit is a counter blast to the criminal proceedings initiated by the appellant against the said B.R.Sekar and prayed for dismissal of the suit.

4. Based on the pleadings, necessary issues were framed. Before the learned Trial Judge, the husband of the respondent was examined as P.W.1 and thirteen documents were marked as Exs.A1 to A13. Appellants examined themselves as D.Ws.1 and 2 and ten documents were marked as Exs.B1 to B10.

5. Considering the pleadings, oral and documentary evidence, the learned Trial Judge decreed the suit.

6. Against the said judgment and decree dated 21.11.2013

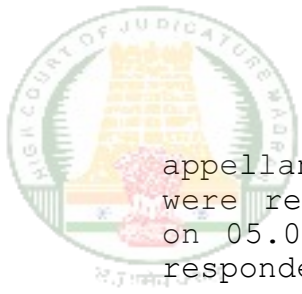


made in O.S.No.130 of 2009, the appellants filed A.S.No.74 of 2013 on the file of Sub Court, Tambaram. The learned I Appellate Judge framed necessary points for consideration and considering all the materials on record, judgment and decree of the Trial Court and arguments of the counsel for parties, dismissed the Appeal, confirming the judgment and decree of the trial Court.

7. Against the concurrent finding of the Courts below, the appellants have come out with the present Second Appeal. At the stage of admission, notice of motion was ordered and no substantial question of law was framed.

8. The contention of the learned counsel for the appellants is that the appellants are in possession of the suit property and they never handed over the possession to the power agent, husband of the respondent. The respondent ought to have filed the suit for declaration and possession. The Courts below failed to consider the documents filed by the appellants to prove their possession of the suit property. The Courts below erred in relying on Ex.A11 which was executed by the first appellant. The Second Appellant is also the co-owner and she did not execute the said agreement of sale. As per Ex.A2, sale agreement, the agreement holder B.R.Sekar had to pay balance sale consideration within a period of six months, failing in which the agreement would become invalid. Till date, the said B.R.Sekar has not paid the balance sale consideration. He has executed the sale deed, while suit in O.S.No.285 of 2008 was pending and appellants came to know about the sale deed only during hearing in O.S.No.285 of 2008. The respondent's husband created documents Ex.A5, dated 09.01.2009 which will not prove her title and possession. The town survey field register, in the name of appellants, marked as Ex.A6 is of the year 2006. Without cancelling the same, Ex.A5 is issued. The appellants have taken steps for cancellation of Ex.A5 and also given complaint. The respondent got property tax and EB card changed without the consent of the appellants. The appellants also have taken steps to cancel the power of attorney.

9. Per contra, the learned counsel appearing for the respondent contended that the appellants have executed power of attorney appointing respondent's husband, B.R.Sekar as their power agent and the said power of attorney is valid to deal with the suit property including power of selling. The appellants and power agent have entered into the agreement of sale on 03.08.2007 and registered the same. As per the agreement, the power agent paid huge amounts to the appellants. Subsequently, when it was found that extend of the land was only 4.25 cents and not six cents. The sale price was reduced to Rs.1,10,00,000/- and the power agent paid entire amounts to the



appellants and possession was handed over to him. These facts were reduced in writing and agreement of sale was entered into on 05.09.2008. The power of attorney sold the property to the respondent by the sale deed dated 05.09.2008 and handed over the possession to the respondent. The cancellation of power of attorney is subsequent to execution of sale deed and cancellation of power of attorney is invalid. The appellants tried to interfere with the possession of the respondent and the respondent has filed suit for injunction and the same is maintainable as the respondent has proved her possession by marking documents and prayed for dismissal of the second appeal.

10. Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

11. The suit filed by the respondent is for permanent injunction. According to the respondent, she purchased the suit property from the power agent of the appellants and possession was handed over to her. When the respondent took steps to demolish the existing superstructure, the appellants tried to interfere with the possession of the respondent and the respondent filled the suit. On the other hand, the contention of the learned counsel for the appellants is that they have executed the power of attorney appointing B.R.Sekar as their agent only to develop the suit property. The said B.R.Sekar delayed to develop the property and did not furnish the amounts and hence, power of attorney was cancelled. The appellants did not authorise B.R.Sekar to sell the property and did not hand over the possession to him. These contentions of the appellants are contrary to the documents executed by them. The Courts below considered the power of attorney and held that the appellants have given power to their power agent to sell the property. In addition to that, they entered into the agreement of sale with power agent and received advance. When it was found that extent of the land is only 4.25 cents and not 6 cents, another agreement of sale was entered into, reducing the sale consideration to Rs.1,10,00,000/-. The appellants have not disputed the execution of sale agreement. The first appellant, as D.W.1 admitted Ex.A11 and also admitted having received sale consideration. He has also admitted that the power agent of the appellants is entitled to sell the suit property. The appellants have handed over the original documents of title to the power agent. On execution of Ex.A11, the appellants have handed over the possession to the power agent and the first appellant had admitted the same in Ex.A11. The documents filed by the appellants to prove their possession is earlier to the power of attorney and agreement of sale.

12. The respondent has produced documents to show her possession. The appellants contended that these documents are



created and they have taken steps to cancel the same. The learned counsel for the appellants has not contended that the documents produced by the respondent were cancelled. In view of the above documents produced by the respondent, on the admission of the appellants in Ex.All that possession was handed over to the power agent and admission of first appellant as D.W.1 that he received money and as per the power of attorney, the power agent is entitled to sell the property, the Courts below have held that possession is with respondent. The Courts below have given valid reasons for arriving at the said finding of facts. There is no error of law warranting interference by this Court with the judgments and decrees of the Courts below. No question of law much less than the substantial question of law has arisen in this Second Appeal.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

LPP

To

- 1.The Subordinate Judge, Tambaram.
- 2.The District Munsif, Tambaram.

+1cc to Mr.S.D.Ramalingam, Advocate, S.R.No. 51306

S.A.No.637 of 2017

PPA(CO)
GN(26/11/2018)