

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.11.2018

Delivered on : 06.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.497 of 2018

and

C.M.P.Nos.13641 and 13642 of 2018

M/s.Maxworth Home Limited
represented by its authorised Signatory
Mr.U.Sivakumar,
No.50, Maxworth Nagar,
Sunnambu Kolathur,
Chennai - 600 117. ...Appellant/Appellant/Plaintiff

Vs

1.M/s.Vox Industries Limited
represented by its
Director/Authorised Signatory
Mr.G.Ravanan,
No.43, Medavakkam Main Road,
Kilkattalai,
Chennai - 600 043.

2.G.Ravanan

3.K.Ravi

4.K.Sundar Raj

5.K.Kalavathi

6.K. Baskaran

7.K.Maheswari

...Respondents/Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed by the learned Principal District Judge, Kancheepuram District, Chengalpattu, in A.S.No.9 of 2017 dated 19.02.2018 confirming the Judgment and Decree dated passed by the learned Subordinate Judge, Tambaram, in O.S.No.44 of 2015 dated 18.04.2017.

For Appellant : Mr.G. Sundaram

JUDGMENT

This Judgment and Decree was challenged by the appellant herein in A.S.No.9 of 2017 on the file of the learned Principal District Judge, Kancheepuram District, Chengalpattu, who also confirmed the Judgment and Decree passed by the learned Subordinate Judge, Tambaram.

2.The parties are referred to as the same array as in the suit.

3.Plaintiff's Case:

The suit has been filed by the plaintiff/appellant herein for the following reliefs:

"(a)To grant specific performance by directing the defendants to execute sale deed pertaining to suit schedule property, Plot Nos.958 and 959 favouring the plaintiff or its nominee as per Agreement dated 18.01.1997 and the subsequent Memorandum of Settlement dated 28.05.2014.

(b)To grant permanent injunction restraining the defendants, their men, agents, servant, nominee or anyone claiming under / through them, from in any manner disturbing the Plaintiff's possession of the vacant land bearing Plot Nos.958 and 959, measuring an extent of 3254 sq.ft in the DTCP approved Layout No.12/75 comprised in Survey No.415/11 (Part) and 415/12 (Part), situated in No.153, Sunnambu Kolathur/97, Madipakkam II Village, Tambaram Taluk, presently Sholinganallur Taluk, more fully described in the suit schedule property.

(c)To grant permanent injunction restraining the defendants, their men, agents, servants, nominee or anyone claiming under /through them, from in any manner encumbering vacant land bearing Plot Nos.958 & 959, measuring an extent of 3254 sq.ft. in the DTCP approved lay out No.12/75, comprised in Survey No.415/11 (Part) and 415/12 (Part), situated in No.153, situated in No.153, Sunnambu Kolathur/97, Madipakkam II Village, Tambaram Taluk, presently Sholinganallur Taluk, more fully described in the suit schedule property.

and

(d)to direct the defendants to pay the costs of this suit."

4.It is the case of the plaintiff that they are engaged in developing Townships in the year 1995 and they had wanted to develop townships in five locations. The suit pertains to their project titled "Maxworth Nagar, Velachery" and the suit property is described as Plot Nos.958 and 959 of Maxworth Nagar, Sunnambu Kolathur, measuring an extent of 3254 sq.ft in Survey Nos.415/11 (Part) and 415/12 (Part).

5.The plaintiff would submit that on 18.01.1997, they had entered into a Procurement Agreement with the 1st defendant and as advance consideration thereof had paid an advance of Rs.4.28 crores in the year 1996-1997 itself. As per the Agreement entered into between the two, the 1st defendant was to identify contiguous land, enter into agreements with the respective land owners and obtain Power of Attorney from them. Thereafter, as and when they received instructions from the plaintiff, they were to use the power of attorney and execute the Sale Deeds in favour of the persons identified by the plaintiff. The 1st defendant, according to the plaintiff, had procured the entire lands, as they had paid the entire consideration to the owners, but however, held the lands as a Power Agent. The original documents were also handed over by the 1st defendant to the plaintiff. It was the further case of the plaintiff that disputes had arisen between the plaintiff and the 1st defendant which resulted in arbitration proceedings being invoked and consequent to the intervention of the 2nd defendant, a revised Settlement Deed dated 28.05.2014 was executed. The 1st defendant had undertaken to execute and convey the remaining Plot Nos.958 and 959 in the suit schedule properties.

6.It is the case of the plaintiff that K.R.Kannapa Chetiyar, the father of the defendants 3 to 5 had executed a registered Power of Attorney on 30.04.1995 in favour of the Chairman of the 1st defendant Company, one Ganasundaram for an extent of 68 ½ cents in various survey numbers. Likewise, he has executed a registered Power of attorney dated 16.03.1998 directly in favour of the plaintiff with reference to 16 cents of lands comprised in Survey Nos.415/11 B, 415/12 and 415/14. Pending the arbitration proceedings between the plaintiff and the 1st defendant, the said Kannapa Chetiyar died. Three years later, the Power agent Gnanasundaram also died. The plaintiff would submit that on the advise of the 2nd defendant, they had approached the 3rd defendant to get the Sale Deeds in their favour, but the 3rd defendant had pleaded time stating that he had to convince the other land owners. In the meanwhile, the allottee of the plots in the said area wanted his property to be fenced and accordingly, the plaintiff attempted to fence the

lands. However, they were obstructed by the 3rd defendant and his henchmen. On 21.08.2014, the 3rd defendant accompanied by Goondas had trespassed into the suit property and damaged the fencing. The plaintiff would contend that they had been in possession of the property from 18.01.1997. The plaintiff would contend that their right to the suit property is protected under Section 53A of the Transfer of the Property Act by virtue of the lands Procurement Agreement entered into between the 1st defendant and the land owners. They would further contend that the defendants 3 to 7 were very much aware about the agreement of sale and Power of attorney even when the same was executed and therefore, the present denial was made with ulterior motive. Hence, left with no other option the plaintiff has filed this Appeal.

7. Petition under Order VII Rule 11 of CPC:

On receipt of summons in the above suit, the defendants 3 to 7 took out an application under the provisions of Order VII Rule 11 of the Code of Civil Procedure in I.A.No.221 of 2015 for rejecting the Plaint on the ground that there was no cause of action and the same was barred by limitation as well as as per the provisions of the Transfer of Property Act.

Contentions of petition:

8. The defendants 3 to 7 have filed the said petition on the following premise:

- a) The entire suit is based on the General Power of Attorney dated 30.04.1995 executed by Late K.R. Kannapa Chetiyyar in favour of Gnanasundaram and the Agreement between the plaintiff and the 1st defendant dated 07.02.1996 and 16.03.1998.
- b) The Principal Mr. Kannapa Chetiyyar died on 09.07.2004 and with that his Power was seized to have any effect. Thereafter, on 07.06.2007, the Power Agent was also no more.
- c) The Power of Attorney dated 30.04.1995 stipulates that no sale consideration has been received and no transfer effected under the Power of Attorney. Therefore, the cause of action pleaded by Gnanasundaram in the suit does not exist.
- d) The Agreement between the 1st defendant and the plaintiff does not bind the legal heirs of Late Kannapa Chetiyyar as the Agreement is only between the two Companies and not connected with the owners of the lands.
- e) It is also seen that the Power of Attorney is of the year 1995 and the Agreement is of the year 1996 and therefore, the suit filed in the year 2015 is squarely barred by limitation.
- f) The Plot Nos. 958 and 959 are not in existence and the

plaintiff who comes forward with the case that they had obtained the Power of attorney for 68 cents of lands comprised in various Survey Numbers, cannot now claim a right to two plot numbers which are not there in the Power of Attorney and therefore, the suit was liable to be rejected.

(9)Counter filed by the Plaintiff:

- (a)The plaintiff had acquired title to the property as per Section 53A of the Transfer of Property Act and therefore, the plaintiff is the rightful owner of Plot Nos.958 and 959.
- (b)The original documents were handed over wayback in the year 1996 and in the year 1998.
- (c)The petition does not attract any of the grounds mentioned in the Order VII Rule 11 of the Code of Civil Procedure.
- (d)The plaintiff is in possession of the suit property on account of the Power of attorney dated 16.03.1998. The transaction is supported by consideration as Kannapa Chetiyar had received the sale consideration of 12 lakhs per acre between the year 1995 and 1998. The plaintiff is very much aware of the sale executed by their father in favour of the plaintiff and the defendants 1 and 2 and it is only after receipt of full consideration the registered Power of Attorney was executed by the said Kannappa Chetiyar.

10.Trial Court:

The learned Subordinate Judge, Tambaram, before whom the petition under Order VII Rule 11 of CPC was argued on a conspectus of the evidence, both oral and documentary, as well as the pleadings came to the conclusion that the suit was hopelessly barred by limitation and there was no cause of action for filing the suit as on the death of Kannapa Chetiyar, the Power of Attorney executed by him came to an end and the plaintiff had not taken any steps whatsoever to get a fresh Power of Attorney from the legal heirs. It is also seen that the defendants 3 to 7 have marked documents, but however, have not let in any oral evidence. On the side of the plaintiff/respondent, neither written arguments nor oral evidence had been marked. The larned Subordinate Judge, Tambaram, by her order dated 18.04.2017 allowed I.A.No.221 of 2015 and thereafter, took up the suit and dismissed the suit by Judgment dated 18.04.2017.

11.Appellate Court:

The Judgment dated 18.04.2017 in O.S.No.44 of 2015 was taken up on appeal to the learned Principal District Judge, Kancheepuram, Chengalpattu, by the plaintiff herein.

12.The learned Appellate Judge also took the same view as the learned Subordinate Judge, Tambaram, and dismissed the appeal. The learned District Judge observed that the initial Agreement between the plaintiff and the defendants is dated 18.01.1997 and the suit has been filed nearly 18 years thereafter. The learned Judge also held that the suit was bereft of any cause of action.

13.Second Appeal:

The matter was listed on 15.11.2018 for admission, heard Mr.G. Sundaram, learned counsel appearing on behalf of the appellant/plaintiff. The learned counsel would base his entire case upon the arrangement between the plaintiff and the 1st defendant which was that the 1st defendant would identify the land owners and pay the sale consideration and obtained Powers of Attorney from them so as to enable the plaintiff as well as the 1st defendant to alienate the property to prospective buyers without going behind the respective land owners. He would contend that the power of attorney was only a sequel to the Agreement and that one power of attorney dated 16.03.1998 was executed directly in the name of the plaintiff by the said Kannappa Chetiyar in respect of Survey Nos.415/11 B, 415/12 and 415/14. It was his further case that the time spent on the arbitration proceedings between the plaintiff and the 1st defendant has to be excluded and therefore, since the arbitration proceedings had culminated in an agreement on 28.05.2014, the said suit was well within time. He would further draw the attention of this Court to the fact that all the original documents of title are in the custody of the plaintiff and further, the Sale Deed had also been executed on behalf of Kannappa Chetiyar, however, none of these documents were produced before the Court below. The learned counsel would submit that the cause of action for the suit was the agreement between the plaintiff and the 1st defendant in pursuance of which, the Power of Attorney has been given in favour of the Chairman of the 1st defendant and also the plaintiff in respect of the suit property. As regards the issue of limitation as already submitted, the case of the appellant is that the period taken for the arbitration proceedings has to be excluded, if so done, is well within the period of limitation.

14.Heard the arguments and perused the records.

15.The Plaint has been rejected primarily on two grounds,

(1)The suit does not reflect a cause of action

and

(2)The same is hopelessly barred by limitation.

16.An additional point raised in the application was that when the Agreement/Powers of attorney related to several Survey Numbers, the plaintiff cannot seek to enforce it against a

small portion consisting of plot numbers which is not in existence on site.

17.As regards the first issue, it is seen that the Agreement between the 1st defendant and the plaintiff is the cause of action. Admittedly, neither Kannapa Chetiyar nor his children are parties to the Agreement dated 07.02.1996, 18.01.1997 or the Memorandum of Settlement dated 28.05.2014. The Power of Attorney given by the said Kannapa Chetiyar does not also refer to the said Agreement.

18.In these circumstances, the Courts below have rightly come to the conclusion that the plaintiff has not proved the cause of action for instituting the suit against the respondents herein. That apart, none of the documents which have been produced before this Court in the form of additional typedset was marked in the proceedings in I.A.No.221 of 2015. Therefore, this Court will not consider the said documents.

19.It has been time and again held by the Hon'ble Supreme Court as well as this Court that it is only the averments in the Plaint that has to be considered while dealing with a petition for rejecting the Plaint. In the instant case, the Plaint pleadings would clearly demonstrate that there is no cause of action and that the power of attorney which has been executed by the said Kannapa Chetiyar in favour of the respondent has also come to an end on his death in the year 2004.

20.It is seen that though Kannapa Chetiyar died in the year 2004, no steps whatsoever was taken by the plaintiff to obtain a fresh Power of Attorney from the legal representatives of the deceased Kannapa Chetiyar namely, defendants 3 to 7 herein.

21.The learned counsel appearing for the appellant would argue that the period which has been taken for arbitrating the dispute between the 1st defendant and the plaintiff has to be excluded and this arbitration procedure had culminated into an agreement in the year 2014 and therefore, the suit filed in the year 2015 was well within the time. The Agreement between the plaintiff and the 1st defendant does not in any manner include the defendants 3 to 7 who are not parties to the arbitration agreement. It is not known as to why the plaintiff has not filed the suit in time. In fact, the Power of Attorney had come to an end in the year 2004 with the demise of the Principal and the Power of Attorney is ceases to exist. The Plaint is totally bereft of details as to the cause of action as also how the suit is filed within the period of limitation. On perusal of the pleadings, it clearly indicates that no cause of action against the defendants 3 to 7 has been proved and further, the suit is hopelessly barred by limitation. I find no questions of law

much less Substantial Questions of Law.

Hence, this Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

mps

To

1.The Principal District Judge,
Kancheepuram District, Chengalpattu.

2.The Subordinate Judge, Tambaram.

+1cc to Mr.G.Sundaram, Advocate SR.No.83806

+1cc to Mr.G.Sundaram, Advocate SR.No.83806 (18/02/2019)

GP (CO)
GMY (28/01/2019)

S.A.No.497 of 2018 and
C.M.P.Nos.13641&13642/18

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