IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.10.2018

PRONOUNCED ON:31.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.598 of 2015
and
M.P.No.1 of 2015

O.Mohan Raman ... Appellant/Appellant/Defendant

Vs.

1.B.Narasimmalu
2.B.Muninathan ... Respondents/Respondents/Plaintiffs/Plaintiffs

Prayer:-
Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.02 of 2014 on the file of the Sub Court, Arakonam dated 20.01.2015 confirming the judgment and decree passed in O.S.No.162 of 2004 on the file of the District Munsif, Arakonam, dated 19.08.2013 and allowing the appeal partly, filed by the appellant.

For Appellant : Mrs.Dakshayani Reddy

For Respondent : Mr.N.Subbarayulu
for M/s.G.Jeremiah

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 20.01.2015 passed in A.S.No.02 of 2014 on the file of the Subordinate Court, Arakonam, confirming the judgment and decree dated 19.08.2013 passed in O.S.No.162 of 2004 on the file of the District Munsif court, Arakonam.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for rendition of accounts.

4.The case of the plaintiffs in brief is that Kuppammal, Kamalammal and Radhabai ammal and the defendant are the sisters and brother and as well as the daughters and son of the late

Chengalvaraya Chettiyar. The plaint schedule properties belong to the abovesaid sisters and brother and they are the co-owners of the same in equal moieties. After the demise of Radhabai ammal, her sons namely the plaintiffs succeeded to her common ¼ share in the suit properties and entitled to the same and the other three sharers are each entitled to ¼ share. The plaintiffs had in good faith along with Kuppammal. Kuppammal, M.R.Jothi and minor Kavitha represented by M.R.Jothi executed a general power of deed dated 29.01.1992 in favour of the defendant appointing him as the general power agent authorizing him to alienate the suit properties as stipulated in the said document and taking into consideration of the close relationship between the parties, the defendant was authorized to do the acts and things as stipulated in the power deed. However, due to the shock and surprise of the plaintiffs, in spite of their demands, the defendant had not rendered the account of income and expenditure arising out of the maintenance, administration and the transactions and conveyance if any, etc., in respect of the suit properties and not paid any amount and hence the plaintiffs on coming to know about the misconduct of the defendant on 08.02.2003, thereby determined to cancel the power of attorney deed and accordingly executed the deed of revocation of power of attorney deed on 10.02.2003 and also informed about the same to the defendant in person as well as by issuing a notice dated 22.03.2003 through their counsel and the defendant had acknowledged the receipt of the same and despite the same, the defendant neglected to render the accounts and hence according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts. The defendant sold the properties to the third parties and gave the amounts for the expenditure, marriage and medical expenses of the family and for deepening the well and other family expenses with the consent of the plaintiffs and the lands belonging to the plaintiffs' shares are not sold and the defendant is not liable to give any amount to the plaintiffs. The plaintiffs have no cause of action to lay the suit and therefore the suit is liable to be dismissed.

6.In support of the plaintiffs' case, P.W.1 was examined. Exs.A1 to A8 were marked. On the side of the defendant, D.W.1 was examined. No document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to grant the relief in favour of the plaintiffs as prayed for. Aggrieved over the same, the present Second Appeal has been preferred.

8.At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(a) Whether the Courts below erred in not appreciating the fact that mere execution of power of attorney by the plaintiffs/respondents in favour of the defendant/appellant will not clothe them with title to the property, especially in the absence of any independent evidence to establish their right or title to the suit schedule mentioned property?

(b)Whether the Courts below failed to appreciate the fact that the plaintiffs' mother having been given away in marriage prior to the year 2005, the plaintiffs have no right or title to the suit schedule mentioned property under the provisions of the Hindu Succession Act in view of clear admission in the plaint itself that the suit schedule mentioned property is ancestral property of the plaintiffs'/respondents' grandfather late O.Chengalvaraya Chetty?

(c)Whether the Courts below failed to appreciate the fact the suit was barred by statute of limitation in as much as the power of attorney was executed in the year 1992 and the suit has been instituted in the year 2003 when the provisions of the Limitation Act 1956 lays down three years as the period of limitation of initiation of a suit for rendering accounts?

9. It is not in dispute that the plaintiffs' mother Radhabai Ammal, Kamalammal and Kuppamal are the sisters and the defendant is their brother and all the above are the children of the deceased Chengalvaraya Chettiyar. It is the case the plaintiffs that on the demise of their mother Radhabai Ammal, they had inherited her share in the suit properties. Accordingly, it is contended that the suit properties belonged to the abovesaid three sisters and the defendant, each having ¼ share in the same and accordingly the plaintiffs are entitled to ¼ share in the suit properties. It is the case of the plaintiffs that they and the other sharers of the suit properties had executed the general power of attorney deed in favour of the defendant authorizing to him to sell the suit properties to third parties and render accounts in respect of the same to the plaintiffs and others and according to the plaintiffs, inasmuch as the

defendant had failed to render accounts and accordingly noting the misconduct of the defendant, it is stated by the plaintiffs that the general power of attorney deed executed by them in favour of the defendant dated 29.01.1992 had been revoked by a deed of revocation on 10.02.2003 and even after the same had been apprised to the defendant by way of a legal notice, inasmuch the defendant had failed to render accounts, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

10. Per contra, the defendant in the written statement had contended that after selling the properties, he had given the amounts for the expenditure, marriage, medical expenses of the family and also for deepening the well with the consent of the plaintiffs and also contended that the lands belonging to the plaintiffs' share had not been sold and therefore according to the defendant, he is not liable to render accounts to the plaintiffs as prayed for.

11. In the light of the pleas set out by the respective parties, it is found that the defendant in the written statement as well as during the course of evidence had not disputed the execution of the general power of attorney by the plaintiffs and others in his favour on 29.01.1992 and the copy of the said deed had been marked as Ex.A1. On a perusal of Ex.A1, it is seen that the plaintiffs and others had authorized the defendant to sell the suit properties to third parties and thereby render accounts to them with reference to the same.

12. Now, according to the plaintiffs, the suit properties belonged to the three sisters Kuppammal, Kamalammal and Radhabai ammal, the mother of the plaintiffs and the defendant in equal moieties and it is thus stated that each have 1/4 share in the suit properties. Accordingly, it is stated by the plaintiffs that on account of the close relationship with the defendant and in good faith, they and others had executed the power deed in favour of the defendant empowering him to alienate the suit properties to third parties and render accounts to them in connection with the same. As abovenoted, the execution of Ex.A1 power deed by the plaintiffs and others to the defendant has not been contradicted.

13. Furthermore, the defendant had not pleaded anything about the character of the suit properties and also not disputed the claim of the plaintiffs that the suit properties belonged to the three sisters and the defendant in equal moieties and that the plaintiffs are the co-owners. Furthermore in the written statement, the defendant would only plead that he had not alienated the share of the plaintiffs' lands. Furthermore, the defendant has also pleaded in the written statement that he has

given the amounts for meeting the marriage and medical expenses of the family and also for deepening the well with the consent of the plaintiffs. Thus, from the above pleas of the defendant put forth in the written statement, it is found that the defendant had admitted the entitlement of the plaintiffs to the suit properties as put forth in the plaint as well as the entitlement of the other sharers in the suit properties and accordingly he having accepted the power deed marked as Ex.A1 and would also plead that he had rendered accounts in connection with the sale of the suit properties to the plaintiffs and others by meeting the marriage and medical expenses of the family members as well as for spending the costs in connection with the deepening the well and other family expenses, in such view of the matter, the contention of the defendant during the course of the evidence that the plaintiffs have no right in the suit properties on the footing that the suit properties are the ancestral properties of the deceased Chengalvaraya Chettiyar as such cannot be countenanced. When the defendant has not raised any plea in the written statement disputing the entitlement of the plaintiffs and other sharers to the suit properties as well as not putting forth any case as regards the character of the properties and on the other hand, admitted that he had not alienated the plaintiffs' shares in the lands, in such view of the matter, the case of the defendant that the suit properties are the ancestral properties belonging to the deceased Chengalvaraya Chettiyar and therefore the plaintiffs' mother and his other sisters have no shares in the same as such cannot be accepted. With reference to the same, the defendant would rely upon certain admission on the part of the plaintiffs during the course of evidence. However, when with reference to the abovesaid defence version, the defendant has not raised any plea in the written statement and on the other hand, having admitted that the plaintiffs have share in the suit properties and that he has rendered accounts with reference to the sale of the suit properties by giving the amounts for meeting the marriage and medical expenses of the family members and other purposes, it is too late for the defendant to contend that the plaintiffs have no share in the suit properties. As rightly put forth the evidence adduced by either of the parties sans pleas with reference to the same cannot be accepted and in such view of the matter, when the defendant, in particular, has not challenged the entitlement of the plaintiffs to the suit properties, in such view of the matter, the defendant cannot be allowed to defeat the plaintiffs' case, on the footing that the suit properties are the ancestral properties of the deceased Chengalvaraya Chettiyar etc., It is further seen that admitting the power deed Ex.A1, the defendant had also alienated certain items of the suit properties as the power agent and also on his behalf and thereby he having admitted the plaintiffs' title as well as the other sharers' title in respect of the suit properties, he cannot be allowed to take an inconsistent stand during the course of evidence without any pleas in the written statement that the suit properties are the ancestral properties and that the plaintiffs have no share in the same. In such view of the matter, the Courts below had rightly negatived the abovesaid plea taken by the defendant as regards the character of the suit properties and no interference is called for with reference to the same.

14. The other point projected by the defendant for defeating the plaintiffs' case is the limitation. Now, according to the defendant, even though the power of attorney deed was executed on 29.01.1992, the plaintiffs having laid the suit for rendition of accounts only during 2004, according to the defendant, the suit laid by the plaintiffs is barred by limitation. However, the abovesaid plea cannot be accepted. Now, according to the plaintiffs, the defendant has not rendered accounts to them as regards the sale of the suit properties to third parties by the defendant as per the power deed and hence further according to them, on noting the misconduct of the defendant and his failure in rendering the accounts to them with reference to the same, consequently, revoked the power deed by the deed of revocation on 10.02.2003 marked as Ex.A2 and also apprised the same to the defendant by way of a legal notice dated 23.02.2003 marked as Ex.A3, further seen from the acknowledgment cards marked as Exs.A4 and A5, the same had been acknowledged by the defendant, thus, it is seen that only on coming to know about the misconduct of the defendant in not rendering the proper accounts to the plaintiffs with reference to the sale of the suit properties and also his neglect to satisfy the plaintiffs with reference to the adjustment of the income received by way of the sale of the suit properties and in such view of the matter, it is found that as rightly put forth by the plaintiffs' counsel, insofar as this case is concerned, Article 4 of the Limitation Act would apply and so viewed, it could be seen that the limitation period would commence three years from the period when the neglect or misconduct becomes known to the plaintiffs and when according to the plaintiffs, they had come to know about the misconduct of the defendant only on 08.02.2003 as regards his failure to render the accounts of the income earned by him with reference to the sale of the suit properties and accordingly they having chosen to cancel the power deed by a deed of revocation on 10.02.2003 and also apprising the same to the defendant by way of a legal notice dated 22.03.2003, it is thus found that the suit laid by the plaintiffs within three years from the abovesaid period is well within the time provided by law and therefore the contention of the defendant that the plaintiffs should have laid the suit within three years from the date of the execution of the power of attorney deed as such cannot be accepted in any manner. As rightly put forth, only on

the failure of the defendant in rendering the accounts to the plaintiffs and his neglecting to apprise the plaintiffs in connection with the same, despite the cancellation of the power deed dated 10.02.2003, it is seen that the plaintiffs' suit, having been laid within three years from the abovesaid time, within three years from the abvoesaid developments, the suit laid by the plaintiffs is found to be not barred by the law of limitation.

15. For the reasons aforestated, the substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiffs.

16. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
   Arakonam.

2. The District Munsif,
   Arakonam.

+1cc to Mrs.Dakshayani Reddy, Advocate, S.R.No.76015
+1cc to M/s.G.Jeremiah, Advocate, S.R.No.75598

S.A.No.598 of 2015
and
M.P.No.1 of 2015

GJII(Co)
CS/03/12/2018