

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.1021 of 2012

Kulwinder Singh Manku Appellant/Defendant

vs.

N.Jaishankar Respondent/Plaintiff

Appeal suit filed under Section 96 of Civil Procedure Code, 1908 against the judgment and decree dated 18.06.2012, passed by the V Additional District and Sessions Judge, Coimbatore, in O.S.No.579 of 2010.

For Appellant : Mr.N.Kishore Kumar

For Respondent: Mr.G.Masilamani, Sr.counsel,
for Mr.Mani Sundaragopal

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit has been directed against the judgment and decree dated 18.06.2012 passed in O.S.No.579 of 2010, by the V Additional District and Sessions Court, Coimbatore.

2.The respondent herein, as plaintiff, has instituted O.S.No.579 of 2010, on the file of the trial Court, praying to direct the defendant to execute a re-conveyance sale deed in respect of the suit property in his favour, after receipt of loan amount and also direct the defendant to handover vacant possession of the suit property and for perpetual injunction, wherein, the present appellant has been shown as defendant.

3.The material averments made in the plaint are that the suit property is the absolute property of the plaintiff and his deceased uncle, by name, Karuppusamy. The said Karuppusamy has passed away as a bachelor, on 23.6.2001. After his demise, the

suit property devolves upon the plaintiff and other legal heirs. The front portion of the suit property has been let out for commercial usage and rear portion has been let out to residential purpose. The family of the plaintiff has been residing in a portion of the suit property. One Susheel has enjoyed the front portion of the suit property, as a tenant. The plaintiff has collected a sum of Rs.3 lakhs as an advance. One Jernail Singh is a close relative of the defendant and he approached the plaintiff to let out a portion of the suit property to the defendant, for the purpose of carrying on business. The plaintiff has received a sum of Rs.7 lakhs from the defendant as an advance. The monthly rent has been fixed at Rs.10,000/-. After some time, the plaintiff has sought financial assistance from one M/s.Emrald Finance Company, Coimbatore. The plaintiff has approached the said Jernail Singh for making arrangements of funds. The said Jernail Singh has directed the plaintiff to execute a Power of Attorney Deed and also a sale agreement for the purpose of arranging funds. On 7.8.1997, the plaintiff and his uncle Karuppusamy have executed a Power of Attorney Deed and also a sale agreement, as a security. The plaintiff has paid 12% interest per annum. No receipts have been issued. The said Jernail Singh has collected parental documents for verification to release the loan. He has also promised to return the same immediately. The defendant has also participated in the death ceremony of Karuppusamy on 23.6.2001. The plaintiff has received some loans from the defendant through Jernail Singh and in total, the plaintiff is bound to pay Rs.13,25,000/- to the defendant. The sister of the plaintiff has filed a partition suit and the same has been dismissed. A notice has been issued to the plaintiff, wherein, it is stated that on the basis of the Power of Attorney Deed, a sale deed has been registered on 16.5.2008. The said Jernail Singh has cheated the plaintiff. The plaintiff is ready to settle the entire amount to the defendant. The defendant has also stopped payment of monthly rents. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4.The material averments made in the written statement are that it is true that the suit property is originally belonged to the plaintiff and deceased Karuppusamy. It is false to allege that only as a security, sale agreement and a Power of Attorney Deed have been executed in favour of Jernail Singh. On the basis of sale agreement, Jernail Singh has paid a sum of Rs.10 lakhs as an advance to the plaintiff and Karuppusamy. The said Jernail Singh has made repeated requests to the plaintiff to execute a sale deed. On the basis of Power of Attorney Deed, the said Jernail Singh has executed a Sale Deed in favour of the defendant in respect of the suit property. From the date of sale deed, the defendant is in possession and enjoyment of the suit property. The plaintiff has instigated his sister to file

a suit, on the file of the First Additional Sub Court, Coimbatore, to defeat the right and title of the defendant over the suit property. The suit sale agreement and also sale deed are known to the plaintiff and his sister. It is false to allege that a portion of the suit property has been let out to the defendant as a tenant and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has declared the Sale Deed dated 16.5.2008 as null and void and thereby directed the plaintiff to deposit a sum of Rs.13,25,000/- within a period of two months and after deposit, the defendant is directed to handover vacant possession of 828 sq.feet mentioned in Ex.B2 and to that extent, suit has been decreed, by way of passing the impugned judgment and decree and the same are being challenged in the present Appeal Suit.

6. The consistent case of the plaintiff is that the suit property is the absolute property of the plaintiff and his uncle one Karuppusamy and both of them have executed a Power of Attorney Deed on 7.8.1997 and also a sale agreement on the same day in favour of one Jernail Singh, wherein, the period of execution has been fixed at 11 months. The said Jernail Singh has obtained both the Power of Attorney Deed and also Sale Agreement as security for the loan arranged by him. The defendant is his brother-in-law and he executed a sale deed dated 16.5.2008 in favour of the defendant. In fact, the plaintiff has received only loans from the defendant and never agreed to sell the suit property in his favour. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

7. The defence put forth on the side of the defendant is that the Power of Attorney Deed and also Sale Agreement dated 7.8.1997 are genuine documents and on the basis of Power of Attorney Deed, the said Jernail Singh, has executed a Sale Deed dated 16.5.2008, in favour of the defendant and put him in possession of the property mentioned therein and it is false to aver to the effect that both Power of Attorney Deed and Sale Agreement have been executed as a security and therefore, the present suit deserves to be dismissed.

8. As mentioned supra, the trial Court has declared that the sale deed dated 16.5.2008 as null and void and subsequently, directed both the plaintiff and defendant as mentioned in the judgment.

9. The only point that comes up for consideration in the present Appeal Suit is as to whether the Sale Deed dated

16.5.2008 is a genuine document.

10.The learned counsel appearing for the appellant/defendant has contended to the effect that the suit property is the absolute property of plaintiff and his uncle by name Karuppusamy and both of them have voluntarily executed a Power of Attorney Deed and also a Sale Agreement in favour of one Jernail Singh on 7.8.1997 and on the date of its execution, both of them have received a sum of Rs.10,00,000/- and on various occasions, the plaintiff has received the balance of sale consideration and by utilising the Power of Attorney Deed, the said Jernail Singh has executed the sale deed dated 16.5.2008 in favour of the defendant and since then, he is in possession and enjoyment of the suit property as absolute owner and the trial Court, without considering both the oral and documentary evidence adduced on the side of the appellant/defendant, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

11.In support of his contention, the learned counsel for the appellant/defendant has relied upon the following decisions:

(1)1918 LW 566 (M.Ponnuswami Pillai and another vs. Chidambaram Chettiar and Others, wherein, this Court has held to the effect that assignee of a decree, during pendente lite, is having all powers and rights of original decree holder.

(2) Prema Sudhamani vs. D.Krishna Rao (judgment in O.S.A.No.189 of 2007, dated 19.09.2008), wherein, a Division Bench of this Court has held that the Power of Attorney Deed authorises Power of Attorney on its terms and purpose mentioned therein.

12.To dispel the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has laconically contended to the effect that both the Power of Attorney Deed and Sale Agreement dated 7.8.1997 have been executed as a security for the loan received by the plaintiff and even assuming without conceding that the sale agreement is a genuine document, wherein time of execution of a sale deed has been fixed at 11 months, the so called Power of Attorney, has executed the sale deed dated 16.5.2008, after a lapse of 11 years and the trial Court, after considering the overall evidence available on record and also the close relationship between Jernail Singh and the defendant, has rightly held that the sale deed dated 16.5.2008 is null and void and also rightly directed the plaintiff to deposit a sum of Rs.13,25,000/- within a period of two months and accordingly, the same has also been deposited in the trial Court and therefore, the judgment and decree passed by the trial Court do not require any interference.

13.The Power of attorney Deed and also Sale Agreement dated 7.8.1997 are marked as Exs.A1 and A2 and a Registration copy of Sale Deed dated 16.5.2008 is marked as Ex.A6.

14.As culled out earlier, the only point which has to be decided in the present appeal suit is as to whether Ex.A6-the Sale Deed, dated 16.5.2008, is a genuine document.

15.The plaintiff has been examined as P.W.1 and he vividly given evidence about the alleged loan transaction between him, Jernail Singh and defendant. The said Jernail Singh has been examined as D.W.2 and he candidly admitted to the effect that the defendant is his brother-in-law.

16.The main contention put forth on the side of the respondent/plaintiff is that Exs.A1 and A2 have been executed as a security for the loan received by the plaintiff.

17.Even assuming without conceding that Ex.A2 is a genuine document, wherein 11 months period has been fixed for paying balance of sale consideration and also get a Sale Deed registered. In the instant case, as rightly pointed out on the side of the respondent/plaintiff, Ex.A6 has come into existence after a lapse of 11 years.

18.Considering the aforesaid factual circumstances, there is no incertitude in coming to the conclusion that Ex.A6 is not a genuine document. Further, on the side of the respondent/plaintiff trust-worthy evidence is available for the purpose of proving that only for loan transaction, Exs.A1 and A2 have come into existence.

19.Since Ex.A6 has been executed after a lapse of 11 years from the date of Ex.A2 and since the said Jernail Singh is the brother-in-law of the defendant, both of them have colluded together and collusively created Ex.A6-Sale Deed, dated 16.5.2008. Further Ex.A6 has been created after the demise of one of the executants of Exs.A1 and A2. On that score also Ex.A6 is a void document. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/defendant are totally devoid of merits; whereas, the argument put forth on the side of the respondent/plaintiff is really having subsisting force. The trial Court, after considering the overwhelming evidence available on record, has rightly passed the impugned judgment and decree and there is no valid ground to make interference in it.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.579 of 2010, by the trial Court, are confirmed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

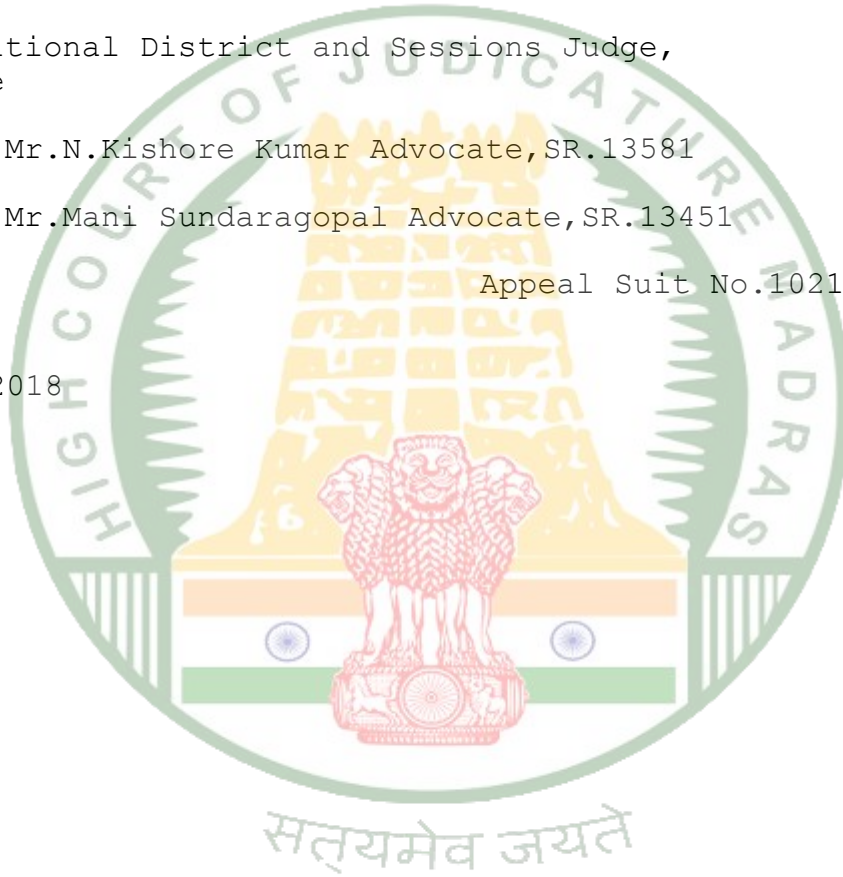
The V Additional District and Sessions Judge,
Coimbatore

+ 1 cc to Mr.N.Kishore Kumar Advocate,SR.13581

+ 1 cc to Mr.Mani Sundaragopal Advocate,SR.13451

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