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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice N.ANAND VENKATESH

Original Side Appeal No.56 of 2015

P.Ramu @ Ramamoorthy,
Represented by General
Power of Attorney, Agent,
P.Sethu Madhavan.

... Appellant/Plaintiff

Vs.

K.A.Liyagath Ali

..Respondent/Defendant

Original Side Appeal is filed under Order 36 Rule 1 of O.S.Rules R/W Clause 15 of the Letter Patent against the judgment and decree passed on 05.11.2014 in C.S.No.873 of 2006.

For Appellant : Mr.Parthasarathy, Sr.Counsel
for Mr.Suhrith Parthasarathy

For Respondent : Mr.S.Rama Narayanan
for M/s. Sampath Kumar Associates

JUDGMENT

(Judgment of the Court delivered by N. ANAND VENKATESH, J)

This Original Side Appeal has been filed by the plaintiff whose suit against the respondent claiming for the relief of delivery of possession, damages and for other consequential reliefs, came to be dismissed by a judgment and decree dated 05.11.2014 in C.S.No.873 of 2006.

2.When this appeal came up for final hearing today before this Court, it was noticed that the plaintiff had already executed a Release Deed dated 30.10.2003 [Ex.D-1] wherein he has already released his half share in the suit property in favour of his brother P.Sethu Madhavan and thereby the said P.Sethu Madhavan had become the absolute owner of the entire suit property.



3.The said P.Sethu Madhavan who has become the absolute owner of the entire suit property, did not file the suit in his capacity as the owner of the entire suit property, on the other hand he has filed the suit in his capacity as the Power of Attorney agent of the appellant. For the purpose of representing the appellant in the suit as agent, the said P.Sethu Madhavan has relied up the General Power of Attorney dated 12.09.2002 which was executed by the appellant while he was the owner of the half share in the suit property. This Power of Attorney has lost his significance after the execution of the Release Deed subsequently on 30.10.2003.

4.The suit has been filed on 23.08.2006 by the appellant claiming for the above said reliefs against the respondent. As on that date, the appellant was no more the owner of the suit property and he did not have the locus standi to maintain the suit.

5.We are of the considered opinion that the learned Single Judge ought to have dismissed the suit on this very preliminary ground without going into the other issues that have been raised in the suit. However, the learned Single Judge erroneously disregarded this Release Deed on the footing that it is not a valid document and it does not confer any right on any person.

6.There was absolutely no evidence that was available on record for the learned Single Judge to come to such a conclusion. In fact the said P.Sethu Madhavan who was examined as PW-1 in his evidence categorically states that his brother namely; the appellant herein has released his share in the suit property in the year 2003. In the light of the registered Release Deed dated 30.10.2003 and the evidence of P.Sethu Madhavan, there is absolutely no doubt about the fact that on the date when the above suit came to be filed, the appellant was not the owner of the suit property and he had no locus standi to maintain the suit. The finding of the learned Single Judge disregarding this clear fact is liable to be set aside by this Court.

7.The learned Single Judge ought to have taken into consideration the above said factum and should have dismissed the suit on the above said preliminary issue itself and should not have gone into the other issues raised in the suit.

8.The reasoning that has been given by us for the dismissal of the suit, equally applies for this appeal also. The appellant who does not have the locus standi to institute the suit also does not have the locus standi to maintain this appeal. We accordingly dismiss the suit and also this appeal on the preliminary issue of locus standi. In view of the same, the



findings that have been rendered on the other issues raised in the suit has no significance and there is no need for any findings on any of the other issues.

9. Accordingly, this appeal stands dismissed for the reasons stated supra. The findings given in the suit with regard to all the other issues also stands set aside. We also make it clear that it is open to P.Sethu Madhavan, who is the owner of the entire suit property, to maintain an independent suit against the respondent, if he is otherwise legally entitled to.

10. In view of the above reasons the appeal stands dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kp

Copy to:
The Sub. Asst. Registrar,
Original Side, High Court
Madras.

+2cc to M/s. Sampath Kumar Associates, Advocate sr.no.42583

Judgment in O.S.A.No.56 of 2015

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