

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2018

PRONOUNCED ON : 21.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1711 of 2004

1. E.Sampath
2. K.Eswaramoorthy Appellants/Appellants/Defendants
Vs.
Nanjappa Gounder ... Respondent/Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.12.2003 passed in A.S.No.57 of 2002 on the file of the First Additional District Court, Erode, confirming the Judgment and Decree dated 25.01.2002 passed in O.S.No.10 of 2000 on the file of the Second Additional Sub Court, Gobichettipalayam.

For Appellants : Mr.N.Manokaran

Respondent : No appearance
(Set exparte vide order dated 11.06.2018)

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 10.12.2003 passed in A.S.No.57 of 2002 on the file of the First Additional District Court, Erode, confirming the Judgment and Decree dated 25.01.2002 passed in O.S.No.10 of 2000 on the file of the Second Additional Subordinate Court, Gobichettipalayam.

2. The second appeal has been admitted on the following substantial question of law.

" When the plaintiff appointed the second defendant in the suit as his power agent under a written instrument (Ex.A1) authorising him to deal with his property including the power to negotiate for sale and execute the sale deed by receiving the price, could a sale executed by the power agent in his capacity as such in favour of the first defendant, on the ground of

inadequacy in the sale price could be set aside in law?"

3. The defendants are the appellants in the second appeal.

4. The suit has been laid by the plaintiff for Declaration, Possession and Future Mesne Profits.

5. Materials placed on record go to show that the plaintiff had given a Power of Attorney in favour of the second defendant, his brother-in-law both for managing the suit property as well as to effect a sale in respect of the same for a valid consideration. It is found that according to the plaintiff's case, the second defendant, in the guise of the Power of Attorney deed executed in his favour by the plaintiff, had alienated the suit property in favour of the first defendant, his only son on 10.07.1998 for a paltry sum of Rs.67,000/-, as according to the plaintiff, the suit property is a valuable one and inasmuch as according to the plaintiff, the second defendant has neither intimated him as regards the above sale transaction in favour of the first defendant as per law nor also paid the consideration to him received under the said sale transaction, according to the plaintiff, the second defendant having exceeded the power granted in his favour and also not paying the sale consideration received under the sale transaction, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

6. The defendants have taken the plea that on the strength of the power of attorney granted by the plaintiff in favour of the second defendant, the second defendant sold the suit property to the first defendant for a valid sale consideration of Rs.67,000/- and further, according to the second defendant, the said amount had been paid by him to the plaintiff and the abovesaid sale transaction had come to be effected to the knowledge of the plaintiff and therefore, the plaintiff cannot be allowed to complain about the same and on that basis, sought for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendants, DWs1 to 7 were examined and Exs.B1 to B8 were marked.

8. The Courts below, on an appreciation of the materials placed on record, both oral and documentary, was pleased to grant the reliefs sought for by the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

9. As above seen, it is found that the plaintiff had given the Power of Attorney in favour of the second defendant marked

as Ex.A1. On a perusal of the same, it is found that the second defendant has been empowered not only to manage the suit property, but, also entitled him to convey the suit property to the third parties for a valid consideration on behalf of the Principal i.e. the plaintiff. Now, it is found that the second defendant had conveyed the suit property in favour of his only son, the first defendant on 10.07.1998 and the copy of the sale deed has been marked as Ex.A4. It is found that the suit property had been conveyed for a sum of Rs.67,000/-. Now, according to the plaintiff, he has not been put on notice about the abovesaid sale transaction and further, it is stated that the defendants 1 & 2 had colluded together and brought about the sale for a low consideration and according to the plaintiff, the suit property would fetch a more sum and according to the plaintiff, the value of the suit property is more than Rs.2,75,000/- and therefore, according to the plaintiff, the abovesaid sale transaction marked as Ex.A4 is not a valid sale consideration and further, according to the plaintiff, the consideration passed thereunder had not been given to him and therefore, it is contended that with a view to cheat the plaintiff, the abovesaid sale transaction has been cleverly brought about by the defendants and hence, it is stated that the plaintiff has been necessitated to institute the suit for appropriate reliefs.

10. Though the defendants would claim that the suit property had been conveyed to the first defendant by the second defendant on the strength of the power deed to the knowledge of the plaintiff, it is found that with reference to the same, no acceptable and reliable evidence is forthcoming on the side of the defendants. Further, when the materials placed on record show that the first defendant is found to be living with the second defendant and not yet married, it is seen that the defendants 1 & 2 remain the members of the same joint family and in such view of the matter, the case of the defendants that the second defendant had conveyed the suit property to his unmarried son, the first defendant by way of Ex.A4 cannot be accepted straight away and in such view of the matter, as rightly found by the Courts below, the defence version projected has to be viewed only with a pinch of salt. Accordingly, it is found that when the second defendant has been given the power to manage the suit property considering the old age of the plaintiff, it is found that the plaintiff was under the impression that the property had not been alienated by the second defendant on the strength of the Power deed and it is only the second defendant, who has been in possession and enjoyment of the suit property as such. Accordingly, it is found that the defendants are unable to place any acceptable and reliable materials to show that pursuant to Ex.A4 sale transaction, the first defendant has been in the exclusive possession and enjoyment of the suit property by distancing the

second defendant and on the other hand, materials placed on record go to show that even after Ex.A4 sale transaction, it is only the second defendant, who has been in the possession and enjoyment of the suit property as such and such being the position, as rightly found by the Courts below, the sale transaction Ex.A4 has been brought about without due intimation to the plaintiff.

11. Further, as seen from the records placed, even the sale transaction Ex.A4 on the face of it goes to show that the value of the suit property is Rs.2,75,000/-. Such being the position, it is found that the case of the defendants that the suit property had been conveyed in favour of the first defendant by the second defendant for a reasonable consideration falls to the ground and it is found that the abovesaid defence has been projected by the defendants only with a view to deceive the plaintiff from receiving the due consideration under the sale transaction. When on the face of it, the property involved is found to be of more value and when it is seen that the sale transaction Ex.A4 had been brought about for a paltry sum, it is seen that on that score alone, the defence version is liable to be rejected. On the sale transactions projected by the defendants by way of Exs.B4, B5 & B6, it is found that when they are not shown to have been executed during the period of execution of EX.A4, it is found that the consideration mentioned therein would be of no use to hold that Ex.A4 sale transaction had been brought about for a valid consideration as projected by the defendants. Thus, it is found that there is no valid and acceptable material projected by the defendants to hold that the suit property had been conveyed under Ex.A4 for a valid consideration.

12. In addition to that, it is also noted that the defendants have failed to pay the consideration to the plaintiff alleged to have been parted under Ex.A4. In this connection, considering the contradictory and unreliable evidence projected by the defendants with reference to Ex.B1 receipt and when the place of execution of Ex.B1 and the passing of consideration, under which, the same had come to be brought about is found to be clouded with the suspicious factors as detailed by the Courts below and thereby, the determination of the Courts below that the defendants have failed to establish the receipt of the consideration by the plaintiff under Ex.B1 cannot be faulted in any manner, accordingly, it is seen that the Courts below are right in upholding that the defendants have failed to establish the receipt of the consideration by the plaintiff under Ex.B1 and the same cannot be faulted in any manner and accordingly, it is found that the Courts below had rightly disbelieved the version of DW2 on the above aspects and finding that he is the henchman of the defendants and accordingly, rightly did not place reliance upon his testimony. That apart, though the trial

Court has made an endeavour to compare the signature found in Ex.B1 with that of the other signatures. However, as rightly determined by the first appellate Court, ignoring the same, on the basis of the materials placed on record considering the inconsistent and contradictory statements projected by DWS1 & 2 with reference to Ex.B1 in toto, it is found that the defendants have failed to establish the receipt of the consideration by the plaintiff as projected by them.

13. In the light of the above discussions, it is found that the Courts below are justified in upholding the case of the plaintiff by concluding that Ex.A4 sale transaction had not been brought about for a valid consideration and also justified in holding that even the consideration recited therein had not been passed on to the plaintiff as claimed by the defendants and accordingly, held that the abovesaid sale transaction would not in any manner bind the plaintiff and resultantly, it is found that the Courts below are justified in granting the reliefs sought for by the plaintiff. The substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendants.

In fine, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The First Additional District Judge
The First Additional District Court, Erode.
2. The Second Additional Sub Judge
The Second Additional Sub Court, Gobichettipalayam.

+1 CC to Mr.N. Manokaran, Advocate sr 39299.

S.A.No.1711 of 2004

SP(03/08/2018)