

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.735 of 2018

&

C.M.P.Nos.21462 & 21468 of 2018

P.C.Jain @ Padmachand Jain, ... Appellant/Plaintiff

Vs

1.Sabapathy

2.Anbazhagan

3.Jayanthi Muruesan

4.Gurunathan

5.Thiyagarajan ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Subordinate Judge, Arakkonam dated 02.08.2018 passed in A.S.No.23 of 2016, confirming the Judgment and Decree of the Learned District Munsif, Arakkonam dated 24.03.2014 passed in O.S.No.18 of 2002.

For Appellant : Mr.Rajaraman.M

सत्यमेव जयते
O R D E R

The plaintiff is the appellant before this Court. The suit is one for bare injunction filed by the appellant who is the plaintiff in the Trial Court. The parties are referred in the same litigative status as in the suit.

2.It is the case of the plaintiff that the suit property originally belonged to the joint family of the one Selvaraji Naidu, after his death on 30.03.1994 the property was partitioned between his sons, children through his first wife Jayammal and his second wife Suseela. In the said partition, the suit property and other properties were allotted to the

second son of Selvaraji Naidu namely Anandan through his first wife Jayammal. On 31.05.1999 the suit property was sold by the said Anandan to the plaintiff for a sum of Rs.1,00,000/- and from the date of purchase the plaintiff has been in enjoyment and possession of the same. The plaintiff had sold a portion to the wife of one Narasimhan in exercise of his rights as the owner of the property. The defendants who have no right to the suit property are taking advantage of the fact that the plaintiff was not a local and tried to trespass into the suit property and disturb his peaceful possession and enjoyment of the suit property thereby constraining the plaintiff to file the suit for a bare injunction.

3. On being served with the summons in the said suit the defendants had entered appearance and the 2nd defendant had filed a written statement in which they had contended that the suit property belonged to his grand father one Aalangati Mudhaliar by way of sale deed dated 05.08.1921. After the death of the said Aalangati Mudhaliar his son Jalanatha Mudhaliar and after him, his son Annamalai Mudhaliar, the defendants 1 and 2 were in possession and enjoyment of the suit property without any interference. The suit has now been allotted to the 2nd defendant. The 3rd defendant is cultivating the lands and for over eight decades the suit property has been in their possession and enjoyment. It appears that all of a sudden without notice to the defendants the revenue authorities had changed the patta. Challenging the same the 2nd defendant had filed the suit O.S.No.137 of 1999 before the District Munsif, Arakkonam against the District Collector, Tashildar, Village Administrative Officer which is pending. The 2nd defendant had contended that the plaintiff did not have any right or title to the suit property.

4. The parties had entered trial and instead of the plaintiff one Ramachandran claiming to be the power agent of the plaintiff had adduced evidence. This was objected to by the defendants. Ultimately, the suit was dismissed.

5. The learned District Munsif, Arakkonam, had observed that the plaintiff had not subjected himself to oral evidence and the person who had adduced evidence had neither produced the power of attorney nor had obtained leave from the Court to adduce evidence on behalf of the plaintiff and therefore the Trial Court had concluded that the plaintiff had not filed his case in the manner of law. Consequently, the suit was dismissed. Challenging the same the plaintiff had filed A.S.No.23 of 2016 on the file of the Subordinate Judge, Arakkonam. The learned Subordinate Judge also confirmed and concurred with the finding given by the Trial Court and the appeal was ultimately dismissed.

6.Challenging the same, the appellant is before this Court. Heard, Mr.Rajaraman. M, learned counsel for the appellant, who would argue that the provisions of the Order III Rule 2 of the Code of Civil Procedure does not prohibit the power of attorney from adducing evidence on behalf of the parties to the proceedings and the non filing of the power of attorney is not fatal to the case. He would further argue that the Court had only considered the non-filing of the power of attorney and the same being confirmed in the appeal was totally erroneous since, no further issues had been framed in this regard by the Courts below. Therefore the Order should be set aside and the matter shall remitted to the courts below.

7.Heard the arguments and perused the papers. The provisions of Order XVIII Rule 1 and 2 of the Code of Civil Procedure contemplates that the parties to the proceedings shall enter the witness box and adduce evidence. This order has to be read in conjunction with the provisions of Order III Rule 2 of the Code of Civil Procedure which has been relied upon by the learned Counsel. The provisions of Order III Rule 2 of the Code of Civil Procedure are extracted below:

"2.Recognised agents.-The recognised agents of parties by whom such appearances, applications and acts may be made or done are-

(a)persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b)persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts."

Order XVIII Rule 1 and 2 of the Code of Civil Procedure reads as follows:

"1.Right to begin.-The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2.Statement and production of evidence.-(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and

produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(3-A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3-B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3-C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3-D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit."

8. Rule 16 of the Civil Rules of Practice contemplates the procedure to be adopted, where the party appears through an agent, others or advocate. The said rule reads as follows:

"16. Party appearing by agent:-(1) When a party appears by an agent other than a pleader or advocate, the agent shall before making or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorising him, or a properly authenticated copy thereof/or, in the case of an agent carrying on a trade or business or behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorised to make or do such appearance, application or act.

(2) The judge may thereupon record in writing that the agent, is permitted to appear and act on behalf of the party, and unless and until the said permission is granted no appearance, application, or act, of the agent shall be recognised by the Court."

9. Therefore, on a conjoint reading of the provisions of Order III Rule 2 of the Code of Civil Procedure, Order XVIII

Rule 1 and 2 of the Code of Civil Procedure and Rule 16 of the Civil Rules of Practice, it is clear that where the power of attorney seeks to substitute himself in the place of the party, he has to obtain the leave to the Court and produce the power of attorney authorising him to appear on behalf of the plaintiff. In the instant case it is pointed out by the Courts below that the power agent has neither produced the power of attorney nor has he sought the leave to the Court to enter into witness box on behalf of the plaintiff.

10.As rightly held by the Courts below this is fatal to the case of the plaintiff and the Courts below had rightly dismissed the suit. I find no infirmity in the Judgment and Decree passed by the Courts below. The appellant has not put forward any question of law much less a Substantial Question of law warranting interference of this Court. Therefore the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Arakkonam.

2.The District Munsif,
Arakkonam.

+1cc to Mr.M.Raja Raman, Advocate, S.R.No. 85554

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NRL (CO)
GN (11/02/2019)