



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD) No.132 of 2018

Ravikumar

... Appellant/Plaintiff

vs.

1.Janaki Vijaya Kumar
2.Ramalakshmi
3.Thangaswamy Nadar
4.Manoharan

... Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment passed by the learned I Additional Subordinate Judge, Nagercoil, in A.S.No.56 of 2005 dated 11.07.2017 by confirming the decree and judgment passed by the learned II Additional District Munsif, Nagercoil, in O.S.No.251 of 2002 on 17.12.2004.

For Appellant : Mr.T.Poovanalingam

For Respondents: No appearance

JUDGMENT

The plaintiff in the suit in O.S.No.251 of 2002 on the file of the learned I Additional Subordinate Judge, Nagarcoil is the appellant in the above second appeal.

2.The brief facts that are necessary for the disposal of the second appeal are as follows:

(i) the plaintiff filed a suit in O.S.No.251 of 2002, for bare injunction restraining the defendants from trespassing into or interfering in the plaintiff's peaceful possession of the plaint schedule property.

(ii) it is the case of the plaintiff that Item No.1 of the plaint schedule property, measuring 50 cents in R.S.No.1332/10 of Neendakarai 'A' Village, belonged to the first defendant. The plaintiff stated that he purchased Item No.I of the plaint schedule property. It is further stated that the entire sale consideration was sent to the first defendant and as per the instruction of the first defendant, the third respondent executed a sale deed in favour of the plaintiff as Power Agent of first defendant in respect of Item No.1 of the suit.



(iii) it is further stated that the Item No.2 of the plaint schedule property belonged to the second defendant and the plaintiff purchased the Item No.2 of the plaint schedule property through the Power Agent of second defendant.

3. It is admitted that the suit properties were purchased only from the third defendant, who according to the plaintiff is the Power of Attorney of the defendants 1 and 2, who are the respective owners of the Item Nos.1 and 2 of the plaint schedule property. The suit was contested by the defendants disputing the Power of Attorney, which was executed by the defendants 1 and 2 on 09.09.1998 and 10.02.1999 respectively, in favour of the third defendant.

4. It is a specific case of the defendants that the alleged Power of Attorney deed is invalid and it is fabricated one. Further, it is stated that the alleged Power of Attorney deed cannot be recognized as a valid document as it is not authenticated as required under Section 32 of the Registration Act, 1908. Since the same ought to have been executed before the Sub Registrar, in whose jurisdiction the property is situated, the suit is contested on the ground that the sale deed executed by the third defendant is unauthorized and invalid.

5. In this case, admittedly, the Power of Attorney document was executed before a Notary Public and the power deed has not been executed in the manner required in law to be a valid document.

6. Leaving alone the other aspects, the fact that the plaintiff has purchased the property from the third defendant, who claims to be the Power Agent of defendants 1 and 2 is not in dispute. If the Power of Attorney deed alleged to have been executed by the defendants 1 and 2 in favour of the third defendant is invalid, the sale deed, that was executed by the third defendant as Power Agent of defendants 1 and 2 is also equally invalid and cannot confer any title or right in favour of plaintiff.

7. Both the Courts have concurrently held that the sale in favour of the plaintiff is invalid and therefore, the suit for permanent injunction is not sustainable as the plaintiff is not entitled to claim that he is in lawful possession of the property and that the plaintiff cannot file a suit for injunction against the owner of the property.

8. In this appeal, this Court find no substantial question of law. Hence, this Second Appeal is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1. The I Additional Subordinate Judge,
Nagarcoil.

2. The II Additional District Munsif,
Nagarcoil.

+ 1 CC TO Mr.T.POOVANALINGAM, ADVOCATE IN SR No. 68606

MM

TE/RP/SAR-2 : 17/07/2018 : 3P/4C

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