

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.192 of 2007

1.B.V.Munirathina Reddy
2.B.V.M.Amarnath Reddy
3.R.Sundaravelu ...Appellants/Plaintiffs

Vs.

1.M.Ramalingam
2.S.Jothilingam
3.J.Sulochana
4.Amsa ammal ...Respondents/Defendants 2 to 5

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 03.08.2006 passed in A.S.No.49 of 2004 on the file of the Subordinate Court, Arni, confirming the judgement and decree dated 20.12.2002 passed in O.S.No.817 of 1995 on the file of the Principal District Munsif Court, Arni.

For Appellants : Ms.AL.Ganthimathi

For Respondent : No appearance
No.1 set exparte

For Respondent : Ms.V.Srimathi
Nos.2 to 4

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 03.08.2006 passed in A.S.No.49 of 2004 on the file of the Subordinate Court, Arni, confirming the judgement and decree dated 20.12.2002 passed in O.S.No.817 of 1995 on the file of the Principal District Munsif Court, Arni.

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

"1.Whether or not the courts below went wrong on technicality in accepting the non-joinder of party, when the said parties presence has nothing to do with the case of the plaintiff?

2.Whether or not the courts below failed in their obligation to follow the rule of law envisaged under Sec.103 of Evidence Act?

3.Whether or not the courts below committed error in understanding the law of power of attorney while passing the judgment?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the suit has been laid by the plaintiffs for declaration.

6.According to the plaintiffs, the suit property originally belonged to the first defendant and the first defendant had executed a power of attorney in favour of the second defendant and even though the second defendant had approached the plaintiffs for conveying the suit property on behalf of the first defendant, inasmuch as the plaintiffs insisted that the first defendant should only execute the sale deed in favour of the plaintiffs, accordingly, it is put forth that the first defendant had cancelled the power of attorney issued in favour of the second defendant and following the same, conveyed the suit property in favour of the plaintiffs by way of the sale deed dated 04.05.1993 and accordingly, it is only the plaintiffs, who are in the possession and enjoyment of the suit property by obtaining patta, paying kist etc., and further according to the plaintiffs, following the difference of opinion between the defendants 1 & 2, it is put forth that taking advantage of the power of attorney executed by the first defendant in favour of the second defendant, with a view to defraud the plaintiffs, the sale deeds had been created in respect of the suit property in favour of the defendants 3 to 5 falsely, however, the alleged sale transactions in favour of the defendants 3 to 5 are invalid and not binding upon the plaintiffs and accordingly, the plaintiffs had been necessitated

to obtain the relief of declaration with reference to the abovesaid sale deeds in favour of the defendants 3 to 5 and accordingly, the suit has come to be laid by them.

7.The defendants 3 to 5 resisted the plaintiffs' suit contending that the second defendant agreeing to convey the suit property in favour of the defendants 3 to 5 entered into a sale agreement dated 01.11.1992 and on the date of the sale agreement, delivered the possession of the suit property and thereafter, executed a proper conveyance in respect of the suit property in favour of the defendants 3 to 5 and as the sale deeds had been executed by the second defendant in favour of the defendants 3 to 5 as the power of attorney agent of the first defendant and as the second defendant had received the sale consideration from the defendants 3 to 5, the sale deeds obtained by the defendants 3 to 5 are valid and binding upon the plaintiffs as well as the defendants 1 & 2, it is only the plaintiffs, who are the benamis and accordingly, obtained a false sale deed in their names with a view to deprive the defendants from enjoying the suit property and accordingly, sought for the dismissal of the plaintiffs' suit.

8.Based on the materials placed on record and the submissions made by the respective parties, the Courts below were pleased to dismiss the plaintiffs' suit. Impugning the same, the present second appeal has been preferred.

9.The only point that arises for consideration in this matter is, whether the alienations of the suit property in favour of the defendants 3 to 5 by the second defendant as the power of attorney agent of the first defendant are true, valid and binding upon the plaintiffs or Whether the sale deed executed by the first defendant in favour of the plaintiffs in respect of the suit property is true, valid and binding upon the defendants 3 to 5.

10.As could be seen from the materials available on record, it is found that the suit property originally belonged to the first defendant. It is further seen that the first defendant had executed a power of attorney in favour of the second defendant on 24.02.1992 empowering him to convey the suit property to the third parties. The copy of the power of attorney deed dated 24.02.1992 has been marked as Ex.B23. Now, according to the defendants 3 to 5, on the strengthen of the abovesaid power of attorney deed, the second defendant had agreed to convey the suit property in their favour and accordingly, entered into an agreement of sale with reference to the same on 01.11.1992 with them and the abovesaid sale agreements executed by the second defendant in favour of the defendants 3 to 5 have been marked as Exs.B20 to 22 and it is

the further case of the defendants 3 to 5, on the date of the sale agreement itself, the suit property had been entrusted with their possession and following the same, it is put forth that the second defendant had also executed the sale deeds in their favour on 22.01.1993 and 29.01.1993, the abovesaid registration copy of the sale deeds have been marked as Exs.B4 to B6. On the basis of the abovesaid transactions, according to the defendants 3 to 5, they have obtained title to the suit property validly.

11. According to the plaintiffs, it is only they, who had obtained the sale deed in respect of the suit property from the first defendant on 04.05.1993, which has been marked as Ex.A3 and it is put forth that the first defendant, after cancelling the power of attorney deed issued in favour of the second defendant, had executed the abovesaid sale deed in their favour and the cancellation deed dated 20.04.1993 has been marked as Ex.A6 and thereby, contended that it is only the plaintiffs, who had obtained the valid title to the suit property and necessitated to institute the suit for seeking appropriate relief.

12. Considering the materials projected in the matter in toto, it is found that following the execution of the power of attorney deed dated 24.02.1992 marked as Ex.B23, it is seen that the first defendant had obtained the sale price of the suit property from the second defendant in entirety and issued a receipt in favour of the second defendant on 01.03.1992 marked as Ex.B3. On a perusal of Ex.B3, as found by the Courts below, it is found that the first defendant has issued the abovesaid receipt in favour of the second defendant acknowledging the payment of Rs.1,50,000/- from the second defendant towards the value of the suit property for the sale of which, the power of attorney deed had been executed by the first defendant in favour of the second defendant and in such view of the matter, when the first defendant is found to have received the entire sale price of the suit property from the second defendant and issued a valid receipt marked as Ex.B3, thereafter, as determined by the Courts below, the first defendant is not entitled to assert any right over the suit property and also would not have the right to cancel the power of attorney issued in favour of the second defendant and in such view of the matter, the Courts below are justified in not accepting the case of the plaintiffs that the first defendant has validly cancelled the power of attorney deed issued in favour of the second defendant.

13. As abovestated, the power of attorney issued in favour of the second defendant is said to have been cancelled by the first defendant by the deed of cancellation on 20.04.1993 marked as Ex.A6. However, even prior to the same, the sale agreement had been entered into between the power of attorney agent, viz., the

second defendant and the defendants 3 to 5 on 01.11.1992 and following the same, the sale deeds had also been conveyed in favour of the defendants 3 to 5 by the power of attorney agent, the second defendant on 22.01.1993 and 29.01.1993 marked as Exs.B4 to B6 and in such view of the matter, when much prior to the alleged cancellation of the power of attorney deed, when it is found that the second defendant had obtained an irrevocable power of attorney empowering him to alienate the suit property, after paying the sale price to the first defendant under Ex.A3 receipt, in such view of the matter, the case projected by the plaintiffs that the first defendant, after the cancellation of the power of attorney deed, had conveyed the suit property in their favour on 04.05.1993, as such, cannot be accepted.

14. Though the reply letter sent by the second defendant to the first defendant dated 12.01.1993 marked as Ex.A5 is pressed into service for contending that much prior to Ex.A6 cancellation deed, the first defendant had been put on notice about the cancellation of the power of attorney, in fact, as determined by the Courts below, the letter sent by the first defendant to the second defendant with reference to which, the reply letter Ex.A5 has been issued, has not been placed for consideration by the plaintiffs. When the second defendant is found to have obtained a valid irrevocable power of attorney deed, after paying the entire sale price of the suit property to the first defendant, in such view of the matter, when based on the same, the defendants 3 to 5 are found to have obtained a valid conveyance from the second defendant much prior to the deed of cancellation, in such view of the matter, accordingly, merely on the basis of Ex.A5 reply letter said to have been issued by the second defendant to the first defendant, it cannot be construed that the first defendant had validly cancelled the power of attorney prior to the same to the knowledge of the second defendant. When it is found that the paper publication as regards the cancellation of the power of attorney had come to be made only 04.05.1993 marked as Ex.A14, the claim of the plaintiffs that much prior to the same, i.e. prior to 12.01.1993 itself, the power of attorney deed had been cancelled by the first defendant cannot hold water and as determined by the Courts below, when the power of attorney granted to the second defendant is pertaining to and carrying the interest in the suit property and sell the same to third properties and found to be an irrevocable power of attorney, following the payment of the sale price of the suit property to the first defendant under Ex.B3 receipt, in such view of the matter, the Courts below are found to be fully justified in not accepting the sale transaction said to have been issued in favour of the plaintiffs by the first defendant on 04.05.1993 and found to be fully justified in accepting the validity of the sale transactions executed by the second defendant in favour of the defendants 3

to 5 on 22.01.1993 and 29.01.1993.

15. In addition to that, when it is found that apart from the plaintiffs, one Krishnasamy Reddy is also found to have acquired title to the suit property by way of Ex.A3, the said Krishnasamy Reddy should have been included as the party in the present proceedings. It is seen that as determined by the Courts below, the plaintiffs having come forward with the suit seeking the relief of declaration, assuming that their sale transaction is a valid one, all the purchasers of the suit property by way of Ex.A3 should have joined in proceedings and instituted the suit. On the other hand, it is found that one of the alleged purchasers of the suit property from the first defendant had not been joined as a party either as the plaintiff or the defendant. Though it is put forth that after the demise of Krishnasamy Reddy, his legal heirs had conveyed their share in favour of one Vanitha, even the alleged purchaser viz., Vanitha, had not been joined as the party in the proceedings. In such view of the matter, as determined by the Courts below, the suit laid by the plaintiffs is found to be bad for non-joinder of necessary and proper parties. Resultantly, it has to be held that inasmuch as the plaintiffs have not obtained a valid transaction from the first defendant under Ex.A3, it is seen that the plaintiffs have not endeavoured to join all the parties to the sale transaction relied upon by them for seeking the relief prayed for in the suit.

16. In the light of the abovesaid discussions, the Courts below are found to have analysed and assessed the materials placed on record in the proper perspective and by giving cogent reasonings and conclusions, rightly determined that the plaintiffs are not entitled to obtain the reliefs prayed for. In such view of the matter, I do not find any valid reason to interfere with the judgment and decree of the Courts below dismissing the plaintiffs' suit. The substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiffs and in favour of the defendants 3 to 5.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sms

To

- 1.The Subordinate Court, Arni.
- 2.The Principal District Munsif Court, Arni.

+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 44965.

+1 CC to Mr.V.Raghavachari, Advocate sr 44578.

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SP(04/07/2019)



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