

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1043 of 2006

1.Govindasami (Died)
2.Gurubalan
3.Shanmugha Nathan
4.Baby Ammal
5.J.Amutha
6.K.Muthulakshmi
7.G.Umarani
8.Amudhavalli
9.G.Sundaravalli ... Appellants/Defendants

[(2nd and 3rd appellants and 2nd respondent are recorded as legal representatives of the deceased 1st appellant viz., Govindasamy vide order of Court dated 28.06.2019 made in C.M.P.No.10072/2016 in S.A.No.1043/2006 and appellants 4 to 9 brought on record as legal representatives of the deceased 1st appellant viz., Govindasamy vide order of Court dated 28.06.2019 made in C.M.P.No.10071/2016 in S.A.No.1043/2006) (NSSJ)].

Versus

1. Ramamurthi1st Respondent/Plaintiff
2. Kumaraguru
3. Mary Roseline ... Respondents 2 and 3/ Defendants 4 & 5

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 28.02.2006 passed in A.S.No.74 of 2004 on the file of the learned First Additional Subordinate Judge, Cuddalore reversing the Judgment and Decree dated 28.06.2004 passed in O.S.No.197 of 2004 on the file of the learned Principal District Munsif, Cuddalore.

For Appellants : Mr.S.K.Rakhunathan

For Respondents: Mr.R.Muralidharan [R1]

JUDGMENT

The defendants who were partially successful in a suit laid by the plaintiff for declaration of his title, and for an ancillary relief of injunction, but lost the entire suit before the First Appellate Court in an appeal filed by the plaintiff, has come before this Court with this Second Appeal.

2.1 The 1st defendant and others owned a block of 1.52 acres. They executed a Power of Attorney in favour of one Jagadeesan. Jagadeesan developed the property into a layout, which this Court was informed was not approved by the statutory Authority. On 27-05-1987, Jagadeesan sold the plot No.38, measuring North-South 60 feet by East-West 30 feet (the suit property) to one Mohan Raj, who in turn sold the same to the 5th defendant on 21-10-1991. In 1998, plaintiff purchased this property from the 5th defendant.

2.2 In the layout, the first defendant, himself purchased No.43. This plot sold to the first defendant forms the southern boundary of the plaintiff's plot No.38. In the plaintiff's property, he had put up a residential building measuring about 1,500 sq.ft. When the plaintiff attempted to put up a wall on the southern side that he had purchased, he faced obstructions from the defendants. Hence, the suit for declaration and for prohibitory injunction.

3. The defendants admitted the Power of Attorney executed in favour of Jagadeesan, and would plead that the Power of Attorney (which is marked as Ext.A4) in favour of jagadeesan, barred the power holder from selling the tree and the well in the property. This restriction on the exercise of power comes in the form of an unregistered document entered into between the power holder and the 1st defendant under Ext.B2.

4. Relying on Ext.B2, the trial Court granted a relief excluding the well and tree and granted a decree declaring title of the plaintiff only for an extent of 30 ft. x 50 ft, (as against a claim over a plot measuring 60 ft. x 30 ft.). In an appeal preferred by the plaintiff, it relied on Exts.A1 to A3 to arrive at a conclusion that the property indeed had been sold by the Power of Attorney of the 1st defendant as early as in 1987, and the same had not been denied by the 1st defendant. Aggrieved the same the 1st defendant has come before this Court with this Appeal.

5. This Second Appeal was admitted on the following substantial questions of law:

''(i) Whether the judgment and decree of the lower appellate Court is vitiated by its failure to interpret the power of attorney and the agreement entered into between the power of attorney agent and the appellants herein?
(ii) Is not the judgment and decree of the lower appellate Court vitiated by its failure to consider the admissions of the plaintiff in proper perspective?''

6. The learned counsel for the appellants laid considerable emphasis on Ext.B2, wherein authority to Power of Attorney has been restricted as it excluded the tree and a well in the entire block of land which the 1st defendant originally owned before it was developed by jagadeesan. This well and tree fell within the plot sold to one Mohanraj by the Power of Attorney. This, according to him, would amount to exercising an authority in excess of what is granted to the Power of Attorney.

7.1 Per contra, the learned counsel for the respondents would argue that nowhere in Ext.A4 Power of Attorney, the so called restriction on the authority of the power holder is seen. It is under Ext.B2, which is subsequent to the registered Power of Attorney, the restriction is seen imposed on the authority of the power holder.

7.2 The learned counsel further argued that Jagadeesan did not have any property himself, and he acted only on the strength of the Power of Attorney of few land holders. In all such cases, where the Power of Attorney is himself a stranger to the property and does not have any interest in the suit property, the Power of attorney enabling sale of an immovable property requires registration under Sec.27 of the Registration Act. Under Section 92 of the Evidence Act, when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, and if the same is registered, then under the Proviso 4 thereto provides that such documents bringing in variance should also to be registered. Therefore, Ext.B2 lose efficacy in limiting the prayer granted under Ext.A4, Power of Attorney.

8. This Court is in full agreement with the argument of the learned counsel for the respondent/plaintiff. Its effect is that by an unregistered document, the contents of a document required to be registered in law cannot be varied, altered, or modified. Inasmuch as a Power of attorney granted for the sale of an immovable property to one who has no joint interest or title in the property concerned along with the executant of the Power of

Attorney, the same has to be registered and its terms cannot be registered Vide an unregistered document such s the one in Ext.B2.

9. In the result, this appeal is dismissed and the judgment and decree of the First Additional Subordinate Judge, Cuddalore, dated 28.02.2006 passed in A.S.No.74 of 2004 is confirmed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The First Additional Subordinate Judge,
Cuddalore.

2. The Principal District Munsif,
Cuddalore.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.S.K.Rakhunathan, Advocate sr.56725
+1cc to M/s.R.Muralidharan, Advocate Sr.56105

S.A.No.1043 of 2006

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