

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.492 of 2012 and
M.P.No.1 of 2012

P.Kanagaraj ... Appellant/Appellant/
1st Defendant

Vs.

1. P.Selvaraj .. 1st Respondent/1st Respondent/
Plaintiff

2. K.Radhakrishnan .. 2nd Respondent/2nd Respondent/
2nd Defendant

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 19.04.2011 passed in A.S.No.101 of 2010 by the Additional District Judge, Fast Track Court No.III, Coimbatore confirming the decree and judgment dated 30.06.2008 passed in O.S.No.682 of 2006 by the First Additional Subordinate Judge, Coimbatore.

For Revision Petitioner : Mr.K.Govi Ganesan

For 1st Respondents : Mr.Mukund
for M/s Sarvabauhman Assots.

For 2nd respondent : No appearance

JUDGMENT

Aggrieved over the concurrent findings of the courts below, decreeing the suit for specific performance of the sale agreement dated 24.07.2006, the second appeal has been filed by the revision petitioner, who is the first defendant in the original suit.

2. Heard the submission of the both side, at the admission stage itself.

3. The suit in O.S.No.682 of 2006 had been filed by the plaintiff to enforce the sale agreement dated 24.07.2006 (Ex.A3) executed by the 2nd defendant, the power of attorney of the first defendant, in favour of the plaintiff. The sale agreement was executed for sale of two plots measuring 1804 sq.ft and 1916 sq.ft. for a sale price of Rs.30,000/- per cent and the 2nd defendant received a sum of Rs.15,000/- towards advance from the plaintiff. The time for completion of sale was three months. It is the case of the plaintiff that he had been always ready and willing to perform his part of the agreement, however the defendants have not come forward to execute the sale deed and hence, he caused legal notice dated 25.09.2006, marked as Ex.A4, to the defendants to execute the sale deed in favour of the plaintiff, whereas, the first defendant sent a reply notice dated 09.10.2006, marked as Ex.A6, alleging that the sale agreement is not true and hence the suit.

4. The revision petitioner/first defendant filed a written statement stating that he executed a power of attorney in favour of the 2nd defendant in respect of a land measuring 1.27 1/2 acres to form a lay out. The first defendant is a real estate business man and the 2nd defendant and one Parameswaran are his relatives and he executed a power of attorney dated 21.06.2006 and 09.09.2004 respectively in favour of them. Later, since the activities of the said Parameswaran and the 2nd defendant were being against the interest of the first defendant, he cancelled the said power attorney on 29.08.2006 and also issued a legal notice dated 02.09.2006 as well as a public notice in the daily newspaper namely "Dinamalar" dated 02.09.2006 and 07.09.2006. It is the contention of the first defendant that, in order to cheat him, the 2nd defendant and the said Parameswaran, colluded with the plaintiff, created the sale agreement. According to him, the second defendant neither informed about the sale agreement nor paid the advance amount to the first defendant and the sale agreement is forged one and hence, he prayed for dismissal of the suit.

5. The trial court framed necessary issues. During trial, on the side of the plaintiff, he examined himself and one another witness as PW1 and PW2 and marked Ex.A1 to Ex.A7. On the side of the first defendant, he examined himself and one another witness as DW1 and DW2 and marked Ex.B1 to Ex.B15. After analysing the entire evidence on record, the trial court decreed the suit for specific performance. The first appellate court also confirmed the decree and judgment of the trial court. Against which, the second appeal has been filed.

6. The learned counsel appearing for the revision petitioner/ first defendant would contend that the sale agreement dated 24.07.2006 is anti dated and it has been

created, after cancellation of power of attorney dated 29.08.2006 and hence, the sale agreement is forged one. According to the revision petitioner, the cancellation of power of attorney was intimated to the 2nd defendant through a legal notice dated 02.09.2006 and to that effect, he had also given a publication in the daily newspaper "Dinakaran". The another contention of the revision petitioner is that the stamp papers for sale agreement were purchased in the name of 2nd defendant on 13.07.2006, however the sale agreement date is 24.07.2006 and this fact clearly proved that the sale agreement is not a genuine one. The further contention of the revision petitioner is that on the date of sale agreement i.e. on 24.07.2006, an adjacent plot was also sold, wherein, comparing the sale value, the sale price fixed to the suit property is very meagre and this also one of the ground to hold that the sale agreement Ex.A3 is a forged one. It is also contended by the revision petitioner that ready and willingness to perform the part of the contract by the plaintiff is not established by him and hence, he prayed to allow the revision.

7. The learned counsel appearing for the first respondent/ plaintiff would contend that the revision petitioner is in the habit of executing power of attorney and after receipt of advance amount, he used to cancel the power of attorney and this has been clearly noted by the trial court as well as the first appellate court. His further contention is that absolutely, there is no evidence to negative the Ex.A3 sale agreement, as it was anti dated and hence, the entire burden is lies on the revision petitioner to prove the same. He would also contend that the courts below concurrently found that Ex.A3 has been executed, as per the manner known to law and in support of his argument, he and relied upon Section 188 and Section 203 of the Indian Contract Act.

8. In the light of the above, I have perused the entire materials on record. The suit has been filed for specific performance on the basis of sale agreement dated 24.07.2006, which is marked as Ex.A3. It is not in dispute that the suit property and other areas were originally developed as plots and the first defendant authorised the 2nd defendant to sell the plots, by giving power of attorney. The trial court in paragraph 14 of its judgment clearly noted the conduct of the first defendant that he is in the habit of cancelling the power of attorney, after conclusion of transaction by the power of attorney. It is the contention of the revision petitioner that the Ex.A3 sale agreement is anti dated, i.e. , after cancellation of power of attorney, the sale agreement has been executed. In this case, the revision petitioner had executed a power of attorney dated 21.06.2006 under Ex.B1 in favour of the

second defendant and subsequently, he cancelled the same on 29.08.2006 as could be seen from Ex.B3. Thereafter, with regard to the cancellation of power attorney, he issued a legal notice dated 02.09.2006 (Ex.B7) and also public notice on 02.09.2006 (Ex.B5), thorough a daily newspaper "Dhinakaran". But, to contend that the Ex.A3 sale agreement was anti dated, there is no evidence available on record. Whereas, the plaintiff clearly examined one of the attested witnesses to prove the execution of the sale agreement. Admittedly, Ex.A3 sale agreement was entered into on 24.07.2006, when the power of attorney was in existence and the power of attorney has been cancelled only on 29.08.2003 under Ex.B3. Therefore, the power of attorney holder was having authority to exercise certain acts, on behalf of the principal, when the power was in existence.

9. It is to be noted that as long as the power of attorney was in existence, any act done by the agent, certainly binds the principal. Section 188 of the Indian Contract Act deals with the power of an agent. The agent has an authority to do every lawful thing, which is necessary in order to do such act. In the case on hand, the power was very much in existence, on the date of sale agreement. It is further to be noted that when the authority has been exercised by an agent by any act, before the revocation of such authority, certainly it will bind the principal. Similarly, Section 203 of the Indian Evidence Act deals with the revocation of agent's authority.

10. PW2 in his evidence has clearly spoken about the execution of the sale agreement dated 24.07.2006. When the plaintiff had examined one of the attested witnesses (PW2) to the sale agreement to prove that the sale agreement has been executed in a manner known to law, it is for the revision petitioner/first defendant to rebut the same by adducing evidence. Except the allegation that the sale agreement Ex.A3 is anti dated, no other materials whatsoever has been filed by the first defendant to prove such allegation. Merely the stamp papers were purchased prior to the sale agreement dated 24.07.2006, that cannot be a ground to hold that the agreement is anti dated.

11. The trial court as well as the first appellate court clearly noted the conduct of the revision petitioner/first defendant, who was entering into the contracts through his power agents and subsequently when the contract is at culmination, he cancelled those agreements, allowing certain revocation. Further, the courts below also discussed about the readiness and willingness of the plaintiff to perform his part of the contract, who established the same by issuing notice to the defendants to execute the sale deed, as per the terms of the sale agreement. Considering all these aspects, I do not find

any substantial question law to frame in this second appeal and also I do not find any illegality or infirmity in the orders passed by the courts below.

12. In the result,

(i) The second appeal is dismissed. No costs. The connected civil miscellaneous petition is closed.

(ii) The decree and judgment passed by the trial court as well as the first appellate court are confirmed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. Additional District Judge,
Fast Track Court No.III,
Coimbatore.

2. The First Additional Subordinate Judge,
Coimbatore.

+lcc to M/s.Sarvabauhman Assots., Advocate, S.R.No.22509

+lcc to Mr.K.Govi Ganesan, Advocate, S.R.No.22826

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M.P.No.1 of 2012

BS(CO)
CS/01/08/2019