

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2018
DELIVERED ON : 23.04.2019

CORAM :

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.476 of 2018
and
C.M.P.No.12810 & 12811 of 2018

M/s. Neelan Charitable Trust
Represented by its Trustee
N.Arasu
No.25, Vinayagampet Street,
Saidapet, Chennai-600 015.

.. Appellant/Plaintiff

-Vs-

K. Kothandam .. Respondent/ /Defendant

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code to set aside the decree and Judgment passed in A.S.No.10 of 2017 on the file of the Additional Subordinate Judges Court, Chengalputtu dated 31.01.2018 confirming the decree and Judgment passed in O.S.No.52 of 2011 on the file of the District Munsif's Court, Chengalputtu dated 11.04.2017

For Appellant : Mr. V.K. Vijayaragavan

For Respondent : Mr.K.Ashok Kumar

JUDGEMENT

The plaintiff is the appellant before this Court. The Second Appeal arises from the concurrent Judgment and Decree passed in a suit filed by the plaintiff in O.S.No.52 of 2011 on the file of the District Munsif, Chenglapattu to declare the Deed of Release dated 9.11.2009 registered as document No.6074 of 2009 on the file of the Sub Registrar, Guduvancheery in favour of the defendant as null and void and not binding on the plaintiff and for a permanent injunction restraining the defendant, his men, agents, servants, etc. from interfering with the peaceful possession and enjoyment of the suit property. The suit schedule property is as follows:

"All that piece and parcel of land earmarked for Bus Stand in 'Arul Nagar' layout, situated at No.6, Nandhivaram Village, Chengalpattu Taluk, Kancheepuram District, comprised in Survey No.440A/1A with an extent of 19227 Sq.ft., or thereabouts measuring East to West on the Northern side - 63 feet; East to West on the Southern side - 141 feet; North to South on the Eastern side - 195 feet; and North to South on the Western Side - 182 feet and bounded on North by - 30 feet wide Road; South by - 40 feet wide Road; East by - Vacant land; and West by - 30 feet wide road within the limit of Registration Sub-District of Guduvanchery and within the limit of Kattankolathur Panchayat Union Jurisdiction."

2.Plaintiff's case:

2.1.The plaintiff is a Registered Trust established for a upliftment of the poor by providing educational institutions and also involved in social service activities. It is the case of the plaintiff that the suit property which was part of a larger extent of 0.82 cents was purchased by one Nagarathinam from the legal heirs of Devaraj Naicker in the year 1957 from the said Nararathinam, one Pattammal had purchased the property under a registered sale deed dated 19.06.1963. Thereafter on 08.08.1984, the said Pattammal entered into an agreement of sale with one M/s.Neelam Real Estate for selling the entire extent of 0.82 cents for a total sale consideration of Rs.57,400/-, the said sum was paid in bits and pieces. The last of such payment was paid on 14.04.1986 and on such payment the entire agreed sum was paid.

2.2.Meanwhile, Pattammal had executed a registered Power of Attorney in favour of U.Neelam, the proprietor of M/s.Neelam Real Estate to deal with the entire extent of 0.82 cents. The said M/s.Neelam Real Estate had purchased the lands in and around the suit schedule property and its larger extent and had started to form a lay out, in the year 1984 called 'ARUL NAGAR'. While forming the lay out portions of the property were earmarked for public utility and marked so in the approved lay out. The suit schedule property was earmarked as the bus stand. It is the case of the plaintiff that on 04.02.1997, the said M/s.Neelam Real Estate had executed the gift deed in respect of the suit schedule property in favour of the plaintiff/trust.

2.3.In the month of November 2010, the plaintiff/Trust came to learn that several strangers were moving around the suit property along with land brokers and on enquiry, the plaintiff came to know that the defendant who is a son of Pattammal and

who had executed as witness in the endorsement for the final payment of the sale consideration had got his sisters to execute a Release Deed in his favour in respect of the suit schedule property on 09.11.2009. Thereafter, on 08.03.2011, the defendant had issued a legal notice to U.Neelam that the suit property belonged to him after his mother's demise intestate. The plaintiff would submit that they had no knowledge about the demise of Pattammal at the time of execution of gift deed. Since the defendant was trying to misuse the release deed to wrongfully enter on the suit property, the plaintiff was constrained to file the suit for the reasons mentioned above.

3. Defendant's Case:

3.1. The defendant had resisted the above suit, inter alia contending that the suit was bad for non joinder of necessary parties since the Director of Town and Country Planning, Chennai, the District Collector, Kancheepuram and the Executive Officer, Nandivaram-Guduvancheri Town Panchayat, Kancheepuram District had not been impleaded as parties to the suit and point in issue related to the layout and the portions reserved for public utility. The defendant would contend that the plaintiff was indulging in land grabbing.

3.2. It is his further case that his mother Pattammal had entered into an agreement with M/s. Neelan Real Estate and also executed a power of attorney dated 12.07.1985 in favour of the said Mr. U. Neelan, proprietor of M/s. Neelan Real Estate. In pursuance of this power of attorney 38 cents out of the total extent of 82 cents was sold to various persons and Pattammal retained the remaining extent of 44 cents. On 26.12.1996, the said Pattammal had died intestate therefore the defendant and his sisters inherited the suit property. It was his further case that on 09.11.2009, his sisters had executed the registered release deed in respect of the suit property in his favour and since then he has been in absolute possession and enjoyment of the same.

3.3. He would also contend that mutation of the revenue records has also been effected in his name. He would further submit that on 22.07.2010 he was shocked to receive a caveat from the plaintiff and it was only after enquiry that he came to learn how the power agent has misused the power after the death of his mother by creating a gift in favour of his son, who was a trustee of the plaintiff/trust. Therefore, the defendant would pray for the dismissal of the above suit.

4. Trial Court:

4.1. The learned District Munsif, Chelgalpattu had framed the following issues:

- " 1. Whether the Release Deed dated 09.11.2009 in favour of the Defendant is valid and binding on the plaintiff?

2. Whether the plaintiff is entitled for a permanent injunction as prayed for?

3. Whether the plaintiff is entitled for a permanent injunction as prayed for?

4. Whether the suit is bad for non joinder of necessary parties?

5. To what relief if any the plaintiff is entitled for?"

4.2. During the trial, the Trustee of the plaintiff Trust Arasan had examined himself as a PW1 and marked Exs. A1 to A12. The Defendant had examined himself as DW1 and marked Exs. B1 to B5. After a detailed enquiry, the learned District Munsif returned a finding that the release deed executed by the sisters of the defendant in his favour was valid and binding on the plaintiff and that since the defendant had produced the revenue records to show his possession the issue Nos. 2 and 3 was also answered against the plaintiff. He however held in favour of the plaintiff with reference to the issue about the joinder of necessary parties.

5. Appellate Court:

Aggrieved by the said Judgment and Decree, the plaintiff had filed A.S.No.10 of 2017 on the file of the Additional Subordinate Judge, Chengalpattu along with the Appeal. The plaintiff had also filed two interlocutory applications in I.A.Nos.488 of 2017 and 14 of 2018 for producing and marking additional documents. The learned Appellate Judge also confirmed the Judgment and Decree of the trial Court and dismissed the Appeal. Aggrieved by the said Judgment and Decree, the plaintiff has filed the above Second Appeal.

6. Questions of Law

After hearing the arguments of both parties, this Court by order dated 30.11.2018 had re-framed the substantial questions of law as follows:

A) Whether the title has passed to Neelan Real Estate upon the execution of the agreement of sale dated 08.08.1984 (EX.A4) and the irrevocable Power of Attorney dated 12.07.1985 (Ex.A5) by the late Pattammal?

B) Whether the authority of the power agent continued even after the demise of the principal since the power given is one coupled with interest and notice of the death of late Pattammal had not been intimated to the power agent as provided under Section 208 of the Indian Contract Act?

C) Whether the gift deed dated 04.02.1997 (Ex.A2) in favour of the plaintiff is valid and thereby giving a locus standi to

the plaintiff to maintain the suit?

D) Whether the suit property can be put to any other use other than as a Bus Terminus for which purpose the said land has been allocated in the layout (Arul Nagar Layout)?

E) Whether the release deed dated 09.11.2009 (EX.A8) in favour of the respondent/defendant is valid since the entire sale consideration had been received by the original owner late Pattammal, the mother of the respondent and the property handed over to Mrs.Neelam Real Estate?"

7.Submission:

7.1.Mr. V.K.Vijayaragavan, learned counsel appearing on behalf of the appellants would contend that the Courts below have failed to appreciate that the sale insofar as Pattammal and M/s.Neelam Real Estate was complete since Pattammal during her lifetime had received the entire sale consideration and had executed the power of attorney only after receiving a substantial portion of the sale consideration.

7.2.He would further argue that the finding of the Court below that the plaintiff had not proved Ex.A4, agreement of sale, was absurd when even in the written statement of the defendant he has in very clear terms admitted the agreement of sale and it is an axiomatic principle of law that what has been admitted need not be proved through evidence. The execution of Ex.A5, power of attorney has also been admitted by the defendant and his only defense is that on the death of Pattammal, the power of attorney automatically came to an end and the further case is that on the basis of Ex.A4 and A5, 38 cents have been sold.

7.3.Therefore, the finding of the Courts below that Ex.A4 and A5 has not been proved by the plaintiff is absolutely puerile. As regards the evidentiary value of the gift deed which has been executed in favour of the plaintiff by the power of attorney namely Mr.U.Neelam after the death of the said Pattammal, it is the argument of the learned counsel for the appellant that under section 208 of the Indian Contract Act, 1872, the termination of authority of an agent would take effect insofar as 3rd persons are concerned only when the death of a person becomes known to the agent.

7.4.Therefore, according to the learned counsel for the appellant, the death of the principal namely Pattammal came within the knowledge of the plaintiff only when the defendant

herein had issued the Ex.A9 notice dated 09.03.2011. Therefore the Gift deed executed by the power agent was very much valid especially when the gift deed was executed within less than two (2) months of her death. Therefore the plaintiff argued that the defendant cannot question the plaintiff's right, title and interest to the suit property.

7.5.He would further argue that even under the gift deed, the plaintiff has been directed to utilise the said land for public purpose and therefore it was not violative of the terms of the lay out approval. He would rely upon the Judgment of the Division Bench of this Court in SIDCO Nagar Welfare Association Rep. by its Secretary. Vs. Chennai Metropolitan Development Authority, rep. By its Member Secretary and others [reported in 2018-5-L.W.497], wherein this Court has held that once the land is reserved for public purpose then the land has to be maintained in the said character and cannot be re-classified.

7.6.He would argue that the defendant was attempting to take advantage of the release deed executed in his favour (Ex.A8) to convert and re-classify the suit property reserved for bus stand into housing sites. He therefore prayed that the Judgement and Decree of the Courts below be set aside and the Second Appeal allowed.

7.7.Per Contra, Mr.K.Ashok Kumar, learned counsel appearing on behalf of the defendant would argue that the very gift deed which has been executed in favour of the plaintiff is invalid since on the date of execution of the gift deed Ex.A5 was no longer valid in as much as the Principal namely Pattammal was no more.

7.8.He would further argue that therefore the Gift deed is null and void and no right flows to the plaintiff. Further, there is no privity of contract between the plaintiff and the said Pattammal since Pattammal had entered into an agreement only with M/s.Neelam Real Estate and the Power of Attorney was executed in favour of the U.Neelam and there is no arrangement with the plaintiff. He would further argue that the lay out is not an approved lay out therefore the plaintiff cannot restrict the enjoyment of the defendant to the lands which belongs to them since on the death of the Pattammal intestate her rights automatically devolves on her children, namely the defendant herein and his sisters and the sisters having executed Ex.A9 release deed the defendant is the absolute owner of the suit property.

7.9.He would further argue that a perusal of the power of attorney would indicate that no right has been given to the

power agent to execute the gift deed with reference to the suit property and it was only a right of sale that had been entrusted to power agent. He would therefore argue that there is no question of law in the present Second Appeal and the same deserves to be dismissed confirming the concurrent Judgment and Decree of the Courts below.

7.10. Heard the submissions of both counsels and perused the entire records from the Trial Court as well as the records filed into the Court in the present second appeal

8. Discussion:

8.1. Pending the Second Appeal, the plaintiff had filed CMP.No.22524 of 2018 for a direction to the Additional Subordinate Judge, Chengalpattu to send the unmarked documents detailed therein namely

a) The original conditions issued by the Executive Officer, Nandivara -Guduvancherry Town Panchayat with reference to the suit property and the jointer property covered under lay out RC No.110 of 84

b) The original lay out plan dated 11.12.1984 issued by the Directorate of Town and Country Plan and approved by the Executive Officer Nandivaram-Guduvancherry Town Panchayat in respect of the suit properties.

c) The original proceedings dated 17.06.1985 of the Executive Officer Nandivaram-Guduvancherry Town Panchayat in respect of the suit property.

8.2. This Petition was allowed by this Court by order dated 12.12.2018.

The second document namely the original lay out approval, the xerox of which has been marked as Ex.A6, was also produced for scrutiny. When comparing the lay out plan with the documents a and c, it is seen that the lay out has been approved by the Executive Officer and the Deputy Town and Country Planning Authority. Therefore, it is clear that the lay out in question is an approved lay out and the lay out approval contains the necessary approval numbers which are reflected in the two documents, therefore, there can be no doubt that the lay out in question namely 'Arul Nagar' is a approved lay out. A perusal of this plan indicates that the suit property has been earmarked as a bus stand and therefore there is no quarrel on the fact that property in question has to be retained as a bus stand and the plan in question an approved one.

8.3.From the perusal of the records, it is seen that the suit property formed part of the larger extent of 82 cents in S.No:440. The same was purchased by Pattammal, under a registered sale deed dated 19.06.1973 (Ex.A3) from one Nagarathinam. 11 years later, it is seen that M/s. Neelan Estate had proposed to form a lay out, Arul Nagar and in their endeavour to form the lay out, the said M/s. Neelan Estate had approached Pattammal to sell to them the 82 cents that she had purchased in the year 1973. The sale consideration was fixed at Rs.57,400/- vide agreement of sale deed dated 08.08.1984 which is marked as Ex.A4.

8.4. A reading of the reverse of Ex.A4, would clearly demonstrate that not only was the entire agreed consideration paid before 1986 but on the substantial portion being paid on 12.07.1985 immediately thereafter Ex.A5, power of attorney dated 13.07.1985 was executed by the said Pattammal in favour of the U.Neelan, who was the owner of the real estate. It is evident that Pattammal on receiving the balance sale consideration had accepted that title had passed to the purchaser since till her death, twelve years after the agreement of sale, she had not claimed any right over the suit property.

8.5.Pursuant to the power of attorney coupled with consideration the said M/s. Neelan Estate had alienated over 38 cents of land to various parties. The suit property which was earmarked for bus stand remained vacant. It also appears that on 04.02.1997, the power agent had executed a gift deed in favour of the plaintiff and it is the case of the plaintiff that this was done without knowledge of the death of Pattammal and further the defendants have not let in any proof whatsoever to show that they have informed the power agent about the death of the said Pattammal. This assumes significance in view of the fact that the defendant is a witness to the payments made under the agreement of sale in favour of the said M/s. Neelan Estate and in the endorsement made on the reverse of the agreement of sale dated 14.04.1986 it has been clearly mentioned by Pattammal that she has received the entire consideration and that she has put the said Neelan Estate in possession.

8.6.Therefore, the defendant was very well aware of the fact that the said Pattammal has executed an agreement of sale. In fact, in the written statement that has been filed by the defendant he has stated as follows:

"6.The defendant states that the suit property comprised in survey No.440A/1A, measuring an extent of 82 cents situated at No.6.Nandivaram, Kancheepuram District, originally purchased by his mother Mrs.Pattammal from one Mr.Nagarathinam, by a registered deed of sale dated 19.06.73 bearing

Document No.2037 of 1073 registered at S R O, Tambaram. The defendant further states that the defendant mother had executed General Power of Attorney deed dated 12.07.1985 in favour of Mr.U.Neelan, proprietor of M/s.Neelan real estate, registered as Document No.242 of 1985 at S.R.O, Tambaram. The defendant further states that the defendant mother had sold 38 cent out of 82 cents to the some various persons through her power agent Mr.U.Neelan proprietor of M/s.Neelan real estate, regaining portion of the land measuring to an extent of 44 cents was in possession and enjoyment of his mother without any interruption whatsoever from any quarters including the plaintiff till her death. Till date all the revenue records like patta, adangal etc stands in the name Mrs.Pattammal."

8.7.Therefore the defendant has categorically admitted the agreement of sale (EX.A4) as well as the payment of the entire sale consideration as also Ex.A5, Power of Attorney. The onus then shifts on the defendant to prove his case. In these circumstances, it was the bounden duty of the defendant to have conveyed the news about the demise of the principal namely Pattammal and until such an information is received by the plaintiff, Section 208 of the Contract Act 1872 would save all acts done by the agent till the termination becomes known to them. In the instant case, termination on account of the death of the principal. It is also to be noted that the gift deed was executed within a period of less than two months from the death of Pattalammal.

8.8.The argument of the defendant was that the power agent was only authorised execute sale deeds fails in view of the clause in the power of attorney, Ex.A5 which reads as follows:

- "a) To sell by private treaty or by any other mode, convey or transfer by way of an Sale or other instruments
- b) to execute any agreement for sale or sale deeds or other documents....

8.9.Therefore from a reading of Ex.A.5, power of attorney, it is clearly evident that the principal had authorised the power agent to execute any other document which included a gift deed. Therefore gift deed (Ex.A2) is a valid and a binding document. Further the Power of Attorney executed in favour of U.Neelan (Ex.A.5) is coupled with interest and without the demise being duly intimated the termination does not take effect. 2013 (4) L.W. 768 T.Sivaperumal Vs. S.Viswanathan and others (Para 20). 2014 (2) L.W. (Crl) 486 - Senthil Selvan and others Vs. Srinivasan Rep. By his Power Agent Vijayaranga (Para

21). Therefore, question of law Nos. A, B and C are answered in favour of the appellant.

8.10.As regards question of law No.E, it is seen the sisters of the defendants had executed a release deed, Ex.A8 dated 09.11.2009 in favour of the defendant. The said deed has come into existence 13 years after the death of the mother. The defendant, who is a signatory to the endorsement in Ex.A4 with reference to the payment of the entire sale consideration and who was aware of the execution of the Power of Attorney has deliberately suppressed the facts above and created this release deed in his favour.

8.11.The reading of the endorsement dated 14.04.1986, would clearly indicate that the defendant, who is none other than the son of Pattammal, the vendor had witnessed the endorsement which gives the details of the payments that had been made by M/s. Neelan Estate to Pattammal in which the vendor Pattammal has clearly stated that she has received the entire sale consideration for the suit property and had put M/s. Neelan Estate in possession and enjoyment of the same.

8.12.Therefore, the defendant was very much aware that the said M/s. Neelan Estate had become the owner of the property and what remained was only the execution of the sale deed in their favour but however, considering the fact that the project involved the sale of house sites to various parties, the said U.Neelan, the power agent had not got the sale deed executed in favour of the M/s. Neelan Estate but had only proceeded to sell portions of the property to the various buyers using the power of attorney in his favour.

8.13.The defendant who was aware that he has no right to the property, since the entire sale consideration had been paid by the plaintiff to the mother, suppressed this fact of the property in question having been already sold to the said M/s. Neelan Estate. Ex.A.8 release deed is therefore invalid and does not create any right in favour of the defendant. Therefore question of law E is answered against the defendant.

8.14.As regards the question of law No.D, admittedly from a reading of Ex.A6 lay out approval as well as the unmarked order of the Executive Officer, it is clearly evident that the suit property has been reserved for the purpose of bus stand. Therefore, the land in question cannot be put to any other use except as a bus stand. In the Judgement reported in 2008-2-L.W. 827, The President, Thanjavur Diocese Society Vs. Nirmala Nagar, Thanjavur, etc. and Others, this Court while confirming the Judgement and Decree of the Courts below granting a permanent injunction restraining the appellant therein and his men from interfering with the peaceful common possession and enjoyment of

the schedule property without constructing or fencing it has held that once a property is reserved for community/public purpose it has to be retained so. The Judgment of the Division Bench of this Court cited supra 2018-5-L.W. Page 497 has also reiterated this position.

8.15. Therefore, the plaintiff shall forthwith take steps to gift the suit property to the Executive Officer of the concerned municipality for the purpose of putting up a bus stand for which purpose the layout approval has been granted. A copy of this Judgment shall be marked to the Executive Officer, Nandivaram-guduvancheri Town Panchayat, Kancheepuram.

8.16. It is made clear that the plaintiff cannot put the suit property to any other use except as a bus stand. The plaintiff shall not put up any other building in the said property. In the result, the Second Appeal stands allowed with a condition that the suit property shall only be maintained as a bus stand and nothing else and the Judgement and Decree of the Courts below are set aside. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Subordinate Judge,
Chengalputtu
2. The District Munsif Court,
Chengalputtu

Copy to:-

1. The Executive Officer,
Nandivaram- Guduvancheri Town Panchayat,
Kancheepuram.
- 2 The Section Officer,
V.R.Section,
High Court, Madras - 104.

+2cc to Mr.V.K.Vijayaragavan, Advocate, SR.No.38422/19

+1cc to Mr.K.Ashok Kumar, Advocate, SR.No.38725/19

S.A.No.476 of 2018
and

C.M.P.No.12810 & 12811 of 2018

Kak (20/06/2019)