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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2019

PRONOUNCED ON : 15.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.183 of 2013
and
M.P.No.1 of 2013

1. Subramani Naicker
2. S.Jaganathan
3. Porkodi
4. B.Panneer Selvam ... Appellants/Defendants

Vs.

L.Arul Raj
Represented by his Power Agent
P.S.Stanislaus ... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree dated 31.07.2012 in A.S.No.19/2011 on the file of the Principal District Judge, Thiruvallur, confirming the judgement and decree dated 17.04.2009 in O.S.No.135 of 2006 on the file of the Sub-Court, Thiruvallur.

For Appellants : Mr.N.Veerassamy
for Mr.K.Rajasekaran

For Respondent : Mr.R.Selva Kumar

JUDGMENT

This second appeal has been filed by the defendants against the judgment and decree passed by the Principal District Judge, Thiruvallur in A.S.No.19 of 2011 dated 31.07.2012 confirming the judgment and decree passed by the Sub-Judge, Thiruvallur in O.S.No.135 of 2006 dated 17.04.2009.

2. The respondent herein had filed a suit in O.S.No.135 of 2006 on the file of the Sub-Judge, Thiruvallur for Specific Performance of the Sale Agreement dated 22.08.2006 and to direct the first defendant to execute a sale deed in favour of him in respect of the suit properties after receiving the balance sale



consideration of Rs.2,66,299/- and to put him in possession of the suit properties and to declare the sale deed executed by the defendants 1 to 3 in favour of the fourth defendant dated 25.08.2006 as null and void.

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3. The learned Sub-Judge, Thiruvallur, by the Judgment dated 17.04.2009 had decreed the said suit as prayed for and directed the plaintiff to deposit the balance sale consideration of Rs.2,66,299/- before the court within three months and on such deposit, the first defendant has to receive the said amount and execute the sale deed within one month thereafter, in favour of the plaintiff and deliver vacant possession of the suit property to the plaintiff. He also declared the sale deed dated 25.08.2006 executed by the defendants 1 to 3 in favour of the fourth defendant as null and void and also directed the defendants to pay the costs of the suit. Aggrieved by the same, the defendants had filed an appeal in A.S.No.19 of 2011 on the file of the Principal District Judge, Thiruvallur. The learned Principal District Judge, Thiruvallur by the Judgment dated 31.07.2012 had dismissed the said appeal confirming the judgment and decree passed by the Trial Court. Feeling aggrieved, the defendants have filed the present second appeal.

4. For the sake of convenience, the parties are referred to as described before the Trial Court.

5. The averments made in the plaint are in brief as follows:

The first defendant is the owner of the suit properties by virtue of the sale deed dated 18.02.1996. The first defendant had agreed to sell the suit properties to the plaintiff who is duly represented by his general power of attorney agent by virtue of the registered general power of attorney deed dated 29.01.2004. The first defendant and the general power of attorney agent of the plaintiff arrived at the consideration of the suit properties and fixed at Rs.2,700/- per cent and the said agreement was reduced to writing on 22.08.2006 and the first defendant had received a sum of Rs.1,001/- as advance. It was further agreed that the balance sale consideration should be paid within ninety days and get the sale deed executed in favour of the plaintiff. After execution of the sale agreement, the plaintiff approached the defendants on several occasions and offered to pay the balance sale consideration but the first defendant postponed to receive the balance sale amount by saying some reason or other. Subsequently, the plaintiff came to know that the first defendant along with the defendants 2 and 3 executed a sale deed in favour of the fourth defendant on



25.08.2006. The plaintiff was always ready and willing to perform his part of the contract but the first defendant did not come forward to execute the sale deed and hence the plaintiff was constrained to file the above suit for the aforesaid reliefs.

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6. The averments made in the written statement filed by the first respondent are in brief as follows:

The truth and validity of the power of attorney deed in favour of P.S.Stanislaus is denied by the first defendant. The suit property is not a self acquired property of the first defendant and it is a joint family property of the first defendant and his sons and daughter. The first defendant denied the allegations that he had executed an agreement of sale dated 22.08.2006 and received a sum of Rs.1000/- as advance. The suit is false, frivolous and vexatious one and hence, the first defendant prayed to dismiss the suit.

7.The defendants 2 to 4 remained exparte before the Trial Court.

8. The learned Sub Judge, Thiruvallur, after considering the aforesaid pleadings had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the power agent of the plaintiff namely Mr.P.S.Stanislaus examined himself as P.W.1 and also examined one more witness as P.W.2. The plaintiff had marked Exs.A1 to A5 as exhibits. On the side of the first defendant, the first defendant examined himself as D.W.1, but, he has not marked any exhibits on his side.

9. The learned Sub Judge, Thiruvallur, after considering the materials placed before him found that Ex.A1 Sale Agreement dated 22.08.2006 is a genuine agreement and the same will bind upon the first defendant and also found that the suit properties are self acquired properties of the first defendant and hence he is bound to execute the sale deed in favour of the plaintiff. He also found that since the suit properties are self acquired properties of the first defendant and already he entered into an agreement with the plaintiff, the defendants 1 to 3 are not entitled to execute the sale deed dated 25.08.2006 in favour of the fourth defendant. Accordingly, he decreed the suit as prayed for with costs and directed the plaintiff to deposit the balance sale consideration of Rs.2,66,299/- before the Court within three months from the date of decree and on such deposit, the first defendant has to receive the said amount and execute the sale deed in favour of the plaintiff and also deliver vacant possession of the suit property to the plaintiff. Further, he declared that the sale deed executed by the defendants 1 to 3 in favour of the fourth defendant dated 22.08.2006 as null and



void. Aggrieved by the same, the defendants 1 to 4 had filed an appeal in A.S.No.19 of 2011 on the file of Principal District Judge, Thiruvallur. The learned Principal District Judge, Thiruvallur, had dismissed the said appeal confirming the Judgment and decree passed by the Trial Court. Aggrieved by the same, the defendants have filed the present second appeal.

10. This Court on 11.02.2019, after hearing both sides and perusing the appeal memorandum; judgments and decrees of the Courts below has admitted the second appeal and formulated the following substantial questions of law:

" 1. Whether the sale agreement dated 22.08.2006 has validly been executed when it is not signed by both the parties on the second page?

2. Whether the plaint and the suit in O.S.No.135 of 2006 has been validly presented, when in some pages, it was signed by the plaintiff's power of attorney and in some pages by the plaintiff himself?

3. Whether the provisions contained in Order II Rule 1 and 2 CPC have been complied with by the plaintiff in O.S.No.135 of 2006?

4. Whether the evidence of the Power of attorney as P.W.1 could be relied on by both the Courts below to grant the decree of specific performance when the plaintiff has failed to discharge his burden by entering into the witness box to depose about his readiness and willingness to perform his part of the contract?

5. Whether both the Courts have adverted to Sections 12, 14, 20 and 21 of the Specific Relief Act, 1963 before enforcing specific performance of the contract? ''.

11. Heard Mr. Mr.N.Veerasamy for Mr.K.Rajasekaran, the learned counsel for the appellants and Mr.R.Selva Kumar, the learned counsel for the respondent.

12. Substantial Question of Law No.1

12(a) The learned counsel for the appellants/defendants has submitted that in Ex.A.1 Sale Agreement at Page No. 1, both the parties have signed, but, at Page No.2, the first defendant alone signed and hence, the said agreement is not valid and cannot be enforced before the Court of law.

13. A perusal of Ex.A.1 would show that the first defendant had entered into a sale agreement with the general power of attorney agent of the plaintiff namely P.S.Stanislaus. In the said document, at page No.1, the first defendant and the power of attorney agent of the plaintiff



namely P.S.Stanislaus had signed, but at Page No.2 of the said agreement, the first defendant had signed and thereafter, one Sundara Moorthi had signed as witness and thereafter, the said P.S.Stanislaus had signed as scribe of the said document and also purchaser of the properties. Therefore, the contention of the learned counsel for the appellants that at Page No.2, no one signed on behalf of the plaintiff, cannot be accepted. Since, both the parties had signed in the said document, the same is valid and can be enforced before the Court of law. Accordingly, this substantial question of law is answered in favour of the plaintiff.

14. Substantial Question of Law No.2

The learned counsel for the appellants has submitted that as per Order 6 Rule 14 of C.P.C, the party shall sign in the pleadings on each and every page, but in this case, the plaintiff has not signed in all the pages of the plaint and he has signed only at the last page of the plaint and therefore, the plaint has not been properly presented before the Court.

15. The learned counsel for the respondent /plaintiff has submitted that the provision of Order 6 Rule 14 CPC, does not say that the party has to sign on each and every page of the pleadings. He further submitted that the said provision insists that the party and his pleader (if any) shall sign in every pleading and that does not mean the party has to sign on each and every page of the pleadings. He further submitted that in this case, on all the pages of the plaint, the counsel for the plaintiff has signed and at the last page, the plaintiff has signed. Therefore, the plaintiff has complied with the provision of Order 6 and Rule 14 of C.P.C.

16. Order 6 Rule 14 C.P.C reads thus:

"14. Pleading to be signed : Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf".

17. A plain reading of the aforesaid provision would show that every pleading shall be signed by the party and his pleader (if any) but it does not say that the party and his pleader shall sign on all the pages of the pleadings. In this case, the plaintiff had signed at the last page of the plaint. The counsel for the plaintiff also signed at the last page of the plaint. There is no necessity to sign on all pages of the



pleadings either for the party or by the counsel. However, in this case the counsel for the plaintiff had signed on all the pages of the plaint. That does not mean that the plaintiff also should sign on all the pages. Therefore, this Court is of the view that the plaintiff has complied with the procedure contemplated under Order 6 and Rule 14 of C.P.C and hence, the contention of the learned counsel for the appellants that the plaintiff shall sign on all the pages of the plaint cannot be accepted.

18. The learned counsel for the appellants further submitted that the plaintiff has not verified the pleadings as envisaged under Order 6 Rule 15 of C.P.C. Order 6 and Rule 15 of C.P.C reads thus:

"15. Verification of Pleadings:

(1) Save as otherwise otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings".

19. A perusal of the aforesaid provision would show that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. In this case, at the last page of the plaint, at the foot, the plaintiff's power of attorney had made verification declaring that the facts stated above are true to the best of his knowledge, information and belief and signed at Thiruvallur on 27.10.2006. So, it is clear that the plaintiff has complied with the aforesaid provision of law also. Therefore, the contention of the learned counsel for the appellants that the plaintiff has not followed the provision of Order 6 Rule 15 cannot be accepted. This substantial question of law is answered against the appellants.



20. Substantial Question of Law No.3

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The learned counsel for the appellants has submitted that in Paragraph No.4 of the plaint, the plaintiff has stated that on 29.01.2004, a registered general power of attorney was executed and in the petition filed by the power of attorney agent namely P.S.Stanislaus under Order 3 Rule 1 and 2 of CPC (I.A.No.246 of 2006) also it is stated that the General Power of attorney was executed on 29.01.2004 but the said power of attorney was not filed before the Court, but on the contrary, the said P.S.Stanislaus had filed one Power of attorney dated 27.11.2001 and obtained permission for filing the suit. He further submitted that since the said P.S.Stanislaus obtained permission for filing suit by furnishing false particulars, the said order is vitiated. This point was also raised before the first appellate court by the appellants herein, but the first appellate court had rejected the said contentions. Though in the plaint and also in the affidavit filed in support of I.A.No.246 of 2006 in O.S.No.135 of 2006, it is stated that the plaintiff had executed a registered power of attorney dated 29.01.2004, the power agent of the plaintiff had filed only the power of attorney dated 27.11.2001 and obtained permission for filing the suit. So, it appears that the plaintiff has mistakenly mentioned the date of the power of attorney in the plaint as well as in the affidavit filed in I.A.No.246 of 2006. Therefore, the contention of the learned counsel for the appellant that the power of attorney agent of the plaintiff had obtained permission for filing the suit by suppressing the fact and hence the said order is vitiated cannot be accepted. Accordingly, this substantial question of law is answered against the appellants.

21. Substantial Questions of Law No.4 and 5

The learned counsel for the appellants has submitted that when the plaintiff did not enter into the witness box to depose about the readiness and willingness to perform his part of the contract, the Courts below ought to have dismissed the suit. In this case, on behalf of the plaintiff, his power of attorney namely P.S.Stanislaus entered into a sale agreement with the first defendant and he filed the suit as power agent after getting necessary permission from the court. Since the power agent had personal knowledge about the transaction, he is a competent person to give evidence before the Court on behalf of the plaintiff. Hence, no adverse inference can be drawn against the plaintiff on the ground that he has not come forward to give evidence.



22. The Power agent while examining himself as P.W.1 has categorically stated that the plaintiff is always ready and willing to perform his part of the contract and also made requests with the first defendant to receive the balance sale consideration and execute the sale deed. The Trial court as well as the first appellate court after analyzing the evidence of both parties have concurrently found that the plaintiff has proved his readiness and willingness to perform his part of the contract. In the said concurrent factual findings, this Court cannot interfere.

23. The evidence on record would show that the plaintiff had executed a registered general power of attorney in favour of P.S.Stanislaus vide Ex.A.4 on 27.11.2001 and in pursuance of the said Ex.A.4, the said P.S.Stanislaus entered in to a sale agreement with the first defendant on 22.08.2006 (Ex.A.1). The Power agent of the plaintiff had filed the above suit after getting necessary permission from the Court and also adduced evidence with regard to readiness and willingness. Further, Ex.A.5 would show that the suit properties were purchased by the first defendant on 28.02.1996 and as such he is the absolute owner of the property and after entering a sale agreement with the plaintiff vide Ex.A.1, the first defendant and the defendants 2 and 3 had executed the sale deed in favour of the first defendant on 25.08.2006 and hence, the said document will not bind upon the plaintiff. The Courts below, taking into consideration of the aforesaid facts have concurrently found that the plaintiff is entitled for the relief of Specific Performance and that the sale deed executed by the defendants 1 to 3 in favour of the fourth defendant vide Ex.A2 will not bind upon the plaintiff and declared the said document as null and void and in the said concurrent factual findings, this Court cannot interfere. Further, the plaint has been properly signed and verified by power agent of the plaintiff as contemplated under Order 6 Rule 14 and 15 of C.P.C and therefore, this appeal is liable to be dismissed. Accordingly these substantial questions of law are also answered against the appellants.

24. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar



Vv

To

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1. The Principal District Judge,
Thiruvallur,
2. The Subordinate Judge,
Thiruvallur.
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.R.Selvakumar, Advocate Sr.24602

+1cc to Mr.Rajasekaran, Advocate Sr.24958

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