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IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.04.2019
Pronounced On	27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A.Nos.99 & 100 of 2018

1.Dr.B.R.Shankar
2.B.R.Lakshmi
3.B.J.Christianasheela
4.Usha Shree Bhaktava Rajaiah

... Appellants in
both O.S.As/Defendants

Vs.

1.B.R.Srinivasa Rao
2.B.R.Padmavathy

... Respondents in
both O.S.As/Plaintiffs

Common Prayer: Original Side Appeals are filed under Order 36 Rule 1 of High Court Original Side Rules r/w Clause 15 of the Letters Patent, to set aside the Judgment and Decree dated 15.03.2017 made in C.S.No.14 of 2009 on the file of this Court.

For Appellants : Mr.G.Masilamani, Senior Counsel for
Mr.T.C.Gopalakrishnan for
M/s.G.K.Law Firm in both O.S.As

For Respondents : Mr.V.Raghupathi in both O.S.As

C O M M O N J U D G M E N T

C.SARAVANAN, J.

The appellants are aggrieved by the impugned judgment and decree dated 15.03.2017 passed by the learned single Judge of this Court in C.S.No.14 of 2009.

2.By the impugned judgment and decree, the learned single Judge has not only decreed the suit as prayed for by the respondents (plaintiffs) but has also dismissed the counter claim filed by the appellants (defendants). Thus, the present appeals.



3. For narration of relevant facts we are referring to the ranks of the respective parties in the above suit. To understand and appreciate the dispute we will briefly explain the relationship between the parties.

4. The plaintiffs and the defendants barring the 3rd defendant belong to the same family. The 1st plaintiff is the younger brother of the 1st defendant. 2nd plaintiff and the 2nd defendant are their respective spouses. The 4th defendant is the daughter of the 1st and 2nd defendants.

5. Dispute is primarily between the members of the same family who are incidentally business partners. Certain business dispute between the 1st - 2nd plaintiffs with 1st - 2nd defendants is in the background to the present dispute which had resulted in filing of the suit and counter claim.

6. We are not concerned with the collateral business dispute between the 1st-2nd plaintiffs with 1st-2nd defendants. It would suffice to state that those disputes have led to conflict between the parties.

7. The 3rd defendant is the seller of the suit schedule properties measuring 2511 sq.ft and 2499 sq.ft located adjacent to each other. There is no dispute that the 3rd defendant has received full sale consideration. According to the plaintiffs the consideration for Exhibit P3 was paid to the 3rd defendant through 1st defendant he being the elder of the family, while the 1st defendant denied the same and claims to have independently paid the consideration to the 3rd defendant for purchasing the suit schedule property for the 4th defendant.

8. According to the plaintiffs, after the 3rd defendant executed Exhibits P1/D4 and P2/D5 Power of Attorneys in favour of the 2nd plaintiff, the original were given to the 1st defendant, he being the elder brother out of respect as was the family custom. It appears that at that time the relationship were cordial between the members of the family, which later deteriorated.

9. The plaintiffs later obtained certified copy of Exhibit P1/D4 and Exhibit P2/D5 from the Sub- Registrar's office and on the strength of the certified copies, the 2nd plaintiff executed Exhibit P3 sale deed dated 15.04.2008 in favour of the 1st plaintiff in respect of the 2 properties.



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10. The above sale deed was executed by the 2nd plaintiff as the power agent of the 3rd defendant on the strength of Exhibits P1/D4 and Exhibits P2/D5. After Exhibit P3 sale deed was executed on 15.04.2008, the 3rd defendant canceled/revoked Exhibits P1/D4 and Exhibits P2/D5 power of attorneys vide Exhibits D6/D7 dated 16.09.2008.

11. After canceling Exhibits P1/D4 and Exhibits P2/D5 vide Exhibits D6/D7 dated 16.09.2008, the 3rd defendant executed Exhibits P6/D8 sale dated 17.09.2008 sale deed in favour of the 4th defendant who is the 1st daughter of the 1st and the 2nd defendants. Exhibits P6/D8 dated 17.09.2008 was registered as Document No. 7353 of 2008 before the Sub- Registrar Sembium, Chennai.

12. On coming to know that Exhibits P6/D8 sale dated 17.09.2008 had been executed by the 3rd defendant in favour of the 4th defendant, the plaintiffs filed C.S.No.14 of 2009 to declare Exhibits P6/D8 sale deed dated 17.09.2008 registered on 18.09.2008 as illegal, null and void and not binding on the plaintiffs. The plaintiffs also prayed for a permanent injunction restraining the appellants from interfering with their peaceful possession.

13. The defendants filed a common written statement and also filed a counter - claim to set aside Exhibit P3 sale deed dated 15.04.2008 executed by the 2nd plaintiff as power agent of the 3rd defendant in favour of the 1st plaintiff and also prayed for a permanent injunction to restrain the plaintiffs from interfering with the peaceful possession and enjoyment of the suit schedule property by the 4th defendant. The plaintiffs filed a written statement to the counterclaim denying the basis in the counter-claim.

14. After completion of the pleading, the court framed 16 issues which read as under:-

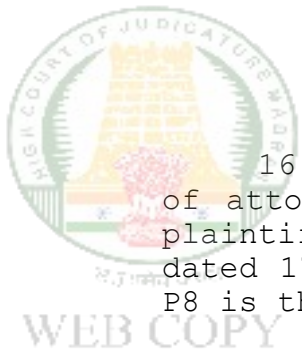
- i. Whether the suit is not maintainable in law?
- ii. Whether relief in suit prayer is correctly valued?
- iii. Whether it is true and correct to plead that the 4th Defendant is in possession and enjoyment of the suit property?
- iv. Whether the sale deed dated 15.04.2008 is bogus and sham as alleged by the defendants?
- v. Whether sale consideration dated 15.04.2008 is void ab



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- intio and not binding on 2nd Defendant?
- vi. Whether the counter claim made by Defendants is sustainable in law and on fact?
 - vii. Whether there is proper cause of action for the counter claim?
 - viii. Whether 1st Plaintiff is entitled for declaration of title over the suit property in view of the sale deed dated 15.04.2008?
 - ix. Whether the sale deed dated 15.04.2008 executed in favour of 1st Plaintiff by the 2nd Plaintiff as the Power agent of the 3rd Defendant is not supported by valid consideration?
 - x. Whether sale deed dated 15.04.2008 is vitiated for the reasons that the 2nd Plaintiff, Power of Attorney had acted against the interest of the 3rd Defendant, the principal by acquiring the property in his wife's name ?
 - xi. Whether sale deed executed on 15.04.2008 in favour of 1st Plaintiff by the 3rd Defendant, represented by the Power of Attorney, the 2nd Plaintiff registered as Document No 2757 of 2008 on the file of SRO Sembium is liable to be set aside on the grounds made in the counter claim of the Defendants?
 - xii. Whether Defendants are entitled to an ex parte decree in their counter claim for want of defence to the same by the Plaintiffs?
 - xiii. Whether the Defendants are entitled for permanent injunction restraining the Plaintiffs and their men, agents from interfering with the peaceful possession and enjoyment of the suit property?
 - xiv. Whether the suit is liable to be dismissed as against Defendants 1 and 2 as they are not necessary parties to the suit?
 - xv. Whether the Defendants are entitled for cost as against the Plaintiffs?
 - xvi. To what other reliefs the parties are entitled to?

15. Evidence was recorded before the learned Master. On behalf of the plaintiffs Exhibits P1 to 8 were marked. The 1st plaintiff deposed evidence as PW1.



16.Exhibits P1-P2 are the certified copies of the 2 power of attorneys executed by the 3rd defendant in favour of the 2nd plaintiff. Exhibits P6/D8 is the certified copy of the sale deed dated 17.09.2008 registered as Document No.7353 of 2008. Exhibit P8 is the statement of income along with IT returns.

17.On behalf of the defendants, Exhibits D1 to D16 were marked. The 3rd defendant deposed evidence as DW1 while the 1st defendant deposed evidence as DW2. The defendants also marked copies of plaint in C.S.No.211 of 2009, C.S.No.238 of 2009 and proceedings in R.C.O.P.No.2338 of 2009 as Exhibits D1, D2 and D3. These are the pleadings in the collateral proceedings between the parties hereto.

18.The defendants also marked the original Power of Attorneys dated 07.02.2007 as Exhibits D4-5. They also marked revocation of these 2 power of attorneys dated 16.09.2008 Exhibits D6 and D7 .

19.Certified copy of registered sale deed dated 17.09.2008 registered as Document No.7353 of 2008 was marked as Exhibit D8 along with the parent documents for the suit property as Exhibit D9. Apart from the above the defendant also marked certain other documents marked as Exhibits D10 to D16.

20.Heard Mr.G. Masilamani, the learned Senior Counsel for the Appellants (Defendants) represented by Mr.T.C. Gopalakrishnan and M/s.C.Devi, the learned counsels of M/s. G.K.Law Firm and the learned Counsel Mr.V Reghupathi for the respondents (plaintiffs) duly assisted by the learned counsel M/s. G.Devi.

21.It was argued on behalf of the Appellants (defendants) that the impugned judgment and decree was liable to be set aside. It was submitted that the sale of the suit Schedule properties by the 2nd plaintiff in favour of the 1st plaintiff vide Exhibit P3 was bad in law for want of consideration and for failure on the part of the Sub- Registrar to follow the prescribed procedure under the Rule 46 of the Registration Rules framed and the Registration Act.

22.The fact that the registration was made on the strength of the Exhibits P1/D4 and Exhibits P2/D5 certified copy of the power of attorney executed by the 3rd defendant in favour of the



that when both the original and certified copy of a judgment are lost then an ordinary copy of the same may be adduced as an valid secondary evidence under Section 65 of the Indian Evidence Act, 1872.

- ii. Boulton Bros. and Co. Ltd (India) Delhi vs New Victoria Mills Co. Ltd. AIR 1929 All 87 wherein numerous judicial decisions were referred and the court reinstated the duty of the Power of Attorney agents to disclose all sorts of underlying gains that would arise from a third party contract.
- iii. Sri Krishnasamy Educational Trust & Another vs Jabely Edourad (2016) SCC Online Mad 25091 wherein it was held that mandatory endorsements as contemplated under Rule 46 of Registration Rules has to be complied by the Registering officer. Any failure will vitiate the registration.
- iv. Asset Reconstruction Company (India) Limited vs The Inspector General of Registration, Chennai & Others 2016-1-LW 590 held that while dealing with examination of documents, the registering authority should examine and verify the contents of the documents and mere enquiry on title will stand insufficient.

30. Per contra the learned counsel for the respondents (plaintiffs) stated that the impugned judgment and decree was well reasoned and requires no interference. It is submitted that till August 2008 the relationship between the brothers and their family was perfectly cordial.

31. The 1st defendant being the elder brother all the documents were given to him out of respect. The sale was completed with the help of the certified copy viz Exhibits P1 and P2 as the Sub-Registrar did not insist on production of the original Power of Attorneys vide Exhibits D4 and D5 dated 07.02.2007 and that the sale was completed after obtaining certified copy of the same.

32. The learned counsel submitted that there is nothing unusual in this procedure. In this connection, reliance was placed on the decision of the Court in Lakshmi Annual vs The SRO, Office of the Sub Registrar, Villivakkam, Chennai 600 049 and other in an unreported decision of this Court dated 05.03.2015 in W.P.No.4535 of 2015, the Court thus held as follows:-



34.It was further submitted that if the 3rd defendant had collected the original of the respective power of attorneys dated 07.02.2007 (certified copies of which were marked as Exhibit P1 & P2 from the 1st defendant), it remains inexplicable as to why 3rd defendant neither cancelled them earlier and/or revoked them only on 16.09.2008 vide Exhibits D6 and D7 after the 2nd plaintiff had executed Exhibit P3 sale deed dated 15.04.2008 in favour of the 1st plaintiff.

35.It was also submitted that the execution of the subsequent sale deed in favour of the 4th defendant vide Exhibits P6/D8 dated 17.09.2008 just four months after execution of Exhibits P3 sale deed dated 15.04.2008 was ex-facie illegal and at the behest of the 1st Defendant. It was submitted that the Sub Registrar ought not to have register the said Exhibit P6 sale deed dated 17.09.2008.

36.Learned counsel further submitted that there is no bar under law permitting the wife to execute the deed of conveyance in favour of husband. In fact, the 2nd defendant had executed several deeds of conveyance in favour of the 1st defendant on other occasion.

37.Learned counsel further submitted that income tax returns were filed to substantiate the source and the credibility of the chartered accountant's certificate cannot be questioned as the chartered accountant is the auditor of the 1st and the 2nd defendants as well till the year 2014.

38.It was further submitted that income tax law permits filing of income tax return within a period of 2 years from the end of the relevant financial year and in the present case assessment year is 2009-10 for the financial year 2008-09.

39.As far as source of income towards consideration to purchase the suit schedule property is concerned, it was submitted that the 1st plaintiff was a partner of, Cauvery Trust Hospital and that he was a man of sufficient means having savings, land, property and agricultural income as per Exhibit P8.

40.The learned counsel for the plaintiff sought to downplay the counterclaim and questioned the source of income of the 4th defendant (4th appellant) as she was a non-resident Indian



settled in US with her husband and was not employed during 2007-2009.

41. It was further submitted that no proof has been filed to show that a permission from the Reserve Bank of India was obtained to substantiate that the 4th defendant would have transferred Rs.35,00,000/- to any one of the defendants towards sale consideration to be paid to the 3rd defendant.

42. We have perused the impugned judgment and decree passed by the learned single judge and the documents, deposition of the parties and considered the rival arguments advanced.

43. By Exhibits P1 and P2 both dated 07.02.2007, the 3rd defendant executed two separate power of attorneys in favour of the 2nd plaintiff in respect of two plots measuring 2511 sq.ft and 2499 sq.ft located adjacent to each other.

44. By Exhibit P3, dated 15.04.2008 the 3rd defendant sold both the suit schedule properties to the 1st plaintiff. Later by Exhibits P6/D8 dated 17.09.2008, the 3rd defendant sold the same properties to the 4th defendant.

45. Thus, Exhibit P3 sale deed was first executed by the 2nd defendant in favour of the 1st plaintiff in her capacity as the power agent of the 3rd defendant. Later by Exhibits P6/D8, the 3rd defendant once again sold the same suit schedule property directly to the 4th defendant vide Exhibits P6/D8 sale deed dated 17.09.2008. It was executed at the behest of the 1st defendant.

46. Though 16 issues were framed and answered by the learned single Judge, the point for determination in the present appeal is whether the 3rd Appellant (3rd Defendant) could execute Exhibits P6/D8 sale deed dated 17.09.2008 in favour 4th defendant (4th appellant) after execution of the Exhibit P3 sale deed dated 15.04.2008 in favour of the 1st plaintiff by the 3rd defendant through her power agent (2nd plaintiff) in respect of the same property once again by cancelling/revoking Exhibits P1/D4 and Exhibits P2/D5 by Exhibits D6 and Exhibits D7.

47. Answer to the above point is obviously no. The power under Exhibits P1/D4 and P2/D5 dated 07.02.2007 had already been exercised and exhausted with the execution of the Exhibit P3



55. It is apparent that the execution of Exhibits P1/D4 and Exhibits P2/D5 power of attorneys were facilitated by the 1st defendant and that explains as to how the parent documents were produced by the defendants.

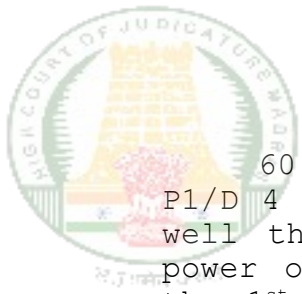
56. As per the Exhibits D6 and D7, the 3rd defendant has stated that the reason for cancelling the power of attorney executed in favour of the 2nd plaintiff vide Exhibits P1/D 4 and P2/D5 was because the 3rd defendant had enough time to directly deal with the suit schedule property and that her power agent albeit the 2nd plaintiff was also not willing to act as a power agent and was not keeping proper account and did not show interest.

57. However, this is not the version in the written statement. In her proof affidavit, the 3rd defendant has further stated that sometime during April 2008, she had requested the 2nd defendant to

return the power of attorney to her, which the 2nd plaintiff ostensibly obliged but had proceeded to execute Exhibit P3 sale deed of which she was unaware and therefore she executed Exhibits D6 and D7 canceling/revoking the power given to the 2nd plaintiff vide Exhibits P1/D4 and P2/D5 on 16.09.2008.

58. Further, in paragraph 6 of the proof affidavit, the 3rd defendant has stated that she has never known the plaintiffs and that she knew only 1st defendant and it was at his instance Exhibits P1/D 4 and P2/D5 were executed in favour of the 2nd plaintiff and that she met the 2nd plaintiff only at the Sub-Registrar's office at the time of execution of Exhibits P1/D4 and P2/D5. The above reasoning of the 3rd defendant appears improbable.

59. Though the stated reasons for revoking the power given to the 2nd plaintiff vide Exhibits P1/D4 and P2/D5 was that the 3rd defendant had sufficient time, in the written statement, it has been stated that 2nd plaintiff failed to act on the aforesaid power of attorney and acted against the interest of the 3rd defendant which necessitated for revocation of the power of attorney.



60. Thus, it is evident that the cancellation of Exhibits P1/D 4 and P2/D5 vide Exhibits D6 and D7 was done knowing fully well that the 2nd plaintiff had already acted pursuant to the power of attorney and had a registered sale deed in favour of the 1st plaintiff. It is also clear that the 3rd defendant has acted at the behest of the 1st defendant to dispute the sale made vide Exhibit P3 to the 1st plaintiff.

61. Having given wide power to sell the property to the 2nd plaintiff vide Exhibits P1/D4 and P2/D5, it was not open for the 3rd defendant to either execute revocation of power of attorney vide Exhibits D6 and D7 or sell the same property once again vide Exhibits P6/D8.

62. The fact that the 3rd defendant did not choose to immediately issue any notice after alleged return of Exhibits P1/D4 and P2/D5 by the 2nd plaintiff shows that this defence was manufactured to suit the convenience of the 1st defendant. As a landowner, 3rd defendant should have not only issued a notice to the

2nd plaintiff from acting under Exhibits P1/D4 and P2/D5 if her intention was to revoke power of attorneys but also should have taken prompt steps to cancel Exhibits P1/D 4 and P2/D5.

63. However, the 3rd defendant did not choose to act promptly as she had obviously received the sale consideration. Instead, the 3rd defendant executed Exhibits P6/D8 sale deed in favour of the 4th defendant belatedly just after executing Exhibits D6 and D7 revoking the power given to the 2nd plaintiff under Exhibits P1/D4 and P2/D5 to make it seem as if she had subsisting title to the property.

64. Therefore, the subsequent sale deed executed by the 3rd defendant in favour of the 4th defendant was liable to be declared as null and void and therefore we find no reasons to interfere with the finding of the learned single Judge and the conclusion arrived by the learned single judge.

65. Both the 1st plaintiff and the 1st defendant have not produced any direct evidence to show as to when the amounts were paid inter se. There is also no proof to show that either the 1st defendant or the 4th defendant were in possession of the required capital and or had paid the amount independently.



66.The 1st plaintiff has partly discharged the burden of proof to the extent that he had sufficient means towards the sale consideration of Rs.35,07,500/- for the suit schedule property.

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67.To us it further appears logical that the sale consideration was paid by the 1st plaintiff to the 3rd defendant through the 1st defendant when latter executed Power of Attorneys vide Exhibits P1/D4 and P2/D5 in favour of the 2nd plaintiff when the relationship was cordial among the family members.

68.It is evident that the intention of the members of the family was to transfer the sale to one of them. It is also evident that though the 3rd defendant has been shown as a pivotal in the proceeding it is the 1st defendant who was calling the shots in a desperate attempt to wrest the suit schedule property from the hands of the 1st plaintiff and has used his proximity with 3rd defendant and her husband to his advantage. This also explains why the 1st defendant was in possession of the originals of the parent documents of the suit schedule property.

69.Though the 1st defendant claims to be in possession of the suit schedule property and had put up compound wall surrounding the suit schedule property there is no proof of the same.

70.Further, as per Exhibits P1/D4 and P2/D5 dated 07.02.2007 the 2nd plaintiff was not only in possession but was also authorized to sell the property. Therefore, it cannot be said that the plaintiffs were not in possession of the suit schedule property. Therefore, we answer the 3rd issue also in favour of the plaintiff.

71.As the 2nd plaintiff had accorded the power to the 2nd plaintiff who acted in accordance of Exhibits P1/D4 and Exhibits P2/D5 power of attorneys, it was not open to the 3rd defendant to unilaterally cancel the sale made by the 2nd plaintiff to the 1st plaintiff. The second sale was ill-advised and ill thought. Execution of Exhibits D6 and D7 and after the 1st plaintiff had got a valid, perfect and legal title to the suit schedule property was improper. Further, it remains as to how the Sub-Registrar registered Exhibits P6/D8 after having registered Exhibit P3.



72. Considering the fact that the 1st transfer to the 1st plaintiff was made vide Exhibit P3 made on the strength of a valid and subsisting Power of Attorney vide Exhibits P1/D4 and P2/D5 by the 2nd plaintiff, it has to be construed that the said sale was valid in absence of any documents by the 1st, 2nd and the 4th defendants to substantiate their source of capital to purchase the suit schedule property. We therefore accept the same in absence of contra evidence by the 1st defendant.

73. The 3rd defendant had no locus standi to revoke Exs. P1/D4 and P2/D5 vide Exhibits D6/7 to execute Exhibits P6/D8 - Sale Deeds in favour of the 4th defendant without declaring the earlier sale vide Exhibits P3 executed by the 2nd plaintiff to the 1st plaintiff as her power agent as null and void.

74. Therefore, we do not find any error in the conclusion arrived by the learned Single Judge that if there was any discrepancy or short fall in the payment, it would be a private dispute inter se between the principal and the agent i.e. between the 2nd plaintiff and the 3rd defendant and any short fall in the payment has to be recovered from the 2nd plaintiff.

75. Even otherwise, even if sale deed in Exhibit P3 was null and void, it was not open for the 3rd defendant to unilaterally treat the same as null and void without approaching the court for declaring the sale as null and void. Mere unilateral cancellation of Exhibits P1/D4 and Exhibits P2/D5 are of no use after the power given therein was fully utilized with the execution of Exhibit P3.

76. Though the Learned Single Judge has stated that there was a procedural irregularity by the Sub-Registrar it is to be noted that the sale deed has been executed in the name of the 3rd defendant by her power of attorneys namely the 2nd plaintiff on the strength of a valid and subsisting Power of Attorneys in Exhibits P1/D4 and Exhibits P2/D5.

77. The fact that the Sub-Registrar had not mentioned that he had verified the power of attorney is immaterial as that there was a valid Power of Attorney subsisting on the date of execution of Exhibit P.3 vide Exhibits P1/D4 and Exhibits P2/D5 and it is only on the strength of these two documents the said sale deed was registered. Thus, we do not find any infirmity in the manner in which Exhibit P3 was executed.



78.As we have already opined that Exhibit P3 was executed on the strength of a valid and subsisting power of attorney vide Exhibits P1/D4 and Exhibits P2/D5, the 3rd defendant did not have clear title over the suit schedule property and she could not have validly conveyed the same in favour of the 4th defendant. Such being the case, we are of the view that the judgment and decree of the Learned Single Judge requires no interference in these Appeals.

79.Consequently, we do not find any reason to interfere with the impugned judgment and decree of the learned Single Judge decreeing the suit as prayed and for dismissing the counter claim of the defendants.

80.In view of the above, both the Original Side Appeals are dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To
The Sub Assistant Register (OS),
High Court, Madras-104

+2cc to M/s.G.K.Law Firm, Advocate SR.No.53319, 53320

+2cc to Mr.V.Raghupathi, Advocate SR.No.53674

O.S.A.Nos.99 & 100 of 2018

RGN (CO)
GMY (27/08/2019)