

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :19.06.2019
PRONOUNCED ON:15.07.2019
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.96 of 2016
and
C.M.P.No.2344 of 2016

Thamarai Selvi

... Appellant/Appellant/2nd Defendant

Vs.

Ashok Kumar
S/o Chinnaiyan

Rep. By Power Agent
Kavitha
W/o, Moovendan,
Keezha Theru,
Manakudi Village,
Mayiladuthurai Taluk,
Nagapattinam District.

... Respondent/Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Principal Sub Court, Mayiladuthurai, dated 10.04.2015 made in A.S.No.27 of 2014 confirming the judgment and decree of the Principal District Munsif Court, Mayiladuthurai dated 28.02.2014 made in O.S.No.181 of 2010.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.N.A.Nissar Ahmed

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 10.04.2015 passed in A.S.No.27 of 2014 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 28.02.2014 passed in O.S.No.181 of 2010 on the file of the Principal District Munsif Court, Mayiladuthurai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for permanent injunction.

4. The case of the plaintiff in brief is that he is the owner of the suit properties and he had purchased the same by way of a registered sale deed dated 19.06.1983 and after the purchase, he had put up a thatched hut and obtained service connection in his name and whileso, due to family circumstances, the plaintiff left the suit village and he had been to Bihar and lived there for the past seven years and the first defendant is his aunt and accordingly, the plaintiff had permitted his aunt namely the first defendant to manage the suit properties and the plaintiff was under the impression that the first defendant has been looking after the suit properties in his absence and on coming to the village in the month of May 2010, he came to know that the first defendant had conveyed the suit properties to the second defendant and on obtaining the copy of the sale deed, the plaintiff came to know that the first defendant went to the extent of saying that the plaintiff had died and that she being his mother and legal heir, conveyed the suit properties and when the plaintiff questioning about the abovesaid illegal acts of the first defendant, immediately the first defendant cancelled the sale deed executed in favour of the second defendant and the plaintiff is now in the possession and enjoyment of the suit properties and as the plaintiff had to leave again to Bihar, he had nominated Kavitha as his power agent by way of a registered power deed dated 09.06.2010 and the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit properties and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants and the suit has come to be laid by the plaintiff through his power agent, namely Kavitha.

5. The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or or on facts and further contended that the suit properties had not been properly described and further according to the second defendant, the first item of the suit properties was enjoyed by the first defendant for more than 60 years and the patta had been issued in favour of the first defendant on 31.05.2000 under Natham Land Scheme and accordingly, the first defendant had alienated the same in favour of the second defendant by way of a registered sale deed dated 12.08.2010 and handed over the possession of the same and accordingly, the second defendant had put up a thatched house in the suit property and living with her family and the abovesaid facts are known to the plaintiff and the power agent had suppressed the same and the suit has come to be laid as if the first item of the plaint schedule properties is in the possession and enjoyment of the plaintiff. The plaintiff has not given any

power to the power agent to institute the suit on his behalf and therefore, on the strength of the power deed, the power agent is not entitled to lay a suit and on that sole ground the suit is liable to be dismissed and it is only the second defendant, who is paying the tax in respect of the thatched house put up by her and the plaintiff has no cause of action and therefore the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A5 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B4 were marked. Further, Exs.X1 and X2 and Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiff is entitled to obtain the relief of permanent injunction as regards the second item of the suit properties and granted the relief of recovery of possession of the first item of the suit properties in favour of the plaintiff from the second defendant and accordingly, disposed of the suit in favour of the plaintiff. The first appellate court had also concurred with the abovesaid judgment and decree of the trial court and thereby dismissed the appeal preferred by the second defendant. Aggrieved over the same, the present second appeal has come to be laid by the second defendant.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(i) Whether the judgments of Courts below are vitiated in its applying the principle of " Possession follows title" when the suit property consists of a thatched house not a vacant site?

(ii) Whether the Courts below erred in ignoring material admissions of plaintiff's own witnesses with regard to possession of appellant/defendant?

9. The plaintiff claims title to the suit properties based on the sale deed dated 19.06.1983 and the registration copy of the same has come to be marked as Ex.A1. On a perusal of Ex.A1, it is found that as determined by the Courts below, it is only the plaintiff, who had purchased the suit properties under the abovesaid sale deed from one Balasamy Nadar. It is thus seen that it is only the plaintiff who has title to the suit properties. The defendants would putforth the case that first item of the suit properties belonged to the first defendant and that the first defendant had been granted

patta with reference to the same and on that basis, according to the second defendant, the first defendant had executed a sale deed in respect of the abovesaid first item of the suit properties to her, by way of a registered sale deed dated 12.08.2010 and the registration copy of the said sale deed has come to be marked as Ex.B1. When it is seen that, it is only the plaintiff who had acquired title to the suit properties, both items 1 and 2, by way of Ex.A1 sale deed, it does not stand to reason as to how come the defendants had putforth the case that the first defendant had acquired title with reference to the first item of the suit properties. In this connection, according to the defendants, on account of the long enjoyment of the abovesaid first item of the suit properties, the patta had been issued in favour of the first defendant and in this connection, the chitta, adangal extract in the name of the first defendant with reference to the abovesaid item have come to be marked as Exs.X1 and X2. No doubt, on a perusal of the said documents, it is seen that the same stands in the name of the first defendant. However, as rightly found by the Courts below, when the patta document as well as the chitta document cannot be treated as equivalent to the title deeds and on the basis of patta, chitta etc., no party would be entitled to claim any title with reference to the suit properties described therein, in such view of the matter, it is found that the Courts below are justified in not placing reliance upon Exs.X1 and X2 for upholding the case of the defendants that the first defendant had a valid title to the first item of the suit properties. When Exs.X1 and X2 cannot be considered as documents of title and when it is further seen that, on the basis of Exs.X1 and X2, the first defendant would not be entitled to claim any right over the first item of the suit properties, in such view of the matter, it is evident that the first defendant would not be competent to convey the said property in favour of the second defendant by way of Ex.B1 sale deed. Therefore, it is found that the second defendant would not be entitled to claim title to the first item of the suit properties based on the documents marked as Exs.X1 and X2 and the sale deed marked as Ex.B1.

10. It is found that the plaintiff has levied the suit against the defendants on 29.06.2010. As above noted, the plaintiff has laid the suit against the defendants for the relief of permanent injunction on the footing that the defendants without any entitlement, are attempting to interfere with his possession and enjoyment of the suit properties. For sustaining his claim of title to the suit properties, the plaintiff has filed the title deed in his favour dated 19.06.1983 along with the suit. It is also found that along with the suit, seeking the relief of temporary injunction against the defendants till the disposal of the main suit, the plaintiff is also found to have preferred I.A.No.276 of 2010.

Based on the documents projected by the plaintiff, it is seen that the trial court had granted the relief of ad interim injunction in favour of the plaintiff on 29.06.2010 restraining the defendants from in any way interfering with his possession and enjoyment of the plaintiff qua the suit properties. As could be seen from the materials placed on record, the abovesaid order has come to be served on the defendants on 01.07.2010 and thereafter, the second defendant is also found to have entered appearance in the matter through her counsel on 14.07.2010. It is thus seen that as correctly determined by the Courts below, the defendants are very well aware of interim injunction granted in favour of the plaintiff by the trial court as earlier as on 14.07.2010 itself. Despite the same, it is found that the first defendant had endeavoured to alienate the first item of the suit properties in favour of the second defendant by way of a sale deed dated 12.08.2010 marked as Ex.B1. Therefore, when the defendants are put on notice about the order of interim injunction granted in favour of the plaintiff, despite having the knowledge of the same, the defendants 1 and 2 had endeavoured to create the sale deed dated 12.08.2010 in respect of the first item of the suit properties without their being any valid title on the part of the first defendant with reference to the said property in any manner and in such view of the matter, it is found that pending lis and having knowledge about the order of interim injunction granted in favour of the plaintiff, the sale deed dated 12.08.2010 had come to be executed between the defendants 1 and 2 and it is thus found that based on the abovesaid sale deed, the second defendant has also put up a new construction in the suit property and the said facts could also be gathered from the report and plan of the Advocate Commissioner and accordingly, it is seen that after the institution of the suit and having knowledge about the interim injunction granted in favour of the plaintiff, the second defendant had trespassed into the first item of the suit properties and put up the construction thereon and in such view of the matter, it is found that the Courts below had also been necessitated to take into consideration the subsequent events which has arisen as above noted and accordingly found to have granted the relief of permission in favour of the plaintiff and thus it is found that though the plaintiff had levied the suit only for the relief of permanent injunction against the defendants, noting that the second defendant had encroached into the first item of the suit properties pending lis and having knowledge of the interim injunction granted in favour of the plaintiff, accordingly, it is found that the Courts below had proceeded to grant the relief of recovery of possession of the first item of the suit properties in favour of the plaintiff from the second defendant. In this connection, the Courts below had placed reliance upon the decision of the Apex Court reported in AIR 1974 Supreme Court 1178 [Shikharchand Jain Vs. Digamber

Jain Praband Karini Sabha and others], where in, it had been held that it is open to a Court (including the Court of Appeal) to take notice of events which had happened after the institution of the suit and afford the relief to the parties in the changed circumstances, where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation or (3) to do competent justice between the parties.

11. Furthermore, the Courts below had also placed reliance upon the decision reported in AIR 1982 Orissa 268 [Bauri and others vs. NataBar Swain and others], wherein, it has been held that when the defendants had dispossessed the plaintiff after filing of the suit in violation of the injunction order, the Court is entitled to take notice of the change of circumstances and in order to shorten the litigation grant the relief of recovery of possession even without pleadings, particularly, when the defendants would not be prejudiced on account of lack of notice. It is found that the Orissa High Court had relied upon the decision reported in AIR 1974 Supreme Court 1178. Applying the abovesaid principles to the case at hand, it is seen that the Court had rightly granted the relief of recovery of possession of the first item of the suit properties in favour of the plaintiff.

12. Though the abovesaid relief which had been granted by the Courts below in favour of the plaintiff had been challenged by the second defendant's counsel, considering the change of circumstances and the subsequent events as abovepointed out and particularly, when it is found that the defendants had encroached into the suit property after the lis and in violation of the interim injunction order granted in favour of the plaintiff, in such view of the matter, the Courts below are found to be wholly justified in granting the relief of recovery of possession as determined by them. In this connection, the plaintiff's counsel placed reliance upon the decision of our High Court reported in CDJ 1997 MHC 959 [Renuka Devi Vs. D.Manoharan] wherein also, it has been held that the Courts are very well competent in invoking the inherent powers provided under section 151 of the Code of Civil Procedure and grant appropriate reliefs and the position of law has been outlined in the abovesaid decision as follows:

17. Our High Court had an occasion to consider the scope of Section 151 CPC in the case reported in Century Flour Mills Ltd Vs. S.Suppiah and another, 1975 (1) MLJ 54 wherein a Full Bench of this Court has held that "the inherent powers of the High

Court under Section 151 of the Code of Civil Procedure, are wide and are not subject to any limitation". In this case, the Full Bench considered as to what orders should be passed in the case of a violation of the stay or injunction. It was held in that case that "Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The inhering power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice".

18. Here, it is a case of fraud, and the person had taken advantage of his own fraud. When these facts are brought to the notice of the Court, can such a person be allowed to remain in possession with immunity and take advantage of his own fraud? If the Court refuses to act on that grievance, it only means, that it abdicates its duty, and it also perpetuates the fraud and injustice.

19. I direct the respondent/plaintiff in O.S.No.5345 of 1997 on the file of the VII Assistant, City Civil Court, Madras to hand over the possession of the building i.e., the first floor of the premises at No.114, Amman Koil Street, Wall Tax Road, Madras - 79 forthwith. The same is to be reported on 19.11.1997. If he fails to surrender possession, as directed, further direction will follow, when the case is posted on 19.11.1997.

13. In the light of the abovesaid discussions, no ground is made out for interfering with the relief of possession granted by the Courts below in favour of the plaintiff qua the first item of the suit properties.

14. As regards the second item of the suit properties, as determined by the Courts below, the same is found to be in the possession and enjoyment of the plaintiff and accordingly, it is seen that the Courts below are justified in granting the relief of permanent injunction with reference to the said item in favour of the plaintiff.

15. Furthermore, it is seen that the materials placed on record go to show that the first defendant who is the aunt of the plaintiff had endeavoured to execute the sale deed in favour of the second defendant as regards the second item of the suit properties by way of the sale deed dated 18.03.2008. On a perusal of the averments contained in the abovesaid sale

deed, it is found that despite the position that the plaintiff is alive and the first defendant has no title to the suit property, the first defendant claiming that the plaintiff has died and that she is his mother and legal heir, proceeded to execute the sale deed Ex.A2 in favour of the second defendant and the plaintiff on coming to know of the same, questioned the second defendant, resultantly it is found that the second defendant had been necessitated to cancel the abovesaid sale deed by a deed of cancellation dated 07.06.2010 marked as Ex.A3.

16. It is thus found that the first defendant contrary to the confidence reposed on her by the plaintiff, without any trace of title to the second item of the suit properties had endeavored to alienate the same in favour of the second defendant by way of Ex.A2, when the plaintiff has been necessitated to live away from the suit village and accordingly, in such circumstances, it is found that the plaintiff has been necessitated to execute a power of deed in favour of Kavitha to protect and manage the suit properties during his absence. Accordingly, it is found that when the defendants again during the absence of the plaintiff attempted to interfere with the possession and enjoyment of the suit properties through his power agent, his power agent had been necessitated to institute the suit on behalf of the plaintiff against the defendants for appropriate reliefs. As abovenoted, despite the order of interim injunction granted in favour of the plaintiff in the suit, the defendants 1 and 2 by way of creating a fictitious and false sale deed dated 12.08.2010 had encroached into the first item of the suit properties and put up the illegal construction therein. The same had been rightly assessed and determined by the Courts below based on the available materials. In such view of the matter, it is found that when the power agent had been authorised to protect and manage the suit properties in the absence of the plaintiff, on the strength of the power deed, it is seen that the power agent is totally justified in laying the suit against the defendants on behalf of the plaintiff and in such view of the matter, the contention putforth by the defendants' counsel that the power agent does not hold the power to institute the suit on behalf of the plaintiff and on that score the suit levied by the power agent should be dismissed, as such, cannot be countenanced.

17. Considering the entire facts and circumstances of the case, it is found that apprehending that the defendants would resort to illegal acts and encroach into the suit properties during his absence, it is found that only on account of the same, the plaintiff had been necessitated to execute the power deed in favour of Kavitha, which document had come to be

marked as Ex.A5. Accordingly, the defendants having endeavoured to challenge the plaintiff's possession and enjoyment of the suit properties through his power agent, it is seen that on the strength of the power deed, the power agent had chosen to institute the suit against the defendants. When the power agent has been authorised to protect and manage the suit properties on behalf of the plaintiff, the abovesaid terms would also include and encompass the power to institute the suit on behalf of the plaintiff with a view to guard the suit properties and tackle the situation, particularly, when it is seen that the defendants had also chosen to encroach into the suit properties on the strength of a fictitious sale deed. In all, it is found that, the power agent is competent to institute the suit against the defendants and the same cannot be challenged by the second defendant in any manner.

18. To sustain his contention that the power agent cannot be allowed to act beyond the power conferred under the power deed and that the power deed should be construed strictly and the power agent cannot be allowed to exceed the authority given to him, the defendants' counsel placed reliance upon the decisions reported in 1937 (1) MLJ 23 [Vijiathammal Vs. M.Kadir Sultan and Another], CDJ 2009 MHC 4867 [M.Nelson Babu Vs. K.Kamelesh Babu & another] and CDJ 2011 MHC 1911 [S.R.Jayaraman & Another Vs. C.Jothirlingam & others]. Per contra contending that the power of attorney is a document of convenience executed by the principal in favour of the agent and the plaintiff having given the power to his agent to protect and manage the suit properties and accordingly, the said power also would be include the power to institute the suit and furthermore, considering the facts and circumstances of the present case, in particular, the defendants had been all along attempting to usurp the suit properties from the clutches of the plaintiff one way or the other, according to the plaintiff's counsel, the power agent has the competency to institute the suit and in this connection, placed reliance upon the decisions of the Apex Court dated 18.09.1996 rendered in Civil Appeal No.11884 of 1996 [United Bank of India Vs. Naresh Kumar and others] and the decisions of the Karnataka High Court dated 25.03.1985 passed in First Appeal No.83 of 1974 [Syndicate Bank, Bangalore Vs. I.K.Amitha and others].

19. Considering the principles of law outlined in the abovesaid decisions cited by the respective counsel as well as the terms of the power deed marked as Ex.A5 and the facts and circumstances under which the abovesaid power deed had come to be executed by the plaintiff and when the power deed authorised the agent to protect and manage the property during his absence and when the defendants are found to have been all along attempting to disturb the possession and enjoyment of the

plaintiff qua the suit properties and also found to have created fictitious sale deeds with a view to grab the suit properties one way or the other, the power granted to the power agent to protect the suit properties, in such a scenario, would also include the power to institute the suit as put forth by the plaintiff's counsel and in such view of the matter, the second defendant cannot be allowed to contend that the power agent does not hold proper power to institute the suit on behalf of the plaintiff. On the other hand, considering the facts and circumstances, it has to be held that the power agent had all the power and authority to institute the suit on behalf of the plaintiff and therefore the abovesaid argument projected on the part of the second defendant to dismiss the plaintiff's case is totally rejected.

20. Complaining the violation of the Courts order, it is found that the plaintiff has also filed I.A.No.318 of 2010 for punishing the defendants for their illegal acts and disobeying the orders of the Court passed in I.A.No.276 of 2010. The trial court had taken the abovesaid I.A along with the main suit and after determining that the defendants had created fictitious document and thereby trespassed into the suit property and put up the construction much against the order of the Court and accordingly further held that the abovesaid acts of the defendants are clearly made in wilful disobedience of the Courts order and thereby held that the second defendant has committed an act of contempt and accordingly determined that she has rendered herself liable to be punished. However, the trial court considering the position that the second defendant is a women and accordingly taking a lenient view and instead of punishing her for the act of contempt committed by her, let her off with a severe warning by directing her not to commit any such act in the future and accordingly disposed of the abovesaid contempt application in I.A.No.318 of 2010 . The abovesaid factors are also found to have weighed with the mind of the trial court as well as the first appellate court in granting the appropriate reliefs in favour of the plaintiff and in my considered opinion, the Courts below are justified in taking into consideration the abovesaid factors also for moulding the reliefs and granting the same in favour of the plaintiff.

21. In the light of the abovesaid discussions, it is found that the Courts below had properly taken into consideration the subsequent events which had arisen and had also accordingly applying the position of law with reference to the same, are found to have granted the proper reliefs in favour of the plaintiff as above pointed out and in my considered opinion, there is no reason warranting any interference with reference to the same. In such view of the matter, in my considered opinion, no substantial question of law is involved

in this second appeal. Be that as it may, the substantial questions of law involved in the second appeal are accordingly answered against the second defendant and in favour of the plaintiff.

22. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sub Judge, Mayiladuthurai.
2. The Principal District Munsif, Mayiladuthurai.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.S.Sounthar, Advocate sr.60152
+1cc to Mr.N.A.Nissar Ahmed, Advocate sr.59992

S.A.No.96 of 2016
and
C.M.P.No.2344 of 2016

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