

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.8 of 2014

1. K.Sathyanarayanan
2. M.Dillibabu
3. K.Elumalai
4. K.Murugesan
5. Chinnammal
6. M.Velu
7. M.Ramachandran ...

Appellants/Plaintiffs 1,3 to 5/
LR of deceased 2nd Plaintiffs

Vs.

1. M.Sundaraperumal
2. S.Shanmuganathan

Respondents/Defendants

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree passed on 11.12.2012 in O.S.No.404 of 2007 by the Hon'ble Additional District Judge, Kancheepuram District at Chengalpattu.

For Appellants : Mr.G.Mohanarangan

For Respondents : Mr.M.Balasubramanian

JUDGMENT

Aggrieved over the judgment and decree dated 11.12.2012 passed in O.S.No.404 of 2007, on the file of the Additional District Court, Kancheepuram District at Chengalpattu, the plaintiffs have preferred the first appeal.

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

3.Suit for declaration and recovery of possession.

4.Briefly stated, according to the plaintiffs' case, they along with Kuppusamy Naicker, since deceased and Kothandapani

Naicker, since deceased had executed a deed of general power of attorney on 31.10.1987, nominating the first defendant as their power agent empowering him to sell the suit property and according to the plaintiffs, the first principal Kuppusamy Naicker died on 22.08.1992 and the fifth principal Kothandapani Naicker died on 12.12.1990 and the same was intimated by the other principals, namely, the plaintiffs and on the death of the two persons, the joint power of attorney executed on 31.10.1987 had become ineffective and unenforceable and the plaintiffs have informed the first defendant that he should not act upon the aforesaid power of attorney and the first defendant had also assured that he would not act as the agent under the abovesaid power of attorney. However, when the plaintiffs thereafter applied for the encumbrance certificate found that the first defendant had sold the suit property to the second defendant by way of the sale deed dated 03.04.2006 and shocked and pained by the act of the first defendant, the plaintiffs issued a legal notice on 16.04.2007 intimating that the aforesaid sale deed is invalid and not binding on the plaintiffs and the plaintiffs also called upon the defendants to cancel the sale deed and hand over the possession of the suit property. The reply notice has been issued by the first defendant on 19.04.2007 contending that he had paid the entire sale consideration and he became the agent coupled with interest and also with other untenable allegations. The first defendant has no right to execute the sale deed in favour of the second defendant in his capacity as the power agent of the plaintiffs and the abovesaid deceased persons. The power of attorney executed in favour of the first defendant ceases to be in force after the demise of the two principals and the plaintiffs are not parties to the sale deed executed in favour of the second defendant and the same is not binding on them and the second defendant is not a bonafide purchaser and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The first defendant resisted the plaintiffs' suit admitting the execution of the power of attorney deed in his favour by the plaintiffs and Kuppusamy Naicker and Kothandapani Naicker on 31.10.1987 and according to him, on 31.10.1987, the plaintiffs and the deceased Chinnasamy Naicker and Ramasamy Naicker, the owners of the suit property entered into an agreement of sale dated 01.10.1987 with the first defendant to sell the suit properties for a sum of Rs.72,000/- and received Rs.20,000/- as advance on the date of the sale agreement and thereafter, on 31.10.1987 received the entire balance sale consideration and made an endorsement in the sale agreement stating that they had received the entire sale consideration in full and final settlement and had declared that they had surrendered all their rights, title and interest of the property in favour of the first defendant and in addition to that, they

had also executed a power of attorney on the same date empowering the first defendant to deal with the property in any manner and suppressing the execution of the sale agreement entered into between the parties as aforesaid, according to the first defendant, the plaintiffs had levied the false suit. Further, it is put forth that the physical possession of the suit property was handed over to the first defendant on the date of the sale agreement and therefore, the sale as required under Section 53A of the Transfer of Property Act was completed and the plaintiffs and the deceased Chinnasamy Naicker and Ramasamy Naicker had received the entire sale consideration and the death of Kuppusamy Naicker and Kothandapani Naicker on 22.08.1992 and 12.12.1990 are not known to the first defendant and the same was not intimated to him by the plaintiffs and therefore, the power of attorney has not ceased to be enforceable as put forth by the plaintiffs. The plaintiffs should have duly intimated the death of the abovesaid principals, however, no notice of the same had been given to the first defendant. The first defendant had not assured that he would not act upon the power of attorney as claimed in the plaint and the first defendant was not aware of the death of Kuppusamy Naicker and Kothandapani Naicker till the date of the receipt of the legal notice issued by the plaintiffs. The claim of the plaintiffs that they had taken steps to improve the property is false. The suit property had already been delivered to the first defendant on the date of the sale agreement. The suit laid by the plaintiffs is barred by limitation and on that sole ground alone, the suit is liable to be dismissed. The first defendant had sold the suit property to the second defendant on 03.04.2006 for valid consideration and the abovesaid sale deed is valid. The power of attorney executed in favour of the first defendant is coupled with interest and the same is not liable to be revoked. The second defendant is a bonafide purchaser for value and therefore, the plaintiffs' suit is liable to be dismissed.

6. The second defendant resisted the plaintiffs suit contending that only after making sufficient enquiry and verifying the copies of the documents available with the first defendant and on being satisfied that the first defendant had the authority to sell the suit property, the second defendant had purchased the suit property from the first defendant for valid consideration and the second defendant is a bonafide purchaser for value and the first defendant and the second defendant are not aware of the death of the principals as claimed in the plaint and the plaintiffs have no cause of action and the suit is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiffs, the deceased Kuppusami Naicker and the deceased Kothandapani Naicker entered into an agreement for sale on 01.10.1987 with the first defendant to sell the suit property?

2. Whether the plaintiffs, the deceased Kuppusami Naicker and the deceased Kothandapani Naicker received the entire sale consideration for the suit property on 31.10.1987?

3. Whether the plaintiffs, the deceased Kuppusamy Naicker and the deceased Kothandapani Naicker delivered the physical possession of the suit property to the first defendant?

4. Whether it is correct that the fact of the death of Kuppusamy Naicker and Kothandapani Naicker was not intimated to the first defendant by the plaintiffs?

5. Whether the first defendant is in possession and enjoyment of the suit property as its owner?

6. Whether the second defendant is the bonafide purchaser of the suit property?

7. Whether the suit is barred by limitation?

8. Whether the plaintiffs are entitled for declaration that the deed of General power of attorney dated 31.10.1987 is non est not in force and not binding on the plaintiffs?

9. Whether the plaintiffs are entitled for declaration that the sale deed dated 03.04.2006 is invalid and not binding on the plaintiffs?

10. Whether the plaintiffs are entitled for declaration that the plaintiffs are absolute owners of the property?

11.To what other reliefs, the plaintiffs are entitled?

8.In support of the plaintiffs' case, PW1 was examined, Exs.A1 to A8 were marked. On the side of the defendants, DWs 1 and 2 were examined, Exs.B1 to B4 were marked.

9.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made,the trial Court was pleased to dismiss the plaintiffs' suit. Impugning the same, the first appeal has been preferred by the plaintiffs.

10. The following main points arise for determination in this first appeal:

1.Whether the plaintiffs are entitled to seek the relief of declaration as prayed for?

2.Whether the plaintiffs are entitled to recover the possession of the suit property from the defendants as claimed?

3.Whether the suit is barred by limitation?

4.To what relief the plaintiffs/appellants are entitled to?

5.To what relief the defendants are entitled to?

Point Nos. 1 to 3:

11.From the materials placed on record, it is found that and also not in dispute that the plaintiffs and the deceased Kuppusamy Naicker and Kothandapani Naicker had executed a general power of attorney in favour of the first defendant on 31.10.1987 nominating him as their power agent and empowering him to sell the suit property. The copy of the abovesaid power of attorney deed has been marked as Ex.A2. Further, from the materials placed on record, it is found that prior to Ex.A2, the plaintiffs and Chinnasamy Naicker and Ramasamy Naicker had entered into the sale agreement with the first defendant with reference to the sale of the suit property for a sum of Rs.72,000/- and the abovesaid sale agreement has been marked as Ex.B1. It is found that the first plaintiff, examined as PW1, has admitted the execution of the sale agreement Ex.B1 entered into between them and the first defendant as recited therein.

In fact, the sale agreement Ex.B1 had been marked through PW1. Further, he has also clearly admitted that they had signed in the sale agreement Ex.B1 and therefore, when it is noted that the plaintiffs and Chinnaamy Naicker and Ramasamy Naicker are the signatories to the sale agreement Ex.B1 and they had received a sum of Rs.20,000/- as advance on the date of the sale agreement and furthermore, when it is seen that subsequently they had also received the balance sale consideration and made an endorsement in the sale agreement on 31.10.1987 and thereby had also declared that they had surrendered all their rights, title and interest in respect of the suit property in favour of the first defendant and empowered the first defendant to deal with the property in the manner as he chose and when PW1 has admitted that Ex.B1 sale agreement had been executed by them as well as attested by the witnesses and further, when it is seen that the same witnesses had also witnessed the power of attorney deed Ex.A2 executed on the same date and when PW1 has not disputed the receipt of the advance amount and the balance sale consideration pursuant to Ex.B1 sale agreement and accordingly, it is found that only following Ex.B1 sale agreement and the receipt of the entire sale consideration pursuant to the same on 31.10.1987, the power of attorney deed had come to be executed in favour of the first defendant and accordingly, it is found that inasmuch as the plaintiffs and others had already received the entire consideration for the suit property, it is found that no recital has been incorporated in the power of attorney making it incumbent upon the first defendant to render accounts and hand over the consideration amount to the principals in the event of the sale of the suit property by the first defendant. Therefore, it is found that the first defendant instead of obtaining the sale deed from the plaintiffs and others qua the suit property for the reasons attributed by him i.e., he having no sufficient money to bear the expenses etc., accordingly, it is found that on the payment of the entire sale consideration pursuant to Ex.B1 sale agreement, the power of attorney deed had come to be executed in favour of the first defendant by all the principals.

12. By virtue of the abovesaid factors, as rightly put forth by the first defendant's counsel, when the first defendant had acquired the interest over the suit property and had the authority to sell the suit property, both by way of Ex.B1 sale agreement and the endorsement made therein as well as the power of attorney deed and the power of attorney deed being coupled with interest, in such view of the matter, as rightly put forth by him, the power of attorney deed is found to be not liable to be cancelled by the principals who had executed the same in favour of the first defendant. In this connection, the counsel for the first defendant placed reliance upon the decisions reported in 2014 (1) CTC 447 (T.Sivaperumal Vs. S.Viswanathan

and others) and 2002-2-L.W. 272 (S.V.Doraisamy Vs. T.Dayalan and 8 others). From the abovesaid decisions, it is found that considering the execution of the sale agreement between the parties under Ex.B1 and the payment of the entire sale consideration following the same and the delivery of the possession of the suit property to the first defendant and the execution of the power of attorney by the principals in favour of the first defendant and the empowerment given to the first defendant to deal with the property as he chooses by the principals, all together, would only lead to the conclusion that the power of attorney deed Ex.A2 is one coupled with interest and the same cannot be ordinarily cancelled as such.

13. The main case put forth by the plaintiffs is that on the death of the two principals namely, Kuppusamy Naicker and Kothandapani Naicker, the power of attorney deed Ex.A2 ceases to have enforceability and had become invalid. According to the plaintiffs, they had intimated the first defendant about the death of the two principals, however, according to the first defendant, he was not aware of the death of the two principals and not intimated of the same by the plaintiffs. PW1 during the course of his evidence has admitted that he had not given any intimation to the first defendant about the death of the two principals and further admitted that the first defendant came to know of their death only after a lapse of several years. According to the first defendant, he had come to know about the death of the two principals only on the receipt of the legal notice issued by the plaintiffs dated 16.04.2007 and there is no material or proof on the side of the plaintiffs to hold that they had duly intimated about the death of the two principals to the first defendant or to hold that the first defendant had gained knowledge about the death of the two principals much earlier and not after the receipt of the legal notice sent by them. Therefore, when it is found that the first defendant was not put on notice, in any manner by the plaintiffs about the death of the two principals and the plaintiffs had also not endeavoured to take any initiation with reference to the same in the manner known to law, the abovesaid factors would only go to show that inasmuch the plaintiffs had already received the entire sale consideration in respect of the suit property pursuant to Ex.B1 sale agreement, accordingly, it is found that they had not evinced interest to apprise the first defendant about the death of the two principals. Inasmuch as they had already empowered the first defendant to deal with the suit property as he chose by executing the power of attorney coupled with interest, therefore, it is found that the case of the plaintiffs that the first defendant is not empowered to act on the power of attorney deed Ex.A2, following the demise of the two principals, as such, cannot be accepted and accordingly, it is found that the first defendant in his capacity as the power

agent as well as the purchaser of the suit property i.e., gaining the absolute right over the suit property by paying the entire sale consideration to the plaintiffs pursuant to Ex.B1 sale agreement, as above pointed out, is found to have alienated the suit property in favour of the second defendant on 03.04.2006. Accordingly, it is found that the second defendant had also verified all the documents available in the custody of the first defendant and on being satisfied that the first defendant had the authority and empowerment to execute the sale deed in respect of the suit property, chose to purchase the same from the first defendant under the abovesaid sale deed.

14. Though the plaintiffs would claim that they continued to retain the possession of the suit property as well as not handed over the parent title deed in respect of the suit property to the first defendant, however, as rightly determined by the trial Court, if the abovesaid case of the plaintiffs has any element of truth, the plaintiffs would have placed acceptable and reliable materials evidencing their claim of possession of the suit property after the execution of the sale agreement Ex.B1 in favour of the first defendant and the power of attorney deed Ex.A2. Furthermore, the plaintiffs has also not chosen to produce the title deed of the suit property to sustain their case. On the other hand, when there are clear recitals contained in Ex.B1 as regards the handing over of the possession of the suit property to the first defendant and the entrustment of the title deeds to the first defendant and in pursuance of the same, when it is noted that Ex.A2 general power of attorney deed had been executed in favour of the first defendant, all put together would only lead to the conclusion that the possession of the suit property had been only with the first defendant along with the title deeds and accordingly, it is found that the second defendant, on the verification of the same and being satisfied with the authority of the first defendant, accordingly, chosen to purchase the suit property from the first defendant on 03.04.2006. It is also noted that the title deeds entrusted to the first defendant had been lost and with reference to the same, it is noted that a complaint had been lodged by the first defendant to the police, the copy of which has been marked as Ex.B2 and the non transferable certificate issued by the police authority has been marked as Ex.B3 and when it is further noted that with reference to the loss of the title deeds, a paper publication had been effected by the first defendant marked as Ex.B4, all put together would only got to show that the defence version put forth is true and acceptable and accordingly, the plaintiffs are unable to buttress their case by placing any acceptable and reliable material to hold that they continue to exercise the right over the suit property after the execution of the sale agreement and the power of attorney in favour of the first defendant. On the other hand,

it is seen that nearly 20 years after the execution of the same, the plaintiffs have chosen to make an attempt to exercise the right over the suit property by sending a legal notice to the first defendant on 16.04.2007. However, when much water had flown down in the interregnum, the suit having been laid by the plaintiffs nearly 20 years after the abovesaid developments, accordingly, it is found that the trial Court has rightly held that the plaintiffs suit is barred by limitation.

15. In the light of the abovesaid discussions, the trial Court is found to have assessed and analysed the materials placed on record in the proper perspective, both factual and legal wise and had rightly come to the conclusion that the plaintiffs are not entitled to seek the reliefs prayed for and the plaintiffs suit is time barred and accordingly, no interference is warranted to the abovesaid determination of the trial Court. Therefore, I hold that the plaintiffs are not entitled to obtain the relief of declaration and also not entitled to recover the possession of the suit property from the defendants and I further hold that the plaintiffs suit is barred by limitation. Accordingly, the point Nos.1 to 3 are answered. Point Nos.4 & 5:

16. For the reasons aforesaid, the judgment and decree dated 11.12.2012, passed in O.S.No.404 of 2007, on the file of the Additional District Court, Kancheepuram District at Chengalpattu are confirmed. Resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:
The Additional District Court,
Kancheepuram District at Chengalpattu.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Balasubramanian, Advocate Sr.103809

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srg 27/08/2020