

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2019

Coram

The Honourable Ms. Justice P.T.ASHA

S.A.No.863 of 2018

C. Palanisamy ... Appellant / Plaintiff

Versus

R. Nachimuthu ... Respondent / Defendant

PRAYER: This Second Appeal is filed under Section 100 of the Code of Civil Procedure-1908, against the Judgment and Decree made in A.S.No.24 of 2016 on the file of II Additional District-cum-Sessions Judge, Tiruppur, dated 12.01.2018, confirming the Judgment and Decree made in O.S.No.638 of 2012, dated 24.06.2016, on the file of Principal Sub-Ordinate Court, Tiruppur.

For Appellant : M/s. D. Chitra Maragatham

JUDGMENT

The plaintiff herein is the appellant before this Court. The above Second Appeal arises against the Judgment and Decree in A.S.No.24/2016 passed by the learned II Additional District-cum-Sessions Judge, Tiruppur, made in A.S.No.24/2016 wherein the learned District Judge had confirmed the Judgment and Decree of learned Principal Sub-Judge, Tiruppur made in O.S.No.638/2012.

2.The brief facts necessary for disposing of the above Second Appeal are hereunder detailed and the parties are shown in the same array as in the suit.

- The plaintiff had filed the suit for declaration of title to the suit property and for a direction to the defendant to handover the possession of the suit property and also claiming damages for a sum of Rs. 15,250/- for use and occupation of the suit property from the date of termination of the lease with future interest at the rate of 18% p.a. and for a direction to the defendant to pay future damages at Rs.5,000/- per month together with interest at the rate of 18% p.a. from the date of plaint to the date of delivery of possession of the suit property.

- It is the case of the plaintiff that the defendant was the absolute owner of the suit property by virtue of a Sale Deed dated 28.01.1994 executed in his favour and he has been in possession and enjoyment of the same till 22.03.2012.
- On 23.03.2011, the defendant had executed a General Power of Attorney in favour of one P. Uthiramani, which is registered as document No.378/2011 on the file of the Sub-Registrar, Nallur, Tirupur, with an intention to sell the same to third parties. By virtue of this power of attorney, the power agent had sold the suit property to the plaintiff under a Sale Deed dated 22.03.2012, registered as document No.861/2012 on the file of the Sub Registrar, Nallur at Tirupur.
- Possession had also been handed over to the plaintiff on the said date and the plaintiff had been the absolute owner and enjoyment of the suit property since then.

3. The plaintiff would contend that after the execution of the Sale Deed, the defendant had requested the plaintiff to lease the property to him on a monthly rental of Rs.5,000/- and the plaintiff had also agreed to the same and the defendant agreed to pay the monthly rental of Rs.5,000/- from 01.04.2012 till 01.08.2012. It was the case of the plaintiff that from 01.09.2012 the defendant did not pay any rents and the defendant also refused to hand over possession of the suit property. Therefore left with no other alternative, the plaintiff had filed the suit.

4. The defense to the above suit was that the power of attorney was executed in favour of P. Uthiramani and she is none other than the wife of the plaintiff and that the same was executed as a security for the amounts borrowed. The defendant would contend that he had borrowed a sum of Rs. 1,50,000/- from the plaintiff and that the plaintiff's son and the defendant's son were carrying on a Partnership business. Therefore, he had borrowed the amount for family and business purpose which is repayable together with interest at the rate of 36 % p.a. The defendant would contend that at the time of borrowal, he had executed blank promissory notes as well as green sheets and the plaintiff had assured him that at the time of repayment of amounts, the documents would be returned to the defendant. However, contrary to the assurance, the plaintiff had gone ahead and misused the power of attorney given and obtained a sale in his favour. The defendant would submit that he had no intention of selling the property to the plaintiff and in fact, the property has been undervalued.

5. The parties had gone to trial before the learned Principal Sub-Judge, Tiruppur and the plaintiff had examined himself as PW1 and marked Exs.P1 and P2. The defendant on his side, had examined himself as DW1 and had marked no documents on his side. On an elaborate consideration of the evidence on record, the learned Principal Sub-Judge had dismissed the suit.

6. Challenging the said Judgment and decree, the plaintiff had filed an appeal before the II Additional District cum Sessions Court, Tiruppur in A.S.No.24/2016. The Appellate Court also confirmed the Judgment and decree of the Trial Court, by dismissing the appeal. Challenging the same the plaintiff is before this Court.

7. Heard Mrs.D. Chitra Maragatham, learned counsel for the appellant and perused the records.

8. It is seen that the plaintiff had come forward with a case that he had purchased the suit property through the power agent of the defendant and after his purchase he had inducted the defendant, the original owner of the property as a tenant on a monthly rental of Rs. 5000/-. This contention has not been proved by the plaintiff. It is also seen that the suit property is of a value much more than the sum of Rs.1,50,000/- as shown in the Sale Deed in question. It has to be borne in mind that the property has been undervalued and this assumes significance since it is the wife who is the Power of Attorney who has sold the property to her own husband with whom the plaintiff has dealings. It is admitted that the property is of much greater value than Rs. 1,50,000/- for which it is said to have been sold. It is also not seen as to how consideration has passed from the plaintiff to the defendant since the amount is recited to have been received by the power agent. Another factor which is to be considered is that the power of attorney of the plaintiff is none else than the wife of the plaintiff and she had executed the sale deed in her husband's favour within a period of one year itself. There has been a deliberate omission to mention the above factor and having failed to prove both the passing of the Sale consideration to the plaintiff, as also the induction of the defendant as a Tenant in the suit property, the plaintiff has failed to prove his case and the Courts below have rightly dismissed the suits. The plaintiff has not made out any

question of law much less substantial question of law warranting interference of this Court. Accordingly the Second Appeal stands dismissed and there shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jrs

To

- 1) The II Additional District-cum-Sessions Judge, Tiruppur.
- 2) The Principal Subordinate Judge, Tiruppur.

S.A.No.893 of 2018

ND(CO)
SSM(17/06/2019)