



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2019

CORAM

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THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)No.577 of 2019

G.Kannan

.. Appellant / Appellant/
1st Defendant

Vs.

1.G.Rangarajan

... 1st Respondent / 1st Respondent
/ Plaintiff

2.Jaffer Ali

3.Kumbakonam Co-operative town Bank,
No.4062, rep. by its
Special Officer,
Kumbakonam.

... Respondents 2&3 / Respondents 2&3
Defendants 2&3

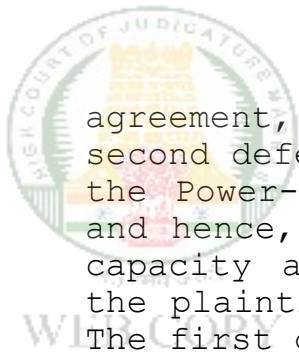
Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and decree dated 09.07.2018, passed in Appeal Suit No.46 of 2017, by the Additional District Judge(Fast Track Court), Kumbakonam, confirming the Judgment and decree, dated 05.07.2017, passed in Original Suit No.6 of 2006, by the Principal Subordinate Judge, Kumbakonam.

For Appellant : Mr.R.Saravanan

JUDGMENT

The first defendant, who suffered a decree for specific performance in O.S.No.6 of 2006 on its affirmation by the lower Appellate Court in A.S.No.46 of 2017 has come up with this appeal.

2. The suit was laid by the plaintiff claiming that the first defendant, who is the owner of the property had appointed the second defendant as his Power-of-Attorney agent vide a registered General Power-of-Attorney, dated 10.06.2005. Exercising the said power, the second defendant had entered into an agreement for sale with the petitioner, on 16.06.2005, agreeing to convey the suit property for a total consideration of Rupees Two lakhs and has received a sum of rupees one lakh as advance on the date of agreement itself. A period of six months was fixed for the performance of the contract. According to the plaintiff, as per the



agreement, he demanded performance from the second defendant. The second defendant informed him that the first defendant has cancelled the Power-of-Attorney on 17.06.2005 by sending the lawyer's notice and hence, he is not in a position to execute the sale deed in his capacity as Power-of-Attorney of the first defendant. Thereafter, the plaintiff issued a notice to the first defendant on 03.12.2005. The first defendant sent a reply refusing to perform his part of the contract. Hence, the plaintiff had come forward with the suit.

3. The suit was resisted by the first defendant contending that the second defendant misguided the first defendant and obtained the Power-of-Attorney. According to the first defendant, the property is worth more than Rs.6,00,000/- and his power agent has in collusion with the first defendant entered into an agreement for the sale of the property for a sum of rupees two lakhs. It was also claimed that the plaintiff has not come forward with clean hands and suit agreement is ante-dated. The readiness and willingness of the plaintiff to perform his part of the contract was also disputed.

4. The second defendant filed separate written statement admitting the execution of the agreement. He would also plead that the agreement was entered into on 16.06.2005 and since the power was cancelled, he had instructed the plaintiff to seek his remedy in the manner known to law.

5. At trial, the plaintiff was examined as P.W.1. On the side of the plaintiff, Exhibits A1 to A4 were marked. On the side of the defendants, one Jafer Ali was examined as D.W.1. One Dhayalan was examined as D.W.2. The first defendant was examined as D.W.3 and one Kamala was examined as D.W.4. Exhibits B1 to B9 were marked on the side of the defendants.

6. The Courts below, on consideration of the evidence on record found that the agreement, dated 16.06.2005 is true and valid. It is also the conclusion of the Courts below that the first defendant cannot wriggle out his obligations under the agreement, since the same was entered into by the second defendant where the Power-of-Attorney executed by the first defendant in favour of the second defendant on 10.06.2005 was in force. It was also found that the plaintiff was always ready and willing to perform his part of contract and he approached the Court within the time allowed by law.

7. A new theory was projected at trial by the 1st defendant to the effect that the Power-of-Attorney was obtained by threat and coercion. Though some evidence was sought to be let in on the said plea, both the Courts below refused to consider the said evidence on the ground that there was no plea with regard to the alleged threat and coercion in the written statement filed by the first defendant. On the above conclusions, the Courts below decreed the suit. The first defendant has come up with this appeal.



8. I have heard Mr.R.Saravanan, learned counsel appearing for the appellant.

9.Mr.R.Saravanan, learned counsel would vehemently contend that the Courts below are not right in rejecting the plea of the first defendant that the Power-of-Attorney was obtained by threat and coercion. He would also contend that the plaintiff and the second defendant have colluded to cheat him of his property, which is worth more than Rs.6,00,000/- by entering into an agreement for sale for much lesser amount of Rs.2,00,000/-. He would also point out the evidence of the first defendant as D.W.3 to the effect that even the advance received under the sale agreement was not paid over to him.

10. I have considered the rival submission.

11. On the question of threat and coercion in execution of Power-of-Attorney, I find that the Courts below were perfectly justified in rejecting the said contention on the ground that the same was not made part of the pleadings. Even in the reply to the suit notices, such a plea was not raised. Only during trial, some evidence was attempted to be let in on the alleged theory of threat and coercion in the execution of Power-of-Attorney. The first defendant had sent a legal notice on 17.06.2005 informing the second defendant that the Power-of-Attorney, dated 10.06.2005 stands cancelled. Even in the said notice the plea of threat and coercion have not been set out.

12. As regards valuation of the property, it is settled law that the Court cannot refuse specific performance on the ground that the agreement was entered into for a lesser amount. Even assuming such a plea could be raised, there is no evidence on the side of the first defendant, except his own oral testimony that the property is worth about Rs.6,00,000/-in the open market. Both the Courts below have concurrently found that the plaintiff was ready and willing to perform his part of contract and hence, he is entitled for specific performance. The said finding cannot be termed as perverse. I do not find any question of law, much less a substantial question of law in order to enable me to entertain this appeal. Hence the appeal fails and it is dismissed without being admitted. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1. The Additional District Judge, (FTC)
Kumbakonam.

2. The Principal Subordinate Judge,
Kumbakonam.

Copy to:

The Section Officer, Vernacular Section (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-103172[F] dated 03/12/2019)

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03.12.2019

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