



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A. (MD) No.652 of 2015

and

M.P (MD) No.1 of 2015

WEB COPY

1.Masanamammal

2.R.Manthiramoorthi

3.R.Kathiravan

4.R.Sornam

5.R.Velmurugan

... Appellants / defendants

vs.

C.Mahekarthick

... Respondent / plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.58 of 2012 on the file of the III Additional District Court, Tirunelveli, dated 30.03.2015 confirming the judgment and decree passed in O.S.No.34/2010 on the file of the Sub Court, Ambasamuthram, dated 03.08.2012.

For Appellants

: Mr.R.Rajaraman

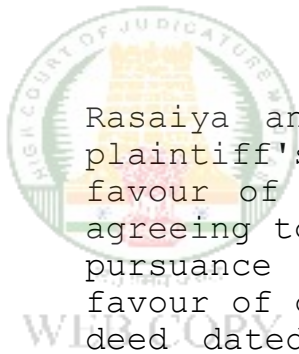
For Respondent

: Mr.D.Nallathambi

JUDGMENT

The defendants having suffered a decree for declaration, recovery of possession and mesne profits in O.S.No.34 of 2010 on the file of the Sub Court, Ambasamuthuram upon its confirmation by the lower appellate Court in A.S.No.58 of 2012 have come up with this second appeal.

2. According to the plaintiff, the suit property belonged to the predecessor in interest of late Thiru.Rasaiya, who had purchased the same vide sale deed dated 15.05.1973. It is also stated that the plaintiff's father Chandramohan and the first defendant, who is the wife of Rasaiya, are cousins. It is further claimed that the plaintiff's family have been providing financial assistance to the defendant's family for over a period of time and in the course of such transaction the defendants had availed a sum of Rs.2 lakhs from the mother of the plaintiff, namely Bhagavathi. On 27.10.1994, the defendants borrowed a sum of Rs.45,000/- for the purpose of the marriage of the fourth defendant from the said Bhagavathi. Since the defendants were unable to repay the debts, they have executed the power of attorney in favour of Bhagavathi on 27.10.1994 authorizing her to sell immovable properties belonging to said



Rasaiya and realise the debts. Exercising the said power, the plaintiff's mother Bhagavathi had sold the agricultural lands in favour of one Mookan. She had entered into an agreement of sale agreeing to sell the suit property to one Durai on 21.09.1999 and in pursuance of the said agreement she had executed a sale deed in favour of one Durai on 24.12.1999. Having acquired title vide sale deed dated 24.12.1999, the said Durai was in possession and in enjoyment of the property till he sold the same on 27.12.2004 to the plaintiff.

3. Therefore, according to the plaintiff, the plaintiff has become the absolute owner of the property and the defendants have trespassed into the property in the year 2009 and occupied the same. The claim of the defendants that they have cancelled the power of attorney, dated 27.10.1994 on 16.11.1999 was also denied by the plaintiff. On the above pleading, the plaintiff sought for the relief stated supra.

4. The defendants resisted the suit claiming that the borrowing of Rs.2 lakhs is false. They admitted the borrowing of Rs.45,000/- on 27.10.1994 for the marriage of the fourth defendant. The execution of power of attorney and its registration was admitted. The defendants would further plead that on the sale of the agricultural lands a sum of Rs.53,000/- was paid over to Bhagavathi and the entire debt stood discharged. Therefore, according to the defendants, they cancelled the power of attorney on 16.11.1999 and had informed the same by serving a notice on Durai. Therefore, sale deed executed by Bhagavathi in favour of Durai on 27.12.1999 will not convey any title to him. On the above contentions, the defendants sought for dismissal of the suit.

5. At trial, the plaintiff was examined as P.W.1 and one Bhagavathi was examined as P.W.2. Exs.A1 to A7 were marked. The first defendant was examined as P.W.1 and Exs.B1 to B8 were marked.

6. The Courts below upon consideration of the evidence on record came to the conclusion that power of attorney dated 27.10.1994 having been executed for the purpose of enabling the creditor Bhagavathi to sell the property to realise her debts was a power of attorney coupled with interest and hence the cancellation of the same dated 16.11.1999 is not valid. The Courts below further found that the alleged cancellation deed, dated 16.11.1999 being an unregistered instrument, in the absence of any evidence to show that the cancellation was actually communicated, the same would not be valid in view of Section 208 of the Indian Contract Act. On the said finding, the Courts below concluded that the sale by Bhagavathi in favour of Durai on 24.12.1999 and the subsequent sale by Durai in favour of the plaintiff on 27.10.2004 would be perfectly valid. On the said findings, the Courts below decreed the suit as prayed for. Aggrieved, the defendants have come up with this appeal.



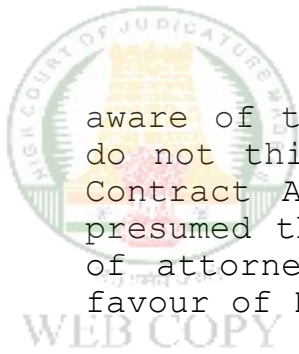
7. I have heard Mr.R.Rajaraman, the learned counsel for the appellants. Notice was ordered on 28.10.2015 upon notice, Mr.D.Nallathambi has entered appearance for the respondent.

8. The learned counsel for the appellants would vehemently contended that the Courts below have not framed any issue on the validity of the cancellation deed dated 16.11.1999 and the power of attorney dated 27.10.1994. He would further submit that the Courts below should not have concluded that the power of attorney dated 27.10.1994 is a power coupled with interest. He would further contend that once it is shown that the factum of cancellation is informed by serving a notice, the legal presumption is created under Section 114 of the Indian Evidence Act would stand attracted and it will have to be presumed that Bhagavathi was aware of the cancellation of the power of attorney.

9. As regards the first submission, it has been repeatedly held by this Court as well as the Hon'ble Supreme Court that the nomenclature of the document alone does not determine the character of the same. Though the document dated 27.10.1994 is termed as a general power of attorney, it was executed enabling Bhagavathi to sell the property to recover the money due to her. Therefore, the object and intention of the parties was that Bhagavathi is entitled to sell the property and realise the debts.

10. It is the case of the defendants that they had borrowed only a sum of Rs.45,000/- and entire debt due to Bhagavathi stood discharged on the sale of the agricultural land for a sum of Rs.53,800/-. Therefore, the claim of the defendants is that the entire debt stood discharged on receipt of a sum of Rs.53,800/- as consideration from Mookan by Bhagavathi. The Courts below have also taken note of the fact that, though defendants would claim that they have obtained receipt from Bhagavathi for the payment of Rs.53,800/- in discharge of the debt the said receipt has not been produced before the Courts.

11. Therefore, I do not find any error in the conclusion of the Courts below that the power of attorney dated 27.10.1994 being a document coupled with interest cannot be revoked and any revocation would be invalid. Even otherwise as per Section 208 of the Indian Contract Act, the cancellation of the power of attorney would be effective as against third parties only when it is proved that the agent had knowledge of the cancellation. Though the power of attorney dated 27.10.1994 is a registered document, the cancellation deed dated 16.11.1999 is an unregistered instrument and there is no evidence to show that the power agent namely, Bhagavathi was informed of the factum of cancellation. The only evidence that is available to show that Bhagavathi was informed of the cancellation is the letter said to have been sent to her by ordinary post. Nothing prevented the appellants from sending the same by registered post. There is no concrete evidence to show that Bhagavathi was



aware of the cancellation. In the absence of the said evidence, I do not think that the requirement under Section 208 of the Indian Contract Act could be said to be complied with and it cannot be presumed that Bhagavathi was aware of the cancellation of the power of attorney dated 24.12.1999, when she executed the sale deed in favour of Durai.

12. The courts below have analyzed the evidence and come to the conclusion that the sale deed executed by Bhagavathi in favour of Durai, dated 24.12.1999 is valid and the cancellation of the power of attorney is not legal. I do not see any perversity in the findings of the Courts below in order to enable me to interfere with the same under Section 100 Cr.P.C. 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, this appeal fails and dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The III Additional District Judge,
Tirunelveli.

2.The Sub Judge, Ambasamuthram.

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

+1 CC to Mr.R.RAJARAMAN, Advocate (SR-104581[F] dated 12/12/2019)

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-104640[F] dated 12/12/2019)

S.A. (MD) No. 652 of 2015

11.12.2019

VB(24.01.2020) 4P 7C