IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2019

Date of Verdict : 13.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.458 of 2006

1. Poornasami (died)
2.Shanthi ..2nd Appellatnt/2nd Respondent/ 2nd Defendant

3. Manimegalai
4. Vasanthi
5. Vivekanandan ...Appellants
(Appellants 3 to 5 brought on record as LR's of the deceased first appellant viz., Poornasami vide order of court dated 30.09.2019 made in CMP.No.21177 of 2019 in SA.No.458 of 2006 (PRMJ))

Vs.

1.Natarajan ...1st Respondent/Appellant / 2nd Plaintiff

3.Subramani @ Senthil ...2nd Respondent/3rd respondent/ 3rd Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 14.03.2005, in A.S.No.82 of 2004 on the file of the I Additional Subordinate Judge, Erode, reversing the decree and judgment dated 04.10.2004 in O.S.No.82 of 2001 on the file of the I Additional District Munsif, Erode.

For Appellants : Mr.T.M.Hariharan

For Respondents
For R1 : Mr.A.K.Kumarasamy, Senior Counsel for Mr.S.Kaithamalai Kumaran

: R2 - notice served, No Appearance

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JUDGMENT

This second appeal is directed as against the judgment and decree dated 14.03.2005, in A.S.No.82 of 2004 on the file of the I Additional Subordinate Judge, Erode, reversing the decree and judgment dated 04.10.2004 in O.S.No.82 of 2001 on the file of the I Additional District Munsif, Erode.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for permanent injunction. The plaintiff is the absolute owner of the suit property. She has been residing in a portion of the building as widow and in the remaining portions her tenants have been in occupation and she has been receiving the rent from the tenants. She further submitted that her son by name Natarajan is living at Kongampalayam and he is not looking after the plaintiff. The first defendant is the close relative of the plaintiff. He is running a power loom factory at Pallipalayam and he used to visit the plaintiff on account of her old age. The defendants 2 and 3 are strangers to the plaintiff and they are friends of the first defendant. While being so, the first defendant along with the third defendant and another one, Senthil on 08.01.2000 entered into her house and kidnapped her to the house of the first defendant, wherein she was illegally detained for three days and on threatening and coercion with dire consequences on her life and property, the defendants obtained her left thumb impression on several blank paper and stamp papers. She was severely beaten up by them. Hence, she lodged a complaint and thereafter the defendants 1 and 3 were arrested in a criminal case.

3.2 Further averred that the defendants 1 and 3 fabricated the documents of their choice utilising her left thumb impression obtained under coercion and threatening from the plaintiff. She also stated that she would take appropriate steps against the defendants 1 and 3 as and when the matter came to light as to how the defendants 1 and 3 have utilised the signatures obtained on stamp papers. Thereafter, the defendants have frequently visited the plaintiff's house and threatened her to dispossess from the suit property. The plaintiff never executed any sale deed in favour of the defendants and never intended to sign any document of transfer in favour of the defendants. Hence, she filed suit for permanent injunction as against the defendants.

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4. Resisting the plaintiff's case, the defendants filed written statement stating that the son of the plaintiff never looked after her and she had to be helped only by the first defendant. After knowing these facts, the plaintiff executed a registered power of attorney dated 09.01.2001 in favour of the third defendant authorising him to sell the property. Since she was not able to go to the Registrar Office often to sell the property, and the third defendant being the power agent executed two sale deeds on 10.01.2001. One sale deed was executed in favour of the first defendant and another sale deed executed in favour of the second defendant, who is none other than the daughter of the first defendant for valid sale consideration. The third defendant settled the entire sale consideration to the plaintiff. Therefore, on her own, the plaintiff had sold the entire suit schedule property in favour of the first and second defendants herein and the third defendant acted as power agent of the plaintiff. Only on the instigation of the son of the plaintiff. He lodged false complaint on 13.01.2001 against the Will of the plaintiff. The plaintiff never intended to lodge any complaint as against the defendants. Further the publication in the Malaimalar newspaper has also been wantonly given only at the instigation of the son of the plaintiff.

4.1 Further averred that after the purchase of the suit schedule property, the first and second defendants are the owners of the suit properties by virtue of the sale deed dated 10.01.2001 and the plaintiff has been permitted to live in a portion at Door No.6 of the suit property till her life time, since she was affected by paralytic of her left hand and left leg. Now the son of the plaintiff has come into picture, that too after the sale of the property, only to extract more money from the defendants, the false complaint has been foisted and also instituted the present suit. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and twelve documents were marked as Ex.A.1 to Ex.A.12. On the side of the defendants D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.21 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit as the suit for injunction alone is not maintainable without the prayer of declaration when there is a cloud over the title of the suit schedule property. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.82 of 2004 before the I Additional Subordinate Judge, Erode and the same was allowed and the suit filed by the plaintiff was decreed in her favour. Challenging the same, the defendants have come forward with the

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present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the suit for bare injunction is maintainable when Ex.B3 and B4 have been executed on the foot of a registered Power Deed Ex.B21 and is the 1st entitled to any relief without a prayer for declaration of title and for setting aside the alienation?

b) When Exs.B3 and B4 are subsisting is not the finding of the lower appellate court regarding possession contrary to the very document nearly perverse and against settled law?

7. The learned counsel appearing for the defendants submitted that the plaintiff filed the suit for injunction as against the defendants. The plaintiff specifically pleaded in the plaint that her only son Natarajan is living at Kongampalayam and he is not looking after her. The suit property is having several portions, in one portion of which she is residing. The other portions are rented out and she is receiving rent from her tenants. Further averred that her thumb impression was obtained on blank papers and stamp papers by the defendants 1 and 3 under threat and coercion. As such she would take appropriate steps against the defendants as and when the matter came to light as to how the defendants 1 and 3 have utilised the signature obtained on stamp papers. Further she averred that the plaintiff never entered into any sale transaction with the defendants and never executed any sale deed in their favour. Even then, she did not ask any prayer for declaration in respect of the suit property. She had full knowledge at the time of filing of the suit that though her signature was obtained in the blank papers and stamp papers on threatening and coercion, sale deed was registered in favour of the defendants 1 & 2 in respect of the suit properties. Therefore, she ought to have filed suit for declaration and consequently for permanent injunction.

8. He further submitted that there is absolutely no averment in respect of the power of attorney executed by her in favour of the third defendant on 09.01.2001, which was marked as Ex.B.21. It was categorically admitted by her that she came to Registrar Office and executed the power of attorney in favour of the third defendant. The power of attorney was marked as Ex.B.21 and other sale deeds which were marked as Ex.B.3 and Ex.B.4. These documents have been duly registered by the Sub Registrar in accordance with law and as such presumption is that the documents are valid and operative unless the contrary is conclusively established. Therefore, the suit for bear

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injunction itself is not at all maintainable without the prayer of declaration declaring that the power of attorney as well as the sale deeds are null and void. Though the permanent injunction was granted in favour of the plaintiff, the sale deeds executed by her under Ex.B.3 and Ex.B.4 hold good.

9. To support of his contention, the learned counsel appearing for the defendants relied upon the following judgments :-

i) Shanti Budhiya Vesta Patel and Others Vs. Nirmala Jayprakash Tiwari and Others reported in (2010) 5 SCC 104,

ii) Jharkhand State Housing Board Vs. Didar Singh reported in 2018 SCC Online SC 2170 and

iii) Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LR's and others reported in (2008) 4 SCC 594.

10. Per contra, the learned Senior Counsel appearing for the plaintiff submitted that the plaintiff filed the suit for injunction in respect of the suit property. At the time of filing of the suit, she was in possession and enjoyment of the suit property and she was forcibly taken to the house of the third defendant and obtained her left thumb impression on threatening and coercion. It is also categorically proved by her police complaint in which FIR has been registered as against the defendants. In fact, they were arrested and remanded to judicial custody. Though the suit was dismissed by the trial court, the first appellate court considered the facts and circumstances and allowed her suit. Admittedly, she was affected with paralysis and she was not able to move without the help of others and as such there is absolutely no possibility for her to execute power of attorney in favour of the third respondent in the Registrar Office.

11. He further submitted that in respect of the other portions of the suit property, she was receiving rent and as such the possession to the property was never handed over to the defendants. The defendants also failed to produce any of the documents to show that after the alleged sale deed, the possession was handed over to them. Pending the suit, the plaintiff died and thereafter her only son, the second plaintiff was impleaded and he is being the legal heir of the deceased, he has taken possession of the suit property and the entire suit property is in possession and enjoyment of the second plaintiff. Therefore, he prayed for dismissal of the second appeal.

12. Heard, Mr.T.M.Hariharan, the learned counsel appearing for the defendants and Mr.A.K.Kumarasamy, Senior Counsel appearing for the plaintiffs.

13. The suit is filed for permanent injunction. The plaintiff stated that she was kidnapped by the defendants 1 and

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3 and she was illegally detained in the house of the first defendant. Thereafter her signature was obtained in blank papers and stamp papers, pursuant to which the third defendant executed sale deed in favour of the first and second defendants. She also lodged a complaint and on her complaint, FIR was registered in which the defendants were arrested and remanded to judicial custody. Therefore, even after the alleged sale, she was in possession and enjoyment of the suit property. Hence, she prayed for permanent injunction as against the defendants. In the plaint, she averred that "the plaintiff submits her son by name Natarajan is living at Kongampalayam and he is not looking after the plaintiff". The defendants 2 and 3 are strangers to the plaintiff and they are friends of the first defendant. The first defendant is a close relative of the plaintiff and he used to visit the plaintiff frequently and enquired the plaintiff about her health on account of her old age. She was affected with paralytic attack on her left hand and left leg.

14. She further averred that she was kidnapped by the first and third defendants and she was detained illegally in the house of the first defendant. There her signatures were obtained in the blank papers and stamp papers under coercion and threatening with dire consequences. Further she averred that "the plaintiff submits that she would take appropriate steps against the defendants 1 and 3 as and when the matter came to light as to how the defendants 1 and 3 have utilised the signatures obtained on stamp papers". " She has not executed any sale deed in favour of the defendants and never intended to sign any document of transfer in favour of the defendants". Hence if the defendants have fabricated any document on the strength of the left thumb impression of the plaintiff obtained by them, the plaintiff charges that those documents are void under law and the plaintiff is entitled to ignore the said document as not binding upon her.

15. Whereas the first defendant denied the fact that the plaintiff is the owner of the suit property. He only looked after her and fulfilled her medical necessity with love and affection, and the plaintiff executed Will dated 27.10.2000 in favour of the son of the first defendant and after knowing this fact, the son of the plaintiff threatened her and as such the plaintiff decided to sell the property. On 09.01.2001, she executed power of attorney in favour of the third defendant and on 10.01.2001, he executed sale deed through power of attorney in favour of the first and second defendants in respect of the suit schedule property. Even then, the defendants 1 and 2 have permitted the plaintiff to stay in a portion situated at Door No.6 in the suit schedule property till her life time. The third defendant stated that the plaintiff had come to the

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Registrar Officer and executed power of attorney on 09.01.2001 in favour of him. In turn, on the instruction of the plaintiff, he executed sale deed in favour of the first and second defendants. The defendants categorically stated about the execution of power of attorney and sale deed in favour of the third defendant and defendants 1 and 2 respectively in the written statement. Even then, the plaintiff failed to alter the prayer for declaration declaring those documents executed in favour of the defendants 1 to 3 as null and void. In fact, she categorically averred in her plaint as stated above, she would take appropriate steps against the defendants as and when the matter came to light as to how the defendants have utilised the signature obtained on stamp papers.

16. It further shows that she herself averred in the plaint that her son is not looking after her and he is living at Kongampalayam. Thereafter she was permitted to dwell in the suit property situated at Door No.6. Unfortunately pending the suit, she died and thereafter her son was impleaded as plaintiff. The suit was decreed in favour of the plaintiff. Even then, the defendants 1 and 2 can very well alienate the suit property since the sale deeds executed in favour of the defendants 1 and 2 hold good, unless and until those are set aside before the court below. Therefore necessarily the plaintiff ought to have filed the suit for declaration and also for injunction.

17. In this regard, the learned counsel for the defendants cited the judgement of the Hon'ble Supreme Court of India in the case of Jharkhand State Housing Board Vs. Didar Singh reported in 2018 SCC Online SC 2170, wherein it is held as follows:

> "11.It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

18. He has also relied upon the judgment in the case of Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LR's and others reported in (2008) 4 SCC 594, wherein it is held as follows:

> "8.The trial court decreed the suit by judgment dated 31.12.1985. Relying on the two sale deeds in favour of plaintiffs, the tax paid receipts and the oral evidence, it held that plaintiffs were in

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possession of the suit property from the date of purchase and the defendant had interfered with their possession. The defendant filed an appeal challenging the judgment and decree of the trial court before the Addl. District Judge, Warangal. The first appellate court held that the defendant was in possession of the suit property and the plaintiffs had not made out, even prima facie, either title or possession over the suit property. It was of the view that in the circumstances a mere suit for injunction was not maintainable, and at least when the defendant filed his written statement denying the title of plaintiffs and setting up a clear and specific case of title in himself, the plaintiffs ought to have amended the plaint to convert the suit into one for declaration and injunction. Consequently it allowed the appeal by judgment and decree dated 9.12.1991 and dismissed the suit. Being aggrieved, the plaintiffs filed SA No.29 of 1992."

19. In the above judgments, the Hon'ble Supreme Court of India has held that in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases, the plaintiff has to seek the relief of declaration. Suit for mere injunction does not live only when the defendant raises genuine disputes with regard to title and when he raises equity over the title of the plaintiff, then necessarily in those circumstances, the plaintiff cannot maintain the suit for bare injunction.

20. In the present case, as stated above, the defendants categorically averred that the plaintiff executed power of attorney in favour of the third defendant and thereafter the third defendant executed sale deeds in favour of the first and second defendants. Even then, the plaintiff did not take any step to amend the prayer for declaration, declaring those documents as null and void. In fact, in the plaint, she also averred that whenever the matter came to light as to how her signatures were obtained in the stamp papers, she would take appropriate action against the defendants. Even then, the plaintiff failed to take appropriate steps to challenge those deeds executed by the plaintiff. Therefore, the findings of the first appellate court is perverse and it is liable to be interfered with.

21. The learned Senior Counsel appearing for the plaintiff submitted that on the police complaint lodged by the plaintiff, the defendants were arrested and remanded to judicial custody and they are facing criminal prosecution. Therefore it is proved that the signatures of the plaintiff were obtained in the blank papers and stamp papers. Thereafter the defendants

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created the sale deeds in favour of the first and second defendants. As such, those documents are void under law and the plaintiff need not to challenge those documents as not binding upon her.

22. In this regard, the learned counsel for the defendants cited the judgment of the Hon'ble Supreme Court of India in the case of Shanti Budhiya Vesta Patel and Others Vs. Nirmala Jayprakash Tiwari and Others reported in (2010) 5 SCC 104, wherein it is held as follows:

> "37.The appellants also alleged that they had revoked the Powers of Attorney executed by them in favour of the respondent no. 9 by filing complaints with the police. We are of the considered opinion that this contention of the appellants is devoid of merit. Although there is no denying the fact that three police complaints had been filed on three different dates with the police against the alleged harassment and threats by respondent nos. 8 and 9, it is difficult to understand how the Powers of Attorney executed by the appellants or their predecessor-in-interest stood revoked. The record of the case reveals that each of the complaints was filed by a separate person - the first complaint was filed by the appellants themselves, the second by an Advocate and the third by one Narendra M. Patel, who is himself a builder. It is significant to note that all these complaints came to be filed when said Narender M. Patel came into the picture. Further, it is important to take note of the fact that all the Powers of Attorney executed in favour of respondent no. 9 as also all the deeds and documents entered into between the predecessor-in-interest of the appellants and respondent no. 9 were duly registered with the office of the Sub-Registrar. Neither any document nor any of the Powers of Attorney was ever got cancelled by the appellants.
>
> 38. The appellants also further contended before us that they had revoked the Powers of Attorney executed in favour of respondent no. 1 by executing a fresh Power of Attorney in favour of said Narendra M. Patel. It is significant to note that despite filing of the complaints with the police nothing was done by the appellants to bring the allegations contained in the said complaints to the notice and knowledge of the High Court although that could have been comfortably done had the appellants wished to do so. The Power of Attorney in favour of said Narendra M. Patel was executed by the appellants on 26.04.2006 whereas the first complaint was filed with the police on 01.05.2006 and the consent terms were entered into on 22.05.2006.

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The consent decree was actually passed by the High Court on 13.06.2006.

39. The appellants, thus, had ample time and opportunity with them to bring the said allegations to the notice and knowledge of the High Court at any time between 26.04.2006 and 13.06.2006. The appellants had considerable amount of time available with them. As noted earlier, with regard to the complaints filed, the appellants did not take any follow up action to bring them their logical end.

40. It is crystal clear that the appellants chose not to avail an opportunity which was available to them. In such circumstances, it will not be appropriate to say that the deedsand documents as well as the Powers of Attorney executed in favour of respondent no. 9 stood revoked merely by filing complaints with the police. We cannot lose sight of the fact that a registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure."

23. In the above case, the Hon'ble Supreme Court of India has held that mere filing of complaint with the police, deeds, documents and powers of attorney cannot be revoked.

24. In the present case, on the police complaint lodged by the plaintiff, the FIR was registered in Crime No.15 of 2001 by the Inspector of Police, Erode South Police Station, Erode District for the offences under Sections 363, 343, 468, 384 and 323 IPC as against the first and third defendants and another, which was marked as Ex.A.2. In which the defendants were also arrested and remanded to judicial custody. Though they were arrested for these offences, the criminal proceedings does not vitiate the execution of deeds unless those are set aside before the court of law. On the strength of the power of attorney executed in favour of the third defendant, the third defendant executed sale deed in favour of the first and second defendants. Therefore, unless and otherwise challenging those deeds, the plaintiff is not entitled for any relief of injunction alone.

25. The learned Senior Counsel also is not able to furnish the fate of the criminal proceedings as against the defendants. Therefore, mere initiation of the criminal proceedings are no way affecting the documents.

26. In the light of the above discussions, the substantial questions of law formulated by this Court are answered in favour

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of the defendants and against the plaintiff. Hence, this Court is forced to interfere with the findings of the first appellate court since this Court finds that the findings of the first appellate are perverse and against the evidences on record.

27. In fine, the second appeal is allowed. Consequently, the judgment and decree dated 14.03.2005 passed in A.S.No.82 of 2004 on the file of the I Additional Subordinate Judge, Erode, are set aside and the decree and judgment dated 04.10.2004 in O.S.No.82 of 2001 on the file of the I Additional District Munsif, Erode is confirmed with costs. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To
1. The I Additional Subordinate Judge,
   Erode
2. The I Additional District Munsif,
   Erode
3. The Section Officer,
   V.R. Section,
   Madras High Court,
   Chennai.

+1 cc to Mr.T.M.Hariharan, Advocate Sr.No. 3011
+1 cc to Mr.Kaithamalai kumaran, Advocate Sr.No. 3383

S.A.No.458 of 2006

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