

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020

Delivered on: 30.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.3329 of 2015

and

MP.No.1 of 2015

K.Kumar

...Petitioner

Vs.

1.Anthonysamy

2.V.G.Rajarathinam

3.The Sub-Registrar,
O/o.The Sub-Registrar,
Thirupoondi,
Kilvelur TK,
Nagapattinam District.

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 09.03.2015 passed in O.S.No.16 of 2011 on the file of the District Munsif, Nagapattinam.

For Petitioner

: Mr.K.Prem kumar

for Mr.R.Prem Narayan

For Respondents

: Mr. P.Valliappan for R1

R2-No appearance

Mr.T.M.Pappiah, for R3

Special Government Pleader

ORDER

This Civil Revision Petition has been filed by the first defendant against the order passed by the District Munsif Court, Nagapattinam, in O.S.No.16 of 2011 dated 09.03.2015.

2. The first respondent herein had filed a suit in O.S.No.16 of 2011 on the file of the District Munsif Court, Nagapattinam, to declare that the sale deed dated 01.10.2009 executed by the first defendant in favour of the second defendant is null and void and for consequential injunction restraining the second defendant from alienating or encumbering the suit property and also for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. According to the plaintiff, he is the absolute owner of the suit property and the first defendant is his friend. His further case is that on 14.08.2004, he executed a registered power of attorney in favour of the first defendant in respect of the suit property for the purpose of looking after the litigations. His further case is that without his instructions, the first

defendant colluded with the second defendant, who is his brother-in-law had executed a sale agreement dated 25.10.2006 in favour the second defendant. After coming to know about the said sale agreement, the plaintiff had cancelled the said power of attorney on 17.09.2008 by executing a registered cancellation deed and also informed the said fact to the first defendant in person. Even thereafter, the first defendant took efforts to sell the property and hence, on 26.09.2009 the plaintiff had sent a letter by registered post to the first defendant informing that the power deed was already cancelled but, the first defendant had purposely did not receive the said letter and returned the same.

4. His further case is that on 07.10.2009 he had sent a registered notice to the third defendant informing the fact that he already cancelled the power deed which was given to the first defendant and that the third defendant had received the said notice on 08.10.2009. Thereafter, the first defendant had executed a sale deed dated 01.10.2009 in favour of the second defendant in respect of the suit property. According to the plaintiff, since already he had cancelled the power of attorney which was given in

favour of the first defendant and the said fact was informed to the first defendant through a registered letter dated 26.09.2009, the said sale deed dated 01.10.2009 will not bind upon him. Accordingly the plaintiff had valued the suit as follows:-

“For declaration 30 times of kist Rs.1.50; half Rs.0.75. As per Section 25(b) the amount is at Rs.75.50. As per Section 27(c), the notional value at Rs.1,000/-, Court fee paid Rs.75.50; total Court fee paid at Rs.151/-.”

5. The case of the first defendant is that in pursuance of the power deed dated 14.08.2004, he entered into a sale agreement with the second defendant on 25.10.2006 and based on the said sale agreement, he executed the sale deed dated 01.10.2009 in favour of the second defendant without knowledge of the alleged cancellation of the said power deed and hence, mere seeking declaration that the said sale deed will not bind upon him is not sufficient and that the plaintiff should have filed the suit for cancellation of the said sale deed by paying the Court fees under Section 40 of the Tamil Nadu Court Fees Act.

6. The petitioner/first defendant had filed an application in I.A.No.330 of 2011 in O.S.No.16 of 2011 under Order 14 Rule 1 of CPC to decide the issue whether the District Munsif, Nagapattinam, is having pecuniary jurisdiction to decide the matter. The trial Court had allowed the said application by the order dated 29.06.2011. Challenging the said order, the first respondent/plaintiff had filed a Civil Revision Petition in CRP.(PD).No.338 of 2011 before this Court and this Court, while dismissing the said Civil Revision Petition by the order dated 04.08.2014, had directed the trial Court to decide the preliminary issue i.e., whether the suit is valued properly and Court fees paid is correct within two months from the date of receipt of copy of the said order.

7. In pursuance of the aforesaid directions, the learned District Munsif, Nagapattinam, had tried the preliminary issue i.e., whether the suit is valued properly and Court fees paid is correct.

8. It is seen from the order passed by the trial Court that neither oral nor documentary evidence has been adduced on behalf of the first

defendant. On the side of the plaintiff, the plaintiff examined himself as RW1 and two more witnesses were examined as RW2 and RW3. The plaintiff has marked 6 documents as Exs.R1 to R6 on his side.

9. The learned District Munsif, after considering the materials produced before her found that the power which was given to the first defendant by way of Ex.R1 was cancelled by the plaintiff under Ex.R2 cancellation deed dated 17.09.2008 and the same was informed to the first defendant through a registered notice dated 26.09.2009 which was returned as “unclaimed.” She further found that since the said letter returned as “unclaimed”, it has to be presumed that as per Section 27 of the General Clauses Act, the said letter was served on him and only thereafter, the first defendant had executed the sale deed in favour of the second defendant and therefore, it cannot be said that the plaintiff is a party to the sale deed dated 01.10.2009 (Ex.R5) and as such, he need not seek to cancel the said document and it is sufficient to seek declaration that the said document will not bind upon him and for that he has to value the said relief under Section 25(d) of the Tamil Nadu Court Fees Act, but, the plaintiff had valued the

said relief under Section 25(b) of the Tamil Nadu Court Fees Act, which is not correct and hence, she gave directions to the plaintiff to take steps to amend the plaint accordingly. Feeling aggrieved, the first defendant has filed the present Civil Revision Petition.

10. Heard, Mr.K.Premkumar, for Mr.R.Prem Narayan, the learned counsel for the petitioner/first defendant, Mr.P.Valliappan, the learned counsel for the first respondent/plaintiff and Mr.T.M.Pappiah, the learned Special Government Pleader for the third respondent.

11. The learned counsel for the petitioner/first defendant has submitted that admittedly, the first respondent/plaintiff had executed a registered power deed in respect of the suit property in favour of the petitioner/first defendant to deal with the said property and in pursuance of the said power deed, the petitioner/first defendant entered into a sale agreement with the second defendant on 25.10.2006 and based on the said agreement, he sold the suit property to the second defendant under the sale deed dated 01.10.2009. He further submitted that eventhough the plaintiff

claimed that he cancelled the said power of attorney by the document dated 17.09.2009 and the said fact was informed to the petitioner/first defendant through a registered post, the said registered post was not served on the petitioner/first defendant.

12. He further submitted that the said registered post, admittedly, was returned without serving on the petitioner and as such, the plaintiff's contention that the petitioner/first defendant after knowing the cancellation of the power deed, the petitioner/first defendant had executed the sale deed dated 01.10.2009 should not have accepted. He further submitted that since the said sale deed was executed without knowledge of the cancellation of the power deed, the said sale deed will bind upon the plaintiff and therefore, he should have asked to cancel the said sale deed by paying the Court fees under Section 40 of the Tamil Nadu Court Fees Act.

13. He further submitted that since in the said sale deed, the market value has been mentioned as Rs.13,74,400/- if the suit is properly valued under Section 40 of the Tamil Nadu Court Fees Act, the District

Munsif Court, will not have pecuniary jurisdiction but, without considering the aforesaid facts, the learned District Munsif had held that the plaintiff need not value the suit under Section 40 of the Tamil Nadu Court Fees Act and therefore, he prayed to allow this Civil Revision Petition and set aside the order of the trial Court and direct the plaintiff to value the plaint under Section 40 of the Tamil Nadu Court Fees Act.

14. Per contra, the learned counsel for the first respondent/plaintiff has submitted that the power deed which was executed in favour of the first defendant dated 14.08.2004 was cancelled by the first respondent/plaintiff through a registered cancellation deed dated 17.09.2008 and the same was informed to the first defendant through a registered notice dated 26.09.2009 which was returned as “unclaimed” and the same is evident from Ex.R4. He further submitted that since the notice was sent through a registered post by mentioning the correct address, as per Section 27 of the General Clauses Act, it has to be presumed that the said letter was deemed to be served. He further submitted that the petitioner/first defendant after knowing the fact that the said registered notice was sent only to inform

him that the power deed was already cancelled, he purposely and intentionally did not receive the said registered post eventhough the postal authority gave intimation to him and hence, the postal authorities have returned the said letter as “unclaimed.” He further submitted that after knowing the fact that the power deed was cancelled, the petitioner/first defendant, with an intention to defraud the plaintiff, had executed the sale deed dated 01.10.2009 in favour of the second defendant, who is none other than the brother-in-law of the first defendant and therefore, the said sale deed will not bind upon the plaintiff.

15. He further submitted that since the said sale deed was executed after cancellation of the power deed, it cannot be said that the document was executed on behalf of the plaintiff and as such, he need not seek to cancel the said document by valuing the relief under Section 40 of the Tamil Nadu Court Fees Act and that it is sufficient to seek relief to declare that the sale deed is null and void and will not bind upon him. He further submitted that taking into consideration of the aforesaid facts, the trial Court had rightly passed an order that the plaintiff need not value the

relief under Section 40 of the Tamil Nadu Court Fees Act and in the said order, this Court need not interfere and therefore, he prayed to dismiss this petition.

16. Mr. T.M.Pappiah, the learned Special Government Pleader, who is appearing for the third respondent has submitted that since the real dispute is between the petitioner and the first respondent, he requests the Court to pass an appropriate order in this petition.

17. It is an admitted fact that the plaintiff is the absolute owner of the suit property and he executed a registered power deed on 14.08.2004 appointing the petitioner/first defendant as his power agent to deal with the suit property. It is also an admitted fact that based on the said power deed, the first defendant entered into an agreement on 25.10.2006 with the second defendant to sell the suit property. It is also an admitted fact that in pursuance of the said sale agreement, the first defendant had executed a sale deed dated 01.10.2009 in favour of the second defendant as power agent of the plaintiff.

18. According to the plaintiff, after knowing the fact that the first defendant had entered into a sale agreement with the second defendant, who is none other than his brother-in-law with an intention to defraud him, he cancelled the said power deed through a registered cancellation deed dated 17.09.2008.

19. At this juncture, it would be relevant to refer to explanation-I attached to Section 3 of the Transfer of Property Act which reads thus:-

*“ **Explanation I** - Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the*

property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that - (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,”

20. A bare reading of the aforesaid explanation shows that where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration.

21. In this case, the plaintiff had cancelled the power deed through a registered document dated 17.09.2008. Therefore, registration of the said document itself is a constructive notice to the subsequent transferor and transferees namely, the defendants 1 and 2. The object underlining the said explanation is that where a person intended to purchase a property should verify the encumbrance. In this case, if the defendants 1 and 2 had

verified the encumbrance, they would have had knowledge about the cancellation of the said power deed. In view of the aforesaid provision of law, it has to be presumed that they got knowledge about the cancellation deed dated 17.09.2008.

22. It is also to be pointed out that the plaintiff had sent a notice (Ex.R3) through a registered post on 26.09.2009 informing the first defendant that the power deed dated 14.08.2004 was cancelled through a registered cancellation deed dated 17.09.2008. Ex.R4 shows that the said registered post returned as “unclaimed”. As per Section 27 of the General Clauses Act, if a letter is sent by a registered post by mentioning the correct address, it has to be presumed that the said letter is deemed to be served to the addressee.

23. In this case, the endorsement of the postal authority shows that an intimation was given to the first defendant as a registered post came to him but he did not go to the post office and receive the said letter and after waiting for the prescribed period, the postal authority had returned the

said letter as “unclaimed.” It is not the case of the first defendant that the postal authorities have returned the said letter by making a false endorsement as “unclaimed.” Since the postal authorities are working under the control of the Central Government, it has to be presumed that they have discharged their duty in accordance with law and there is no reason to suspect genuineness of the said endorsement. Therefore, it has to be presumed that only after knowing the fact that the plaintiff had cancelled the power deed, the first defendant did not receive the said letter and thereafter executed Ex.R5 sale deed dated 01.10.2009 in favour of the second defendant.

24. The first defendant being the power agent should act only as per the instruction of the Principal (plaintiff). In this case, as already pointed out, in view of explanation-I attached to Section 3 of the Transfer of Property Act, the defendants 1 and 2 had constructive notice with regard to the cancellation deed. Further since the first defendant had returned Ex.R3 notice as “unclaimed”, on that ground also, it has to be presumed that he had knowledge about the cancellation of the power deed and even thereafter, he

executed the sale deed dated 01.10.2009 in favour of his brother-in-law (second defendant) and hence, the trial Court had rightly held that it cannot be said that the said document was executed as power agent of the plaintiff.

25. It is also pertinent to note that the alleged sale deed was executed by the first defendant in favour of the second defendant. The trial Court had held that the said sale deed has not been executed as power agent of the plaintiff. The second defendant has not challenged the said impugned order.

26. The trial Court had rightly held that since the said sale deed has been executed after cancellation of the power deed, it cannot be said that the said sale deed was executed by the first defendant as power agent of the plaintiff and in such a case, he need not seek to cancel the said sale deed by valuing the relief under Section 40 of the Tamil Nadu Court Fees Act and it is sufficient to declare the said document as null and void and for that he has to value the said relief under Section 25(d) of the Tamil Nadu Court Fees Act and directed the plaintiff to amend the plaint accordingly. This

Court does not find any irregularity or illegality in the said order and hence, this Civil Revision Petition is liable to be dismissed.

27. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

30.11.2020

Index : Yes/No

Internet : Yes/No

dna

To

1. The District Munsif Court,
Nagapattinam.

2. The Sub-Registrar,
O/o. The Sub-Registrar,
Thirupoondi,
Kilvelur TK,
Nagapattinam District.



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CRP.(PD)No.3329 of 2015

P.RAJAMANICKAM.J.,

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**Pre-Delivery Order in
CRP.(PD).No.3329 of 2015
and
MP.No.1 of 2015**

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