



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 17.07.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.110 of 2020
and C.M.P(MD)No.1712 of 2020

WEB COPY

Ambigapathi : Appellant/4th Respondent/4th Defendant

Vs.

1.V.Kandasamy Gounder :1st Respondent/Appellant/Plaintiff
2.P.Raja
3.P.Dhanalakshmi
4.R.Sampath : Respondents 2 to 4/Respondents 1 to 3/
Defendants 1 to 3

5.Rathina Sabapathy

6.Karur Municipality,
Represented by its Executive Authority,
The Commissioner,
Azad Road,Karur Town,
Karur Taluk,Karur District.

7.The Assistant Executive Engineer,
Operations and Maintenance,
Tamil Nadu Electricity Board,
Velliyanai,
Karur Taluk,
Karur District.

8.The Assistant Engineer,
Operations and Maintenance,
Tamil Nadu Electricity Board,
Thanthonimalai,
Thanthoni Village,
Karur Taluk,
Karur District.

:Respondents 5 to 8/Respondents
5 to 8/Defendants 5 to 8

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated dated 16.09.2019 made in A.S.No.18 of 2016 on the file of the Principal District Court, Karur reversing the judgment and decree dated 13.06.2016 made in O.S.No.365 of 2010 on the file of the Principal Sub-Court, Karur.

For Appellant : Mr.A.Arumugam
for M/s Ajmal Associates



J U D G M E N T

The present appeal has been preferred by the fourth defendant in a suit for declaration of title. The suit was filed for declaration of the plaintiff's title and for consequential relief of prohibitory injunction.

2. The case of the plaintiff is that the suit property originally belonged to the first defendant, that he entered into a registered sale agreement dated 11.09.2006, which was marked as Ex.A.2, in pursuant to which, the first defendant executed a sale deed dated 17.04.2007. The sale deed is Ex.A.3. It is the further case of the plaintiff that he has leased out the property to one Paramasivam under Ex.A.4 dated 18.04.2007 and thereafter to one Dhanalakshmi, the second defendant, under Ex.A.7 dated 04.06.2008.

3. While things stood thus, the first defendant had executed a general power of attorney on 30.03.2007 and had the same registered on 16.04.2007. This power of attorney was marked as Ex.B.1. It may be stated that this power of attorney has been executed after Ex.A.2 sale agreement in favour of the plaintiff has come into existence, and registered one day prior to the execution of Ex.A.3 Sale Deed. Be that as it may, on the strength of Ex.B.1 power of attorney the third defendant had executed a sale agreement (marked Ex.B.3) in favour of the fourth defendant. Subsequently, the fourth defendant filed O.S.No.133 of 2007 before the Sub Court, Karur, but without impleading the plaintiff in the present suit. As already indicated, by the time O.S.No.133 of 2007 was laid, the title to the suit property had already vested in the plaintiff. In that suit, the defendant obtained an ex-parte decree, which was marked as Ex.B.6. Thereafter, the fourth defendant/appellant would file a Execution Petition and on 19.03.2008 Ex.B.7 Sale Deed was executed in his favour by the Execution Court.

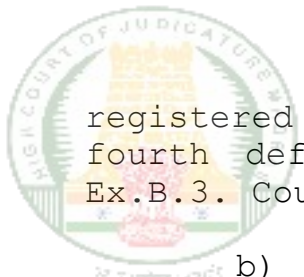
4. In the written statement, the fourth defendant did not dispute the first defendant's title, but harped more on the specific performance suit which he laid, and ex-parte decree obtained by him.

5. The trial court, by a strange process of reasoning, has dismissed the suit, and it has focussed much on possession of the property at the hands of the tenant rather than investigating the title. This fundamental error in approach, entertained by the learned trial judge was rectified by the first Appellate Judge.

6. The learned counsel for the appellant wanted to convince this Court again along the reasoning of the trial court which this Court was no mood to buy.

7. The points against the appellant are as follows:

<https://hcservices.ecourts.gov.in/hcservices/> by the sale agreement Ex.A2 in favour of the plaintiff was a



registered one and it is strange, under such circumstances, the fourth defendant would enter into a sale agreement again under Ex.B.3. Could it be a *bonafide* purchase then?

b) At any rate, Ex.B.6 the decree passed in O.S.No.133 of 2007 is of no use to the fourth defendant since the plaintiff in whom the title was vested then was not even arrayed as a party to the suit in terms of ratio in **Lala Durga Prasad and another Vs. Lala Deep Chand and others** [1954 SCR 360]. As to be expected, the first defendant and his power of attorney, the third defendant have chosen to remain ex-parte.

8. Given the setting in which Ex.B.6 decree is positioned, this Court finds merit in the apprehension of the plaintiff that the decree so obtained was collusively made by the fourth defendant/appellant without least *bonafides*.

9. However, if an element of *bonafide* is attributed to the conduct of the fourth defendant/appellant, then it would only mean he has been duped by the defendants 1 and 3. He might have been far too innocent and gullible purchaser, but, law does not countenance innocence to unsettle title already vested lawfully in the plaintiff. If at all the fourth defendant has any right, then he has to proceed only against the defendants 1 and 3. He may not have any cause to resist the title of the plaintiff. This Court finds that the judgment of the first Appellate Court is in order and does not suffer from any infirmity whatsoever and therefore, necessarily, this Court holds that there is no substantial question of law to be involved in this appeal.

10. In fine, this Second Appeal is dismissed. No costs. consequently, the miscellaneous application is also dismissed. The fourth defendant is free to proceed against the defendants 1 and 2, if he has a right as per law.

Sd/-

Assistant Registrar (CS II)

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/ /2020

Sub Assistant Registrar (CS)

CM/Tsg

To

1. The Principal District Judge,
Karur.



2. The Principal Sub-Judge,
Karur.

3. The Executive Authority,
Karur Municipality, The Commissioner,
Azad Road, Karur Town, Karur Taluk, Karur District.

4. The Assistant Executive Engineer,
Operations and Maintenance, Tamil Nadu Electricity Board,
Velliyanai, Karur Taluk, Karur District.

5. The Assistant Engineer,
Operations and Maintenance, Tamil Nadu Electricity Board,
Thanthonimalai, Thanthoni Village, Karur Taluk,
Karur District.

6. The Section Officer,
V.R. Section, Madurai Bench of Madras High Court,
Madurai. (2c)

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KK(30.07.2020) 4P 8C