



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 14.09.2020

CORAM

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

S.A(MD)No.115 of 2020

and

C.M.P. (MD)No.1821 of 2020

S.Balu

:Appellant/1st Respondent/
2nd Defendant

Vs.

1.T.Kulanthai Raja
2.K.Seshiah Pandian
3.M.Ulagammal
4.M.Thirumalaiappan
5.M.Sivamurugan
6.M.Raja
7.M.Subbulakshmi
8.M.Meena
9.M.Tamilselvi

:1st Respondent/Appellant/Plaintiff

:Respondents 2-9 /Respondents 2-9/
Defendants 3-10

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree passed in A.S.No.120 of 2017 dated 22.10.2019 on the file of the Additional District Court No.III, Tirunelveli reversing the judgment and decree made in O.S.No.10 of 2010 on the file of the Additional Sub Court, Tirunelveli dated 25.07.2017.

For Appellant : Mr.S.Kumar
For Respondents : No Appearance

J U D G M E N T

The second defendant in a suit for declaration of title and injunction is the appellant herein.

2. The suit was decreed by the trial Court, which was confirmed by the first appellate Court. The suit property is described as Plot No.129 in Survey No.319/1, Keelnatham Village, Saragampalayamkottai Taluk, Palayamkottai. This property was purchased by the first defendant under Ex.A1, sale deed dated 02.10.1981. Indeed the first defendant has owned two plots. One is suit property and another is Plot No.119. While so, on 14.07.2006 under Ex.A2, the settlement deed, the first defendant has settled the property in favour of his wife, Ulagammal. She is the fourth defendant in the suit. Thereafter, under Ex.A3, sale deed dated 09.01.2009, the plaintiff purchased Plot No.129.



3. The obstruction from the defendants was based on a certain sale agreement executed by the power of attorney of the first defendant. The defendants' case is that on 28.11.2002, the power of attorney of the first defendant executed Ex.B.11, unregistered sale agreement, as regards both the plots (Plot Nos.119 and 129), whereunder the second defendant had agreed to purchase both the plots in Plot Nos.119 and 129 for a total sale consideration of Rs.3.25 lakhs, that he had paid an advance of Rs.2 lakhs, that he undertook to perform his part of contract within one month of execution of Ex.B1, unregistered sale agreement, that on 10.02.2003, he had paid the balance sale consideration to the power of attorney and pursuant to that, the power of attorney had executed Ex.B3, receipt / memorandum acknowledging the receipt of balance sale consideration and resisted the plaintiff's case for declaration of title.

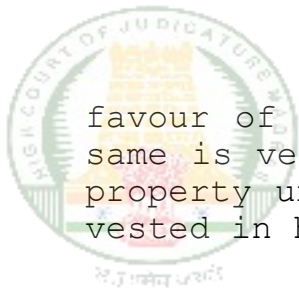
4. As indicated earlier, the suit came to be dismissed successively.

5. This second appeal is not admitted. This Court heard the learned counsel for the appellant.

6. The learned counsel for the appellant laid a strong emphasis in the judgment of this Court in ***T.Sivaperumal vs. S.Viswanathan and others*** [2014 (1) CTC 447] and submitted that the power of attorney executed by the first defendant is an irrevocable power of attorney inasmuch as the power of attorney was backed by consideration and hence, the Courts below ought to have held that the sale agreement executed by the power of attorney in favour of the defendant is valid enough and strong enough to unsettle the title of the plaintiff.

7. This Court was least impressed with the contentions of the learned counsel for the appellant. Here, this Court considers that the authority referred to above was on entirely different set of facts. That was the case, where the plaintiffs have executed a power of attorney and later it was cancelled and ignoring the same, the power of attorney sold the property. It was in these circumstances, the effect of cancellation of the power of attorney on the sale deed executed by the power of attorney came for consideration.

8. So far as the present case is concerned, the situation is vastly different. A mere execution of sale agreement by the power of attorney will not confer any title in the property. Therefore, when performance under an agreement is sought to be frustrated, the only remedy available to the purchaser under the sale agreement is to move a suit for specific performance or for damages etc. The existence of a sale agreement does not *ipso facto* take away the right of the owner of the property to transact the property. Therefore, when the first defendant executed a settlement deed in



favour of his wife under Ex.A2, dated 14.07.2006, the title to the same is vested in her and when the plaintiff has purchased the suit property under Ex.A3 dated 09.01.2009, the title to the property is vested in him.

9. In these circumstances, in fitness of things, the second defendant/ appellant herein ought to have approached the Court for specific performance and should have admitted to sustain his right to enforce Ex.B1, unregistered sale agreement. This he did not do. Today, it is terribly bared by limitation. In these circumstances, this Court does not find any merit in the submission of the appellant resisting his title to Plot No.129 layout.

10. This Court does not find any perversity in the approach of the Courts below. Accordingly, this second appeal is dismissed as devoid of merits confirming the judgment and decree dated 22.10.2019 passed in A.S.No.120 of 2017 on the file of the Additional District Court No.III, Tirunelveli reversing the judgment and decree dated 27.07.2017 passed in O.S.No.10 of 2010 on the file of the Additional Sub Court, Tirunelveli. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta/CM

Note: In view of the present lock-down owing to Covid-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District Court No.III,
Tirunelveli

2.The Additional Sub Court,
Tirunelveli.

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

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VB (01.10.2020) 3P 5C