



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD)No.656 of 2015

and M.P(MD)No.2 of 2015

WEB COPY

R.Chellathai : Appellant/Appellant/Plaintiff

Vs.

1.P.Ayyammal

2.R.Karuppasamy

3.R.Rajaperumal

: Respondents / Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C, against the Decree and Judgment made in A.S.No.72 of 2014 dated 12.06.2015 on the file of the Sub Court, Sankarankoil, Tirunelveli District confirming the Judgment and Decree made in O.S.No.315 of 2007, dated 08.09.2014 on the file of the Principal District Munsif Court, Sankarankovil.

For Appellant : Mr.I.Pinay Gash

For Respondents : Mr.S.Ramesh @ Ramiah

J U D G M E N T

The plaintiff, who has suffered defeat successively before the Courts below has approached this Court in this Second Appeal. The parties would be referred to by their rank before the trial Court.

2.The suit is laid for declaration of title over the suit property and for other ancillary reliefs. The case of the plaintiff is that;

- the suit property originally belonged to one Malayappan. On 05.03.2007, under Ext.A.1, Malayappan had granted General Power to a certain Arunachalam. On the strength of the said Power of Attorney, on 24.05.2007, Arunachalam executed a sale yadas in favour of his mother, who is the plaintiff herein. In 29.09.2007, Arunachalam executed a proper registered sale deed in favour of his mother. Based on the strength of this, Arunachalam's mother has laid the present suit.
- The suit is opposed by the defendants on the ground that on 28.09.2007, Malayappan himself had executed 3 separate sale deeds respectively in favour of defendants 1 to 3, which are respectively marked as Ext.B.1 to B.3. Certain rectification required to be made and Malayappan had executed Rectification Deed under Exts.B.4 to B.6 to each of the defendants. As

<https://hcservices.courts.gov.in/hcservices/> indicated, the trial Court dismissed the suit and the



same consequence followed when the plaintiff moved the first Appellate Court.

3.The appeal is not yet admitted and only notice was issued, pursuant to which, the respondents have entered appearance.

4.The learned counsel for the appellant strongly argued that Malayappan did not issue any notice cancelling the Power of Attorney and therefore, his right to execute the sale has to be considered as not available to him and the sale deeds under Exts.B1 to B3 followed by the Rectification Deeds under Exts.B.4 to B.6 cannot state to vest any title in the defendants.

5.The learned counsel submitted that firstly, the Power of Attorney was not backed by consideration and it is not a irrevocable patta. Secondly, possession of the suit property was not handed over to the Power of Attorney under the same.

6.The submissions of the learned counsel for the appellant appears to be founded on a misconception that once a Power of Attorney is executed, the principal will forthwith forfeit his right to deal with the property. In this context, the Judgment of this Court in ***T.Sivaperumal Vs. S.Viswanathan and others***[2014 (1) CTC 447], which the appellant relied on can be differentiated on facts. That was a case where the entire sale consideration was paid under the Power of Attorney and possession too was handed over to the Power of Attorney holder. Therefore, the ratio laid by that Authority in the context of the facts before the Court cannot be telescoped into this case.

7.In conclusion, this Court does not find any merit in this appeal and the same dismissed. Accordingly, the Decree and Judgment made in A.S.No.72 of 2014 dated 12.06.2015 on the file of the Sub Court, Sankarankoil, Tirunelveli District confirming the Decree and Judgment made in O.S.No.315 of 2007, dated 08.09.2014 on the file of the Principal District Munsif Court, Sankarankovil is upheld. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)



1.The Subordinate Judge, Sankarankoil,
Tirunelveli District.

2.The Principal District Munsif,
Sankarankovil.

S.A (MD) No. 656 of 2015
and M.P (MD) No. 2 of 2015
03.09.2020

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