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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.83 of 2021

B.Azagammal

... Appellant/Plaintiff

Vs.

1.M.Sridharan

2.Pramila

3.The Sub Registrar,
Sub Registrar Office,
21/8, Mark Lane,
Thiruvottriyur - 600 019.

... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule 41A of the Code of Civil Procedure against the Judgment and Decree dated 23.12.2020 in O.S.No.246 of 2018 on the file of the learned IV Additional District Judge, Ponneri, Thiruvallur.

For Appellant :Ms.R.Thenmozhi Shiva Perumal

For Respondents :Ms. Poornima for R1 and R2

R3- Served
-No appearance

JUDGMENT

The unsuccessful plaintiff is the appellant before this Court challenging the dismissal of a suit O.S.No.246 of 2018 by the learned IV Additional District Judge, Thiruvallur at Ponneri. The parties for the ease of understanding are referred to in the same array as in the suit.

2.The facts in brief which are necessary for disposing of the above Appeal Suit are as follows:



The subject matter of the suit is an extent of 1232 sq.ft. out of a total extent of 4026 sq.ft together with a cement sheet roofed house situate at No.41, Sokkammal Kuzatheru, Manali Village, within the specified boundaries. The description of the property would indicate that it is to the East of the remaining land and house of the plaintiff.

PLAINTIFF'S CASE:

3.It is the case of the plaintiff that the 1st defendant is her husband's younger brother and the 2nd defendant is the wife of the 1st defendant and the 3rd defendant is the Sub Registrar, Thiruvottiyur. The plaintiff's contention is that a larger extent of the suit property was purchased by her from one Govindarajulu and the sale was executed by her husband who was appointed as a Power Agent by the said Govindarajulu. The property was purchased by her under a Sale Deed dated 27.03.2002. After purchase, she had constructed a house in one ground and let out the remaining 1232 sq.ft. to tenants. The plaintiff would submit that she has been in possession and enjoyment of the entire extent as an absolute owner. While so, the 1st defendant who did not have a permanent job and was indebted to several persons had needed money. He started pestering the plaintiff to hand over the title deeds of the property so as to enable him to raise funds to settle this debts. The plaintiff would further submit that this was also since the 1st defendant wanted to stand in the local body election, for which he had filed a nomination form. As per the regulation, he had to clear all the debts and the police cases for his nomination to be accepted. Even though the plaintiff warned the 1st defendant not to stand in the election he turned a deaf ear to her request. The plaintiff would contend that 1st defendant thereafter started visiting the house of the plaintiff in the absence of her husband by buying flowers and sarees for the plaintiff and had requested the plaintiff to sign as a witness.

4.The plaintiff would submit that when she had approached the Bank for a loan for her daughter's wedding and had applied for Encumbrance Certificate. She came to know about the Power of Attorney and the subsequent Sale Deed dated 04.07.2021 executed by the plaintiff in favour of the 2nd defendant, namely, the 1st defendant's wife. The plaintiff would submit that the 1st defendant had taken advantage of the fact that she was an illiterate and did not know the nature and consequence of the



act. On coming to know about the same, the plaintiff cancelled the Power of Attorney vide Cancellation Deed dated 13.06.2017. Though the Power of Attorney has been cancelled the plaintiff's title was still in question. Therefore, the plaintiff has come forward with the following relief:

"(A) for a declaration declaring the Sale Deed executed by the 1st defendant in favour of the 2nd defendant on 04.07.2011 vide Document No.4937/2011 before the Sub Registrar Office, Thiruvottiyur for Rs.2,51,000/- measuring an extent of 1232 sq.ft. under coercion and undue influence is null and void and

(a) for permanent injunction restraining the defendant, his men, agents or any persons acting or any persons acting through or under not to execute the deed that may injure the rights of the plaintiff."

Written Statement of the defendants:

5. The defendants have filed a Written Statement inter alia denying the allegations raised by the plaintiff in her Plaint. The defendants would contend that the plaintiff had executed a General Power of Attorney in favour of the 1st defendant on 26.03.2010 registered as Doc.No.516/2010 on the file of the SRO, Thiruvottiyur in respect of 1232 sq.ft out of total extent of 4026 sq.ft. The 1st defendant has taken possession of the same and has been in possession of the said property. An year later on the strength of being the Power Agent, the 1st defendant had executed a Sale Deed dated 04.07.2011 registered as Doc.No.4937/2011 on the file of the SRO, Thiruvottiyur, in favour of the 2nd defendant. The plaintiff's husband had received a sum of Rs.2,00,000/- from the 1st defendant on 26.10.2009 by way of a Cheque towards sale consideration. From the date of purchase, the 2nd defendant is in possession and enjoyment of the suit property. The revenue records have also been mutated in her name. While so, the plaintiff had fraudulently executed a Mortgage Deed including the 2nd defendant's property in favour of the Indian Bank, Villivakkam. The 1st defendant complained to the Indian Bank, Villivakkam on 16.03.2017 as well as to Manali Police Station on 22.08.2017 against the above act since the property that has been sold to the 2nd defendant had been mortgaged by the plaintiff suppressing the sale. The plaintiff had filed a suit O.S.No.47 of 2017 for permanent injunction in respect of the entire extent of 4026 sq.ft. and when the 2nd defendant attempted to put up constructions, the plaintiff and her husband forcibly entered into the 2nd defendant's property along with rowdy elements and



threatened the defendants not to put up any kind of construction. The 2nd defendant wanted police protection to lay fence around the properties ad-measuring 1232 sq.ft. comprised in S.F.No.205/4. Though the complaint was given to the police they had not taken action against the plaintiff and her husband and directed them to move the Civil Court. Thereafter, the plaintiff had repaid the entire loan amount and cancelled two mortgages on 23.03.2017. The 1st defendant had filed a Writ Petition for a direction to the Inspector of Police, Manali Police Station to register the complaint. By order dated 13.10.2007, this Court had directed the 1st defendant to work out his remedy before the appropriate Forum since the dispute in question was purely Civil in nature. Therefore, they filed the suit O.S.No.20 of 2018 on the file of the learned District Munsif, Thiruvottiyur. These suits are pending for the trial.

6.The plaintiff had voluntarily given a General Power of Attorney to the 1st defendant on 26.03.2010, which she deemed fit to cancel after a period of 7 years. The General Power of Attorney has not been obtained either by coercion or undue influence and has been voluntarily executed by the plaintiff in favour of the 1st defendant. The plaintiff has filed the above suit only to grab the property of the 2nd defendant and the suit itself is vexatious one.

TRIAL COURT:

7.The learned IV Additional Judge, Ponneri, Thiruvallur, on a perusal of the pleadings on either side had framed the following issues:

“(1)Whether the 1st defendant had obtained the registered General Power of Attorney dated 26.03.2010 from the plaintiff under coercion and undue influence as alleged by the plaintiff?

(2)Whether the Sale Deed dated 04.07.2011 executed by the 1st defendant on behalf of the plaintiff in favour of the 2nd defendant is null and void and not binding on the plaintiff?

(3)Whether the plaintiff is entitled to the relief of permanent injunction against the defendant as prayed for?

(4)To what relief if any the plaintiff is entitled to?”

8.The parties had gone to trial on the above issues. The plaintiff had examined herself as PW1 and her husband Baskaran as PW2 and one Govindan as PW3. In support of her contentions, she had marked Ex.A.1 to Ex.A.17. On the side of the



defendants, the 1st defendant examined himself as DW1 and his brother Selvaganesan who had executed the Power of Attorney and the Sale Deed as a witness as DW2. To prove their contention, they had marked Ex.B.1 to Ex.B.15.

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9.The learned District Judge on consideration of the evidence on record both oral and documentary had come to the conclusion that the Power of Attorney had been voluntarily executed by the plaintiff in favour of the 1st defendant. The learned Judge has also observed that the 1st defendant had clearly deposed that he had given Rs.13 lakhs to the plaintiff's husband in her presence for obtaining Power of Attorney and the cheque has been honoured. Therefore, the learned Judge has come to the conclusion that the execution of Power of Attorney is voluntarily done and the plaintiff has come to the Court with the delay of nearly 7 years after its execution that too after the sale executed in favour of the 2nd defendant. The Court had also come to the conclusion that the property being a vacant site and since the title is in the name of the 2nd defendant, she was entitled to the injunction and consequently, the suit came to be dismissed. Challenging the same, the plaintiff is before this Court.

10.Ms.R.Thenmozhi Shiva Perumal, learned counsel for the plaintiff would primarily attack the Judgment on the ground that the learned District Judge has overlooked the fact that the Sale Deed is said to have been executed at the time when the property admittedly was mortgaged with the Indian Bank. The property was the subject matter of the mortgage when the Power of Attorney was executed and also when the Sale Deed is said to have been executed in favour of the 2nd defendant. She would also argue that if the appellant had paid a sum of Rs.11 lakhs as contended by him under Ex.B.2, there was no necessity to execute the Power of Attorney as the sale deed could have been directly executed in favour of the 2nd defendant. This cause suspicious with regard to the execution of the Sale Deed in favour of the 2nd defendant. She would draw the attention of this Court to the evidence of DW1 wherein he has admitted that the suit property is bearing Door No.3A in Ex.B.15 - Property Tax receipt, the Door Number showed as 5. She would submit that the Court below has been totally misdirected and consequently, the appeal has to be allowed and the Judgment and Decree of the Court below is liable to be set aside. She further contended that the defendants had not examined any independent witness to prove the power and the Sale Deed. They have examined DW2 who is the elder brother of the 1st defendant and the plaintiff's husband who is already enimically deposed towards the family of the



plaintiff on account of certain property issues. She would further contend that the Courts below have totally overlooked the fact that the plaintiff was an illiterate lady and the 1st defendant has used his relationship as brother-in-law to obtain Power of Attorney and thereafter, the sale in favour of his wife. She would submit that these factors have been totally overlooked by the Court below. She would also invite the attention of this Court to the certain portions of the deposition of DW1.

11.Per contra, Ms. Poornima, learned counsel appearing for the defendants would submit that the Power of Attorney had been executed in the year 2010 whereas it had been cancelled only in the year 2017 after the execution of the sale in favour of the 2nd defendant and thereafter, the suit had been filed in the year 2018. Till that date, no action had been taken by the plaintiff to cancel the document though the Sale had been as early as in the year 2010. This also assumes significance since the allegation is that the power was obtained by coercion and undue influence. That apart, the entire case had been pleaded in the Written Statement and the plaintiff had not come forward to rebut these statements by filing a reply. The allegations that the plaintiff is an illiterate woman had been demolished by the cross examination of both DW1 as well as PW2 who have admitted that the plaintiff studied up to X Std. He would further submit that the entire allegations regarding the mortgage in favour of the Bank has been raised only during the argument and does not find in any place in the Plaint.

12.PW2 during his cross examination had admitted the signature of the plaintiff not only in Ex.B.3 but also in Ex.B.4. He has also admitted to the execution of two documents by his brother as witness. She would further contend that PW2 has admitted that the subsequent land has been obtained in favour of the 1st defendant. Subsequently, PW2 has also conceded that they have not initiated any criminal action against the 1st defendant. She would further submit that originally, the Plaint had been filed showing the suit property as a vacant site and when the defendants had in the Written Statement contended that he has to put up an asbestos sheet house the plaintiff has come forward with the amendment to state that the suit scheduled property contained a building. The learned Judge has correctly come to the conclusion that the plaintiff is not entitled to a decree and the same has to be sustained by this Court. He would therefore praying for the dismissal of the appeal.



POINTS FOR CONSIDERATION:

13. From the above submissions, the following points for consideration arise in the above suit:-

(1) Whether the plaintiff has voluntarily executed Ex.B.2 - Power of Attorney or whether the same has been obtained by coercion and undue influence?

(2) Whether the Sale Deed executed by the 1st defendant as Power Agent of the plaintiff can be held to be valid and is binding on the plaintiff?

DISCUSSION:

14. A perusal of the Plaint would clearly demonstrate that the plaintiff has not come to the Court with a definite case. Although the learned counsel for the plaintiff would submit that the plaintiff was totally unaware about the contents of the documents that she had executed and got registered, a perusal of the Plaint would indicate otherwise. In Para 9 of the Plaint, the plaintiff has clearly and categorically submitted that the 1st defendant had been pestering her to hand over the title deeds of the properties so as to enable him to raise funds. In fact, the plaintiff would plead that the defendant who wanted to contest in the local body had informed her that he had to file a nomination form before which he had to clear all the debts and police case. Thereafter, the plaintiff would make the following Statement in Para 9 as follows:

"Even though the plaintiff warned the defendant not to stand for the election, yet it has been put in to deaf years and the defendant wants to contest in the election and since he wants money to meet out the election expenses, the defendant started visiting the house of the plaintiff in the absence of her husband and in his absence by buying flower, saree for the plaintiff by stating that she is the only other for him and took the plaintiff's son in his car to various restaurants and showed much affection and since he is doing real estate business, he requested the plaintiff stood as witness and by coercion and undue influence the plaintiff was taken."

15. The plaintiff does not even state as to the documents/parties for whom she was asked to stand as a witness for the 1st defendant. The plaintiff is absolutely silent with reference to the above fact. The plaintiff who pleads that she was an illiterate woman has been proved wrong and that she has come forward with the false statement since in her cross



examination as well as the cross examination of her husband it has been brought out that the plaintiff had studied up to 10th standard and therefore, she is capable of comprehending and understanding the document that she has been called upon to execute. In fact, a perusal of the signature of the plaintiff in her evidence as PW1, Plaint, etc., all of which has been affixed in the English language would clearly indicate she is proficient in the English language and therefore, her contentions that she is an illiterate has to be rejected. The Power of Attorney has been executed on 26.03.2010 whereas the cancellation of the power has been done in the year 2017, nearly seven years after the execution of the Power of Attorney. In the Plaint, the plaintiff has come forward with the contentions that she had come to know about the execution of the Power of Attorney and the Sale Deed, when she had applied for the Encumbrance Certificate from the Sub Registrar's office, Thiruvottriyur for the purpose of obtaining a loan from the Bank and that she had immediately taken steps to cancel the Mortgage Deed. However, the 2nd mortgage has been created by the plaintiff by depositing of title deeds on 03.05.2011 under a registered Document No.3232/2011 on the file of the Sub Registrar, Thiruvottriyur, whereas the Sale Deed in favour of the 2nd defendant has been executed only on 04.07.2011. Therefore, the entire contents of the Plaint appears to be the concocted one made with an intention to buttress the contention of the plaintiff that she was unaware of the execution of the Power of Attorney and the consequent Sale Deed and therefore, the conduct of the plaintiff appears to be questionable with reference to the contentions raised by her in the Plaint. The plaintiff has filed a Written Statement in O.S.No.20 of 2018 filed by the defendant on the file of the learned District Munsif, Thiruvottiyur. The said suit has been filed by the defendants herein for bare injunction restraining the plaintiff from interfering with their peaceful possession and enjoyment of the suit property. In the Written Statement filed therein, the plaintiff has admitted the execution of the Power of Attorney in favour of the 1st defendant but had only contended that the possession continues to be with her.

16.Further, the plaintiff has admitted her signature in Ex.B.4 which is an unregistered Sale Deed executed by her in favour of the 1st defendant, in which it is stated that a sum of Rs.11,00,000/- has been paid to her. The subject matter of the Sale was an extent of 1023 sq.ft. including the three compound wall, toilet and bathroom put up thereon. When the husband of the plaintiff as PW1 was cross examined regarding the payment of a sum of Rs.11 lakhs, he has not denied the same, on the



contrary, in his cross examination he would state as follows:

"...ரூ.11,00,000./ பெற்றுக்கொண்டு கிரயம் எழுதி கொடுத்துள்ளார். அதைப் பற்றி எனக்குத் தெரியாது."

Therefore, the contention of the defendants appears to be true that the plaintiff has agreed to sell the property to the defendants for which purpose a Power of Attorney had also been executed.

17.DW2, who is a witness to Ex.B.1 and Ex.B.2, in his Chief examination, has categorically stated that the plaintiff has signed in Ex.B.2 after receiving the money. He has not been cross examined regarding this to rebut the said Statement. That apart in his cross examination, the witness has clearly deposed that when Ex.B.1 was executed the husband of the 2nd defendant and son were also present at the Sub Registrar's Office. The learned counsel for the plaintiff would try to brush aside the evidence of DW2 by contending that he is an interested witness and also a family member. However, there is no evidence to show the enmity and therefore, his evidence cannot be ignored. On the contrary, it is quite vital to prove Ex.B.1 and Ex.B.2.

18.In the light of the above fact, it is amply clear that the plaintiff has executed Ex.B.1 fully comprehending the purpose for which she executed the General Power of Attorney. Therefore, the point for consideration No.1 is answered in favour of the defendants. Likewise, the point for consideration No.2 is also in favour of the defendants.

19.Consequently, the First Appeal stands dismissed and the Judgment and Decree of the learned IV Additional District Judge, Ponneri, Thiruvallur in O.S.No.246 of 2018 stands confirmed. However, there shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

mps
To

(1)The IV Additional District Judge,
Ponneri,
Thiruvallur.



(2) The Sub Registrar,
Sub Registrar Office,
21/8, Mark Lane,
Thiruvottriyur - 600 019.

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(3) The Section Officer,
VR Section,
High Court of Madras.

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