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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.934 of 2012

and

M.P.No.1 of 2012

1.Saroja
2.Mageswari
3.Revathy
4.R.Venkatesan
5.V.D.Gopalakrishnan

... Appellants/Respondents/Defendants

Vs.

Indirani

... Respondent/Appellant/Plaintiff

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree passed in A.S.No.60 of 2010, on the file of the Sub Court, Kancheepuram, dated 28.04.2011, reversing the Judgment and Decree passed in O.S.No.359 of 2006, on the file of the District Munsif Court, Kancheepuram, dated 17.06.2010.

For Appellants : Mr.J.Manoharan
For Respondent : Mr.T.Sathiya Murthy

JUDGMENT

The defeated defendants are the appellant herein.

2.This Second Appeal has been against the judgment and decree passed in A.S.No.60 of 2010, by the Sub Court, Kancheepuram, dated 28.04.2011, wherein, the learned Judge has reversed the judgment and decree passed in O.S.No.359 of 2006, by the District Munsif Court, Kancheepuram, dated 17.06.2010.

3.Brief facts of the case:

(a).The plaintiff/respondent has filed a suit in O.S.No.359 of 2006 to declare Ex.A3/Sale Deed executed by the fifth defendant/fifth respondent herein, dated 12.07.2006, in favour of the fourth defendant as null and void, not binding



upon the him and consequently injunction against the other defendants in respect of his share alone. The preliminary contention in the plaint is that seeking Ex.B1/general power of attorney, dated 14.06.2004, the plaintiff and the defendants 1, 2, 3 & 5 have executed a power of attorney in favour of the fifth defendant to make arrangements to sell the schedule mentioned property and to submit proper accounts to the plaintiff and others, but the was not carried on by the fifth defendant and hence, under Ex.A1/legal notice dated 16.11.2005, the plaintiffs have cancelled the power of attorney in favour of the fifth defendant in respect of entire property. Despite the cancellation of the power of attorney, the fifth defendant along with others have executed the sale deed under Ex.B3 and hence, the suit.

(b).The appellants/defendants have filed a written statement, inter alia contending that they have received the money of Rs.1,25,000/- and executed power of attorney under Ex.B1 and subsequently, the plaintiff/respondent herein has issued the legal notice on 16.11.2005 not to act in furtherance of the power of attorney given by her and do not revoke the power by a registered instrument and based upon Ex.A3/sale deed, he has also obtained Patta and he is in possession of the property.

(c).Before the Trial Court, on behalf of the plaintiff, she herself was examined as PW1 and Exs.A1 to A4 were marked; on behalf of the defendants DW1/the mother of the plaintiff and DW2/brother of the plaintiff, were examined and marked Exs.B1 & B2.

(d).Taking into consideration the facts and circumstances of the case, the Trial Court, by a judgment dated 17.06.2010, has dismissed the suit. Aggrieved over the same, the plaintiff has filed an appeal suit in A.S.No.60 of 2010 before the Sub Court, Kancheepuram. The learned Judge by a judgment dated 28.04.2011, has allowed the appeal and consequently the said suit in O.S.No.359 of 2006 was decreed. Hence the Second Appeal by the defendants.

4.The Second Appeal was admitted on 21.09.2012, on the following substantial questions of law:

"1.Whether the Lower Appellate Court has committed an error in granting a decree of permanent injunction not to alienate Items 1 and 3 of the suit properties without even restricting the same to the share of the plaintiff?



2. Whether the Power of Attorney granted in favour of the fifth defendant is irrevocable to say that the notice issued by the plaintiff revoking the same does have no effect?"

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5. Heard the learned counsels and perused the materials placed on record.

6. After perusing the records, it is seen that admittedly, the general power of attorney viz., fifth defendant has not entered into witness box, he has not subjected himself to the cross examination. Under Sections 201 and 202 of the Indian Contract Act, the general Power of Attorney can be revoked even by the notice, though a stand was taken by the defendant that Ex.B1/Power of Attorney is coupled with consideration on the receipt of Rs.25,000/- each and hence, it is projected as if, it is a power coupled with consideration.

7. Admittedly, the defendants have not filed any document evidencing the such payment to show the power is coupled with consideration so as to make it as irrevocable. In the absence of any clause in Ex.B1/Power of Attorney regarding irrevocable in nature, in view of Ex.A1/legal notice issued for cancellation of power of attorney in respect of her share, which was admittedly served under Ex.A2, the Lower Appellate Court has rightly come to the conclusion that Ex.B1/ power of attorney executed in favour of the fifth defendant by the plaintiff stands revoked to that extent and Ex.A3/sale deed is not binding upon him. With this in nature the Lower Appellate Court has rightly allowed the sale deed only to an extent so as to by the share of the plaintiff alone.

8(a). Though, several substantial of law were raised in the second appeal, I find that ground No.5 is wrong, which does not arise from evidence. The respondent/plaintiff never admitted the receipt of money and executed receipt for payment of money from the power agent/fifth defendant. On a perusal of the evidence of PW1, it is seen that the plaintiff denied the suggestion that she has received the money and execution of alleged receipt for payment of money. When the respondent herein/plaintiff has denied the receipt of any consideration for sale deed or for execution of general power of attorney, the ground No.5 is wrongly worded. It is for the appellants/defendants to show that the plaintiff has received money either for execution of power of attorney or before execution of the sale deed. Though, they claim they received Rs.25,000/- each, though they claim there was a receipt, though



they claim since it was unregistered and unstamped, they could not be filed, however, these excuses cannot save the plea.

8(b).The power of attorney was executed to all the properties of the suit schedule since the sale under Ex.A3/sale deed was only in respect of Item No.2 of the suit property and the same cannot be put against the plaintiff. Since the fifth defendant has effected the sale in clandestine manner, the plaintiff has chosen to cancel the power. Hence, the plaintiff has cancelled the power deed dated 14.06.2004 by way of legal notice under Ex.A1, stating that the power of attorney agent/fifth defendant cannot represent on behalf of the plaintiff and therefore, the Lower Appellate Court has rightly rejected the case of the defendants. Hence, the substantial question of law No.1 is answered in negation against the appellants/defendants, in view of Ex.A1/revocation of the power, which is not supported by consideration is valid in law. Consequently, the Judgment rendered by the Lower Appellate Court in A.S.No.60 of 2010, dated 28.04.2011, does not call for any interference.

9.Accordingly, this Second Appeal is dismissed. The judgment and decree passed in A.S.No.60 of 2010, by the Sub Court, Kancheepuram, dated 28.04.2011, by reversing the judgment and decree passed in O.S.No.359 of 2006, by the District Munsif Court, Kancheepuram, dated 17.06.2010, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,
The Sub Court,
Kancheepuram.

2.The District Munsif,
Kancheepuram.



Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Manoharan, Advocate SR.No.68929

+1cc to Mr.T.Sathiyamoorthy, Advocate SR.No.69150

S.A.No.934 of 2012
and M.P.No.1 of 2012

NRL(CO)
GN(08/02/2022)