

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.1854 of 2016

1.S.Periyasamy
2.P.Santhamani

..Petitioners

Vs.

1.R.Thangavel
2.K.Mohana
3.P.Kalimuthu

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 30.03.2016 made in O.S.C.FR.No.2627 of 2016 on the file of the Principal Additional District Judge, Tiruppur.

For Petitioners : Mr.G.Ethirajulu

For R1 : No appearance

For R2 & R3 : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 30.03.2016 made in O.S.C.FR.No.2627 of 2016 on the file of the Principal Additional District Judge, Tiruppur, thereby rejecting the plaint.

2. The petitioners are the plaintiffs and the respondents are the defendants in the suit. The petitioners filed a suit for declaration for the following reliefs :

(a) By declaring that the alleged sale deed dated 23.03.2015 in favour of 2nd defendant registered as document No.1409/2015 before the Sub-Registrar of Tiruppur Joint 2 is null and void, unenforceable, not acted upon, created by fraud and not binding the plaintiffs.

(b) By declaring that the alleged sale deed dated 24.03.2015 in favour of 3rd defendants registered as document No.1410/2015 before the Sub-Registrar of Tiruppur Joint 2 is null and void, unenforceable, not acted upon, created by fraud and not binding the plaintiffs.

(c) Granting an order of permanent injunction restraining the 2nd and 3rd defendants their men, agents, etc. from in any way and any manner either alienating or encumbering the suit properties to third parties till setting aside the sale deeds dated 23.03.2015 and 24.03.2015 as null and void or reconvening of the suit properties in favour of the plaintiffs by means of permanent injunction.

3. Accordingly, they calculated the value of the suit and paid a sum of Rs.1,72,697.60/- as Court fees under Section 25C and 25D of the Tamil Nadu Court Fees and Valuation Act. After the rejection of the plaint, the same

was represented by stating the following reasons :

“1. When the plaintiffs had applied for encumbrance certificate of the suit properties on 03.06.2015, then only they came to know about the alleged Two Sale Deed, then immediately on 05.06.2015, the plaintiffs have issued legal notice to the defendants No.2 and 3 also, but they refused to comply the same, and after that on 03.07.2015, the plaintiffs tried to register the cancel the power of attorney deed in the Sub-Registrar Office, Joint No.2, Tiruppur. The said cancel of power of attorney deed is filed herewith as plaint document no.16 . But the S.R.O of Joint No.2, Tiruppur had refused to register the same on 03.07.2015. Hence the plaintiffs have no other option to file this suit before this Honourable Court.

2. On 09.06.2015, when the defendant No.3 had received the legal notice issued by the plaintiffs through their counsel and on 16.06.2015 when the 3rd defendant issued reply notice to the plaintiffs and when the defendant No.2 and 3 did not comply the plaintiffs demand and on 23.03.2015, 24.03.2015 when the defendants No.2 and 3 had got the alleged two sale deed in favour of them and on when the defendants No.2 and 3 attempt to sell away the suit properties to 3rd parties, and on 18.03.2016 when the defendants tried to disturb the plaintiffs peaceful possession and enjoyment of the same

and all subsequent dates cause of auction arose against the defendant No.2 and 3. Hence the defendant No.2 and 3 are added as necessary parties in the suit.

3. Fly sheet attached.”

4. Even then the Trial Court rejected the plaint for the reason that the registered Power of Attorney dated 09.07.2012 has not been cancelled by way of registration and filing the suit this cancellation deed copy which is unregistered dated 03.07.2015 has been produced.

5. On a perusal of the plaint reveals that the petitioners borrowed a loan from the first defendant and for security purpose, the first defendant demanded the original deeds in respect of the suit properties. The first defendant also obtained signatures from the petitioners in blank papers and also revenue stamp affixed in the blank papers as a security for the loan. Thereafter, the petitioner came to understand that the first defendant had fabricated the power of attorney dated 09.07.2012, as if the petitioners executed the same and in turn the first defendant executed the sale deed in favour of the second and third defendants by way of the sale deeds dated 23.03.2015 and 24.03.2015. Therefore, the petitioners filed a suit for the above said reliefs against the defendants. While filing the suit, the Trial Court ought to have seen other

aspects with regard to cause of action and court fees etc., and not the merits of the suit.

6. As rightly pointed out by the learned counsel for the petitioners, once the sale deed executed on the strength of the power of attorney, the power of attorney documents goes and need not be challenged. However, if the Trial Court found that the petitioners necessarily ought to have challenged the power of attorney, the plaint can be very well returned for correction instead of rejection of plaint.

7. Therefore, the impugned order passed by the Trial Court in O.S.C.FR.No.2627 of 2016, dated 30.03.2016 on the file of the Principal Additional District Judge, Tiruppur, is hereby set aside and the Civil Revision Petition is allowed. The petitioners are directed to represent the plaint within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the Trial Court is directed to number the suit and dispose of the same on merits and in accordance with law. No costs.

25.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

lpp

**Note : Registry is directed to return the
plaint to the petitioners.**

G.K.ILANTHIRAIYAN.J,

lpp

To

The Principal Additional District Judge
Tiruppur.



CRP (NPD) No.1854 of 2016

WEB COPY

25.03.2021