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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.10.2021
Pronounced on : 20.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.437 of 2014

Pravin Ramachandran ...Appellant/Plaintiff

Vs.

1.Viswaraj Sankar

2.A.Chandran

3.H.Bhojraj

4.A.Antony Suresh ... Respondents/Defendants

Prayer: Appeal is filed under section 96 of the Code of Civil Procedure against the Judgement and Decree dated 25.03.2014 in O.S.No.17 of 2009 on the file of the District Judge, of the Nilgiris at Udagamandalam.

For Appellant : Mr.A.R.L.Sundaresan
Senior Counsel
For Mrs.A.L.Ganthimathi

For Respondents 3 & 4 : Mr.C.A.Diwakar

For Respondents 1 & 2 : No Appearance

JUDGEMENT

The unsuccessful plaintiff has filed the appeal challenging the dismissal of the suit O.S.No.17 of 2009 on the file of the District Court, Nilgiris at Udagamandalam.

2.Relief claimed:

"(a) For a declaration declaring the Sale Deed dated 04.12.2006 and registered as Document No.1477/2006 on the file of the Sub Registrar, Ootacamund and all other subsequent Sale Deed created



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basing on the Sale Deed dated 04.12.2006 as sham and nominal;

(b) For a declaration declaring that the plaintiff is the absolute owner of the suit schedule property;

© For a permanent injunction restraining the defendants, their men, agents, servants or anybody claiming through them from interfering with the peaceful possession and enjoyment of the suit schedule properties by the Plaintiff.

(d) For costs of the suit; and

(e) For such other further relief as the Hon'ble Court may deem fit to grant in the circumstances of the case."

3. Schedule of Properties:

Registration District	: The Nilgiris.
Registration Sub District	: Ootacamund
Town/Municipality	: Ootacamund
Name of the Property	: Hill Crest
R.S.Nos	: 638 & 640
<u>T.S.No.</u>	: K/5/23/2
Extent Owned	: 2.18 Acres
BOUNDARIES	
North & West	: Forest
South	: Land belonging to Thammannan
East	: Common Road, portion conveyed to K.S.Sivakumar and another and Municipal Foot Path.

4. Plaintiff's case:

(i) It is the case of the plaintiff that under a compromise decree in O.S.No.275 of 1996 dated 21.06.2000 of the Subordinate Court, Nilgiris, he became the absolute owner of an extent of 1.23 acres in R.S.No.639 and 1.40 acres in R.S.No.640 totaling an extent of 2 acres 63 cents. After the said decree, the properties were subdivided in the name of the plaintiff and renumbered as T.S.No.K/5/23/2. The plaintiff thereafter sold an extent of 45 cents to one K.Sivakumar and K.S.Narendra Kumar under a sale deed 31.08.2005, leaving an extent of 2.18 acres.

(ii) On 02.09.2005, the plaintiff had executed a registered General Power of Attorney in favour of the 1st defendant, authorising him to alienate the property.



(iii) It is the case of the plaintiff that after the execution of the Power of Attorney, he came to learn that the 1st defendant was giving out and claiming that he was the absolute owner of the property and therefore the plaintiff had proceeded to cancel the Power of Attorney dated 02.09.2005, under a cancellation of Power of Attorney dated 13.10.2005. The cancellation was communicated to the 1st defendant under a cover of letter dated 21.10.2005 along with the copy of the cancellation deed.

(iv) The plaintiff had not received the postal acknowledgment and a complaint was given on 27.12.2006 and the postal authorities had informed the plaintiff that the letter dated 21.10.2005 had been delivered to the 1st defendant on 25.10.2005.

(v) After the cancellation of the Power of Attorney, the plaintiff had received a letter dated 04.12.2006 from the 1st defendant informing him that the property had been sold to the 2nd defendant under a registered sale deed dated 04.12.2006. Immediately, on receipt of the said letter, the plaintiff had issued a letter dated 13.12.2006 informing the 1st defendant that the execution of the sale deed by the 1st defendant in favour of the 2nd defendant was without authority as the sale has been executed after the cancellation of the power, which was also known to the 1st defendant. The notice to the 1st defendant was returned "unserved". The 2nd defendant who received a notice had sent a reply stating totally false contention.

(vi) On 14.05.2007, the 2nd defendant had conveyed a portion of the property to the 3rd and 4th defendants measuring an extent of 0.52 acres and 0.66 acres respectively.

(vii) It is the case of the plaintiff that the sale executed in favour of the defendants 3 and 4 after the cancellation of the power deed was a clear act of fraud and defendants have colluded together to deprive the plaintiff off his property.

(viii) The plaintiff had also made a submission that without prejudice to his main contention, in the event of the Court coming to the conclusion that the cancellation of the power was not communicated to the 1st defendant, then the Court should examine as to whether the sale in favour of the 2nd defendant was sham and nominal one since the 2nd defendant was only a coolie who did not have necessary wherewithal to pay a huge sum of Rs.10,00,000/- to purchase the suit property. He would also contend that the 3rd and 4th defendants are not bonafide



purchasers for value. On the above basis the plaintiff has instituted the suit in the month of March 2009 for the relief set out supra.

5. Written statements filed by the defendants:

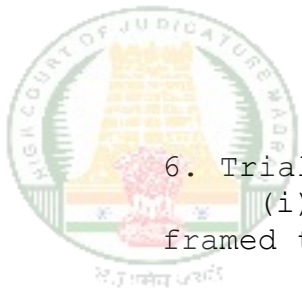
(i) The 1st defendant had filed a written statement inter alia contending that he has not received any communication from the plaintiff informing him about the cancellation of the Power of Attorney. The 1st defendant would submit that he had received a letter dated 24.10.2005 from the plaintiff enclosing paper cuttings but not the deed of cancellation of power. The sale deed executed in favour of the 2nd defendant was only in pursuance of the agreement of sale dated 25.09.2006 and on the authority given to him under the Power of Attorney.

(ii) An additional written statement had also been filed by the 1st defendant contending that the sale consideration received had been utilised to settle the amounts to the various persons, who the 1st defendant had introduced to the plaintiff regarding certain placements abroad.

(iii) The 2nd defendant had filed a written statement inter alia contending that the plaintiff had not informed the 1st defendant about the cancellation of the power and therefore the sale deed executed in favour of the 2nd defendant and thereafter in favour of the defendants 3 and 4 are valid and binding on the plaintiff.

(iv) The 2nd defendant had also filed an additional written statement inter alia denying the contention of the plaintiff that the 2nd defendant was coolie and did not possess necessary wherewithal for purchasing the suit schedule property and denying the contention of the plaintiff that no consideration had passed under Ex.A.8, sale deed.

(v) The 3rd and 4th defendants have also filed a written statement, in which they have also denied the contention of the plaintiff that the plaintiff had informed the 1st defendant about the cancellation of the power deed and further the cancellation has not been made before the Sub Registrar, Uthagamandalam. The 3rd defendant would also contend that when they had verified the encumbrance certificate they had found that there was no encumbrance in respect of the said property and they had purchased the same.



6. Trial Court:

(i) The District Court, Nilgiris at Udhagamandalam had framed the following issues:

“(i)Whether cancellation of power deed dated 2.09.2005 on 13.10.2005 is sham and nominal?

(ii)Whether the Sale deed dated 04.12.2005 executed based on the Power Deed dated 02.09.2005 is valid in law?

(iii)Whether the plaintiff is entitled for a declarations claimed?

(iv)Whether the plaintiff is entitled for a relief of permanent injunction?

(v)To what relief?”

(ii) An additional issue had been framed to consider the issue as to “Whether the cancellation deed dated 13.10.2005 was communicated to the 1st defendant and the 2nd defendant / 3rd defendant before the sale deeds dated 14.05.2007 was executed?”

(iii) The learned Judge had taken up the additional issue as the preliminary issue since the gravamen of the entire dispute rested on the fact as to whether the cancellation has been communicated to the 1st defendant as contemplated under Section 208 of the Indian Contract Act.

(iv)The learned Judge, on considering the evidence on record, particularly, Ex.A.5, Ex.A.6 and Ex.A.7 and Ex.A.9, came to the conclusion that there was no proof of the cancellation of power having been communicated to the 1st defendant. That apart, the learned Judge had also relied on the evidence of P.W.3, Sub Registrar, Udhagamandalam, who in very clear terms had stated that there was no entry in the Book-4 register maintained by them, showing that Ex.A.3, power had been canceled by the cancellation deed, Ex.A.4. The witness had also submitted that all the despatch registers are maintained for over 6 years and he had adduced evidence within the 5th year.

(v) The learned Judge, therefore proceeded to hold that the cancellation had not been communicated to the 1st defendant. Further, as regards the possession, the same was in the hands of the tenant. Ultimately, the learned Judge has proceeded to dismiss the suit. Challenging the same, the plaintiff / appellant is before this Court.



7. Points for consideration:

The points for consideration that arises in the above First Appeal are as follows:

(a) whether the plaintiff has communicated the cancellation of the Power of Attorney to the 1st defendant in the manner known to law?

(b) Whether the sale in favour of the 2nd defendant is a valid one and not sham and nominal document and consequently the sale in favour of defendants 3 and 4 would also be valid and not a sham and nominal one?

8. Submissions:

(i) Mr.A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of the plaintiff / appellant would submit that the plaintiff had communicated the cancellation of the Power of Attorney under their letter dated 21.10.2005 and had also enclosed the cancellation deed. This letter has been served on the 1st defendant on 25.10.2005, which is clearly evident from Ex.A.6, which is a letter issued by the Postal Department informing the plaintiff that the letter sent by him on 24.10.2005 has been delivered to the addressee, namely, the 1st defendant on 25.10.2005 at Tattamangalam, Palakkad.

(ii) The learned senior counsel would submit that after receiving the said letter and nearly a year and 2 months later, the 1st defendant has sold the property to the 2nd defendant and therefore the sale in favour of the 2nd defendant is invalid since the 1st defendant had alienated the property when he had no authority to do so.

(iii) The learned senior counsel would further submit that in order to get over the cancellation, the 1st defendant has proceeded to create sham and nominal documents by executing the sale deed Ex.A.8 in favour of the 2nd defendant and thereafter the 2nd defendant executed the sale deeds, Ex.A.12 and Ex.A.13 in favour of the 3rd and 4th defendants on 14.05.2007.

(iv) The learned senior counsel would further contend that the sale in favour of the 2nd defendant is definitely a collusive one and sham and nominal one since the 2nd defendant was only a coolie and he did not have the wherewithal to pay the huge consideration of Rs.10,00,000/-. In this regard he would draw the attention of the Court to the evidence of D.W.2, who would depose that he was not an income tax assessee and he did not possess a bank account in his native village at Palakkad. He would submit that these admissions were sufficient to show that sale consideration that has been shown in Ex.A.8 sale deed was a



nominal one and no sale consideration had actually passed. He would therefore submit that once the sale deed executed in favour of the 2nd defendant was held to be invalid, the subsequent sale deeds under Ex.A.12 and Ex.A.13 would also be invalid.

(v) The learned senior counsel would further submit that the cross examination of P.W.2 and P.W.3 would clearly show that the cancellation of the Power of Attorney has been done in accordance with law and cannot be found fault with. He would submit that the defendants 2 to 4 are all the henchmen of the 1st defendant set up to deprive the plaintiff off his property.

(vi) The learned senior counsel would further submit that the possession of the property continued to remain with the plaintiff and therefore the contention of the defendants that they are in possession of the suit property is totally false. He would submit that the learned District Judge has been totally misdirected and has dismissed the suit merely based on presumptions and conjectures.

(vii) Per contra, Mr.C.A.Diwakar, learned counsel appearing on behalf of the 3rd and 4th defendants would submit that the Power of Attorney, Ex.A.3 had been executed on 02.09.2005 at Ooty and was registered on the file of the Sub Registrar, Udthagamandalam. Nearly 1 ½ months later, the plaintiff appears to have canceled the very same deed. However, the cancellation deed has been registered at Coimbatore and not at Udthagamandalam.

(viii) The learned counsel would submit that the cancellation of the power had not been informed to the 1st defendant and therefore he had proceeded to execute the sale deed in favour of the 2nd defendant under Ex.A.8 dated 04.12.2006. On the very same day, on which the sale had been executed i.e., 04.12.2006, the 1st defendant had sent a communication to the plaintiff informing him that the 1st defendant had executed a sale deed in favour of the 2nd defendant as undertaken by him in the power and also informing the plaintiff that he has discharged his functions as the Power of Attorney of the plaintiff.

(ix) The learned counsel would submit that in the plaint, the plaintiff has stated that he had canceled the Power of Attorney on the ground that the defendant was giving out to third parties that he was the absolute owner of the suit schedule property, however, this fact does not find place in the



be binding on the plaintiff. He would further submit that after the issue of the legal notice under Ex.A.9, the plaintiff has unilaterally canceled Ex.A.3 under Ex.A.5 which is not binding on the 2nd defendant.

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(xiv) The learned counsel would also draw the attention of the Court to the time taken for initiating proceedings by the plaintiff. Though the plaintiff had come to know about the execution of the sale deed in favour of the 2nd defendant on 04.12.2006, the plaintiff has chosen to file the suit only in March 2009, that too after the sale of portion of the property in favour of the defendants 3 and 4. He would therefore submit that the plaintiff having failed to prove his case the learned Judge, Nilgiris at Udhagamandalam, has rightly dismissed the suit and the said Judgement and Decree should be confirmed by this Court.

9.Discussion:

(i) The entire case rests primarily on the issue as to whether the 1st defendant, the power agent of the plaintiff had been put on notice about the cancellation of the power given to him. It is an admitted case that the plaintiff had executed a Power of Attorney in favour of the 1st defendant under, Ex.A.3, on 02.09.2005 authorising him to do all acts including the sale of the property. This Power of Attorney deed was executed and registered at Udhagamandalam on the file of the Sub Registrar's Office, Udhagamandalam. Admittedly, the residence of the plaintiff is in Nilgiris in the address given in the plaint. While so, the power has been cancelled and the cancellation has been registered at Coimbatore. There is no explanation on the side of the plaintiff as to why the cancellation of the Power of Attorney under Ex.A.4 has been registered on the file of the Sub Registrar's Office, Coimbatore. Infact even in Ex.A.4, cancellation deed the address of the plaintiff is given as follows, "Manjoor Estate, Kundah (Post), Nilgiris - 643219". However, in his cross examination as P.W.1, the plaintiff would depose as follows:

"The cancellation of power was registered at Coimbatore since I lived in Coimbatore at the point of time"

This statement is false in the light of the address given in Ex.A.4, cancellation deed. At another place P.W.1 has deposed that since he was unable to come to Ooty the cancellation deed was registered at Coimbatore.

(ii) The plaintiff in his plaint has stated that he had been forced to cancel the Power of Attorney on account of the conduct of the 1st defendant. However, a reading of the recitals in



Ex.A.4 does not reflect the same. That apart, even the disputed letter, Ex.A.5 does not make any reference to this. The disputed letter is dated 21.10.2005. Ex.B.1 is a letter which has been admitted by both the plaintiff and the defendants and is dated 24.10.2005. Therefore, from the above, there appears to be two registered letters sent by the plaintiff to the 1st defendant i.e., letter dated 21.10.2005, Ex.A.5 and 24.10.2005, Ex.B.1. However, there is only one postal receipt that is available and postal receipt is found affixed on the envelop marked as Ex.B.4. The cover enclosing Ex.B.1, letter has been marked as Ex.B.3 and the postal receipt affixed on the letter is marked as Ex.B.4. The details on Ex.B.4 receipt is marked as Ex.B.2. It is these details which is reflected in Ex.A.6, letter from the Postal Department.

(iii) The tenor of the letter issued on 24.10.2005 appears to be very friendly as the plaintiff would call the 1st defendant by his first name, "Raj". However, a perusal of Ex.A.5 indicates that the plaintiff has adopted a formal form of addressing the 1st defendant. The 1st defendant has been addressed as "Mr.Viswaraj Sankar". This letter, i.e., Ex.A.5, contains instructions to the 1st defendant that the 1st defendant should return the original Power of Attorney at the earliest. If really Ex.A.5 enclosing the cancellation deed, had been forwarded to the 1st defendant and the 1st defendant had failed to return the original Power of Attorney, the plaintiff would have immediately taken steps to verify as to why the original power has not been returned by the 1st defendant.

(iv) The documents would reveal that first mention, about the cancellation of Ex.A.3, power was in the notice dated 13.12.2006, Ex.A.9 issued by the plaintiff. This notice has been issued only after the 1st defendant under Ex.A.7 had informed the plaintiff about the sale of the property to the 2nd defendant. Therefore, for nearly 1 year and 3 months, the plaintiff who claims to have forwarded a letter, Ex.A.5 to the 1st defendant has not bothered to verify as to whether the 1st defendant had acted upon the power as the original power had not been returned back to the plaintiff.

(v) Ex.B.1, letter is dated 24.10.2005. The postal receipt would show that the letter has been despatched on 24.10.2005. Though the letter, Ex.A.5 is dated 21.10.2005, there is no explanation on the side of the plaintiff as to why the letter had not been despatched on the very same day i.e., 21.10.2005. Ex.B.1 is dated 24.10.2005 and therefore it is clear that the registered letter which is despatched on 24.10.2005 was only



Ex.B.1. This fact is confirmed by examining Ex.B.4 receipt which is affixed on Ex.B.3 envelope. The receipt bears the No.6558. The envelope, Ex.B.3 like the letter, Ex.B.1, is in the hand of the plaintiff. A perusal of Ex.A.6 would prove that it is this letter i.e., Ex.B.1 that has been delivered to the 1st defendant on 25.10.2005. Ex.A.5 appears to have been created after Ex.A.7, which is evident from the fact that even under Ex.A.9 notice dated 13.10.2006 the plaintiff has not mentioned that the letter Ex.A.5 had been received by the 1st defendant on 25.10.2005.

(vi) In fact, the letter is rather silent about the receipt of the letter Ex.A.5 by the 1st defendant and the notice would only state that the plaintiff had informed the 1st defendant through letter dated 21.10.2005 about the deed of cancellation. If really the letter had been served on the plaintiff on 25.10.2005 it would have found mention in Ex.A.9, notice

(vii) Another factor which gives rise to a doubt in the mind of the Court with reference to the conduct of the plaintiff is that though Ex.A.5 letter is said to have been sent on 21.10.2005, it is seen that it is only in December 2006 that the plaintiff has addressed the postal authorities as to what had happened to the letter. The plaintiff has only filed the receipt of the postal department which says that the letter despatched on 24.10.2005 has been served on the 1st defendant. There is a delay in addressing the postal authorities particularly when the matter relates to the cancellation of Power of Attorney. The plaintiff appears to have manipulated the receipt issued for the letter Ex.B.1 as the receipt for Ex.A.5 letter.

(viii) All these documents put together, read along with the evidence of P.W.1 would confirm the fact that the letter, Ex.A.5 had not been communicated to the 1st defendant. In order for the revocation to take effect it has to be conveyed to the Power Agent, the 1st defendant as contemplated under Section 208 of the Indian Contract Act.

(ix) Section 208 of the Indian Contract Act reads as follows:

"208. When termination of agent's authority takes effect as to agent, and as to third persons. - The termination of the authority of an agent does not, so far as regards the agent, take effect before it



becomes known to him, or, so far as regards third persons, before it becomes known to them.”

Therefore it is clearly evident that unless the cancellation of deed of power has been communicated to the power agent as provided above the cancellation will not take effect.

(x) Therefore, the findings of the Court below that the plaintiff has not communicated the cancellation of power deed has to be upheld and the first point for consideration is answered against the plaintiff.

(xi) The learned senior counsel for the plaintiff had contended that there is no proof of passing of consideration and would rely on certain portion of the deposition of the 2nd defendant during his cross examination as D.W.2. However, on a reading of the entire evidence, it is seen that the 2nd defendant had stated that the suit property was the first property he had purchased and that he had obtained money in a partition in his family and that amount has been utilised for purchasing the suit property. This evidence has not been rebutted by the plaintiff. The plaintiff even after coming to know about Ex.A.8, sale deed has not questioned the 1st defendant about the sale consideration as deposed by him in his cross examination. If it is true that the plaintiff had come to know about the sale deed Ex.A.8 only when he received Ex.A.7, letter from the 1st defendant it would but be natural for the plaintiff to question the 1st defendant about the sale consideration received. Ex.A.9 letter dated 13.12.2006 is silent in this regard. This silence assumes significance since Ex.A.7 does not spell out the consideration for which the suit property had been sold. Further, in his cross examination the plaintiff would depose that he and the 1st defendant continue to remain on friendly terms. All this would only go to prove that the sale consideration has been used to settle claims as contended by the 1st defendant. Therefore, this Court proceeds to hold that Ex.A.8 sale deed is backed by consideration and is therefore a valid document and not a sham and nominal one as contended by the plaintiff. Therefore, the sale in favour of the defendants 3 and 4 are valid.

(xii) The plaintiff who had come to know about the sale in favour of the 2nd defendant as early as in the year 2006 has instituted the suit only in the year 2009 and there is absolutely no explanation for the delay especially when the plaintiff had issued Ex.A.9 notice on 13.12.2006 itself. Therefore, the second point for consideration is also answered against the plaintiff.



In fine, the First Appeal is dismissed confirming the order of the learned District Judge, Nilgiris at Udhagamandalam in O.S.No.17 of 2009. No costs.

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ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The District Judge,
Nilgiris at Udhagamandalam.

+1cc to Mr.M.C.A.Diwakar, Advocate Sr.53674
+1cc to M/s.A.L.Gandhimathi, Advocate Sr.53933

A.S.No.437 of 2014

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