IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.09.2021

Pronounced On: 20.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.457 of 2014

K. Gopalakrishnan ...Appellant/Plaintiff

Vs.

1.T. Rathinamala
2.T. Ravikumar
3.T. Senthilkumar

4.N. Nachimuthu,
(Power Agent of 1 to 3)

5.The Sub Registrar,
Peelamedu Sub Registrar Office,
Coimbatore.

...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule (1) of the Code of Civil Procedure against the Judgment and Decree dated 04.10.2013 passed in O.S.No.825 of 2008 on the file of the learned V Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.P. Sunil Kumar
for R1 to R3

Ms.Arachelvi Kavitha
for R4 - No appearance

R5 - Served - No appearance.

JUDGMENT

The unsuccessful plaintiff in a suit for Specific Performance is the appellant before this Court. The parties are referred to in the same litigative status as in the suit O.S.No.825 of 2008 on the file of the learned V Additional District and Sessions Judge, Coimbatore, whose Judgment is under challenge before this Court.

2.The facts in brief necessary to dispose of the above First Appeal are hereinbelow briefly set out:

PLAINTIFF CASE:

(a)The plaintiff would contend that the property subject matter of the suit and hereinafter referred to as the suit property, originally belonged to one Thangaraj. He had purchased a plot from the Tamil Nadu Electricity Employees Co-operative House Construction Society Limited under a registered Sale Deed dated 20.07.1979 and constructed a house upon it. To construct the house Thangaraj had obtained a loan from the TNEB. He was in absolute possession and enjoyment of the suit property till his death on 24.09.1988 after which the defendants 1 to 3 succeeded to his estate.

(b)After inheriting the suit property, the defendants 1 to 3 executed a registered Power of Attorney dated 05.06.2007 in favour of the 4th defendant. Thereafter, the 4th defendant as Power Agent has executed an Agreement of Sale dated 07.06.2007 in favour of the plaintiff registered on the file of the 5th respondent. As per the terms of the Agreement, the total sale consideration was Rs.10 lakhs of which a sum of Rs.50,000/- was paid as advance. The parties agreed that the balance sale price would be paid at the time of execution of the Sale Deed or on or before the stipulated time, i.e., 1 1/2 years from the date of Agreement.

(c)The plaintiff would submit that he was all along ready and willing to proceed with the Agreement being possessed of sufficient funds to pay the balance sale consideration and Stamp Duty for the Sale Deed as also meet the expenses for preparation and registration of the Sale Deed. He would contend that despite several requests to the 4th defendant to complete the transaction, the 4th defendant kept postponing the same. Thereafter, on 20.10.2008, the 4th defendant received the balance sale consideration of Rs.9,50,000/- and issued a receipt for the same. The plaintiff went ahead and purchased Stamp paper to the tune of Rs.89,000/- and prepared the Sale Deed. He would further contend that when the Sale Deed was presented for registration before the 5th defendant, he returned the same stating that the defendants 1 to 3 had cancelled the power executed in favour of the 4th defendant.

(d)When the plaintiff had enquired with the 4th defendant he had contended that he had not received any notice about the cancellation of the Deed. The plaintiff was therefore forced to conclude that the defendants 1 to 4 have colluded to dupe him. The plaintiff thereafter issued a registered Notice dated 20.10.2008 to the defendants demanding that they execute and register the Sale Deed in his favour.

(e)Meanwhile, on 22.10.2008, the plaintiff received a legal notice from the defendants 1 to 3 stating that they had cancelled the Power Deed executed in favour of the 4th defendant dated 23.07.2008. The plaintiff also came to learn that the 4th defendant in collusion with the defendants 1 to 3 were planning to alienate the suit property. Hence the suit.

3.WRITTEN STATEMENT OF THE 1ST DEFENDANT:

(a)The 1st defendant would submit that the Power of Attorney has been executed in favour of the 4th defendant only under the threat of one Raveendran who was introduced to the defendants 1 to 3 by one Mohan. They had approached Mohan as the 2nd defendant was desirous of arranging a business for the 3rd defendant. Raveenran had obtained signatures in some documents and blank cheques and thereafter, he showed his true colours. The 4th defendant is an employee of the said Raveendran. Apart from the defendants 1 to 3, Thangaraj had one more son called Sasikumar who is not a party to the Power of Attorney.

(b)The Sale Agreement is a collusion between the plaintiff who is also Raveendran's employee and Raveendran. No consideration has passed under the Agreement and the defendants 1 to 3 are totally in the dark about the said Agreement. When they had met their counsel he had advised them to cancel the power and accordingly, the power was cancelled on 23.07.2008 itself. The suit was therefore liable to be dismissed.

(4)WRITTEN STATEMENT OF THE 4TH DEFENDANT AND THE 5TH DEFENDANT:

(a)The 4th defendant adopted the case of the plaintiff and stated that he had not received notice of the cancellation of power . He would also state that he had paid the entire Sale consideration received from the plaintiff to the defendants 1 to 3.

(b)The 5th defendant filed his Written Statement stating that he had refused to register the Sale Deed as the Power of Attorney had been cancelled.

5.TRIAL COURT:

(a)The learned V Additional District and Sessions Judge, Coimbatore had framed the following issues:

"(1)Whether the Power of Attorney was executed under threat of one Raveendran?

(2)Whether the Sale Agreement was fraudulent and collusive one?"

(b)The parties had gone to trial and the plaintiff examined himself as PW1 and one Balaji as PW2. He had marked Ex.A.1 to Ex.A.14 to substantiate his case. On the side of the defendants, the defendants 1 and 2 had examined themselves as DW1 and DW2, respectively and Nachimuthu, the 4th defendant as DW3, Ex.B.1 to

Ex.B.10 were marked. One T.K. Raveendran was examined as CW1 and third party exhibits Ex.X.1 to Ex.X.3 were marked. The learned District Judge on examining the evidence came to the conclusion that the plaintiff and the defendants had colluded together to create the Power of Attorney and thereafter, the Agreement of Sale at the behest of Raveendran. The learned Judge had also held that even assuming the Agreement was a valid one, the plaintiff had not proved his readiness and willingness. Consequently, the suit was dismissed against which the instant appeal is filed.

6.POINT FOR CONSIDERATION:

After hearing the arguments of the Counsels on either side which is briefly set out hereunder, the following points arise for consideration:

(a)Whether the Power of Attorney Ex.A.6 was executed in the circumstances pleaded by the defendants 1 to 3?

(b)Whether the Agreement of Sale Ex.A.7 is the result of fraud and collusion between the plaintiff and the 4th defendant at the behest of Raveendran?

(c)If Ex.A.7 - Agreement of Sale is a valid one has the plaintiff proved his readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act?

7.SUBMISSIONS:

Mr.S.S.Swaminathan, learned counsel appearing on behalf of the plaintiff would contend that the defendants 1 to 3 had executed the Power of Attorney on 05.06.2007 and though the case is that the Power of Attorney had been executed under coercion by T.K.Raveendran they had not taken any steps to cancel the Power of Attorney till 23.07.2008 nearly a year after the execution of the Power of Attorney. This itself would show that the Power of Attorney executed is a genuine document and executed for selling the suit property. He would further submit that a mere perusal of evidence of DW2 and DW3 would clearly prove that the Power of Attorney has been executed voluntarily by the defendants 1 to 3. He would further submit that though the Power of Attorney had been cancelled on 23.07.2008 no communication of the same had been given to the Power of Attorney, the 4th defendant herein. He would therefore submit that till such time as the Power Agent was not put of notice about the cancellation of the power any action taken would be valid as per Section 208 of the Indian Contract Act. He would further submit that the entire case of the defendants 1 to 3 rests on the case that there has been a threat and the Power of Attorney was the outcome of such threat, however, this fact has not been proved by the defendants 1 to 3.

8.On the contrary, the plaintiff has not only proved the execution of the Power of Attorney but also the execution of the Agreement of Sale by examining the attesting witnesses. He would further submit that the 4th defendant had also received the entire amount and the evidence of DW3 would show that the money has also been handed over to the plaintiff. Therefore, the learned Judge has totally misdirected himself and as a consequence the suit has been dismissed. He would therefore pray for the decree being passed in favour of the plaintiff by setting aside the Judgment and Decree of the trial Court.

9.Mr.P.Sunil Kumar, learned counsel appearing for the defendants 1 to 3 would submit that the trial Court has extensively examined the evidence, both oral as well as documentary which would clearly go to show that the Power of Attorney and the Agreement of Sale have all been concocted and the 4th defendant and the plaintiff along with T.K.Raveendran has fabricated and brought into existence the above Power of Attorney and the Agreement of Sale. He would submit that a perusal of the Stamp papers of Ex.A.6 - Power of Attorney and Ex.A.7 - Agreement of Sale would clearly show that both the stamp papers had been purchased on the same day. He would further argue that there is no explanation as to why the Power of Attorney was executed on the file of the Joint II Sub Registrar's Office, Coimbatore between 11.00 and 12.00 hours and the Agreement of Sale has been executed on the file of the Sub Registrar's Office, Peelamedu between 1.00 and 2.00 hours. The fact that the Power of Attorney and the Agreement of Sale have been executed at two different Registration Offices would clearly show that the plaintiff did not want to alert the defendants 1 to 3 that an Agreement of Sale has been created in respect of the suit property. He would further submit that the witnesses who have signed these documents are also the employees of the said T.K.Raveendran along with the plaintiff and the 4th defendant. He would further draw the attention of this Court to the admission of PW2 who would state that the value of the property that has been shown in the Sale Deed is way too low than the market value.

10.Another fact that has been elucidated is the presence of Raveendran when the Agreement of Sale has been prepared in his son's office. The building in which the business was being run by the said Raveendran's son belonged to Raveendran's brother. The Power of Attorney has been obtained under threat is clearly evident from the fact that one of the children of Late Thangaraj, namely, Sasikumar has not been made as a party to the proceedings and he has not signed in the Power of Attorney. The plaintiff has fairly conceded that he had no knowledge about the said son. The Counsel would submit that the role of T.K.Raveendran is obvious from the fact that CW1 T.K.Raveendran in his Chief Examination had deposed that he did not know the 1st and 2nd defendants. This statement is contradicted in his cross examination wherein he has admitted knowledge of the same and the fact that the 2nd defendant is having certain business dealing with his son. Therefore, the witness is an unreliable person.

11.The learned counsel would further submit that the plaintiff did not have the wherewithal to purchase the property for a huge sum of Rs.10 lakhs as he was only an employee under the said T.K.Raveendran drawing a monthly salary of Rs.12,500/-. He would further submit that after the power was cancelled on 23.07.2008 Legal Notices were separately issued to both the plaintiff as well as the Power Agent informing them about the cancellation of the Power of Attorney and warning them not to execute any document which would create any third party rights. He would submit that after the receipt of this notice, the plaintiff has rushed into preparing Ex.A.8 - Sale Deed knowing fully well that the Power had been cancelled. He would further submit that the plaintiff has in his evidence clearly admitted that he did not have necessary wherewithal and that the time of 1 1/2 years had been made only to enable the plaintiff to raise funds and therefore, even assuming that the Agreement of Sale is valid one the plaintiff has not been ready and willing to proceed further with the Agreement. He would therefore submit that the learned District and Sessions Judge has rightly dismissed the suit and the appellant had not made out any case warranting any interference.

12.DISCUSSION:

The defendants 1 to 3 have contended that the Power of Attorney has been forcibly obtained from them by the said T.K.Raveendran in whose establishment the plaintiff, the 4th defendant and the alleged witnesses of Ex.A.4 are employed.

13.PW1 has admitted that one Mohan who was doing real estate business, had introduced the 2nd defendant to his employer, namely, T.K.Raveendran, for the purpose of starting a business for him. Therefore, the contention of the defendants with reference to the circumstances in which the Power of Attorney came to be executed appears plausible. In fact, PW1 in his evidence has stated as follows:

> "எங்கள் கடைக்கு மோகன் என்பவர் அடிக்கடி வருவதுண்டு. அவர் ரியல் எஸ்டேட் தொழிலும், விளம்பரம் செய்கின்ற தொழிலும் செய்கின்றார் என்று சொன்னால் சரிதான். அந்த மோகன் என்பவர் மூலமாகத்தான் 2ம் பிரதிவாதி 3ம் பிரதிவாதி தொழில் செய்ய வேண்டும் என்று ஏற்பாடு செய்து வந்தார்கள் என்றால் சரிதான் ."

14.Further, the witness has not denied the fact that the entire transaction relating to the execution of the Power of Attorney took place in the Textile Shop run by T.K.Raveendrawn. His deposition in this regard are as follows:

> "இந்த சம்பவம் அனைத்தும் ரவீந்திரனின் துணிக்கடையில் வைத்துதான் நடந்தது என்றும் அதேபோல் இவ்வாறு பொது அதிகார ஆவணம் எழுதிக்கொடுக்கும்படி கேட்டுக் கொண்டார் என்றால் அது எனக்குத் தெரியாது."

15.Therefore, the execution of the Power of Attorney as described by the defendants 1 to 3 in their Written Statement appears to be correct and the Point for Consideration 1 is answered in favour of the defendants 1 to 3.

16.The other allegation that has been made by the defendants 1 to 3 against the plaintiff is that Ex.A.7 -Agreement of Sale is a result of fraud and collusion between the plaintiff and the defendants at the behest of the said T.K.Raveendran. In order to examine the above, it is necessary to examine certain details of both Ex.A.6 - Power of Attorney dated 05.06.2008 and Ex.A.7 - Agreement of Sale dated 07.06.2007. Stamp papers for both the documents have been purchased on 04.06.2021 from the very same Stamp Vendor and they have consecutive numbers. The stamp paper bearing No.14629 has been used to prepare the Power of Attorney and the stamp paper bearing No.14630 has been used to prepare Ex.A.7 - Agreement of Sale. The stamp paper that has been used to create Ex.A.6 - Power of Attorney is purchased in the name of Nachimuthu whereas the stamp paper used for preparing the Agreement of Sale has been purchased in the name of Mr.Gopalakrishnan. The Power of Attorney Ex.A.6 itself has been executed only on 05.06.2007 but the Agreement of Sale Ex.A.7 is executed on 07.06.2007 though the stamp paper for both has been purchased on the same day.

17.PW1 in his evidence would submit that he had no knowledge about the owners of the suit property and had entered into the Agreement only on the basis of the Power of Attorney executed in favour of the 4th defendant. The plaintiff's evidence as PW1 in this regard is that he had entered into the Agreement of Sale within two days of the Power of Attorney. It is therefore surprising that even without the Power of Attorney having been executed the plaintiff has proceeded to purchase the stamp papers for preparing the Agreement of Sale. The Power of Attorney though executed on 05.06.2007 have been registered only on 07.06.2007 and that too at the Joint Sub Registrar - II, Coimbatore between 11.00 and 12.00 hours. The Agreement of Sale has also been executed on the very same day at a different Sub Registrars' Office at Peelamedu. It is not known as to why the plaintiff has not got the Agreement of Sale executed directly by the defendants 1 to 3 though they have come to the Sub Registrar's office on 07.06.2007 to register the Power. The only inference that can be drawn is that the plaintiff did not want the defendants 1 to 3 to know about the Agreement of Sale.

18.The witnesses to these documents are also employed under the said T.K.Raveendran as is the case of the plaintiff and the 4th defendant. PW2 who is one of the witnesses and the employee of the said T.K.Raveendran would in his evidence admit that the Agreement had been executed in the presence of T.K.Raveendran. In this regard, his evidence in cross is as follows:

"கம்ப்யூட்டர் சென்டரின் ரவீந்திரன் இருந்தார் என்றும் அவர் முன்பாகத்தான் இந்த ஒப்பந்தம் எழுதப்பட்டது என்றால் சரிதான்."

19.The witness has also admitted that the other person who has signed in the document one Chandrasekara Rao is also an employee of T.K.Raveendran. Therefore, the presence of T.K.Raveendran when the Agreement of Sale was being prepared and the fact that the Power of Attorney, the alleged purchaser and the witnesses are all his employees, only goes to show that the said T.K.Raveendrawn had an active part to play in creation of the documents.

20.Therefore, from the above factors, it is amply clear that the Agreement of Sale and the Power of Attorney has been orchestrated only by the said T.K.Raveendran and it is not a valid document. PW2's evidence regarding preparation of the Sale Agreement at the Computer Center run by T.K.Raveendran's brother and Raveendran's son would highlight the above factum. Therefore, it is very clear that the Power of Attorney has not been prepared on the free consent of the defendants 1 to 3. Therefore, the Point for Consideration 2 is also answered against the plaintiff.

21.An argument was also advanced that the plaintiff was not ready and willing to proceed with the Agreement. This fact has been admitted by PW1 himself who has stated that he had sought 1 1/2 years time in order to muster funds to pay the balance of Rs.9,50,000/-. This itself would clearly show that the plaintiff was not ready and willing on the date of the execution of the Agreement of Sale. Further, the plaintiff has not proved that he has paid the money to the defendants 1 to 3. The plaintiff as PW1 would submit that the balance amount of Rs.9,50,000/- was paid before the Sub Registrar, the said statement is not reflected in the Sale Deed and in case, the amounts were handed over at the Sub Rgistrar's Office, an entry to this effect would have definitely been made in the Sale Deed Ex.A.8. Therefore, the contention of the plaintiff appears to be false.

22.PW2 has also admitted that the reason for giving a long time to pay the balance sale consideration was only on account of the fact that the plaintiff was not having the requisite wherewithal. Taking into account the fact that the plaintiff is only earning Rs.17,000/- under the said T.K.Raveendran and the fact that the plaintiff has not produced any of his Bank Statement to prove his financial capacity clearly raises a doubt about the capacity of the plaintiff to pay such a large amount. Therefore, the plaintiff has not proved the passing of consideration and Point No.3 is also answered against the plaintiff.

Therefore, I do not find any reason to interfere with the well considered Judgment and Decree of the trial Court and consequently, the Appeal Suit stands dismissed with costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mps
To

1. The V Additional District and Sessions Judge,
   Coimbatore.

2. The Sub Registrar,
   Peelamedu Sub Registrar Office,
   Coimbatore.

+1cc to M/s.S.Swaminathan, Advocate Sr.53778

A.S.No.457 of 2014

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