IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.830 OF 2017

C.Saravanan ... Appellant/Appellant/Respondent/Plaintiff

Vs.

1.M/s.Ravi & Nina Enterprises
rep by its Partner
A.Ravikumar Reddy
No.9 River view road
Kottupuram,
Chennai-600 085

2.Ravichandra Reddy ... Respondents/Respondents/Petitioners/Defendants

PRAYER:

The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 07.12.2016 passed in A.S.No.40 of 2015 by the Additional Subordinate Judge, Chengalpattu confirming the decree and judgment dated 10.09.2015 passed in I.A.No.1209 of 2013 in O.S.No.76 of 2013 by the District Munsif, Chengalpattu.

For Appellant : Mr.Ajoy Kumar Gnanam

For Respondents : Mr.K.V.Babu

J U D G M E N T

Aggrieved over the rejection of plaint, the plaintiff has preferred the above Second Appeal.

2. The plaintiff filed a suit for declaration declaring the Power of Attorney registered as Doc.No.106 of 1994 and the pursuant sale deed registered as Doc.No.160 of 2006 dated

09.01.2006 as fraudulent sham and nominal and for a consequential mandatory injunction to return the documents and also for permanent injunction restraining the defendants from interfering with the possession.

3. According to the plaint, on receipt of a notice from Income Tax Department dated 09.03.2012, the plaintiff came to know the sale of family property during the year 2006. Since he was practising as an advocate, he could not collect the correct status of the property and after long trace he could understand that his family property situated at Thiruvidanthai village, Chengalpattu Taluk, Kanchipuram District in S.No.2/1C3 measuring about 4.75 acres was sold when he was an minor. Only when he applied for the certified copy of the Power of Attorney as well as the sale deed, he came to know of the fact. The Power of Attorney was allegedly executed in the year 1994, while he was a minor. Further, based on the alleged Power of Attorney, the sale deed was executed on 09.01.2006, after a period of 13 years after execution of the Power of Attorney. After getting the certified copy of the sale deed and Power of Attorney, he was shocked to know that the 2nd defendant had executed a sale deed in favour of the first defendant. The value mentioned in the document was also very low and false. The transaction is nothing but sham and nominal. The lower value quoted in the sale deed shows the malafide intention of cheating the Income Tax department and the plaintiff. The second defendant who was the Power of Attorney has not informed the details regarding the execution of the sale deed and also not submitted the true accounts either to the plaintiff's father or to him. The Power of Attorney itself is invalid and not enforceable and will not bind the plaintiff. The plaintiff was not having knowledge regarding execution of Power of Attorney either in the year 1994 or execution of the sale deed in the year 2006. The second defendant in the capacity of his agent never made any representation to the plaintiff on the date of execution of sale deed dated 09.01.2006. He neither maintained nor improved the suit property in any manner whatsoever. In the sale deed the second defendant shown his age as 26 years. As per which it is categorically admitted that the plaintiff was a minor at the time of execution of Power of Attorney. The defendants are well educated and very much aware of legal consequences of execution of sale deed after a lapse of 13 years. The plaintiff was not having any knowledge about the execution of Power of Attorney in favour of the second defendant. The defendants are liable for criminal prosecution for misusing the minor's interests of his ancestral property and therefore the sale deed executed by the second defendant in favour of the first defendant is liable to be set aside on the grounds of involvement of minor interest. The sale deed was undervalued and it is made with an intention to defraud the plaintiff and the Income Tax department. Further,

the second defendant has not followed the requirements as prescribed in Hindu Minority and Guardianship Act 1956. The plaintiff has not received any consideration either from the first or second defendant. Infact as per real Power of Attorney the second defendant has to act prudently without causing any loss either directly or indirectly. Taking advantage of the ignorance and polite nature of his father the first defendant has exploited and obtained wrongful gains and sold to the property to the first defendant after the lapse of 13 years. The second defendant has no right to alienate the property on his own will and accord and no consent was obtained from the principal to execute such power. The notice issued by him was replied evasively and they filed suit for permanent injunction and obtained exparte interim injunction. The second defendant as power agent has not acted prudently and caused loss to the plaintiff wherein the minor interest of the property was involved and therefore he filed the above suit.

4. The defendant filed an petition under Or.7 R.11(a) and 11 (d) C.P.C for rejection of the plaint. Trial Court after considering the oral and documentary evidence allowed the petition and rejected the plaint. Against which the plaintiff preferred an appeal and it was also dismissed. Aggrieved over the same, the present Second Appeal has been preferred.

5. Both the sides have made elaborate submissions.

6. From perusal of the plaint, it is noted that Birth certificate is plaint document No.1; Power of Attorney dated 09.02.1994 is document No.4 and Sale deed dated 09.01.2006 is plaint document No.5. The entire suit is based on the fact that the plaintiff was a minor at the time of execution of Power of Attorney and any transaction on the basis of the Power of Attorney is illegal. Perusal of the Power of Attorney dated 09.02.1994 reveals that the plaintiff as the fourth party representing himself as a principal. The said Power of Attorney was executed in favour of the second defendant herein at the office of Sub-Registrar. It is not mentioned that he was a minor at the time of execution of Power of Attorney but it was signed by the plaintiff before the Registrar, which means that the declaration was given before the Registrar to register the Power of Attorney that the plaintiff is a major. The birth certificate which is plaint document No.1 reveals the date of birth of the plaintiff was 18.10.1976. As per the certificate of birth the plaintiff has completed 17 years 3 months and 19 days and he was running 18 years. Therefore, it is inferred that a declaration was given before the Registrar as if he attained full age of 18 years though he has not completed and the Power of Attorney was registered. Now that it is required to be seen that whether the plaintiff had knowledge of consequences of appointing his Power

of Attorney or not.

7. In the plaint a specific averment is made that the Power of Attorney was responsible for false declaration of age. Such a contention cannot be accepted. Further averment claims the notice issued by the Income Tax department dated 09.03.2012 is the date of knowledge about Power of Attorney which gave rise to cause of action to file the suit. However, the averments made in para 6 is contradictory to the very statement. In para 6 the plaintiff would aver that the second defendant as the Power of Attorney failed to inform the plaintiff of the execution of the sale deed and also not submitted the true accounts either to the plaintiff's father or to him. If this averment is taken, it gives an impression that he had knowledge over the duties and responsibilities of a Power of Attorney and that the second defendant as a Power of Attorney had failed to submit true accounts to his father or to him. In that event the Power of Attorney should be recognised as a valid document. The further averments at para 9 would go to show that the second defendant in the capacity of his agent executed the sale deed and never informed the plaintiff of the sale on the day of execution. Such an averment categorically recognises the second defendant as his agent and that he has a duty informing the actions taken on his behalf as his principal. It is further averred that the Power of Attorney has not maintained or improved the suit property in any manner. This averment expects the second defendant of his duties to maintain the proeperty and to make improvements over the same. Therefore, the averment that he did not have any knowledge about the Power of Attorney till he received the notice dated 09.032012 is false and it is pleaded only for the purpose of creating an giving a illusory cause of action to maintain the suit and to escape from law of limitation.

8. The further averments that the plaintiff had not received any consideration in any manner whatsoever either from the first or second defendant and that the second defendant had to act prudently without causing loss either directly or indirectly clearly proves that the grievance of the plaintiff is not on the valid execution of Power of Attorney, but on not receiving the sale consideration at the time of registration of the sale. It is expected that Power of Attorney shall pass on the consideration and keep the principal without any loss. If that is the case, it goes to show that the plaintiff had definite knowledge about the Power of Attorney. The very same averments were repeated in Para 21, which reads as under:

> " 21. The plaintiff states that the second defendant as Power of Agent has not acted prudently and in the best interest of the plaintiff and had acted in a reckless manner to bring about total loss

of the property to this principals, with the minor interest on the property involved and caused prejudice to the plaintiff herein.

9. It gives an impression that the plaintiff's remedy lies elsewhere. Instead of filing a suit for damages, he preferred a suit for declaration declaring the registered Power of Attorney and sale deed as illegal on the illusory cause of action.

10. Art.59 and 60(a) of Limitation Act, 1963 reads as under:

> "59. Description of Suit Period of Limitation Time from which period begins to run To cancel or set aside an instrument or decree or for the recession of a control Three years When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
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> 60. To set aside a transfer of property made by the guardian of a ward
>
> (a) by the ward, who has attained majority, three years from the date on which the ward attains majority."

11. The Trial Court has found that the suit was filed by the plaintiff at the age of 36 years. The suit was not filed to set aside the document within a period of three years of attaining majority. The plaintiff has conveniently had taken shelter under the date of knowledge. But the plaint averments clearly prove that the plaintiff had knowledge about the execution of Power of Attorney in the year 1994, when he was 17 years 3 months. He should have filed the suit within 3 years i.e latest by 1998 but he filed the suit only in the year 2013 i.e after a lapse of 15 years, which is hopelessly barred by limitation. Further, the sale deed was executed in the year 2006 and it was challenged only after a period of 7 years, which is also barred by limitation. First Appellate Court in terms of Art. 59 and 60 of Limitation Act held that a minor should challenge the document within three years from the date of attaining majority, but the document was challenged after a period of 19 years. Therefore, dismissed the suit holding that the protection under law as a minor would not apply to the plaintiff and the cause of action claimed by the plaintiff on the basis of date of knowledge was also false.

12. I do not find any discrepancy in the above findings and the plaint averments clearly goes to show that the plaintiff declared himself as 18 years old at the time of execution of

Power of Attorney and he cannot put the blame on the second defendant. Secondly, the plaintiff claims true and correct accounts from the second defendant and information and the duty of the second defendant as power of Attorney to inform him at the time of sale clearly shows that he was aware of the Power of Attorney from the beginning. Even assuming that he was under the shade of his parents and dependent upon them and he could not challenge the action of his father, he should have filed the suit within three years after attaining the age of majority. Once the document is not challenged within a period of three after attaining the age of majority it is is barred in view of Art.59 and 60(a) of the Limitation Act, 1963.

13. Secondly, there is no cause of action against the first defendant. First defendant has purchased the property for valid consideration in the year 2006. He should be deemed as a bonafide purchaser. There is no reason alleged against the first defendant. Even assuming that the second defendant has acted fraudulently, the sale remains valid as long as the Power of Attorney is in force on the date of execution of sale deed. The first defendant cannot be expected to understand that Power of Attorney is acting against the interest of the principle. There is no averment in this regard. Absolutely, there is no cause of action to maintain the suit against the first defendant. Without any cause of action, the sale deed executed in favour of the first defendant cannot be set aside.

14. Learned counsel appearing for the appellant would rely on the judgment of the Hon'ble Supreme Court in Sopan Sukhdeo Sable & Ors vs. Assistant Charity Commissioner & Ors, Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005 7 SCC 510 and order of this Court in in C.R.P(.PD) dated 27.11.2014. For the proposition that the averments made in the plaint are germaine for consideration of petition under Or.VII R.11 A, CPC whereas the Court below relied on the extraneous document marked by the defendant and therefore the order tainted with illegalities and liable to be set aside.

15. Learned counsel appearing for the respondents would rely on the judgment of Hon'ble Supreme Court in Prem Singh and Ors vs. Birbal and Ors, AIR 2006 SC 3608. The relevant portion is extracted as under:

> “6. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person

> for instituting a suit for possession of any property, his right to such property shall be extinguished. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.
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> ......
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> 13.There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.

16. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court. In the instant case, the plaint averments on the face of it creates an illusory cause of action on the basis of date of knowledge to the notice caused by the Income Tax department. Secondly there is no cause of action against the first defendant to maintain the suit or to set aside the sale deed made in his favour. Thirdly, the suit is absolutely barred by limitation as held by the Hon'ble Supreme Court in Prem Singh' case which reads as under:

13.There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.

The findings of the Courts below are based on valid reasons and it need not be interfered. I do not find any question of law arising out of the facts stated herein. Thus the Second Appeal does not deserve admission and accordingly dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Subordinate Judge, Chengalpattu

2.The District Munsif, Chengalpattu.

+1cc to Mr.Ajoy Kumar Gnanam, Advocate, S.R.No.67415
+1cc to Mr.K.V.Babu, Advocate, S.R.No.67014

S.A.No.830 of 2017

JP II(CO)
PM/06/04/2022