



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 20.12.2021

CORAM

WEB COPY

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

SA(MD)No.751 of 2021 &
CMP(MD)No.10069 of 2021

1.R.Muthupetchi

2.S.Ravi

... Appellants/ Appellants/

Defendants

vs.

R.Lakshmi (died)

K.R.Ramasamy (died)

1.R.Gopalan

2.R.Parthasarathy

3.R.Vijaya

4.R.Radha

5.R.Mythily

6.R.Rengarajan

7.R.Govindan

...Respondents

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the Judgment and decree dated 09.04.2021 in AS.No.50/2020 on the file of the Subordinate Court, Thirumangalam confirming the Judgment and decree dated 09.01.2018 in OS.No.254/2010 on the file of the District Munsif Court, Thirumangalam and allow the present Second Appeal.

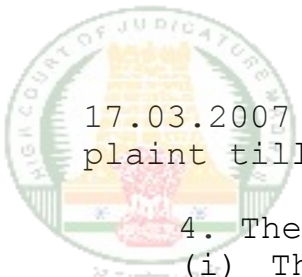
For Appellant : Mr.S.Loganathan

J U D G M E N T

This Second Appeal is filed to set aside the Judgment and decree dated 09.04.2021 in AS.No.50/2020 on the file of the Subordinate Court, Thirumangalam confirming the Judgment and decree dated 09.01.2018 in OS.No.254/2010 on the file of the District Munsif Court, Thirumangalam.

2. For the sake of convenience, the parties are referred as per their ranks before the trial Court.

3. The plaintiffs have instituted a suit in O.S.No.254/2010 on the file of the District Munsif Court, Thirumangalam seeking for a direction to the defendants 1 and 2 to surrender the possession of the property to them, to pay past damages of Rs.60,000/- from



17.03.2007 to 17.03.2010 and to pay future damages from the date of plaint till the date of handing over possession.

4. The case of the plaintiffs is as under:-

(i) The suit properties originally and ancestrally belong to one Rama Iyengar, who is the grandfather of the plaintiffs 2 to 6. After the demise of Rama Iyengar, the plaintiffs 2 to 6 and their father K.R.Renga Iyengar inherited the suit properties. The patta of the suit properties was transferred in the name of K.R.Renga Iyengar.

(ii) As per the Hindu Succession Act, the plaintiffs 2 to 6 each received undivided 1/6th share of the suit properties and their father got 1/6th undivided share of the suit properties. K.R.Renga Iyengar executed a general Power of Attorney in favour of the second defendant on 28.09.1998 vide Document No.328/1998, with regard to item 3 of the suit properties situate in S.No.145/9 measuring an extent of 1 acre 4 cents (0-42-0 ares) and S.No.47/1 measuring an extent of 10 cents (0-40-0 ares). K.R.Renga Iyengar died on 12.05.2006 leaving the plaintiffs 1 to 6 as his legal heirs.

(iii) The plaintiffs decided to sell the 1st item of the suit properties situate in S.No.42/5 measuring an extent of 2 acres 17 cents to the third party. At that time, the plaintiffs came to know that the second defendant, Power Agent of K.R.Renga Iyengar illegally sold the 1st item to the first defendant, who is the wife of the second defendant, via registered sale deed dated 15.12.2006 bearing Document No.5588/2006 for sale consideration of Rs.56,000/-. Similarly, the second defendant illegally sold the items 2 and 3 of the suit properties to the first defendant via registered sale deed dated 08.12.2006 bearing Document No.5452/2006 in the capacity of Power Agent of K.R.Renga Iyengar. The law is very clear that the Power of Attorney can be operated only during the life time of principal with regard to the properties authorized by the principal. The second defendant without any legal right created registered sale deeds on 15.12.2006 and 08.12.2006 in favour of the first defendant / his wife. The suit items 1 and 2 are not included in the Power of Attorney dated 28.09.1998 and therefore, the Power of Attorney holder has no iota of right to alienate those items in favour of the first defendant. After the demise of K.R.Renga Iyengar, the second defendant has no right to deal with his properties in any manner. The deceased K.R.Renga Iyengar has no independent right over the suit properties.

(iv) On the basis of erroneous sale deeds and on false representations, the first defendant got transfer of patta in her name. The first defendant is in illegal possession of the suit properties and enjoying the income thereon. The suit properties will fetch not less than Rs.20,000/- per annum and the first defendant has to pay damages for the illegal use of the land for



liable to pay future damages to the plaintiffs at the rate of Rs.20,000/- per annum from the date of plaint till the date of delivery of possession.

5. In the suit, the defendants 1 and 2 filed a written statement and the brief facts are as follows.

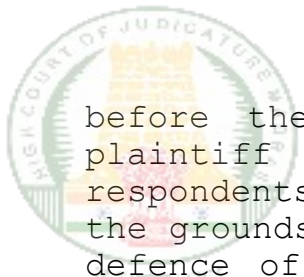
(i) The genealogy mentioned by the plaintiffs is wrong and it has to be proved by the plaintiffs. K.R.Renga Iyengar is the owner of the suit property. The plaintiffs are not entitled to get share in the suit properties, since K.R.Renga Iyengar relinquished his right through a registered general power deed dated 28.09.1998 in favour of the second defendant, with regard to the suit properties. The plaintiffs had wrongly stated that the general power deed is only with regard to the third item of the suit properties. The fact that K.R.Renga Iyengar died on 12.05.2006 leaving behind the plaintiffs as his only legal heirs, is absolutely false. The date of death and the subsequent records with regard to death and legal heir certificate are all fabricated documents. The averment of the plaintiffs that the second defendant illegally sold the suit properties in favour of the first defendant through the registered sale deeds dated 08.12.2006 and 15.12.2006, is false. As a *bonafide* purchaser, the second defendant has got right to transfer the suit properties in favour of his wife, the first defendant.

(ii) During the life time of K.R.Renga Iyengar, as per Section 54 of Transfer of Property Act, sale has been effected in favour of the second defendant. On that basis, the subsequent sales have been effected. Hence, both sale deeds dated 08.12.2006 and 15.12.2006 are genuine documents. All the three items of the suit properties were mentioned in the Power of Attorney executed by K.R.Renga Iyengar on 28.09.1998. The defendants 1 and 2 have mortgaged the above sale deeds and obtained loan from the third defendant on 23.10.2007. Only on the basis of valid and genuine documents, the third defendant granted loan in favour of the first defendant. The cause of action to file the suit is vexatious.

6. Before the Trial Court, on the side of the plaintiffs, PW1 was examined and Exs.A1 to A12 were marked. On the side of the defendants, DW1 was examined and Exs.B1 and B2 were marked.

7. On the basis of the rival pleadings on either side, the Trial Court has framed necessary issues and after evaluating both oral and documentary evidences, had come to a conclusion that the defendants 1 and 2 are liable to surrender the possession of the suit properties to the plaintiffs and decreed the suit partially in favour of the plaintiffs. The trial Court had also come to a conclusion that the defendants 1 and 2 are not liable to pay Rs.60,000/- to the plaintiffs and partially dismissed the suit.

8. Aggrieved by the Judgment and decree passed by the Trial Court, the defendants 1 and 2 filed an appeal in AS.No.50/2020



before the Subordinate Court, Thirumangalam. Since the second plaintiff died, his legal heirs were brought on record as respondents 7 to 9 in the Appeal Suit. The Appeal Suit was filed on the grounds that the Trial Court without proper consideration of the defence of the defendants 1 and 2, had come to a conclusion that after the death of power holder the sale has been effected by the second defendant. During the life time of K.R.Renga Iyengar, as per Section 54 of Transfer of Property Act, the sale has been effected and hence both the sale deeds dated 08.12.2006 and 15.12.2006 are valid before law. The Appellate Court after hearing both sides and upon reappraising the evidences available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the Trial Court.

9. Challenging the concurrent Judgments and decrees passed by the Courts below, the present second appeal has been filed raising the following substantial questions of law:-

"(a) Whether the Courts below are legally right in decreeing the suit without setting aside the sale deeds dated 08.12.2006 and 15.12.2006 executed by the second appellant in favour of the first appellant?"

(b) Whether the Courts below are legally right in decreeing the suit when the plaintiffs have not proved the genuineness of the death certificate for the deceased K.R.Renga Iyengar dated 12.05.2006?"

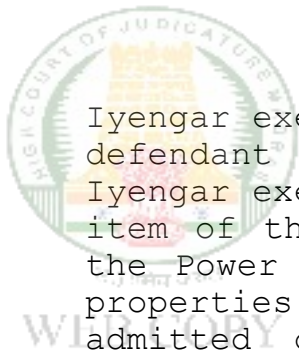
(c) Whether the Courts below have legally and property appreciated the oral and documentary evidence adduced by the parties in the proceedings?"

10. Heard the learned counsel appearing for the appellants / defendants 1 and 2 and perused the materials available on record.

11. The learned counsel for the appellant / defendants 1 and 2 submitted that the plaintiffs have failed to prove the genuineness of the Death Certificate of K.R.Renga Iyengar issued by Andhra Pradesh Government, marked as Ex.A2. At the time of execution of power deed, possession was handed over to the second defendant and being a *bonafide* purchaser, the second defendant has got transferable right over the suit properties. Therefore, the sale deeds dated 08.12.2006 and 15.12.2006 executed as per Section 54 of the Transfer of Property Act are legally valid documents. Hence, the concurrent Judgments of the Courts below in decreeing the suit partially is unsustainable and prayed for allowing the appeal.

12. The suit properties are ancestral properties belonging to the plaintiffs 2 to 6 and their father K.R.Renga Iyengar. K.R.Renga

<https://hcservices.ecourts.gov.in/hcservices/>



Iyengar executed a general Power of Attorney in favour of the second defendant on 28.09.1998. The plaintiffs claim that K.R.Renga Iyengar executed the Power of Attorney only with regard to the third item of the suit properties and the defendants 1 and 2 claim that the Power of Attorney was executed with regard to the entire suit properties. The second defendant, who was examined as DW1, has admitted during his cross examination that only the property comprised in S.No.145/9, measuring an extent of 45 ares, which is the third item of the suit properties, is mentioned in the general Power of Attorney executed by K.R.Renga Iyengar, marked as Ex.A8.

13. According to the plaintiffs, K.R.Renga Iyengar died on 12.05.2006 and to substantiate the same, they have adduced Death Certificate of K.R.Renga Iyengar issued by Andhra Pradesh Government, marked as Ex.A2. Even though the defendants 1 and 2, who are the appellants herein deny Ex.A2, they have not adduced any contra evidence to prove the date of death of K.R.Renga Iyengar. In the absence of any material evidence, the defendants 1 and 2 have failed to disprove the Death Certificate issued by the competent Authority. The Appellate Court has also gone into this aspect and rightly concluded that the Death Certificate, Ex.A2 can be relied upon to fix the date of death of K.R.Renga Iyengar.

14. The second defendant had sold the suit properties to the first defendant for a valuable consideration vide sale deeds dated 08.12.2006 and 15.12.2006. However, after the demise of the principal, the Power Agent has no right to alienate the property. The power executed by the principal via Power of Attorney gets terminated once the principal dies. Therefore, the second defendant, who is the Power Agent in this case, cannot have any right over the third item of the suit properties, after the death of K.R.Renga Iyengar on 12.05.2006. Though, in the appeal grounds, it is averred that as a *bonafide* purchaser, the second defendant had sold the properties to the first defendant, no evidence has been adduced by the defendants 1 and 2 to prove the fact that the second defendant purchased the property from K.R.Renga Iyengar, when he was alive. In the absence of any substantiative evidence, the bald statement that the second defendant has got transferable right with regard to the suit properties cannot be accepted. Clearly, the defendants 1 and 2 have failed to prove their case by adducing material evidence. Accordingly, the sale deeds dated 08.12.2006 and 15.12.2006 are not acceptable and invalid in the eye of law and they will not confer any title over the suit properties in favour of the first defendant. The Trial Court as well as the Appellate Court after proper appreciation of oral and documentary evidences on record, held that the first and second defendants have to surrender the possession of the suit properties to the plaintiffs, free of all encumbrances.

15. For the reasons stated above, this Court finds no reason to interfere with the well reasoned Judgments of the Courts below and



therefore, no substantial question of law arises for consideration in this appeal. Accordingly, the Second Appeal is hereby dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mbi

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Subordinate Court, Thirumangalam
2. The District Munsif Court, Thirumangalam
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.S.LOGANATHAN, Advocate (SR-39681[F] dated 21/12/2021)
SA(MD)No.751 of 2021
20.12.2021

RD(03.02.2022) 6P 6C