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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 07.06.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

SECOND APPEAL No.187 of 2007

D.F.Selvaraja ..Appellant / 1st defendant/1st respondent

Vs

1.Rajammal
2.Ramamoorthy
3.Veeramuthu (died)
4.Kanagavalli (died)
5.Kanniammal (died)

.. Respondents 1 to 5/Plaintiffs/Appellants

6.The Special Tahsildar
(Land Acquisition)
Tamil Nadu Housing Board
Nandanam, Chennai-600 035

..Respondent No.6/2nd Defendant

7.Gomathi
8.Surya Prabha
9.Lalitha
10.Manimaran
11.Vijayalakshmi
12.Jayabharathi
13.Gowrishankar
14.Saritha
15.Vanaja
16.Senthilkumar

.. Respondents 7 to 16 legal heirs
of deceased R3, R4 and R5

[RR 7 to 10 brought on record as Lrs of the deceased R3]
[RR 11 to 14 brought on record as Lrs of the deceased R4]
[RR 15 and 16 brought on record as Lrs of the deceased R5]

- vide court order dated 03.12.2021
made in CMP.Nos.18065, 18064 and 18066 of 2021
and CMP.No.18067 of 2021]

Prayer : Second Appeal filed under Section 100 of CPC., against
the decree and judgment dated 28.08.2006 made in A.S.No.50 of
2005 on the file of the Subordinate Judge's Court of



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Poonamallee, reversing the decree and judgment dated 05.02.2004 made in O.S.No. 177 of 1997 on the file of District Munsif Cum Judicial Magistrate, Ambathur.

For Appellant : Mr.M.Chidambaram

For respondents : Mr.V.Raghavachari for R2
Mr.P.S.Jayakumar for R7 to R14
and R16
Mr.M.Bindran, Addl Govt.Pleader
for R6
Mr.K.Prabhakaran for R15
R1- No appearance
R3 to R5 - Died.

JUDGMENT

This Second Appeal is filed by the appellant/1st defendant in O.S.No.177 of 1997 against the decree and judgment dated 28.08.2006 made in A.S.No.50 of 2005 on the file of the Subordinate Judge's Court of Poonamallee, whereby the First Appellate Court reversed the decree and judgment dated 05.02.2004 made in O.S.No. 177 of 1997 on the file of District Munsif Cum Judicial Magistrate, Ambathur.

2. At the time of admission of this Second Appeal, notice was ordered to the respondents and order of stay of operation of decree was ordered.

3. The appellant herein is the 1st defendant in the suit in O.S.No.177 of 1997. The original plaintiff Loganathan Nayakkar @ Kollapuri Naicker died and so amended plaint was filed bringing his legal heirs. Suit was filed for declaration, declaring that the plaintiffs are entitled to receive the compensation payable by the 2nd defendant-Special Tahsildar, TNHB) in respect of the suit property acquired by the 2nd defendant and directing the 2nd defendant to pay the compensation amount to the plaintiffs.

4. The brief facts of the Plaintiffs before the District Munsif cum Judicial Magistrate, Ambattur, are as follows:-

(a) The suit property originally belonged to one Muthuranga Mudaliar. The original plaintiff/Loganathan Naicker purchased the same from Muthuranga Mudaliar under Sale deed dated 29.08.1951 under Document No.2132/1951 before Sub Registrar Office, Sembiam. According to the plaintiff, the first defendant/D.F.Selvarajan on 31.10.1983 entered into sale agreement and Power of Attorney with the plaintiff. On



24.10.1975 the Government had issued G.O.R.No.266/Housing, for acquisition and it was published on 10.11.1978 in the Government Gazette. On completion of three years of execution of sale deed and Power of Attorney, the plaintiffs have cancelled the sale deed and power of attorney given in favour of the first defendant in respect of the suit property. The cancellation deed dated 03.12.1986 was registered in S.R.O.Ambattur. The plaintiffs sent notice dated 18.12.1986 to the first defendant. According to the plaintiffs, the first defendant has not returned the original title deed relating to the suit property.

(b) The plaintiffs would submit that they are the absolute owners of the suit property, therefore, they filed the suit for declaration of the plaintiff's title and injunction and also to declare that since the lands have been acquired by the 2nd defendant-Tahsildar, TNHB, the plaintiffs are entitled to receive the compensation amount awarded by the 2nd defendant.

5. (a) The 1st defendant filed written statement submitting that suit filed by the plaintiffs is not at all maintainable. Plaintiffs have no locus-standi to file the suit since the plaintiffs have already fulfilled their rights and claims. There is absolutely no cause of action for the suit. The acquisition proceedings were pending from 1975 and the same is fully known to the plaintiffs and entered into the sale agreement and subsequently, fraudulently got huge amount and therefore, material facts were suppressed. The 1st defendant denied the cancellation of the power deed and exchange of notice. The plaintiffs have no right over the suit property.

(b) The 1st defendant submitted that the plaintiffs executed a Power of Attorney in favour of the defendant and as per the agreement and power of attorney deed, all original documents were handed over and suit possession was handed over to this defendant and so the 1st defendant is entitled to the property or the compensation if the Housing Board acquired the same. Since he raised objections before the authority, the amount was deposited before the Sub Court, Poonamallee.

(c) Further, it is submitted by the 1st defendant that the plaintiffs received a sum of Rs.50,000/- on the date of agreement and the balance sum of Rs.46,000/- was also paid by the first defendant to the plaintiffs 4 and 5 after the death of the first plaintiff and the plaintiffs 4 and 5 on receipt of the same, agreed to withdraw the suit. But the plaintiffs failed to withdraw the suit. The first defendant also submitted that the suit is an outcome of extracting money and so it is a vexatious suit.

(d) In the additional written statement, the first defendant



submitted that the plaintiffs have to pay court fee for the amount awarded under the acquisition proceedings and the court fee paid by the plaintiff is insufficient.

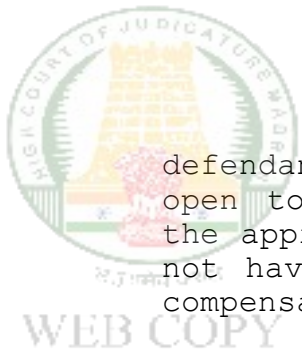
6. Based on the above pleadings, appropriate issues were framed by the trial court. In order to prove the respective cases, both parties let in oral as well as documentary evidence. On the side of the plaintiffs, P.W.1 was examined and as many as 8 documents were exhibited. On the side of the defendants, 1 witness was examined and as many as 3 documents were exhibited. Having considered all the above materials, the trial court dismissed the suit.

7. Aggrieved over the dismissal of the suit, the plaintiffs, viz., the legal heirs of the original plaintiff filed A.S.No.50 of 2005 before the Subordinate Judge, Poonamallee.

8. The Lower Appellate Court on going through the entire evidence and facts, given a finding that once the Power of Attorney as well as Agreement was cancelled by the plaintiff in favour of the 1st defendant, the first defendant does not have any right over the property. The particular land in dispute was already acquired by the Tamil Nadu Housing Board in the year 1975 itself, therefore, the 1st defendant is not entitled to get agreement and execute the power in favour of him. Further the cancellation of Power of Attorney by the plaintiff was communicated to the 1st defendant but the first defendant has not taken any appropriate action before the proper forum, thereby, the first defendant is not entitled to get any share from the plaintiffs.

9. The learned Judge, has taken the view in A.S.No.50 of 2005 that based on the Power of Attorney, the first defendant is not entitled to get any right over the property. Since the Land acquisition proceedings were pending from 1965 onwards by the 2nd defendant-Tahsildar, TNHB, knowing fully well about the same, the 1st defendant made agreement and Power of Attorney. While the Land Acquisition proceedings, were pending, the first defendant is not entitled to get any share over the property based on the Agreement and Power of Attorney and in such view, the the first defendant is not entitled to get any compensation from the 2nd defendant.

10. The Lower Appellate court further held that since the plaintiff cancelled the Power of Attorney and cancelled the agreement, the plaintiffs are entitled to get compensation from the Special Tahsildar, TNHB. It is further held that in respect of the agreement, 1st defendant had paid some amounts and in that event, for return of the amounts already paid by the 1st defendant to the plaintiffs and in such agreement, if the 1st



defendant got aggrieved and wants to seek compensation, it is open to the first defendant to take appropriate action before the appropriate forum, but in any event the first defendant does not have any capacity or any right over the property to claim compensation from the 2nd defendant.

11. The lower appellate court on perusal of the records, evidences and witnesses, held that the finding of the trial court that for all practical purposes, based on the power of attorney and sale agreement, the first defendant is entitled to the suit property and he is having the right to claim compensation and the plaintiffs handed over the possession and therefore, the plaintiffs have no right over the property, cannot be accepted. The first appellate court, thereby, reversed the judgment and decree of the trial court and held that the plaintiffs are entitled to get compensation from the 2nd defendant-Tahsildar, TNHB.

12. I have heard the learned Counsel on either side and also perused the records carefully.

13. The following are the substantial questions of law raised by the appellant/1st defendant in this Second Appeal:

"(a) Whether the First Appeal Decree and Judgment is valid without framing issues?

(b) Whether the suit is maintainable without paying proper court fee for the claim of Award amount ?

© Whether the suit is maintainable without filing the suit under Specific Performance suit based upon Exhibit A1 (Sale agreement dated 31.10.1983) ?

(d) Whether the Principles of Promissory estopped is applicable in this case, when the plaintiffs received the sale consideration under Exhibit B.3 ?

(e) Whether the suit is maintainable without seeking proper relief and without paying proper court fees? "

14. The learned counsel for the appellant/1st defendant submitted that the first appellate court, without considering the issues and without considering the practical procedure, reversed the judgment of the trial court and passed decree in favour of plaintiffs which is liable to be set aside. The learned counsel raised arguments that the entire title deeds of the property was handed over to the appellant/1st defendant after receiving part of sale consideration amount of Rs.50,000/- and thereafter, balance sum of Rs.46,000/- was also paid. The receipt for the same is marked as Ex.B.3. The suit is not maintainable since the plaintiffs have not paid proper court fee for the claim of Award amount. The other argument is that if there is any violation of the terms and conditions of the sale agreement, the plaintiffs ought to have filed a suit for



specific performance and the plaintiffs who filed the suit seeking to return the original title deeds is not maintainable as the plaintiffs have not sent prior notice before cancellation of Power Deed. Further there was no valid reason to cancel the Power deed dated 31.10.1983/Ex.A.2. It is submitted that since entire sale consideration is paid to the plaintiffs and the respondents 2 and 3 agreed to withdraw the suit, but failed to do the same, it is violation of principles of Promissory Estoppel.

15. According to the appellant/1st defendant, even after knowing the acquisition of the land by Tahsildar, TNHB, purposely with wanton intention, the plaintiffs suppressed the facts and wrongly entered sale agreement with the 1st defendant. Since the plaintiffs have already given up their right, the claim for compensation is unwarranted one. The learned counsel for the appellant, prayed this court to restore the trial court judgment and allow this Second Appeal.

16. The learned counsel for the respondents submitted that since the land acquisition proceedings are pending from 1965 onwards by the 2nd defendant, the appellant/1st defendant who made agreement and Power of Attorney in favour of him and claiming that he is entitled to get share over the property is not sustainable. The plaintiffs have cancelled the Power of Attorney and issued notice to the 1st defendant. The plaintiffs/respondents are entitled to get compensation and the First Appellate Court has correctly held that the plaintiffs are only entitled to get compensation from the 2nd defendant-Tahsildar, TNHB and the said judgment of the First Appellate Court is to be confirmed.

17. Admittedly, the plaintiffs executed the Power of Attorney in favour of the 1st defendant/ appellant and subsequently the plaintiffs cancelled the Power of Attorney on 03.12.1986 and the same was registered in SRO, Ambatture, which was communicated to the 1st defendant. In respect of cancellation of agreement and Power of Attorney dated 31.10.1983, by way of legal notice, it was communicated by two dates viz., 18.12.1986 and 07.02.1987. Even after receipt of notice, the first defendant has not taken any action against the plaintiffs. The suit was filed by the Plaintiffs in O.S.No.177 of 1997 and the relief sought is for declaration to declare the plaintiffs are entitled for compensation from the 2nd defendant-Tahsildar, TNHB. The first defendant has not disputed the cancellation of Power of Attorney and cancellation of sale agreement. It is the case of first defendant also that the land in dispute was already acquired by the Tamil Nadu Housing Board in the year 1975 itself and the proceedings are pending. In such circumstances, the right over the property to claim compensation from the 2nd



defendant is only in favour of the plaintiffs who cancelled the sale agreement and Power of Attorney. Moreover, the 1st defendant who received notice on the cancellation of deeds, not given any reply and not filed any case against the plaintiffs.

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18. During the course of argument, it is submitted by the counsel for respondents that the Land Acquisition compensation was deposited in the Court and the guideline value fixed was meagre. At present, the guideline value is more and hence, Rs.4,024/- per square feet can be fixed as enhanced compensation for the lands acquired by the plaintiffs.

19. The Lower Appellate court, on going through the plaint pleadings, written statement of the defendants, evidence let in before the trial court and the findings of the trial court, resolved the issue that the plaintiffs are entitled to claim compensation. The said view is based on the legal scrutiny and on appreciation of evidence. In this case, since the Sale deed and Power of Attorney has been cancelled by the Plaintiffs on 03.12.1986 and the same has been registered in SRO, Ambattur, which was also communicated by way of notice to the 1st defendant and further the learned Counsel for the appellant is not in a position to point out any material on record so as to hold the findings of the Lower Appellate Court as perverse, the suit property which was subjected to acquisition, then as per the Government Order, the plaintiffs alone are entitled to claim compensation.

20. In the light of the above discussion, at the risk of repetition, it is to be pointed out that the second appeal has been filed by the first defendant in the suit. Parties are described as per the nomenclature assigned to in the trial court for the sake of clarity and convenience.

21. The suit has been filed by the plaintiffs seeking for declaration that the plaintiffs are entitled to receive the amount of compensation which had been deposited by the second defendant towards acquisition of the property and that the defendants must be directed to return the original title deed to the plaintiffs. The suit was originally filed by Loganathan Nayakkar @ Kollapuri Naicker, after his death, his legal representatives have been added as plaintiffs 2 to 6.

22. After the death of the third defendant respondents 7 to 10 have been brought on record as legal representative of the deceased third defendant. After the death of fourth defendant, respondents 11 to 14 have been brought on record as legal representatives of the deceased for the defendant. After the death of the 5th defendant, respondents 15 and 16 have been brought on record as legal representative of the deceased. It is



the case of the plaintiff that they being the title holder of the property and as the legal owner of the property, they are entitled to receive the compensation which has been paid by the second defendant towards acquisition of their property and it is the case of the contesting defendants that the deceased first defendant having executed the sale agreement as well as the power of attorney in respect of the suit property cannot have a declaration that he is the owner of the property and that the defendants are entitled to receive the compensation deposited by the second defendant as they are the processory title holders of the property and therefore, the claim of the plaintiffs must be dismissed.

23. It is an admitted fact that the title was in favour of the deceased plaintiff and that after receiving a sum of Rs.50,000/- on the date of sale agreement and power of attorney was also executed in favour of the defendants. It is equally an admitted fact that the defendants failed again getting the sale executed from the plaintiffs. Taking advantage of the failure/omission on the part of the defendants, the plaintiffs have chosen to cancel the sale agreement as well as power of attorney.

24. But the fact remains that the plaintiffs have received the balance of sale consideration of Rs.45,000/- on subsequent occasion as clearly proved by Ex.B.3. The defendants claimed that by virtue of the part performance, they are in possession of the property and as such though the document is not in their name, they are entitled to receive the compensation as a lawful owner.

25. On perusal of facts of the case on the one hand and a reading of judgment of the courts below on the other hand, in the considered opinion of this court, in the absence of the sale deed in favour of the defendants, the issue to be decided in the present appeal is that whether the plaintiffs are to be considered as lawful owner or the defendant is sought to be considered as lawful owner of the property.

26. Law is well settled that any immovable property worth more than Rupees Hundred can be transferred only by executing a registered sale deed. The Stamp Act and the Registration Act are in place to cover transaction of sale in respect of the immovable property. When the defendant claims that they are armed with sale agreement, it is the duty of the defendants to file a suit for specific performance based upon the sale agreement within the period of limitation. There is no reason as to why such a step is not taken by the defendants. In the absence of the failure on the part of the defendants to get their valid title in favour of them by getting the sale deed



executed, they cannot claim title to the property.

27. However, it is the admitted fact that the defendants have parted with a sum of Rs.96,000/- towards consideration for purchase of the suit property. It is equally an admitted fact that the defendants also claim that the power of attorney was also executed in favour of them to enable them to enjoy the property. As it is clear that even though the title is not to the defendants, possession had been with the defendants.

28. It is claimed by the plaintiffs that they have cancelled the sale agreement as well as the power of attorney in favour of the defendants. But it is nowhere stated by the plaintiffs that they have repaid part of sale consideration received by them. It is not known under what circumstances, the sale agreement was cancelled. The sale agreement itself has been executed only after the Government initiating the process of acquisition of the suit property. Under such circumstances, the issue to be considered is whether equity requires that some relief has to be granted to the defendants who have parted with money about two decades back. So far as plaintiffs are concerned, the legal title is vested with them and therefore, they are entitled to declaration that they are entitled to receive the amount of compensation which had been deposited by the Government towards acquisition of the suit property but the plaintiffs are claiming direction to the defendants to return the original title deed which is in the hands of the defendants. He who seeks equity must do equity.

29. The defendants were in possession of the title deeds only by virtue of the sale agreement executed by the plaintiffs when they parted with the money towards payment of sale consideration. Before that, the plaintiffs wanted back the original documents on account of the delay on the part of the defendants in getting the sale deed executed. Perhaps the defendants would have been misled on account of the power of attorney having been executed by the plaintiffs in favour of them. Justice, equity and good conscience requires that the plaintiffs to pay back to the defendants before they ask for return of documents.

30. In the result, this court while confirming the finding of the Lower Appellate Court that the plaintiffs are entitled to declaration and that they are entitled to receive the amount of compensation, in the interest of justice, the plaintiffs are directed to repay the sale consideration amount of Rs.96,000/- along with interest at 9% per annum for return of documents from the defendants. Accordingly, the Second Appeal stands partly allowed on the following directions:-



(i) The judgment and decree of the Lower Appellate court decreeing the suit in O.S.No.177 of 1997 in favour of plaintiffs, is hereby confirmed. However, the same is subject to the condition that the plaintiffs shall repay the defendants a sum of Rs.96,000/- along with interest at 9% per annum within a period of three months from the date of receipt of a copy of this judgment.

(ii) On such payment being made, the defendants shall hand over the title deeds in favour of the plaintiffs.

(iii) In view of the arguments made by the learned counsel appearing for both sides before me and not seriously pressed for the questions of law, following the principles of law on a point and considering the facts and the rights of parties, this Second appeal is answered. No costs. Order of stay granted in M.P.No.1 of 2007 stands vacated.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

nvsri

To

1. The Subordinate Judge,
Poonamallee.
2. The District Munsif Cum Judicial Magistrate,
Ambathur.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.32509

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.32469

+4ccs to Mr.P.S.Jayakumar, Advocate, S.R.No.32299

+1cc to the Special Government Pleader, S.R.No.32421

SECOND APPEAL No.187 of 2007

SV(CO)
UMA(28/06/2022)