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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2022

DELIVERED ON : 24.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1093 OF 2005

1. Vellammal
2. T.R.Shanmugha Vadivu
3. T.R.Sivasubramaniam
4. T.R.Radhakrishnan
5. Manimegalai
6. T.R.Senthil Palanivel ... Appellants/Appellants 2, 3,
8 to 11/LR's of 1st Defendant

.Vs.

1. S.Manonmani ... 1st Respondent/1st Respondent/
Plaintiff
2. N.Subramaniam ... 2nd Respondent/2nd Respondent/
2nd Defendant
3. Jagathambal
4. S.Ambiga Devi
5. S.Savidha Rani
6. Minor Poonmani

Rep. By Guardian, Next Friend,
Mother Jagathampal

... 3 to 6th Respondents/
Appellants 4 to 7

7. P.Kannappan
8. K.Vijayalakshmi ... Respondents

RR 7 & 8 impleaded as party respondents
vide Court order dated 22.11.2018
made in C.M.P.No.236 of 2015 in
S.A.No.1093 of 2015.



PRAYER:-

Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.07.2004 passed in A.S.No.12 of 2002, on the file of the Principal Subordinate Court, Coimbatore, confirming the decree and judgment dated 04.06.2001 passed in O.S. No.11 of 1997, on the file of the II Additional District Munsif Court, Coimbatore.

For Appellants : Mr.Srinath Sridevan
3 to 6

For Appellants : No appearance
1 & 2

For R7 & R8 : Mr.Saravanan Sowmiyan

For RR2 to 6 : Given up

JUDGMENT

The Appellants herein are the legal heirs of late Rangasamy. Late Rangasamy was the first defendant in the suit filed by the first respondent/plaintiff in O.S.No.11/1997 on the file of II Additional District Munsif, Coimbatore.

2. The suit was filed by the first respondent/plaintiff for a permanent injunction restraining the defendants 1 & 2 in the said suit from interfering with her peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiff in nutshell is as follows:

4.1 The first respondent (since deceased)/plaintiff was the absolute owner of the suit property through a registered sale deed dated 25.08.1989 (Ex.A3) executed by the second defendant as the Power of Attorney holder of the first defendant. The first defendant, apart from the present suit property also owned properties in S.Nos.398/1 & 378/2 of Thodnamuthur Village, Coimbatore District. He converted the same into several house sites during 1988 and got the approval from Thondamuthur Panchayat. The first defendant executed a Power of Attorney deed dated 22.06.1989 (Ex.A2) in favour of the second defendant, who in turn sold the suit property, house site No.3 of the layout, to the plaintiff. The plaintiff was in possession and enjoyment



of the suit property ever since the date of her purchase. When the plaintiff wanted to put up a fence around her property, the first defendant prevented the same. Hence the plaintiff filed the suit for a bare injunction as stated above through her power agent Manirajan.

4.2 In both the courts below the second defendant remained absent and was set ex- parte. The first defendant in his written statement had admitted that he executed a Power of Attorney dated 22.06.1989 (Ex.A2) in favour of the second defendant. However it was contended that when the sale proceeds of the sites sold was not forthcoming from the second defendant, the first defendant cancelled the Power of Attorney on 25.08.1989 (EX.B3) and sent a legal notice (Ex.B4) on the same day to the second defendant. The second defendant on receiving the said legal notice from the first defendant sent a reply (Ex.B6). There were other notices dated 09.09.1989 (Ex.B8, Ex.B10 & Ex.B13) sent by the first defendant to the plaintiff and two other buyers. The plaintiff and the second defendant are husband and wife. Subsequently, the first defendant filed a private complaint against the second defendant for an offence under Section 409 IPC before the Judicial Magistrate I, Coimbatore, which was forwarded to the Thondamuthur Police for investigation under Section 156 (3) Cr.P.C. There was also a publication in a Tamil daily on 24.03.1992 (Ex.B27) given by the first defendant who also ensured to file a caveat petition against the plaintiff, second defendant and the other buyers in Sub Court Coimbatore. He further sent a requisition dated 03.08.1989 (Ex.B22) to Sub Registrar, Thondamuthur, not to register the sale deed in favour of the plaintiff, for which the Sub Registrar sent a reply dated 31.08.1989 (Ex.B23) declining the request made by the first defendant. According to the first defendant, he is in possession of the suit property and both the plaintiff and the second defendant were silent for the past eight years and thereafter filed the present suit. He therefore prayed for the dismissal of the suit.

5. The trial court, on the basis of the above pleadings, framed the following issues :

- i. Whether the plaintiff is entitled for a permanent injunction restraining the first defendant and his men from interfering with her possession and enjoyment of the suit property?
- ii. Whether it is true to state that the suit property is in possession of the first defendant?
- iii. To what relief the plaintiff is entitled?



6. In the trial Court, the plaintiff's Power of Attorney Manirajan and one Selvam were examined as P.W.1 & P.W.2 respectively. Ex.A1 to Ex.A3 were marked. The first defendant examined himself and marked Ex.B1 to Ex.B32.

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7. After full trial, the learned II Additional District Munsif, Coimbatore, decreed the suit filed by the plaintiff vide his decree and judgment dated 04.06.2001. The trial Court, infact, keeping in mind the Provisions of Sections 206 and 208 of the Indian Contract Act and adverting its attention to the oral/documentary evidence adduced on both sides held that reasonable notice was not given by the principal, the first defendant, to his agent, the second defendant before cancelling the Power of Attorney and that the termination of power of attorney was not also made known to the second defendant. It is also observed that the sale deed in favour of the plaintiff cannot be nullified as there was no intimation cancelling the power of attorney prior to the execution of the sale deed.

8. Aggrieved over the same, the first defendant filed an appeal in A.S.No.12 of 2002 before the Principal Subordinate Judge, Coimbatore. Since the first defendant died during the pendency of the first appeal, his legal heirs were brought on record as appellants 2 to 11. The first appellate Court had held that the first defendant had authorised the second defendant to receive the consideration and execute sale deeds on his behalf through the Power of Attorney (Ex.A2) and that the second defendant in turn executed a sale deed in favour of the plaintiff which was presented for execution on 25.08.1989 between 04.00 p.m. to 05.00 p.m. and registered on 26.08.1989. Though the first defendant claims that he cancelled the Power of Attorney executed by him in favour of the second defendant, there is no acceptable evidence to show that either the plaintiff or the second defendant was made known about the cancellation of the Power of Attorney. It is further held that the first defendant did not file any suit against the second defendant to recover the amount due to him for the reasons best known to him and when the plaintiff had title over the suit property by virtue of the sale deed (Ex.A3) and was also put in possession of the suit property, there is an irresistible conclusion that the plaintiff is in possession and enjoyment of the suit property.

9. Now the present second appeal is filed on the following substantial questions of law.

- 1) Whether the courts below are correct in decreeing the suit by holding that the plaintiff is in possession of the suit property contrary to Ex.B7 and Ex.B30, in which she did not state herself as owner of the suit property



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by virtue of Ex.A3 sale deed, but only proceeded as agreement holder?

- 2) Whether the courts below are correct in decreeing the suit without any finding for the proof of the alleged cause of action of the suit that the first defendant had interfered with the possession of the plaintiff on 27.12.1996 by preventing the workers in putting up fence and none of the witnesses of the plaintiff spoke about the same?
- 3) Whether the courts below are correct in decreeing the suit holding that Ex.A3 sale deed executed by the second defendant, who is the Power of Attorney of the first defendant, in favour of the plaintiff, against the interest of the principal whose approval is necessary to execute the sale deed after paying the proportionate sale consideration as agreed upon on Ex.B1 agreement?

10. Mr.Srinath Sridevan, learned counsel for the appellants contended that

- a) When the Power of Attorney in favour of the second defendant was cancelled on 25.08.1989, the execution of the sale deed on the very same day is void-ab-initio.
- b) No prior notice is required to be given before cancelling the Power of Attorney as is held in the decision in P.Sunil vs Government of Tamilnadu, (W.P. No. 2922 of 2022). Even otherwise registration of cancellation deed operates as public notice.
- c) When the sale deed itself is void, there is no necessity to file a suit seeking for setting aside/cancellation of the sale deed as held in the decisions in Lalit Kumar v Jaipur Trader reported in 2002 Vol. 5 SCC p. 383, Ghanshaym Sharada v Shashikant Jha reported in 2017 Vol. 1 SCC p. 599, Jambu Prasad v Mohammed Aftab reported in 1915 ILR Vol. 38 All. p. 49, Kiran Singh Vs. Chaman Paswan reported in AIR 1954 SC p. 340, Prem Singh vs. Birbal reported in 2006 Vol. 5 SCC p. 353.
- d) The plaintiff had issued a legal notice on 29.08.1989 (Ex.B7) to the first defendant requesting the latter to execute a sale deed in respect of Survey Numbers 378/2 and 378/1 measuring 2 acres of lands as per the sale agreement between her and the first defendant. In this notice, there is no mention about the execution of a sale deed in her favour.

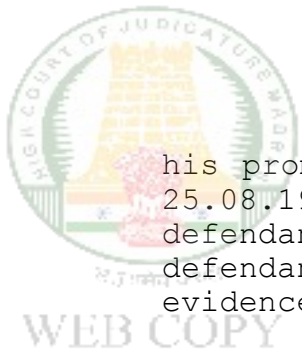


e) On 25.08.1989, the second defendant was not a Power of Attorney holder and hence he cannot execute a sale deed in favour of the plaintiff.

11. Per contra Mr.Saravanan Sowmiyan, learned counsel for the respondents 7 and 8 contended that both the courts below had rendered a concurrent finding based on facts and there is no substantial question of law involved in the present case. He would further contend that the cancellation of the Power of Attorney was admittedly made known to the second defendant only on 29.08.1989 and the sale deed was executed on 25.08.1989. It is his contention that Section 47 of the Registration Act clearly provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority and that according to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution and the vendee gets rights which would be related back on registration from the date of execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read with Section 47 of the Registration Act. He also relied on the decisions in Ram Kumar Barnwal vs. Ram Lakshan [(2007) 5 SCC 660] and M.Ramakrishnan vs. Hindustan Petroleum Corporation Ltd [(2018) 2 CTC 876] and contended that the courts can take into consideration the subsequent events and that since the respondents 7 and 8 are subsequent purchasers, their interest should be protected. He would therefore contend that the plaintiff had valid title and possession over the suit property on the date of the suit.

12. At the outset, it may be observed that the plaintiff had filed the suit for a bare injunction against the defendants 1 & 2. The plaintiff's contention is that she purchased the suit property from the second defendant, the Power of Attorney holder of the first defendant on 25.08.1989 and that ever since the date of purchase she has been in possession and enjoyment of the suit property. According to her, the first defendant attempted to interfere with her peaceful possession of the suit property when she wanted to put up a fence around her property.

13. The first defendant admitted that he executed a Power of Attorney (Ex.A2) in favour of the second defendant on 22.06.1989. But his contention is that the second defendant, though promised to pay the amounts due to him, did not keep up



his promise which forced him to cancel the Power of Attorney on 25.08.1989 (Ex.B3) and that a notice was also sent to the first defendant on the same date (Ex.B4). However, the second defendant received the said notice only on 29.08.1989 as evidenced by the postal acknowledgment card (Ex.B5).

14. Under Section 201 of the Indian Contract Act, (hereafter called the Act), the principal has the right, subject of course to certain limitations, to revoke the agency. Revocation of agency by the principal immediately terminates the agent's actual authority to act for the principal unless the agent's authority is coupled with an interest under Section 202 of the Indian Contract Act. Section 204 of the Act, however, compels the principal not to revoke an authority given to an agent after the agent has partly exercised the same and this interdict is provided by the statute in so far as it relates to such acts and obligations as arising from acts already done in the agency. Section 206 of the Act, provides that reasonable notice must be given before revocation by the principal or renunciation by the agent.

15. In the instant case, the first defendant had executed the Power of Attorney for selling plots, receiving consideration and also to execute sale deeds on his behalf. The Power of Attorney was cancelled on 25.08.1989 and the second respondent was served with notice of cancellation only on 29.08.1989. The sale deed (Ex.A3) in favour of the plaintiff was executed on 25.08.1989 and registered on 26.08.1989. The recitals of Ex.A3 also shows that the plaintiff was put in possession of the suit property on the date of sale. It is contended that the second defendant did not settle the amounts due to the first defendant. The learned counsel for the appellant contended that a suit was filed in the year 2015 and it was dismissed and an appeal is pending. Though no proof was filed in this aspect, it is not known as to why such a belated action was taken by the first defendant. The present suit was filed in the year 1997 i.e. nearly after eight years of the sale deed in favour of the plaintiff. The first appellate Court in paragraph 13 of its judgment has observed thus :

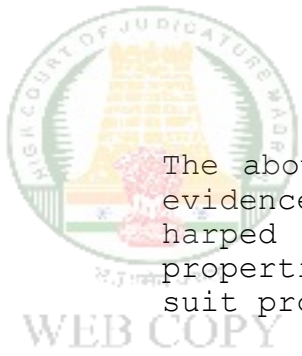
...There is no acceptable evidence to show that the first respondent/plaintiff had knowledge of cancellation of power of attorney, executed by the appellant on the same date. If really, the intention of the first appellant is to notify immediately the fact of cancellation of the power of attorney given by him to the second defendant, he ought to have sent a telegram to the second defendant and his wife, the (End of the 11th page in the original) plaintiff/first respondent. On the



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other hand, after the execution of the sale deed by the second defendant in favour of the plaintiff on 25.08.1989 under Ex.A3, the first appellant has sent a letter dated 25.08.1989 intimating to the second respondent about the cancellation of the power of attorney which has been received by the second defendant only on 28.08.1989, where as Ex.A3 sale deed has been registered on 26.08.1989. Therefore, there is no prior notice to the second defendant, the power of attorney holder about the cancellation of the deed of power of attorney.

In the absence of knowledge of the cancellation of the power of attorney, there is no impediment for him to execute a sale deed in favour of the plaintiff/1st respondent, though he is his wife. It is not the case of the appellants that no consideration has been passed. It is for them to prove the collusion. Mere relationship of husband and wife between the second defendant and the plaintiff is not a ground to hold that there is collusion between them. Even though, the appellants are alleging such collusion, the first appellant he has not so far taken any steps to set aside the sale deed executed by the second defendant in favour of the plaintiff. 1st defendant/1st appellant (D.W.1) has admitted in cross-examination that the power of attorney agent, the second defendant has sold the suit property to the plaintiff and he has not so far filed any suit against the second defendant/second respondent seeking accounts and claiming money, and it is true that 15 days have passed on the date of the suit from the date of the sale of the suit property by his power agent to the plaintiff. He has also admitted that the second defendant, his power attorney agent has sold remaining three sites in favour of Lakshmiammal, K.V. Ranganayakiammal and Sampath, and so far he has not filed any legal proceedings to set aside the sale. All his inaction in this regard shows that he has accepted the sale deed executed by his power agent namely, the second defendant to the plaintiff, and also others, and therefore he has not taken any steps (End of the 12th page in the original) either to set aside the above sale deeds or any legal proceedings against the second defendant seeking accounts and claiming balance of money. All the above have falsified his present contention that there is collusion between the second defendant and the plaintiff."



The above observations are based on sound principles of law and evidence on record. Though the learned counsel for the appellant harped on the notice EX. B7, there is nothing to show that the properties indicated in the notice (Ex.B7) relate to the present suit property.

16. In the decision in P.Sunil vs Government of Tamilnadu, cited supra, a Division Bench of this Court (first bench) relied on by the counsel for the appellants, it has been held that notice to agent about the revocation of power of attorney deed is not mandatory. This judgment has no application to the factual matrix of the present case since in this case, the revocation of power of attorney deed without notice has been done after a sale deed was executed in favour of the plaintiff.

17. The following decisions are relied upon by the learned counsel for the appellants for the proposition that sale by agent would not date back to the date of execution, if the agent had no power on the date of registration and that the sale executed by agent whose power was revoked is void, thereby further stating that void transactions need not be set aside.

- 1) Lalit Kumar v Jaipur Trader, reported in, 2002 Vol. 5 SCC p. 383
- 2) Ghanshaym Sharada v Shashikant Jha, reported in, 2017 Vol.1 SCC p. 599
- 3) Jambu Prasad v Mohammed Aftab, reported in, 1915 ILR Vol.38 All. p.49
- 4) Kiran Singh Vs. Chaman Paswan, reported in, AIR 1954 SC p.340
- 5) Prem Singh vs. Birbal, reported in, 2006 Vol. 5 SCC p.353

These cases relied upon by the Appellants are not at all an authority to the controversy in hand. In the present case, the power penned down by the principal had been acted upon by the power agent well within the ambit and the sale deed was executed and without any hindrance in the registration process, thereby conferring rightful title of the property on to the plaintiff.

18. In the present case, the plaintiff has her prime facie right over the suit property and proved to be in possession of the suit property at the time of the institution of the suit. Therefore, she need not file a suit for declaration of title to the suit property.



19. The sale deed executed in favour of the plaintiff is binding on the first defendant and the plaintiff has also proved her title and possession over the suit property. Since the defendant had contested the suit by way of filing a written statement and had cast a cloud on the title and possession of the plaintiff over the suit property, the decree granted by both the courts below in favour of the plaintiff is perfectly in order. Thus, the substantial questions of law are answered accordingly.

20. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of courts below in a second appeal. In fine, the second appeal fails and is dismissed.

21. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 06.07.2004 passed in A.S.No.12 of 2002, on the file of the Principal Subordinate Court, Coimbatore, and the decree and judgment dated 04.06.2001 passed in O.S.No.11 of 1997, on the file of the II Additional District Munsif Court, Coimbatore, are upheld.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Coimbatore.
2. The II Additional District Munsif,
Coimbatore.



3. The Section Officer,
V.R. Section,
High Court, Madras.

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+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.20696

S.A.NO.1093 OF 2005

AK-II (CO)
PBS/01/06/2022