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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AS.No.495/2018

[Virtual Mode]

1.P.Periathambi
2.P.Janaki

.. Appellants/2 & 3 Defendant
in Trial Court

Vs.

1.P.Kaliappan
2.C.Perumal

...Respondents/Respondents/Plaintiff
and 1st Defendant in Trial Court

Prayer:- Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree in O.S.No.305/2013 dated 18.01.2018 on the file of the learned First Additional District Judge, Salem.

For Appellants :Mr.Senthilnathan
For R1 :Mr.T.S.Vijaya Raghavan
For R2 :Mr.M.Suresh Kumar

JUDGMENT

- (1) This Appeal is preferred by defendants 2 and 3 in O.S.No.305/2013 on the file of the learned First Additional District Judge, Salem.
- (2) The 1st respondent in this appeal as plaintiff filed the Suit in O.S.No.305/2013 on the file of the District Court, Salem for partition of his one half share in the Suit property by metes and bounds and for injunction restraining the 1st defendant and their men in any manner alienating or encumbering the Suit property.
- (3) The Suit property is described as an extent of 0.91 acres (91 cents) in S.No.55/2B out of the total extent of 1.61.5 hectares (4 acres), with reference to specific boundaries.
- (4) It is the case of the 1st respondent in the plaint that the



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Suit property namely the entire extent of 91 cents belonged to the 1st defendant, by virtue of a registered Sale Deed dated 31.08.1992. It is the further case of the plaintiff that the 1st defendant was in absolute possession of the property and that he has also constructed a rice mill and a terraced house in the Suit property by availing loan from Edappadi Co-operative House Building Society.

- (5) Though, it is admitted that the 1st defendant had executed a General Power of Attorney in favour of the 2nd defendant on 17.04.2002 to manage the property, it is the specific case of plaintiff that the 1st defendant suspecting the 2nd defendant had later executed a Settlement Deed in respect of half share of the Suit property in favour of plaintiff by means of a Settlement Deed dated 18.10.2002. It is on the basis of the Settlement Deed that was executed the plaintiff came forward to prefer the Suit for partition of half share.
- (6) It is admitted during the course of evidence that out of 91 cents, the Settlement Deed was in respect of undivided 45 cents. Incidentally, in the plaint it is also admitted that the 2nd defendant based on the Power of Attorney Deed in his favour, had subsequently executed a Sale Deed dated 09.07.2012, in favour of the 3rd defendant namely, the wife of the 2nd defendant in respect of the entire Suit property.
- (7) It is stated that the Power of Attorney Deed executed in favour of the 2nd defendant is null and void and not binding on the plaintiff in so far as the property covered under the Settlement Deed in favour of the plaintiff. Stating that the Power of Attorney Deed became invalid after the father himself executed the Settlement Deed, it is contended that the plaintiff need not pray for setting aside the Sale Deed. The Suit was contested by the appellants on many grounds. It is the case of the appellant that the 2nd defendant entered into an agreement to purchase the Suit property and that in order to construct a rice mill, it is stated that the 2nd defendant availed the loan in the name of 1st defendant as he was working in MALCO, Mettur as it would be easy to get the loan from the Co-operative Bank in the name of first defendant.
- (8) It is the further case of the appellants that the 2nd defendant alone repaid the entire loan in instalments. The 1st appellant also has pleaded the improvements he has made to the Suit property. It is the case of the appellants that the 1st defendant gave the General Power of Attorney on 17.04.2002 in favour of the 2nd defendant only because the father had recognized the ownership of property by the 2nd defendant.
- (9) It is the case of appellants that the Settlement Deed in



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favour of plaintiff is not a true one and that it was not disclosed. The appellant also described the settlement as a fraudulent one. A specific issue was also raised by the appellants in the Written Statement that the Suit without the relief of declaration is not at all maintainable and that the plaintiff has come forward with the Suit for partition without a cause of action and suppressing the real fact.

- (10) Before the Trial Court the plaintiff examined himself as PW1 and filed Ex.A1 to A6. Apart from examining the 1st defendant as DW1 the appellants were examined as DW2 to DW4 apart from marking Ex.B1 to B16.
- (11) The Trial Court after framing the issues held that the property was purchased by the father namely, the 1st defendant as per the Sale Deed obtained by him. Since there is no dispute with regard to the relationship, the Trial Court found that the Settlement Deed executed by the 1st defendant in favour of the plaintiff is valid in respect of 45 cents and that therefore, the Suit for partition is maintainable.
- (12) As regards, the contention that the property had been dealt with by the 2nd defendant by executing a Sale Deed on the basis of Power of Attorney Deed, the Lower Court found that the Settlement Deed is valid in respect of 45 cents as the father is the absolute owner of the property as per Sale Deed under Ex.B3 and that the Sale Deed executed by the 2nd defendant in favour of 3rd defendant is invalid and not binding on the plaintiff in so far as the property covered by the Settlement Deed.
- (13) Since the Settlement Deed was executed by the principal, the Trial Court observed that the Settlement Deed will render the Power of Attorney Deed invalid insofar as the property covered by the Settlement Deed. The Trial Court has applied the theory of implied revocation of Power of Attorney on the basis of the facts which are admitted. When concluding the judgment the Trial Court observed that the father had executed a Settlement Deed with an intention to give equal share to the plaintiff and that the Settlement Deed is therefore valid and binding on the appellants.
- (14) The Trial Court also relied upon the Written Statement of the father who has also admitted the execution of Settlement Deed in favour of the plaintiff, his younger son in order to give the due share to the plaintiff and stated further that the execution of the Settlement Deed was also duly informed to the 2nd defendant immediately after the documentation. On the basis of findings on facts, the Trial Court decreed the Suit by granting Preliminary decree in respect of half share



of the Suit property. Aggrieved by the same, the appellants namely, the defendants 2 and 3 have preferred the above appeal.

(15) Learned counsel appearing for the appellant though raised several grounds in the Memorandum of Appeal confined his arguments to the following legal issues.

(a) When the father has admittedly executed a Power of Attorney Deed in favour of the 2nd defendant on the basis of the Power of Attorney Deed, the 2nd defendant has executed a Sale Deed in favour of his wife namely, the 3rd defendant. Hence, the Suit for partition without challenging the Sale Deed executed by the 2nd defendant in favour of the 3rd defendant is not maintainable.

(b) The father has no right to execute the Settlement Deed with reference to half share in favour of the plaintiff without the consent or knowledge of the 2nd defendant in whose favour the father had already executed the Power of Attorney Deed. The concept of partial or implied revocation of power applied by the Trial Court is unsustainable.

(c) The property was purchased by the 2nd defendant in the name of the 1st defendant as the loan which was required for purchasing the property could be availed only by the 1st defendant.

(d) The 2nd defendant alone mobilised the fund for purchasing the property, and the loan was also cleared by the second defendant. However, the Lower Court failed to consider the evidence let in by the defendants.

(16) This Court is unable to agree with any of the submissions made by the learned counsel appearing for the appellants. First of all, the learned counsel has not demonstrated before this Court how the property could be claimed by the 2nd defendant as his own, when the property admittedly stands in the name of the 1st defendant/father. The Sale Deed clearly indicate that the source for purchasing the property was provided by the father/1st defendant.

(17) The Trial Court has also found that the Power of Attorney Deed executed by the 1st defendant in favour of the 2nd defendant reflects that the actual owner of the property in the 1st defendant. If the case pleaded by the 2nd defendant in the Written Statement is true, the Power of Attorney Deed could have been recited differently so as to indicate that the source for purchasing the Suit property came from the 2nd defendant himself. It is not even the case of appellants that the Power of Attorney Deed was one coupled with interest.

(18) Learned counsel appearing for the appellants relied upon a judgment of the learned Single Judge of this Court in the



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case of Vedambal Vs. Ponnarasi & Another reported in CDJ 2011 MHC 4128. Learned Single Judge dealt with the case where the respondent therein instituted the Suit for partition and separate possession of half share on the ground that the Suit and other properties are Joint Family Properties of plaintiff and 1st defendant, who is the father of the plaintiff.

- (19) It is admitted therein that the 1st defendant father had sold the Suit property in favour of the 2nd defendant under a registered Sale Deed dated 01.01.1992. The Sale Deed was executed by the 1st defendant for himself and also on behalf of the plaintiff. Since the plaintiff was eo nomine party to the Sale Deed it was contended by the defendant in the Suit that the Suit for partition without setting aside the earlier Sale Deed dated 01.01.1992 in favour of the appellant is not maintainable.
- (20) The bar under limitation also was raised as a plea. Relying upon the previous judgments of this Court P.D.Ramjee and two others Vs. P.B.Lakshmanaswamy Naidu and ten others reported in 1996 (I) CTC 661 and the other judgment of Full Bench of this Court in Sankaranarayana Pillai Vs. Kandasamipillai reported in 1956 (2) MLJ 411, the learned Single Judge held that the daughter who was eo nomine party to the Sale Deed must sue for cancellation of a Sale Deed when the Sale Deed was executed by the father as natural guardian or manager of the joint family.
- (21) The legal position settled by this Court in the judgment relied upon by the learned counsel appearing for the appellants has no application in the present case. In the present case, there was no alienation in favour of the 2nd defendant. The Power of Attorney Deed executed by the father in favour of the 2nd defendant does not convey any right in immovable property in favour of the 2nd defendant. Though the Power of Attorney Deed is in force, the principal does not lose his right as a owner of the property to deal with the same.
- (22) In the present case, it is not even pleaded that the Power of Attorney Deed executed by the 1st defendant in favour of the 2nd defendant is coupled with the interest. In such circumstances, the father as absolute owner of the property is entitled to dealt with the property and therefore, the Settlement Deed executed by the father in favour of the plaintiff is perfectly valid and binding on the 2nd defendant



who was just appointed an agent of the father.

- (23) As pointed out earlier, the learned counsel appearing for the appellant has not pointed out from the evidence that the Suit property was purchased out of the funds provided by the 2nd defendant. The source of income for the 2nd defendant was not even pleaded in the Written Statement. Similarly, the 2nd defendant has admitted that the father alone availed the bank loan.
- (24) In such circumstances, the Trial Court has correctly applied the principle and granted a decree in favour of the plaintiff by accepting the Settlement Deed executed by the 1st defendant in favour of the plaintiff. It is to be noted that the Sale Deed is valid in respect of the remaining property of the father as the Power of Attorney Deed was not revoked by the father. Therefore, the Trial Court has not invalidated the sale in favour of 3rd defendant in so far as the remaining portion of the property on the basis of the Sale Deed.
- (25) Since the 3rd defendant has not paid any Court fee, the Suit was decreed by declaring the share of the plaintiff. However, the Court has never held against the appellants with regard to the remaining portion of the Suit property.
- (26) Having regard to the discussion above, this Court is unable to find any illegality or regularity in the judgment and this appeal is devoid of any merits.
- (27) In the result, the Appeal Suit is dismissed confirming the judgment and decree dated 18.01.2018 passed in O.S.No.305/2013 by the learned First Additional District Judge, Salem. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

cda

To

The First Additional District Judge,
Salem.



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The Section Officer,
V.R.Section, High Court,
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+1cc to Mr.M.Senthil Kumar, Advocate SR.No.6220
+1cc to Mr.T.S.Vijaya Raghavan, Advocate SR.No.6120

AS.No.495/2018

SSV(CO)
CB(10/03/2022)