



S.A.No.773 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.11.2022**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T. ASHA**

S.A.No.773 of 2022

and

C.M.P.No.15900 of 2022

M.Anandan

... Appellant

Vs.

1.Mylee

2.Mani

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code 1908, against the Decree and Judgment passed in A.S.No.68 of 2020 dated 29.11.2021 on the file of I Additional Sub Judge, Salem as confirmed in O.S.No.521 of 2016, dated 08.06.2020, Principal District Munsif, Salem.

For Appellant : Mr.B.Ravi

For Respondents : No appearance



S.A.No.773 of 2022

JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant herein.

2.The facts that have culminated in the filing of the above Second Appeal is herein below set out and the parties are referred to in the same ranking as before the Trial Court.

3.The plaintiff had filed a suit for Declaration to declare the power of attorney deed dated 31.12.2003 as sham and nominal, to cancel the sale deed dated 22.08.2007 and for permanent injunction restraining the defendants from interfering with the possession of the plaintiff.

4.It is the case of the plaintiff that the suit property originally belongs to him under a registered sale deed dated 28.08.1998. From that date, the plaintiff is in possession and enjoyment of the same. The plaintiff would submit that he had borrowed a sum of Rs.28,000/- from one Rajamanickam



S.A.No.773 of 2022

WEB COPY

and on his instructions, a power of attorney deed came to be executed by the plaintiff in favour of 2nd defendant. The plaintiff would submit that he had no nexus with 2nd defendant and the power of attorney was never intended to be acted upon and it was executed only as a security. It is the further case of the plaintiff that he had paid the interest and on 28.04.2010 he had tendered the principal amount to the said Rajamanickam. However, he had given evasive replies. The defendants attempted to trespass into the property and they have also fraudulently created a sale deed in the name of 1st defendant on the basis of power of attorney deed. Further case of the plaintiff is that the sale is sham and nominal in as much as he continued in possession and enjoyment of the suit schedule property. Now, since the defendants are attempting to interfere with his peaceful possession and enjoyment of the suit property, the plaintiff is constrained to file the above suit.

5.The 1st defendant had filed a written statement, which was adopted by the 2nd defendant, in which, the plea of borrowal as put forward by the plaintiff was denied. It is the case of the 1st defendant that he had purchased



S.A.No.773 of 2022

the property for valid consideration through the agent, namely the 2nd defendant. The plaintiff had therefore lost his right over the suit property.

6. The Trial Court had framed the following issues :-

“1. Whether the plaintiff is not in possession of suit property is true ?

2. Whether the power of attorney deed dated 31.12.2003 is a sham and nominal one ?

3. Whether it is true the plaintiff has lost title to the property ?

4. Whether the sale deed executed by D1 in favour of D2 on the basis of Power of Attorney is binding on the plaintiff ?

5. Whether the decree in O.S.No.548/2010 is binding on the plaintiff ?

6. To what other reliefs ?”

7. The plaintiff has examined himself as P.W.1 and marked Ex.A1 to Ex.A5 and one Annamalai was examined as P.W.2 and through him Ex.A6 to Ex.A7 was marked and one Palanisamy and Ayyanarappan were



S.A.No.773 of 2022

WEB COPY

examined as P.W.3 and P.W.4. On the side of defendants, the 1st defendant was examined as D.W.1 and marked Ex.B1 to Ex.B4.

8.Ultimately, the learned Principal District Munsif, Salem had proceeded to dismiss the suit. Aggrieved by the same, the plaintiff had filed A.S.No.68 of 2020 on the file of the learned I Additional Subordinate Judge, Salem. The Appellate Court confirmed the judgment and decree of the Trial Court by dismissing the appeal. Challenging the same, the plaintiff is before this Court.

9.Heard the learned counsel for the appellant and perused the materials on record.

10.The case of the plaintiff is that he had borrowed money from one Rajamanickam and as a security for this loan, the said Rajamanickam had directed the plaintiff to execute a power of attorney in favour of the 2nd defendant and this borrowal has taken place in the year 2003. The plaintiff



S.A.No.773 of 2022

WEB COPY

would further contend that he has paid the interest and on 28.04.2010 he had tendered the principal amount, which is refused to be received by the defendants. Thereafter, the plaintiff did not take any step either to repay the so called money or to cancel the power of attorney deed or initiate any legal proceedings against the said Rajamanickam on account of his refusal to return the power of attorney deed. The suit is filed only in the year 2016, nearly 13 years after the execution of the power of attorney deed. The sale deed in favour of the 1st defendant has been executed by the 2nd defendant as early as on 22.08.2007. Further, the plaintiff, who claims to have repaid the amounts has not let in any independent evidence to prove the said statement.

11. Therefore, considering the fact that the sale in favour of the 1st defendant had been done as early as in the year 2007 and no objection has been taken for the same by the plaintiff for so many years, compels this Court to hold against the plaintiff.



S.A.No.773 of 2022

WEB COPY

12.In the circumstances, no substantial question of law has been made out by the plaintiff to interfere with. Therefore, the Second Appeal fails.

13.Accordingly, the Second Appeal is dismissed. No costs.
Consequently, the connected civil miscellaneous petition is closed.

21.11.2022

Index : Yes/No
Speaking order/non-speaking order
sp

To

- 1.The I Additional Sub Judge, Salem.
- 2.The Principal District Munsif, Salem.
- 3.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.773 of 2022

P.T.ASHA, J.,

sp

S.A.No.773 of 2022
and
C.M.P.No.15900 of 2022

21.11.2022