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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.Nos.430 of 2017 and 1074 of 2019

S.A.No.430 of 2017

P.Kalimuthu (deceased)

1.Velammal

2. K.Muthulakshmi

3.K.Sridevi (Minor)

4.K.Manju Devi (Minor)

... Appellants

(Appellants 3 and 4 declared
as major vide order of this Court
dated 03.04.2017 made in
C.M.P.Nos.5575 and 5576 of 2017
in SASR.No.19717/2017)

Vs.

1. K.John

2.Nithiyanandam

3.K.Gajendran

4.G.Mariappan

... Respondents

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment in A.S.No.306 of 2014 passed by the XVII Additional Judge, XVI Additional City Civil Court, Chennai dated 12.08.2016 in partly allowed with modification of the judgment and decree in O.S.No.4890 of 2007 dated 18.06.2014 on the file of XIV Assistant Judge, City Civil Court, Chennai.

S.A.No.1074 of 2019

K.John

... Appellant



vs

1.Velammal

2. K.Muthulakshmi

3.K.Sridevi

4.K.Manju Devi

... Respondents

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment so far as the modification dated 12.08.2016 contained in A.S.No.306 of 2014 and passed by XVII Additional Judge, XVI Additional City Civil Court, Chennai, thereby modifying the judgment and decree dated 18.06.2014 made in O.S.No.4890 of 2007 passed by the XIV Assistant Judge, City Civil Court, Chennai.

For Appellants in
S.A.No.430 of 2017 : Mr.S.Gunaseelan

S.A.No.1074 of 2019 : Mr.D.Gopinathan

For Respondents in
S.A.No.430 of 2017 : Mr. D.Gopinathan

S.A.No.1074 of 2019 : Mr.S.Gunaseelan

C O M M O N J U D G M E N T

The unsuccessful defendants are the appellants in S.A.No.430 of 2017. The plaintiff is the appellant in S.A.No.1074 of 2019.

1. The plaintiff filed a suit for declaration and delivery of possession. The Trial Court decreed the suit. On appeal by the defendants, the First Appellate Court modified the relief of delivery of possession on payment of compensation. Aggrieved over the same, both the plaintiff as well as the defendants have preferred the above Second Appeals.

2. The plaintiff filed a suit for declaration of title and delivery of possession. According to him one Mariappan the 4th defendant herein purchased the property by virtue of registered sale deed dated 09.03.1972, which is marked as Ex.A1. The plaintiff purchased the same from the said Mariappan through his Power of Attorney, the 3rd defendant herein by virtue of registered sale deed dated 06.09.1991. The Power of Attorney dated 04.06.1984 was a registered one. After he purchased, he could not construct the house on the plot purchased by him due



to his financial condition. While the matter stood thus, the 2nd defendant filed a suit for permanent injunction against him in O.S.No.3195 of 2002. He filed written statement setting out his title. Thereafter, the suit was dismissed for default on 02.09.2004. After dismissal of the suit, the 2nd defendant sold the property in favour of the 1st defendant in the year 2005. The plaintiff came to know that the 1st defendant has put up a thatched shed. Immediately the plaintiff questioned the trespass made by the 1st defendant and he was chased away from the suit property. Hence, he lodged a Police complaint on 30.03.2005 and filed the present suit for declaration and delivery of possession.

3. The averments made in the plaint were denied by way of written statement. The 1st defendant would state that the 4th defendant executed the registered Power of Attorney dated 20.02.2000 in favour of the 2nd defendant. The 2nd defendant executed a sale deed on 22.02.2005 in favour of the 1st defendant. The 1st defendant put up a thatched shed and got electricity connection, which is evidenced by the electricity card. He is in possession of the building ever since the purchase and therefore he is the owner of the property. The Power of Attorney produced by the 3rd defendant is a forged one and the 4th defendant has not executed such Power of Attorney and therefore the sale deed executed by the 3rd defendant is also not valid.

4. The Trial Court framed appropriate issues and decreed the suit declaring title in favour of the plaintiff and ordered declaration of possession. Aggrieved over the same, the legal representatives of the deceased 1st defendant have filed the appeal. The Appellate Court confirmed the decree and judgment of the Trial Court but modified the decree in respect of delivery of possession to the extent that the plaintiff shall pay the cost of construction to the defendants. Aggrieved over the same, the legal representatives of the 1st defendant preferred the Second Appeal in S.A.No.430 of 2017. Aggrieved over the modification of the decree and directing to pay cost of construction to the 1st defendant's legal representatives, the plaintiff has preferred S.A.No.1074 of 2019.

5. Heard the submissions.

6. Learned counsel on either side consented to argue the Second Appeal No.430 of 2017 on the following question of law:

(i) Whether the Courts below are justified in decreeing the suit on the genuineness of the sale deeds of the plaintiff?



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Second Appeal No.1074 of 2019 is admitted on 05.11.2019 on the following question of law:

i) Whether the lower Appellate Court was right in granting a decree for compensation for the value of the building having held that the respondents are the trespassers?

7. At the outset, it is noted that the original sale deed dated 09.03.1972 purchased by the 4th defendant was marked as Ex.A1. The same document was marked in original as Ex.A1. The certified copy of the same document was marked as Ex.B1. From this, it is clear that both the parties admit the title of the 4th defendant Mariappan. From the Ex.A3 the registered sale deed dated 06.09.1991, it is noted that the property was conveyed in favour of the plaintiff. The 1st defendant would question the Power of Attorney granted in favour of the 3rd defendant. According to him the Power of Attorney is a forged one and therefore the sale deed is not valid and enforceable. The fact remains the sale deed dated 06.09.1991 conveying the title to the plaintiff remains intact till date and it was not challenged by the 1st defendant and he has not taken any steps to challenge the same and to protect his rights. In such event, it can be inferred that the execution of the Power of Attorney by the 4th defendant in favour of the 2nd defendant is without any title to the suit property. When the 4th defendant himself has no title, he cannot grant any Power of Attorney in favour of the 2nd defendant and the 2nd defendant cannot convey any title to the 1st defendant. It is required to be noted that the 2nd defendant has filed the suit in O.S.No.3195 of 2002 for permanent injunction against the plaintiff that means the plaintiff had some interest in the property and after filing of a written statement by the plaintiff on 09.12.2002, the 2nd defendant left it for default and a judgment came to be passed on 02.09.2004. That judgment operates as resjudicata against the 2nd defendant. The 2nd defendant must be aware of the title of the plaintiff and thats why he did not pursue the suit but fraudulently sold the property to the 1st defendant.

8. In so far as the 1st defendant is concerned, it is not his claim that his purchase was bonafide. On the other hand he would contend that the Power of Attorney executed by the 4th defendant in favour of the 3rd defendant is a forged one and the Power of Attorney executed in favour of the 2nd defendant is only a genuine one. As observed in the previous paragraphs, the 2nd defendant Power of Attorney himself abandoned the suit which he filed against the plaintiff.



9. The Trial Court has discussed the sale deed dated 09.03.1971 marked as Ex.A1 and found that the Survey numbers found therein were found in the sale deed made in favour of the plaintiff vide Ex.A3. The encumbrance certificate which is marked as Ex.A5 also correctly discloses the conveyance made in favour of the plaintiff. It is also required to be noted that another encumbrance certificate vide Ex.A7 was marked and in that the conveyance made in favour of the 1st defendant was entered but the entry discloses that 2nd defendant as the principal and the 4th defendant as agent whereas the fact remains otherwise. It is also noted that the very same conveyance made in favour of the plaintiff was also found. During the course of evidence wife of the 1st plaintiff who deposed as D.W.1 would state that her husband had verified the encumbrance certificate before the purchase. If that be so, the purchase may not be bonafide one and made after knowing that the property stood in the name of the plaintiff. Therefore, the purchase made by the 1st defendant is not valid and it is not bonafide. Therefore, he has no title to the property. On the other hand, the sale deed made in favour of the plaintiff vide Ex.A3 which remains intact would prove the title of the plaintiff. The plaintiff has produced the originals of the parent deed, Power of Attorney and his sale deed. Whereas, the defendant is not in a position to answer as to why he is not in possession of any of the originals, not even his sale deed. Of course, it is true to state that the plaintiff shall prove his case. In the instant case, he produced the parent deed in original, Power of Attorney and sale deed in original. On the other hand, the defendant had taken a stand that the Power of Attorney executed in favour of the 3rd defendant is a forged one and that the 4th defendant has sold the property to the 2nd defendant in his favour on 22.02.2005 is only a valid document. The burden is on him to prove that his purchase is valid which is subsequent to the purchase of the plaintiff. For that, he should have examined his vendor or atleast the Power of Attorney who conveyed the property. But none of them were examined to prove the same except for marking the document to show his possession and no other document to prove his title. Hence the question of law as to genuineness of the sale made in favour of the plaintiff is declared valid and the sale deed of the defendant in Doc.No.135 of 2005 is declared invalid and it does not convey any title. Thus the appeal filed by the defendant merits no consideration and dismissed.

10. During the pendency of the suit, the defendant has put up a construction over the property which is evidenced by Ex.B6 to B16. The documents are of the year 2008 to 2013. It shows that during the pendency of the suit at his own risk he put up the construction and therefore, he is not entitled to



seek any equitable relief. The observation made by the First Appellate Court that the appellant/4th defendants 5 to 8 are entitled to claim the cost of construction as determined by the qualified engineer is not correct and the defendants are not entitled to any equity for they have taken the risk knowing well that their title is under cloud. Therefore, the question of law on which the parties argued are answered against the appellants in S.A.No.430 of 2017 and in favour of the appellant in S.A.No.1074 of 2019.

11. In the result, S.A.No.430 of 2017 stands dismissed and S.A.No.1074 of 2019 is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The XVI Additional Judge,
City Civil Court, Chennai
- 2.The XIV Assistant Judge,
City Civil Court, Chennai.

Copy To

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

+1cc to Mr.S.Gunaseelan, Advocate SR.No.2202

+2ccs to M/s.M.Ravibharathi, Advocate SR.No.2193

S.A.Nos.430 of 2017 and
1074 of 2019

AJS (CO)
GMY (28/06/2022)