



A.S(MD)No.108 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.108 of 2010

A.Muthusamy

... Appellant

vs.

M.Saraswathy

... Respondent

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree of the District Court, Karur dated 13.10.2003 in O.S.No.7 of 2002.

For Appellant : Mr.Anand Chandrasekar for
M/s.Sarvabhauman Associates
For Respondent : No appearance

JUDGMENT

The respondent in this appeal as a plaintiff filed a suit against the appellant/defendant in O.S.No.7 of 2002 on the file of the District Court, Karur, for recovery of a sum of Rs.4,17,000/-. The said suit was decreed by judgment and decree dated



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13.10.2003. Challenging the said judgment and decree, the appellant/defendant has filed this appeal.

2. Brief facts in the plaint are as follows:-

The respondent/plaintiff purchased a property in Survey Nos. 11/2 and 15 vide a sale deed dated 13.02.1984 by her own money and was in possession of the same. The appellant is the husband of the respondent and abandoning the respondent, the appellant contracted a second marriage with one Sampooranam and is living in Karnataka State. According to the respondent, as of now, there is no marital relationship between her and the appellant. Before that, on 29.05.1995, the respondent executed a general power of attorney in favour of the appellant for selling the abovesaid property. According to the respondent/plaintiff, the appellant sold the said property to one Mahendra Singh on 29.03.1996 by way of two sale deeds for a sale consideration of Rs.3,42,000/-, but despite the said sale, the appellant did not give the respondent sale amount. Hence, the respondent filed the above suit against the appellant for recovery of money at Rs.3,42,000/- with interest at Rs.75,000/- totally Rs.4,17,000/- with costs.



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3. Brief averments in the written statement are as follows:-

The appellant/defendant denied the allegations in the plaint and the respondent is not entitled to the relief claimed in the suit. According to the appellant, out of his own money only he purchased the abovesaid property in the name of the respondent. Since there was no male child born between the appellant and the respondent, with the permission of the respondent, the appellant contracted a second marriage with the said Sampooram. The allegation of abandonment of the respondent by the appellant is denied. According to the appellant, both himself, respondent and Sampooram were living jointly. The appellant has leased out the land in Karnataka. At the request of the respondent to give money, the appellant sold the abovesaid property to the said Mahendra Singh. The respondent received the sale consideration of Rs. 3,42,000/- on 04.04.1996 and issued a receipt, wherein, the respondent's brother has signed. However, with false allegations, the suit has been filed, as such it is not maintainable. The purchaser of the property namely, Mahendra Singh is a necessary party in this suit. Hence, the suit is liable to be dismissed.



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4. Based on the pleadings, the trial Court framed the following issues:-

1)Whether the defendant is liable to pay the plaintiff a sum of Rs.3,42,000/- with 12% interest totally Rs.4,17,000/- as per the sale deeds dated 29.03.1996?

2)Whether the defendant obtained a receipt on 04.04.1996 from the plaintiff for having paid Rs.3,42,000/-

3)Whether Mahendra Singh is a necessary party?

4)Whether the trial Court has jurisdiction?

5)Whether the defendant is liable to pay interest to the plaintiff?

6)Whether the plaintiff has no case?

7)To what relief, the plaintiff is entitled to?

5. In order to substantiate the case, on the side of the plaintiff, the plaintiff examined herself as PW1 and 2 documents were marked as Exs.A1 and A2. On the side of the defendant, two witnesses were examined as DW1 and DW2 and 4 documents were marked as Exs.B1 to B4.



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6. The trial Court, considering the pleadings, oral and documentary evidence, decreed the suit. Challenging the judgment and decree, the defendant has filed this appeal.

7. The learned counsel for the appellant would submit that the appellant is the power agent of the respondent and the respondent is the owner of the property. In order to sell the said property, the respondent executed a power of attorney deed in favour of the appellant and based on the same, the appellant sold the property to one Mahendra Singh vide Exs.A1 and A2 and therefore, the power of attorney was acted upon and the power agent settled all the money to the respondent, for that, the respondent issued a receipt-ExB2 dated 04.04.1996 in favour of the appellant. Once the appellant proved that he settled all the amount received from the purchaser under Ex.B2 to the appellant, the burden is discharged and the onus is shifted to the respondent to prove non receipt of that amount. However, the learned trial Judge erroneously decreed the suit giving a finding that the appellant did not pay the sale consideration to the respondent. Therefore, the judgment and decree passed by the trial Court is liable to be set aside.



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8. When the matter came up on 10.06.2022 and 16.06.2022, there was no representation for the respondent and on 16.06.2022, the learned counsel for the appellant advanced his arguments and the matter was directed to be listed on 21.06.2022. Even on 21.06.2022, none appeared for the respondent. In order to give further opportunity, the appeal was again adjourned to today for arguments on the side of the respondent. Despite the matter has been listed today under the caption 'for judgment', none appeared for the respondent. Thus, this Court is inclined to pronounce the judgment on merits.

9. Heard the learned counsel for the appellant and perused the records.

10. Though the respondent did not appear and put forth his arguments, the case of the appellant is that the respondent is his wife and they got dissolved the marriage before that, the respondent executed a power of attorney in favour of the appellant. Based on that power of attorney, the appellant sold the property to a third party and settled the entire sale amount to the respondent



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and the respondent also gave a receipt-ExB2 in favour of the appellant and the trial Court failed to appreciate the oral and documentary evidence. Therefore, the judgment and decree passed by the trial Court warrants interference. Though none appeared for the respondent, no arguments put forth, the respondent filed the suit for recovery of money stating that she is the owner of the property and she executed a general power of attorney-Ex.B1 dated 29.05.1995 in favour of the appellant. Based on the said general power of attorney, the appellant sold the property stands in the name of the respondent to a third party through two sale deeds Exs.A1 and A2 for Rs.3,42,000/-. According to the respondent, the said amount has not been settled to her by the appellant. According to the appellant, he paid the amount and also got a receipt-Ex.B2 from the respondent and therefore, the respondent has no claim, but the trial Court failed to appreciate the evidence in proper perspective.

11. The relationship of parties is not in dispute. The property stands in the name of the respondent also not disputed. The general power of attorney given by the respondent in favour of the



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appellant and based on the same, the appellant sold property to a third party are not in dispute. The only dispute is as to whether the appellant/power agent has settled the sale amount to the respondent/principal. Though the appellant claimed there is no due and the respondent also issued a receipt-Ex.B2, the said document does not show what is the amount paid and what is the date on which the amount was paid. Ex.B2 says that there is no dues. When the plea of discharge is denied by the respondent, it is the duty of the appellant to discharge his burden. Though DW1 has stated that the respondent signed Ex.B2, the respondent denied the same. Though the appellant has stated that the respondent gave a signed receipt for the said payment of sale consideration, he has not produced any such receipt and marked the same and therefore, the case of the appellant cannot be believed.

12. Thus, on a reading of the entire pleadings, oral and documentary evidence, this Court finds that the appellant has not discharged his liability in the manner known to law. The receipt said to have been given by the respondent in favour of the appellant is against the normal course of conduct. This Court also finds that



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since the appellant sold the property of the respondent utilising the power of attorney, it is his duty to settle the entire sale consideration received from the third party purchaser after deducting expenses, if any, and as a power agent he is liable to settle the dues and give the accounts to the principal. In this case, once the appellant admitted that he was acting as power agent, he shall settle the entire sale consideration to the respondent. Ex.B2 is not a sufficient proof of discharge and therefore, under these circumstances, there is no perversity and illegality in the judgment of the trial Court. There is no merit in the appeal.

13. Accordingly, the Appeal Suit is dismissed. No costs.

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29.06.2022

Index : Yes / No

Internet : Yes

To

The District Judge,
Karur.



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P.VELMURUGAN, J.

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JUDGMENT MADE IN
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