



S.A.No.385 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.No.385 of 1999

M.Saravanan

... Appellant/
Appellant/
Plaintiff

Vs.

1.S.Rama Thilagam
2.Shanmugananthan

... Respondents/
Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.03.1998, passed in A.S.No.31 of 1997 on the file of the Additional District Court cum Chief Judicial Magistrate, Sivagangai, confirming the judgement and decree, dated 30.06.1994, passed in O.S.No.104 of 1992 on the file of the Sub Court, Devakottai.

For Appellant : M/s.P.Kaleeswari
for M/s.S.Silambanan Associates

For Respondents : M/s.S.Ramesh
for M/s.V.Raghavachari



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JUDGMENT

The plaintiff in the suit is the appellant herein.

2. The appellant herein had filed O.S.No.104 of 1992 before the Sub Court, Devakottai, for declaration and recovery of possession. The suit was dismissed by the trial Court and the findings of the trial Court was confirmed by the First Appellate Court. Challenging the concurrent findings, the appellant is before this Court.

3. According to the appellant / plaintiff, the suit property which was originally a vacant site belonged to the second respondent herein. The second respondent entered into a sale agreement with his father on 11.06.1991 under Exhibit A3, agreeing to sell the suit property to him for a sale consideration of Rs.16,000/- and also received the entire sale consideration. The second respondent also executed a power deed in favour of the appellant's father under Exhibit A2 on 11.06.1991. The appellant / plaintiff also claimed that the power deed executed by the second respondent is irrevocable one as it was executed after receiving



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the entire sale consideration. It was further averred that the power agent of second respondent, namely, the father of the appellant in his capacity as an agent of second respondent executed a sale deed in respect of the suit property in favour of the appellant on 21.06.1992 and the same was registered on 23.07.1992. The appellant had also stated that the first respondent herein claiming right under the second respondent tried to interfere with his possession. Therefore, he was constrained to file a suit for declaration and injunction. The plaint was subsequently amended for the relief of recovery of possession instead of relief of injunction on the ground that, the first respondent trespassed into the suit property pending suit and put up construction.

4. The first respondent herein had filed a written statement and resisted the suit and the same was adopted by the second respondent. The suit was mainly resisted by the respondents 1 and 2 on the ground that, the power deed in favour of the father of the appellant was cancelled by the second respondent under Exhibit B12, dated 08.07.1992. It was also stated by the respondents that on 08.07.1992, the second respondent sold the suit property to the first respondent and hence, the first respondent is the absolute owner of the suit property. The respondents also denied the



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sale agreement produced by the appellant in favour of his father under Exhibit A3. The respondents specifically raised a plea that subsequent to the cancellation of the power deed under Exhibit B8, the power agent of second defendant, namely, the father of the plaintiff was not entitled to execute a registered sale deed in favour of the appellant.

5. Before the trial Court, the appellant was examined as P.W.1 and four other witnesses were examined on his behalf as P.W.1 to P.W.5. Exhibits A1 to A18 were marked on behalf of the appellant. The first respondent was examined as P.W.1 and his vendor, namely, the second defendant was examined as D.W.3. One another independent witness was examined as D.W.2. The respondents marked Exhibits B1 to B14 on their behalf.

6. The trial Court on consideration of oral and documentary evidence available on record, came to the conclusion that the sale deed executed in favour of the appellant under Exhibit A1, dated 21.06.1992, by the power agent of second respondent was not valid as it was executed subsequent to cancellation of power deed by the second respondent. The suit was dismissed by the trial Court and aggrieved by



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the same, the appellant had filed first appeal in A.S.No.31 of 1997 on the file of the Additional District Court cum Chief Judicial Magistrate, Sivagangai. The First Appellate Court concurred with the findings of the trial Court and aggrieved by the same, the appellant / plaintiff is before this Court.

7. After hearing the argument of the learned Counsel for the appellant, this Court framed the following substantial questions of law, which arises for consideration in the second appeal:

"(a) Whether the alleged cancellation of power of attorney by the principal would take effect in the absence of any communication to the power agent about cancellation of power?"

"(b) Whether Exhibit A1 which is anterior in time would prevail over Exhibit B3 by virtue of operation of Section 47 of the Registration Act?"

8. Heard the argument of learned Counsels for the appellant and respondents on the questions of law framed by this Court and perused the records and typed set of papers.



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9. The Courts below came to the conclusion that Exhibit A1 sale deed in favour of the appellant will not confer any title to the appellant / plaintiff, mainly on the ground that, power granted to power agent of second respondent was cancelled by him on 08.07.1992 under Exhibit B12 and consequently, the power agent of second respondent could not have validly registered the sale deed on 23.07.1992. The said finding of the Courts below was arrived at mainly on the ground that, appellant had taken the certified copy of the sale deed in favour of the first respondent even prior to registration of Exhibit A1 and thus, he acquired knowledge about the cancellation of the power deed by second respondent.

10. I have perused the evidence of P.W.1 and P.W.2 and also the oral evidence of other witnesses examined on behalf of the appellant / plaintiff and the witnesses of the respondents / defendants. Absolutely there is no evidence available on record to show that cancellation of the power deed by second respondent was communicated to his power agent prior to registration of Exhibit A1. Under Section 208 of the Contract Act, the revocation of power takes effect only from the time on which the same is communicated to the agent. It would be appropriate to refer to



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the relevant Section under the Indian Contract Act:

“Section 208: When termination of Agent's authority takes effect as to agent, and as to third persons. - The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it become known to them”

11. A perusal of Section 208 of the Indian Contract Act would make it clear that termination of authority of agent will become effective only from the time it becomes known to him. Reading of Section 208 would further suggest that the termination of authority of agent would become effective as against third parties only when it is known to them. Reference may be had to the decision of this Court in ***Senthilselvan and others Vs. Srinivasan*** reported in ***[2014 (3) CTC 258]***, wherein this Court held as follows:

*“20. In this regard, it would be relevant to advert to **Section 208** of the Indian Contract Act, 1872, which reads as follows:-*

"208. When termination of Agent's authority takes effect as to agent, and as



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to third persons. -- The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."

The above Section prescribes the extent of an Agent's authority which clearly states that it is not binding on the third persons unless they are made aware of the same."

12. In the case on hand, there is no evidence available on record to show that the cancellation of power deed by second respondent was communicated either to the plaintiff or to the power agent of second respondent prior to registration of sale deed, dated 21.06.1992. Admittedly, the sale deed in favour of the appellant was executed on 21.06.1992 and the same was registered on 23.07.1992. By virtue of Section 47 of the Registration Act, the moment Exhibit A1 is registered, it will become operative from the date of its execution, namely, 21.06.1992. Therefore, the sale deed in favour of the appellant / plaintiff is prior to the sale in favour of first defendant under Exhibit B3. Therefore, I have no hesitation in holding that Exhibit A1 will prevail



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over Exhibit B3 in the absence of any evidence available on record to show that the alleged cancellation of power by second respondent was communicated to his power agent prior to registration of Exhibit A1 sale deed. Once we come to a conclusion appellant is the title holder of suit property under Exhibit A1, as a necessary consequence he is entitled to recovery of possession against respondents. Hence, both the question of laws are answered in favour of appellant.

13. In view of the discussions made above, the concurrent findings of the Courts below are liable to be set aside and accordingly set aside. The appellant / plaintiff is entitled to declaration and recovery of possession as prayed for.

14. In the result,

"(a) In nutshell, the second appeal stands allowed by setting aside the judgment and decree passed by both the Courts below.

(b) The appellant / plaintiff is entitled to decree for declaration and recovery of possession.



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(c) In the circumstances of the case, there will be no order as to costs."

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Index : Yes / No
Internet : Yes / No
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To

- 1.The Sub Court,
Devakottai.
- 2.The Additional District Court cum Chief Judicial Magsitrate,
Sivagangai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

btr

Judgment made in
S.A.No.385 of 1999

Dated:
20.12.2022