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AS.No.354 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.No.354 of 2011

T.V.Mylsamy

... Appellant

Vs.

1.Pushpavalli

2.C.Balakrishnan

3.Bhagavathi

4.Subramani

5.Murukesh

6.D.Govindarajan

7.Subadarsan Property Developers India(P) Ltd.,

Rep. By its Director Subramanian

No.43, Krishnammal Street,

K.K.Pudur, Saibaba Colony,

Coimbatore

8.S.Ragunath

(R8 impleaded vide court order dated 28.04.2022

made in CMP.No.1662 of 2022 in AS.No.354 of 2011

...Respondents

PRAYER:

Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 25.03.2010 made in OS.No.118 of 2008 on the file of the learned I Additional District Judge's Court at Coimbatore.



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For Appellant : Mr.Mukunth,
Senior Counsel
for M/s.Sarvabhauman Asso

For Respondents

For R4 : Mr.S.Sivapandi

For R6 : Mr.Kandan Doraisamy

For R8 : Mr.V.R.Appaswamee

R1 to 3 : No appearance

R5 : Dispensed with

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 25.03.2010 made in OS.No.118 of 2008 on the file of the learned I Additional District Judge's Court at Coimbatore thereby dismissed the suit of declaration and partition.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.



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3. The appellant is the plaintiff and the respondents are the defendants. The case of the plaintiff is that the suit property was purchased by one, Aranavithan. He died intestate leaving three sons and three daughters i.e. late Kandasamy, late Marappan, late Shanmugam and daughters i.e. late Marakkal, Subbathal and late Chinnammal. The defendants 1 to 3 are heirs of the late Chinnammal and defendants 4 & 5 are the sons of the late Shanmugam. The defendants 1 to 5 are entitled to have 2/6 share in the suit property and the heirs of the said Kandasamy, Marappan, Marakkal and Subbathal are entitled to have 4/6 share in the suit property. They had already sold out their share to the plaintiff as per sale deed dated 14.08.2007. Therefore, the plaintiff is entitled to have 4/6 share in the suit property. Both the plaintiff and defendants 1 to 5 are in joint possession and enjoyment of the suit property. While attempting to division the property by the plaintiff, the defendants are not cooperating for division of the property. Thereafter, the plaintiff came to understand that the suit property was sold out in favour of the seventh defendant through power of attorney who is the sixth defendant. In fact, after the power of attorney executed in favour of the sixth defendant, it was already cancelled by way of deed of cancellation of power of attorney dated 16.03.2007. Even after cancellaion of



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power of attorney, the seventh defendant had purchased the suit properties. Therefore, the sale deed executed in favour of the seventh defendant is not binding on the plaintiff or his predecessors in title. Hence, the suit for partition claiming 4/6 share in the suit schedule property.

4. Resisting the same, defendants 1 to 4 filed written statement stating that they along with one, Sundaram, Loga Shanmugam, Gowri, Krishnaveni and Rani are entitled to have 1/6 share in the suit property. They are still in joint possession. One, Ragunathan had filed suit for specific performance in OS.No.324 of 2008 as against the defendants and others and obtained exparte decree dated 21.08.2009. Therefore, they are entitled to have 3/42 share.

4.1 The sixth defendant filed separate written statement stating that the plaintiff is not in joint possession and enjoyment of the suit property. Arunavithan gave birth to six children out of which two sons and one daughter died. Eldest son is one, Mr.Kandasamy. The said Kandasamy and the legal heirs of the said Marappan, Marakkal and Subbathal and the legal heirs of Chinnammal, except one daughter Rani had entered into an agreement for sale



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with one, S.Ragunath on 04.10.2004 to sell their share in the property. The branch of Shanmugam did not join in the sale agreement. In the meanwhile, the said Kandasamy's legal heirs and the legal heirs of Marappan, Marakkal and Subbathal had executed registered power of attorney dated 06.12.2005 in order to deal with their 4/6 share in the total extent of 1.64 acres at the instance of the said Raghunath. They received sale consideration from the said Raghunath and had executed Vardhamana letter dated 06.12.2005 in his favour. As per the power of attorney, the sixth defendant had executed sale deed in favour of the seventh defendant. The said Raghunath had also filed suit in OS.No.24 of 2007 on the file of the Sub Court, Coimbatore as against the Logashanmugam and 13 others for specific performance on the strength of the agreement for sale dated 04.10.2004 with reference to the balance share of 7/48. Therefore, the sale deed dated 14.08.2007 executed in favour of the plaintiff is null and void and he had no right over the property. The sixth defendant had no knowledge about the cancellation of power of attorney and in fact, he did not receive any notice from the principal before execution of sale deed dated 20.03.2007. Therefore, the sale deed executed in favour of the plaintiff is share and nominal and it was created only to defeat the interest of the seventh defendant. In fact, they informed about



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the cancellation of power of attorney after execution of sale deed. It was properly replied and on receipt of the reply, the vendors of the plaintiff had executed the sale deed dated 14.08.2007 in favour of the plaintiff. Therefore, the plaintiff is not the bonafide purchaser. That apart, the plaintiff is not in possession and enjoyment of the suit property at any point of time.

4.2 The seventh defendant filed separate written statement and stated that by the registered sale deed dated 20.03.2007, he purchased the suit property for valid sale consideration through power of attorney i.e. the sixth defendant. He never received any notice from the principal or from the power holder in respect of the cancellation of power of attorney.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1. Whether the plaintiff is entitled to partition as prayed for?*
- 2. Whether the plaintiff is entitled to declaration to set aside the sale deed executed by 6th defendant to 7th defendant?*



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3. *Whether the plaintiff is not in joint possession of the suit property?*
4. *Whether the plaintiff has no right in the suit property?*
5. *Whether the sale deed dt.14.8.2007 which is a result of creation to defeat the right of the 7th defendant?*
6. *Whether the plaintiff is a bonafide purchaser?*
7. *Whether the suit not in the result of collusion of the plaintiff with the defendants 1 to 5?*
8. *Whether the suit as framed is not maintainable?*
9. *To what relief?*

6. In support of the plaintiffs' case, P.W.1 was examined and three documents were marked as Ex.A.1 to Ex.A.3. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.10 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff has preferred this appeal suit.



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7. The learned Senior Counsel appearing for the plaintiff/appellant submitted that after cancellation of power of attorney, the suit properties were sold out in favour of the seventh defendant. In fact, they had knowledge about the cancellation of power of attorney and even then, they had executed sale deed in favour of the seventh defendant. The plaintiff is a bonafide purchaser and on the strength of the sale deed, he is entitled for partition of 4/6 share in the suit schedule property. The sale deed dated 20.03.2007 executed in favour of the seventh defendant was created one by the sixth respondent, that too after cancellation of power of attorney. In fact, the power of attorney was executed in the year 2005 itself in favour of the sixth defendant. Thereafter, it was cancelled by cancellation deed dated 16.03.2007. Section 52 of the Registration Act and revocation of power of attorney under a registered document itself is a public notice and hence, the seventh defendant ought to have verified the book before presenting the document for registration. The seventh defendant also without verifying the power of attorney, purchased the said property.

8. Heard, the learned counsel appearing on either side.



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9. On the submissions made by either side, the only point arises in this appeal suit for consideration is that whether the sale deed executed in favour of the seventh defendant is valid or not?

10. The specific case of the plaintiff is that he had purchased the suit property by the registered sale deed dated 14.08.2007 from the legal heris of late, Kandasamy, Marappan, Marakkal, Subbathal and defendants 1 to 5 are being the legal heris of the late Chinnammal and Shanmugam. The sixth defendant is the power holder. The seventh defendant is the purchaser of the suit property through the power holder i.e. sixth defendant. There is no dispute that defendants 1 to 5 are entitled to have 2/6 share and the other legal heirs are entitled to have 4/6 share in the entire suit property. They had executed power of attorney in favour of the sixth defendant on 06.12.2005. Accordingly, the sixth defendant can deal with the property on behalf of principals. However, the power of attorney was cancelled by the cancellation deed dated 16.03.2007. The vendors of the plaintiff had executed power of attorney in favour of the sixth defendant. However, the plaintiff failed to implead the vendors as party to the suit. When the suit was filed for declaration declaring that the sale deed



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executed by his vendors' power of attorney is null and void, the plaintiff ought to have impleaded the principles as parties to the suit. Further, before cancellation of power of attorney registered vide document No.1089 of 2009 dated 16.03.2007, the power holder was not communicated about the cancellation of power of attorney. Admittedly, the cancellation was unilateral one by the principles. After cancellation of power of attorney, on 10.04.2007, legal notice was issued to the sixth defendant as if power of attorney was cancelled by the cancellation deed dated 16.03.2007.

11. Further, even before the notice dated 10.04.2007, the sale deed was executed by the power holder in favour of the seventh defendant on 20.03.2007. After receipt of the legal notice, the sixth defendant issued reply on 18.04.2007 thereby categorically stated that on the strength of the power of attorney, on 20.03.2007 itself, sale deed was executed in favour of the seventh defendant. In fact, the said power of attorney was executed on the instructions of the original agreement holder from whom principles have already received money. After settling the money in favour of the agreement holder, the power of attorney was executed in favour of the sixth defendant. Therefore, without even



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intimation about the cancellation of power of attorney to the sixth defendant as well as the agreement holder, the power of attorney was unilaterally cancelled by the principles on 16.03.2007. That apart, the principles having been cancelled the power of attorney executed in favour of the sixth defendant, they did not take any steps to stop further encumbrance by the power holder in respect of the suit properties. In fact, even after receipt of the reply from the power holder i.e. the sixth defendant, the principles did not take any steps to cancel the sale deed executed in favour of the seventh defendant. As stated supra, the plaintiff did not even implead the principles as parties to this suit. But the plaintiff challenged the sale deed executed in favour of the seventh defendant by his own vendors through their power of holder. The plaintiff is also subsequent purchaser from his vendors by the registered sale deed dated 14.08.2007, much after the existence of the earlier sale deed executed in favour of the seventh defendant dated 16.03.2007. Therefore, the above point is answered against the plaintiff. As such, the trial court rightly dismissed the suit and this Court finds no infirmity or illegality in the judgment and decree passed by the trial court.

12. Therefore, this appeal suit fails and the same is liable to be



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dismissed. Accordingly, this appeal suit is dismissed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The I Additional District Judge's Court at Coimbatore
- 2.Section Officer,
V.R.Section,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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