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A.S.No.494 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.06.2023

Judgment Delivered on : **07.07.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.494 of 2013

C.Krishnasamy (died)

2.Parameshwari

3.Shanthi

... Appellants

[Appellants 2 & 3 brought into the record as LR's of the deceased sole appellant, viz., C.Krishnasamy) vide Court order dated 21.02.2022 made in CMP. Nos.3772, 3773 & 3775 of 2020)

Versus

1.R.Dhamodharan

2.D.Kavitha

3.S.Rangasamy

4.A.Duraisamy

... Respondents

Prayer: Appeal Suit filed under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 28.07.2003 made in O.S.No.24 of 2003, on the file of the Additional District Court (Fast Track Court – IV), Coimbatore at Tiruppur District.

For Appellants : Mr. S. Sriram for Mr.K.Govi Ganesan

For Respondents : Mr. J.V.Sakthi Balakrishnan (for R1 & R2)

: Mr. A. Sivaji (for R3)



JUDGMENT

A.The Appeal :

This Appeal Suit is filed against the Judgment and Decree dated 28.07.2003 in O.S.No.24 of 2003 by the Additional District Court – Fast Track Court No.IV, Coimbatore at Tiruppur, whereby the suit filed by the plaintiff was decreed, declaring that the plaintiffs are the owners of items No.1 & 2 of the suit schedule properties and granting permanent injunction restraining the defendants or any person claiming through them in any manner interfering with the possession and enjoyment of the plaintiffs.

1.1 Aggrieved by the same, the first defendant filed the Appeal Suit, who, since passed away pending disposal of the Appeal Suit and his legal heirs are brought on record as appellant Nos.2 & 3. Hereinafter, in this Judgment, the parties are referred to as per their array in the suit.

B. The Case of the Plaintiffs :

2. The case of the plaintiffs is that the first plaintiff is the owner of the suit properties. He had constituted the second defendant as his Power of

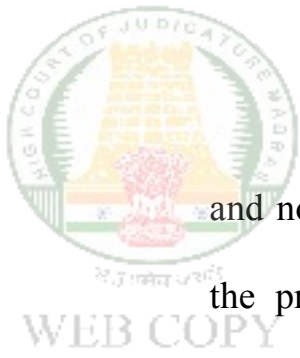


A.S.No.494 of 2013

Attorney to sell the suit properties by a registered Power of Attorney, dated 08.04.2002. On the same day, the second defendant had entered into an agreement of sale with the third defendant. Thereafter, the defendants wanted to cancel the said sale agreement and to sell the properties to the plaintiff. The parties agreed for a total sale consideration of Rs.3,13,452/-. The said sale agreement was duly cancelled and a sale deed was duly executed by the second defendant in favour of the plaintiffs on 08.08.2002. Thereafter, the defendants demanded an additional sum of Rs.50,000/-, by stating that the first defendant had cancelled the Power of Attorney, even before execution of the sale deed. Therefore, the plaintiffs filed this suit to declare himself as the owner of the suit properties and for grant of permanent injunction restraining the defendants from interfering with his possession or in the alternative, to pay back the sale consideration of Rs.3,13,452/-, along with interest and take back the properties.

C. The Case of the Defendants:

3. The first defendant filed a written statement stating that the Power of Attorney executed by him in favour of the second defendant was sham



A.S.No.494 of 2013

and nominal. It was given as a security for loan to the third defendant and the property was mortgaged to the third defendant through the second defendant on 08.08.2002. The first defendant had cancelled the Power of Attorney given to the second defendant on 05.08.2002, and therefore, the sale deed which was executed thereafter, will not be binding on him.

3.1 The second defendant filed a written statement stating that it was true that he was constituted as a Power of Attorney Agent and he entered into an agreement with the third defendant and third defendant paid the sale consideration in three installments. But, however, to earn more profits, the third defendant identified the plaintiff as the purchaser, and the sale consideration was fixed at Rs.3,13,452/- and accordingly the agreement with the third defendant was cancelled and the sale deed was executed in favour of the plaintiffs.

3.2 The third defendant filed a written statement by stating that he had entered into an agreement with the plaintiffs through the second defendant totally for two extents. One extent is of 10 Cents of land and



another extent is 20 Cents of land, and the transaction in respect of the 20 Cents of lands was cancelled on 08.08.2002. In respect of the balance 10 Cents of lands, since he has already paid a sum of Rs.1,01,000/-, the suit for specific performance has been separately filed against the first defendant and the same is pending.

C. Issues :

4. On the above pleadings, the Trial Court framed the following four issues:-

“1. Whether the suit properties are in the possession of the plaintiffs?

2. Whether the plaintiffs are entitled for the suit amount along with interest?

3. Whether the plaintiffs are entitled for declaration and permanent injunction?

4. To what other relief is entitled? ”

D. The Trial, Judgment & Further Proceedings:

5. On the said issues, the first plaintiff examined himself as **P.W.1** and **Exs.A-1 to A-21** were marked. After filing a written statement, the first



defendant, thereafter remained ex parte. The second defendant examined himself as D.W.1. No evidence was let in on behalf of the third defendant.

5.1 Thereafter, the Trial Court considered the case of the parties and found that even though the first defendant has claimed that he had cancelled the Power of Attorney, on 05.08.2002, he had failed to prove his case by adducing evidence or by even marking the said cancellation of Power of Attorney as a document and further, let in any evidence that the second defendant, the Power of Attorney agent was put on notice about the cancellation. Therefore, in the absence of any notice as to the cancellation, the Power of Attorney Agent had executed the sale deed. The Trial Court held that the same would be binding on the first defendant/principal and therefore held that the plaintiffs would be entitled for the declaration of the title and the consequential permanent injunction and holding so, the Trial Court dismissed the alternative relief of the return of the sale consideration.

5.2 When the judgment and decree thus was granted on merits, when the other defendants, namely D.W.2 and D.W.3 contested the suit, the first defendant thereafter, filed an application in I.A.No.2306 of 2006, to set aside the decree, stating that it is an ex parte decree. By order dated



20.08.2007, the said application was dismissed. Aggrieved by the same, C.M.A.No.3239 of 2007 was preferred, which also came to be dismissed on 09.02.2010. Aggrieved by the same, the first defendant further approached the Hon'ble Supreme Court of India, vide in S.L.P (Civil).No.18997 of 2010, which was also dismissed as withdrawn on 26.07.2010, however, with liberty to avail such remedies as may be available to the petitioner in law. It is thereafter, the present appeal suit is filed by the first defendant before this Court.

E. Submissions :

6. Heard *Mr. S. Sriram*, learned Counsel for the appellant and *Mr. J. V. Sakthi Balakrishnan*, learned Counsel appearing on behalf of the first and second respondents and *Mr. A. Sivaji*, learned Counsel appearing for the third respondent.

6.1 *Mr. S. Sriram*, learned Counsel for the appellant would submit that the Power of Attorney executed in favour of the second defendant had been cancelled on 05.08.2002 itself, vide a registered document No.309 of 2002. Therefore, on and from the said date, any document executed by the



second defendant would not be binding on the first defendant. As a matter of fact, the second defendant falsely averred before the Trial Court that he received the legal notice issued after cancellation only on 14.08.2002. But, however, no proof whatsoever was filed by him before the Trial Court. Even though the first defendant remained *exparte*, still, there is no pleading on behalf of the second defendant that he had handed over the sale consideration to the first defendant and therefore, the Trial Court ought not to have decreed the suit. If an opportunity is granted to the defendants, they will adduce evidence and prove that even before the execution of the sale deed, the Power of Attorney was duly cancelled and the same was to the knowledge of the second defendant, especially, when the cancellation document is not even challenged. The Trial Court only relied upon the receipts executed by the third defendant which are immaterial, so long as there is no proof of receipt of sale consideration by the first defendant, even assuming that the first defendant was *ex parte*, still the suit ought not to have been decreed.

6.2 In support of his contentions, the learned Counsel relied upon the



judgment of a Division Bench of this court, in ***Meenakshi Sundaram Textiles Vs. Valliammal Textiles***¹, to contend that even if a party remains ex parte, still the judgment should contain reasons, and the Appellate Court can necessarily go into the merits to find out whether the decree could be set aside or not, and if there are no reasons in the judgment, the matter can be remanded back to the Trial Court for fresh consideration.

6.3 The learned Counsel relied upon the Judgment of this Court in, ***P.Sunil Vs. The Government of Tamilnadu and Ors.***², more specifically, relying upon paragraph 6 therein, to contend that the issuance of notice is not necessary to revoke the Power of Attorney. The learned Counsel also relied upon the judgment in ***State Bank of India and another Vs. Ajay Kumar Sood***³, to impugn the judgment of the Trial Court in not following the basic tenets of judgment writing, by properly framing the issues and answering them.

6.4 Per *contra*, Mr. J.V. Sakti Balakrishnan, learned Counsel for the

¹ 2011(3) CTC 168

² MANU/TN/2321/2022

³ 2022 SCC OnLine SC 1067



respondents would submit that the plaintiffs have duly pleaded that they were *bona-fide* purchasers of value. As a matter of fact, the plaintiffs were open to both the reliefs, either they should be declared as the owners of the property, or the sale consideration should be returned to them. They cannot be put to loss for whatever that had happened between the defendants. Therefore, when the first defendant has failed to prove that it had duly intimated the defendant and that he cancelled the Power of Attorney, the Trial Court has rightly granted the relief of declaration and permanent injunction. The first defendant was set ex parte. It is from the ex parte stage, they have to argue and once again, cannot argue for grant of an opportunity.

6.5 The Learned Counsel would submit that already, in respect of the judgment which is made on merits, they approached the higher fora upto the Supreme Court and they failed, thus delaying and protracting the matter, and therefore, the appeal suit is liable to be dismissed.

6.6 *Mr. A. Sivaji*, learned Counsel appearing on behalf of the third respondent would again stick on to the pleadings of the third defendant in the suit and submit that the third defendant has accepted the facts in the written statement itself about entering into an agreement and cancelling the



agreement.

F. Point for consideration :

7. I have considered the rival submissions made on either side and perused the material records of the case. Upon perusal thereof, the following question arises for consideration:

“Whether or not the sale effected by the second defendant as the Power of Attorney agent on 08.08.2002 will be binding on the first defendant in view of, the alleged cancellation of the power on 05.08.2002?”

7.1 After pleading that, by a registered document bearing No. 309 of 2002, the first defendant had cancelled the Power of Attorney the first defendant neither let in oral evidence nor produced the said cancellation document before the Trial Court. As such, the said factum remains unproven. Since it is said to be a registered document bearing Document No. 309 of 2002, even assuming that the cancellation is so effected, reasonable notice must be given for such revocation as per Section 206 of the Indian Contract Act, 1872. Further, as per Section 208 the termination of authority of an agent does not take effect in so far as the agent before it

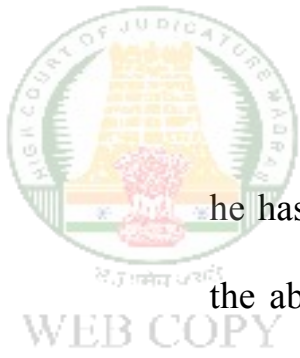


becomes known to agent and so far regards the third person before it becomes known to them. It is useful to reproduce Section 208 of the Indian Contract Act, which reads as follows:

“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 becomes known to them. —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.”

7.2 Therefore, the contention of the learned Counsel for the appellant is that on mere execution of the cancellation of Power of Attorney, the authority stood terminated, is incorrect in law and therefore, it is incumbent upon the first defendant to prove that he had not only cancelled the Power of Attorney dated 05.08.2002, but, such cancellation was duly intimated to the second defendant. The second defendant has categorically pleaded that only after the execution of sale deed on 08.08.2002, only on 14.08.2002 he received the intimation. He had also deposed to the said effect. Even though



A.S.No.494 of 2013

he has not produced the legal notice along with the postal endorsement, in the absence of any contra evidence of sending the legal notice at an early date by the first defendant, his oral testimony stands. Therefore, the first defendant had not proved that he had duly intimated the cancellation of the Power of Attorney before the execution of the sale deed in favour of the plaintiffs.

7.3 As an alternative plea, even the learned Counsel for the appellant would pray for an opportunity to remand the matter to the Trial Court so as to give him an opportunity, and such opportunity cannot be given to him for two reasons. Firstly, when the matter is decided on merits, as the other defendants were contesting the suit, the suit was decreed in the year 2003. From 2003 up to 2010, the first defendant indulged in an erroneous practice of filing of set aside application, then civil miscellaneous appeal, then filing of Special Leave Petition and withdrawing the same. Therefore, it is clear that his intention is only to protract the proceedings. Secondly, even the plea of remand is also a hallow plea, as nothing prevented the appellant to produce the document of cancellation of the Power of Attorney and the legal



notice sent by him with due acknowledgment in proof of his contention before this Court with due application to receive additional evidence, so as to consider remanding the matter back to the Trial Court. On the contrary, submissions are made in the air, therefore it is vexatious and thus, I refuse even the alternative prayer of remanding the matter back to the Trial Court, especially, since 20 years have gone-by, after filing the present suit on 28.10.2002. Hence, the point is answered that the sale deed executed on 08.08.2002 on the strength of the Power of Attorney executed by the first defendant in favour of the second defendant is binding on the first defendant.

G. Result :

8.In the result :

- i) The Appeal Suit in A.S.No.494 of 2013 is dismissed;
- ii) There will be no order as to costs.

07.07.2023

Index : Yes

Speaking order

Neutral citation : Yes

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A.S.No.494 of 2013

To

- 1.The Additional District Court, Coimbatore at Tiruppur District.
- 2.The Section Officer, V.R. Section, High Court of Madras.



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A.S.No.494 of 2013

D.BHARATHA CHAKRAVARHY, J.

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Pre-Delivery Judgment in

A.S.No.494 of 2013

07.07.2023



A.S.No.494 of 2013

Appeal Suit No.494 of 2013

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D.BHARATHA CHAKRAVARTHY. J.,

Today, this matter is posted 'for being mentioned'.

2.It is submitted by the learned counsel for the appellants that pursuant to the interim order of this Court, a sum of Rs.3,00,000/- (Rupees Three Lakhs) was deposited to the credit of the Appeal Suit. However, nothing is mentioned in the final order dated 07.07.2023, regarding the same.

3.Heard the learned counsel appearing on either side and the learned counsel for the respondents has no serious objection in allowing the appellants to withdraw the said amount.

4.Considering the submissions made by the learned counsel on either side, the amount deposited in the Appeal Suit along with interest accrued if any has to be withdrawn by the appellants herein. Therefore, in Paragraph No.8 of the order dated 07.07.2023, a new clause No.(iii) is added, which shall reads as follows:-

“(iii).The appellants are entitled to withdraw the sum of Rs.3,00,000/- (Rupees Three Lakhs only) deposited by them to the credit of the A.S.No.494 of 2013 along with accrued interest if any.”



A.S.No.494 of 2013

5.Registry is directed to issue the order copy afresh.

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28.11.2023

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D.BHARATHA CHAKRAVARTHY. J.,

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Appeal Suit No.494 of 2013