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A.S.No.467 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

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

A.S.No.467 of 2012
and M.P.No.1 of 2012

Radhakrishnan

... Appellant

-Vs-

1. H.G.Padmasarang
2. Ribayudeen
3. Dr.M.Srinivasan

... Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree of the District Court, Nagapattinam, dated 09.11.2011 made in O.S.No.23 of 2010 and allow the first appeal.

For Appellants : Mr.B.Jawahar

For Respondents

For R1 : Mr.A.Adhivarahan

For R2 & R3 : Not ready in notice

JUDGMENT

This appeal is directed as against the judgment and decree dated 09.11.2011 passed in O.S.No.23 of 2010 by the learned District Judge, Nagapattinam, thereby allowing the suit filed by the first respondent for declaration, possession and recovery of mesne profits.



A.S.No.467 of 2012

WEB COPY

2. The suit is filed for declaration and consequential relief of possession, mense profits. The first respondent is the plaintiff and appellant and the respondents 2 & 3 are defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff is that the suit property originally belonged to the third defendant and he had purchased the same by the registered sale deed dated 29.12.1995. While he was in Australia, he decided to sell the property and he had executed power of attorney in favour of the plaintiff's father. The said power of attorney adjudicated in India also. Thereafter, a sale deed was executed in favour of the plaintiff. After purchasing the suit property, when the plaintiff verified the suit property, he found that the second defendant was in possession of the suit property. On enquiry, the second defendant informed that the first defendant is the owner of the property and he only leased out the suit property to the second defendant. Therefore, the plaintiff lodged complaint and thereafter the first defendant filed suit in O.S.No.108 of



A.S.No.467 of 2012

2010 for bare injunction as against the plaintiff. Hence, the plaintiff filed the present suit for declaration and consequential relief.

4. Resisting the same, the first defendant filed written statement stating that one Muthukumar was the power of attorney of the third defendant and he entered into agreement for sale dated 16.03.2009, to sell the suit property for the total sale consideration of Rs.25,00,000/-. On the date of agreement, the first defendant paid a sum of Rs.5,00,000/- as part of the sale consideration. The said Muthukumar agreed to receive balance sale consideration within nine months on installments. On the date of agreement for sale, the said Muthukumar handed over all the original documents along with parent document. From the date of agreement of sale, the first defendant was in possession and enjoyment of the suit property. Thereafter, the first defendant also paid substantial amount of Rs.9,00,000/- as part of the sale consideration and totally a sum of Rs.14,00,000/- was paid by the first defendant. However, before registering the sale deed in favour of the first defendant, the said Muthukumar died on 14.02.2010. When the said Muthukumar was alive, the second defendant had given possession of the subject property under



A.S.No.467 of 2012

the bokkiyam agreement dated 13.04.2009, by the first defendant. Insofar as the power of attorney in favour of the plaintiff's father, it is not valid one since the principal never identified the power holder. Hence, he prayed for dismissal of the suit.

5. On completion of pleadings, the trial Court framed the following issues :-

“(i) Whether the plaintiff is entitled to declaration and possession as prayed for?”

“(ii) Whether the plaintiff is entitled to mesne profits as prayed for?”

“(iii) Whether the first defendant was in possession of the property as per any part performance of the agreement dated 16.03.2009?”

“(iv) Whether the bokkiyam agreement dated 13.04.2009 between the defendants is not valid in law?”

“(v) Whether the power of attorney executed by the third defendant in favour of Ganesa Iyer is not valid in law?”

“(vi) To what relief?”



A.S.No.467 of 2012

6. On the side of the plaintiff, he examined P.W.1 and marked documents in Ex.A.1 to Ex.A.14. On the side of the defendants, they examined D.W.1 to D.W.3 and marked documents in Ex.B.1 to Ex.B.9. The Court document was marked as Ex.X.1. After considering the oral and documentary evidences, the trial Court decreed the suit in favour of the plaintiff as prayed for. Aggrieved by the same, the first defendant filed the present appeal.

7. The learned counsel appearing for the appellant contended that the power of attorney which was marked as Ex.A.4 dated 11.03.2010 is fabricated one, since the principal never identified the power holder as his power of attorney. Further the power of attorney executed sale deed to none other than his own son. Therefore, it is a sham and nominal and it is a void document. That apart, as far as the first defendant is concerned, he had purchased the suit property for valid sale consideration. Unfortunately, before executing the sale deed, the power holder viz., Muthukumar died. Further on the date of agreement, all the original documents were handed over to the first defendant and he was put in possession in the suit schedule property. In turn, the first defendant



A.S.No.467 of 2012

entered into bokkiyam agreement dated 13.04.2009 with the second respondent and he was in possession and enjoyment as lessee in respect of the subject property.

7.1. He also submitted that the first defendant is ready and willing to hand over the vacant possession of the property. However, insofar as the means property is concerned, the plaintiff failed to prove the same by let in evidence and as such the mense profit is concerned the plaintiff can look out remedy in the manner known to law.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. Having regard to the pleadings, evidence and the submissions made by the learned counsel appearing on either side, the only point raised in this appeal is that whether the power of attorney dated 11.03.2010 is valid one?



A.S.No.467 of 2012

10. On perusal of records revealed that the principal viz., the third defendant was in abroad viz., Australia. Due to some issues, he intended to sell the property. Accordingly, he had executed power of attorney and he found the purchaser viz., the plaintiff herein. On receipt of the entire sale consideration, he executed power of attorney in favour the plaintiff's father on 11.03.2010. It was executed in Australia before the Notary Public and it was sent to India. Thereafter, it was duly adjudicated before the District Registrar, Kanyakumari at Nagercoil as serial number 44 of 2010. After adjudication, it was acted upon and his power of attorney executed sale deed in favour of the plaintiff by the registered sale deed dated 25.03.2010, which was marked as Ex.A.13.

11. Therefore, the identification of power of attorney does not arise since it was executed in Australia without the presence of the power holder. The power holder identification was verified before the authority concerned in India and he was identified by the registering authority and also duly adjudicated on 23.03.2010 by the District Registrar, Kanyakumari at Nagercoil. Therefore, the power of attorney dated 11.03.2010 which was marked as Ex.P.4 is valid one as such the plaintiff



A.S.No.467 of 2012

purchased the suit property by the registered sale deed dated 25.03.2010, which was marked as Ex.A.13. Therefore, the point is answered accordingly in favour of the plaintiff.

12. Insofar as the mesne profit is concerned, the trial Court fixed at Rs.300/- per day. Admittedly, even according to the first defendant, the suit property was leased out in favour of the second defendant under bokkiyam agreement. The suit property ad measuring 2600 sq.ft., in which the build house area is 1800 sq.ft. Therefore, the admitted fact need not to be proved by let in evidence. Accordingly, the trial Court rightly fixed the mesne profit and this Court finds no infirmity or illegality in the order passed by the Court below.

13. In the result, the Appeal Suit stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

18.12.2023

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



A.S.No.467 of 2012

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1. The District Court,
Nagapattinam.



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A.S.No.467 of 2012

G.K.ILANTHIRAIYAN, J.

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18.12.2023