



SA.No.320 of 2008

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17 .11.2023
CORAM
THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**
S.A.No.320 of 2008

1. K.A.Krishnasamy (died)

2. Deivanai

3. Samundeswari

4. Ramasamy

5.Gopal

6. Venkatachalam

... Appellants

- Vs -

1. A. Palaniappan

2. Rasammal

3.Shanmugam

4. Pushpa

... Respondents

(R2 to R4 brought on record as legal heirs of the deceased sole respondent viz., A.Palaniappan vide Court Order dated 21.10.2021 made in C.M.P.No.14867,14869 and 14870 of 2019 in S.A.No.320 of 2008)



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Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree passed in A.S.No54 of 2006 dated 19.02.2007 on the file of the first Additional Sub Judge, Erode modifying and confirming the Judgment and decree passed in O.S.No.972 of 2004 dated 17.12.2004 on the file of the first Additional District Munsif, Erode.

For Appellant : Mr.V.S.Kesavan
For Respondent-1 : died
For Respondents 2 and 4 : Mr.P. Valliappan, Senior counsel for
Mr.G.R.M.Palaniappan

JUDGMENT

This second appeal was filed at the instance of the defendant. The respondents 2 to 4 herein was the legal heirs of sole plaintiff.

2. For the sake of convenience, parties will be referred according to their litigative status before the Trial Court.

3. **The brief facts which give rise to the instant second appeal is as follows:**

The suit property is absolutely belongs to the defendant by virtue of the registered sale deed dated 04.03.1992. According to the plaintiff the



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defendant executed the registered power of attorney to the plaintiff's son P.Shanmugam on 22.04.1999. Based upon the said power of attorney the plaintiff purchased the suit property on 11.04.2001 for a sale consideration of Rs.77,555/-. It is the submission of the plaintiff that, at the time of execution of the sale deed the defendant requested some time to vacate the premises. Based upon the request, permission was granted to the defendant to reside in the same place. Whiles, the defendant refused to vacate the premises. On his refusal the plaintiff issued a legal notice on 25.07.2002 revoking the permission and directed the defendant to deliver vacant possession of the property. Though the defendant received the said notice, has neither replied to the said notice nor vacated and handed over the vacant possession. Hence the plaintiff has filed a suit directing the defendant to deliver possession of the suit property to the plaintiff and to pay mesne profits of Rs.1,500/-.

4. The said suit was resisted by the defendant on the sole contention that the Power of Attorney came to be executed only as a loan transaction and the defendant has borrowed a sum of Rs.70,000/- in the year 1996. It is the submission of the defendant that he agreed to pay the said amount with interest at the rate of 36% p.a. Since there was a delay in repayment, at the



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request of the plaintiff he has executed a power of attorney on 22.04.1999 and that the defendant did not know anything about the registration of the documents and the power of attorney dated 22.04.1999 is the result of fraud, coercion and undue influence. Therefore, the defendant prays to dismiss the suit.

5. Evidence, Documents and findings of the both the Court below:

Before the Trial Court the plaintiff has examined two witness as P.W.1 and P.W.2 and marked seven documents Ex.A.1 to Ex.A.7. As a Court documents two documents have been marked as Exs.C1 and C2. On the side of the respondents two witnesses R.W.1 and R.W.2 were marked. .

6. The trial Court after having considered the submissions made on the either side and oral and documentary evidence on record has decreed the suit on the finding that the defendant has not proved fraud, coercion and undue influence, and also gave a finding that the defendant has not proved the defence of loan transaction.



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7. Aggrieved with the said finding the defendant approached the First Appellate Court. Though the First Appellate Court has confirmed the Judgment in respect of the recovery of possession, disagreed with the findings on the mesne profits. Hence, the defendant is before this Court through the second appeal.

8. Submissions of either side counsel

The learned counsel for the appellant would vehemently submit that the very power of attorney dated 22.04.1999 came to be executed only as a security for the loan transaction and that the finding recorded by the Trial Court that the plaintiff did not prove the loan transaction is erroneous, and the learned counsel for the appellant would also submit that the decree drafted by the First Appellate Court is not in consonance with the Judgment of the First Appellate Court. It is also the submission of the appellant that both the Court below has miserably failed to consider that the respondent herein is the power agent. Hence prays to allow the second appeal.

9. Per contra the learned counsel for the plaintiff/respondent would submit that they proved the execution of the power of attorney dated 22.04.1999, and that the learned counsel would also submit that they had



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miserably failed to prove the fraud, undue influence and coercion. It was the further submission of the the learned counsel that, the plaintiff did not give any reply to the legal notice dated 25.07.2002. Hence, prayed to dismiss the appeal.

10. I have given my anxious consideration to the either side submission.

11. Substantial Question of Law:-

When the Second Appeals was admitted before this Court, this Court has framed the following substantial question of law:-

- a. *Whether the decree passed by the First Appellate Court is valid and maintainable by law*
- b. *Whether the decree passed by the First Appellate Court is executable one*
- c. *Whether the power agent against the interest of the owner and if so was his act genuine*
- d. *Whether the Courts below were coercion in decreeing the suit after gave a finding that the plaintiff contradicted in his stand*
- e. *Whether the Courts below committed material irregularity in decreeing the suit when the PW1 stated in his evidence that he did not took possession on the date of sale per contra to the contention in the sale deed (Ex.P1) in his favour, which reads that he took possession on the date of sale itself.*



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f. Whether the sale of the suit property effected on the basis of the general power ded is a legal one

g. Whether the plaintiff is entitled to the relief of the delivery of possession and mesne profits without the prayer for declaration in the suit

h. Whether the plaintiff proved the consideration for the sale

12. The sum and substance of the learned counsel for the appellant is that the power of attorney dated 22.04.1999 came to be executed only as a security to loan transaction. In this regard the trial Court found that the plaintiff has executed the power of attorney as a security for loan transaction during 1996. Whereas the sale deed is dated on 11.05.2001. If at all the defendant defence of fraud, undue influence and coercion is true , the defendant would have taken some steps within a period of three years to question the sale deed. It is pertinent to mention here that if a document is obtained by fraud and undue influence and coercion, then the said document would only become voidable and the document can be avoided by challenging the validity of those documents. Whereas the defendant herein has miserably failed to exercise his right vigilantly and has not proved the defence of fraud, coercion and undue influence.



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13. It was also the finding of the trial Court that the plaintiff have pleaded that the signature found in the power of attorney is fabricated and forged one. It was further pleaded that the signature found in the power of attorney dated 22.04.1999 was also obtained by way of fraud, coercion and undue influence. While cross examining the defendant he himself admitted that he has voluntarily came to the Sub Registrar office. However, in the written statement he stated that the signature was obtained by playing fraud, coercion and undue influence. On close reading of the submissions of the defendant, this Court could not find any substance to fraud, coercion pleaded in the written statement.

14. On the other hand the plaintiff himself was examined before the Trial Court and he explained about the due execution of Power of attorney. Therefore, the Trial Court held that through the sale deed dated 11.04.2001 title has been transferred to the plaintiff.

15. It was the finding of the learned Trial Judge that there are no material before the Court in respect of a loan transaction. In this case, the plaintiff has issued notice to the defendant on 25.07.2002, requesting him to



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vacate the premises. Further the respondent did not respond to the said notice. Therefore, this Court is of the view that the finding of fact recorded by the Trial Court as well as the First Appellate Court is based on material on record and this Court could find any material to deviate from the said finding.

16. Therefore, this Court is of the view that the substantial questions of law are answered in favour of the respondent. In the result, the second appeal is dismissed by confirming the Judgment of the First Appellate Court in A.S.No54 of 2006 dated 19.02.2007 on the file of the first Additional Sub Judge, Erode. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

17.11.2023

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To

1. The Additional District Munsif, Erode.
2. The First Additional Sub Judge, Erode

C.KUMARAPPAN, J



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