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S.A.No.14 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.14 of 2018

Panchavarnam

...Appellant

Vs.

1.Kannan

2.Nandakumar

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the I Additional Subordinate Court, Villupuram dated 02.09.2014 in A.S.No.33 of 2011 reversing the judgment and decree of the Principal District Munsif, Ulundurpet dated 06.01.2011 in O.S.No.92 of 2007.

For Appellant : Mr.M.Subash Babu

For Respondent 1 : M/s.R.Meenal

For Respondent 2 : Not ready in notice

JUDGMENT

The unsuccessful plaintiff is the appellant. She filed a suit for declaration of title and recovery of possession. The suit was decreed by the



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Trial Court. The first appeal filed by the 1st respondent/1st defendant was allowed by the First Appellate Court by reversing the findings of the Trial Court. Hence, the appellant/plaintiff is before this Court by way of this second appeal.

2. According to the appellant/plaintiff, she purchased the suit property from Subbaiah Naidu under registered Sale Deed dated 30.11.1998, marked as Ex.A1. The suit property was let out to the 1st respondent on lease. It was further case of the appellant that her husband was arrested by police under prevention of Goondas Act and in that connection, the police people had taken her to Ulundurpet Sub-Registrar Office, employed coercion and got a Power Deed in favour of the 2nd respondent in respect of suit property on 16.07.2005. Subsequently, by utilizing the said Power Deed, the 2nd respondent sold the property to the 1st respondent on 28.07.2005. The appellant issued a lawyer notice on 06.3.2006, narrating the coercion employed on her and requested the respondents to deliver possession of the suit property. The 1st respondent having received notice failed to give any reply and notice sent to the 2nd respondent was returned. In these circumstances, the appellant/plaintiff filed the suit on 27.03.2007.



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3. The 2nd respondent remained *ex-parte* and the 1st respondent filed his written statement, resisted the suit by denying the averment of the appellant as if the Power Deed in favour of the 2nd respondent was obtained by employing coercion. It was further averred by the 1st respondent that when husband of the appellant was in jail under preventive detention, he met him in jail and as per his instructions, he met the 2nd respondent in order to take out the husband of the appellant on bail. The 2nd respondent informed him about the General Power of Attorney executed by the appellant to facilitate him to sell the suit property to meet out the Court expenses. In these circumstances, he purchased the suit property from the 2nd respondent, who was power agent of the appellant by paying a consideration of Rs.1,15,000/-. He also claimed that subsequent to purchase, he made an improvement in the suit property by spending a sum of Rs.25,000/- and he had been in possession and enjoyment of the suit property.

4. Before the Trial Court, the appellant was examined as P.W.1 and two other witnesses were examined on her behalf as P.W.2 and P.W.3. On behalf of the appellant, 5 documents were marked as Ex.A1 to Ex.A5. The 1st



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respondent was examined as D.W.1, the Attestor of Sale Deed in his favour was examined as D.W.2. The scribe of Sale Deed was examined as D.W.3.

On behalf of the 1st respondent, 3 documents were marked as Ex.B1 to Ex.B3.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the 1st respondent failed to prove due execution of Power Deed in favour of the 2nd respondent. Therefore, the Trial Court held that the appellant was entitled to declaration of title and possession as prayed for. Aggrieved by the same, the 1st respondent preferred an appeal in A.S.No.33 of 2011 on the file of I Additional Subordinate Court, Villupuram.

6. The First Appellate Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove the employment of coercion as pleaded by her and therefore, reversed the finding of the Trial Court and allowed the appeal. Aggrieved by the same, the appellant is before this Court.



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7. The learned counsel appearing for the appellant submitted that the 1st respondent failed to prove due execution of Power Deed by the appellant in favour of the 2nd respondent and therefore, the First Appellate Court ought not to have reversed the well considered findings of the Trial Court. The appellant/plaintiff came to the Court with a specific plea that General Power of Attorney executed by her in favour of the 2nd respondent was obtained by him under coercion. Therefore, there is no dispute with regard to the execution of General Power of Attorney by the appellant in favour of the 2nd respondent. When the appellant pleads employment of coercion, it is for her to prove the same by leading acceptable evidence. The Power Deed in favour of the 2nd respondent was executed and registered on 16.07.2005, on the file of Ulundurpet Sub Registry. Further, it is specific case of the appellant that Power Deed was obtained by police officials by employing coercion. In that case immediately after alleged coercion ceases to exist, the appellant should have issued notice to the said power agent, namely the 2nd respondent, cancelling the Power Deed. Atleast, the appellant should have made a complaint to the higher police official regarding the coercion employed by police officers on 16.07.2005. However, the appellant for the reason best



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known to her kept quite till March 2006 for nearly eight months and thereafter, issued a pre-suit notice raising the plea of coercion. The appellant failed to explain the delay of eight months in issuing pre-suit notice raising the plea of coercion.

8. Whenever a person enters into a contract and his consent to the contract was obtained by coercion, immediately after the employment of coercion ceases to exist, it is incumbent on him to issue notice to other party and repudiate the contract. In the case on hand, the appellant failed to issue any notice cancelling the Power Deed immediately after alleged coercion ceases to exist. She also failed to give any complaint regarding the employment of coercion to the higher police officials. In such circumstances, the First Appellate Court rightly came to the conclusion that the appellant failed to prove the plea of coercion and consequently, dismissed the suit. The said factual finding of the First Appellate Court is not vitiated by perversity. In such circumstances, I do not find any substantial question of law to interfere with the finding of the First Appellate Court.



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9. Accordingly, the second appeal stands dismissed

a) by affirming the judgment and decree dated 02.09.2014 made in A.S.No.33 of 2011 on the file of the I Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 06.01.2011 made in O.S.No.92 of 2007 on the file of the Principal District Munsif, Ulundurpet; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

1. The I Additional Subordinate Court, Villupuram.
2. The Principal District Munsif, Ulundurpet.



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S.SOUNTHAR, J.

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