IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 5.7.2023

Delivered on : 17.7.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.439 of 2023
and
C.M.P.No.13286 of 2023

M.Ravi .. Appellant

Vs.

1. K.N.Krishnasamy
2. M.Varadharajan
3. V.Anandhalakshmi

4. The Chairman,
Chitode Panchayat,
Panchayat Office,
Chitode Village, Erode Taluk,
Erode District. .. Respondent

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 27.07.2022 made in A.S.No.20 of 2019 on the file of the Additional Sub Court, Erode confirming the judgment and decree dated 28.01.2019 made in O.S.No.268 of 2016 on the file of the I Additional District Munsif, Erode.

For Appellant : Mr.A.Sundaravadhanan

For R2 : Mr.S.Kaithamalai Kumaran
For R4 : Mr.U.Bharanidharan

JUDGMENT

Plaintiff, who lost his case before both the courts below in respect of permanent injunction sought for, has preferred the present Second Appeal.

2. The case of the plaintiff is as under:-

i) The suit property originally belonged to the first defendant, which, he had agreed to sell to the plaintiff and thereupon executed a general power of attorney on 4.7.2000 on receipt of entire sale consideration and also executed a declaration on the same day affirming the factum of receipt of entire sale consideration, agreement to sell the property to the plaintiff and also undertaking that he would not cancel the general power of attorney.

ii) On 4.7.2000 itself, the plaintiff was handed over possession of the suit property and from then onwards, the plaintiff had been in possession and enjoyment of the same.

iii) Second defendant is the brother of the plaintiff and third defendant is his wife. Having developed enmity with the plaintiff, the second defendant used to give trouble to the plaintiff. Colluding with one Rajasekaran and Easwaran, the second defendant attempted to evict the plaintiff from the suit property. In order to thwart such an attempt, the plaintiff had earlier filed a suit in O.S.No.605 of 2005 and obtained a decree. The Appeal preferred by the defendants therein viz., A.S.No.11 of 2007 also came to be dismissed on 24.10.2008.

iv) Subsequently, the second defendant, with the intention to evict the plaintiff from the suit property, filed a suit in O.S.No.97 of 2013, by fabricating some documents, claiming partition of the suit property against the plaintiff and one Dhanalakshmi, which also came to be dismissed by the II Additional Sub Court, Erode on 21.7.2015.

v) Further, the second defendant, by colluding with the first defendant, fabricated documents in favour of his wife, the third defendant and indulged into illegal activities to evict the plaintiff from the suit property and thereby, the plaintiff had issued notice to defendants 1 and 3 on 10.12.2007, however, there was no reply for the same.

vi) Once again, the defendants had raised some dispute and thereupon, the plaintiff had issued notice on 15.2.2011. Whileso, having failed in his suit in O.S.No.97 of 2013, the second defendant alongwith his henchmen picked up a quarrel with the plaintiff on 2.5.2016 and on pacification by the neighbours of the plaintiff, quit the place by wielding threat that they would acquire possession of the suit property by evicting the plaintiff.

vii) Aggrieved against the action of the defendants, the plaintiff had issued notice on 24.5.2016 and even thereupon, the second defendant, alongwith defendants 1 and 3 and their henchmen, visited the suit property and picked up quarrel with the plaintiff and on assembling of neighbours, they had quit the place.

viii) From the encumbrance certificates in respect of the suit property, it was found out that the second defendant had obtained a power of attorney from the first defendant and fabricated a sale deed dated 31.3.2005 in favour of his wife, the third defendant. The said fabricated sale deed was not at all given effect to and the third defendant had no means to purchase the suit property. The said sale deed was created by the defendants only to defeat the plaintiff's rights over the suit property and it is not valid and binding on the plaintiff.

ix) The plaintiff has been in possession and enjoyment of the suit property for more than 15 years from 4.7.2000. The defendants have not taken any legal steps to evict the plaintiff from the suit property or to send any notice denying the execution of the general power of attorney or the declaration dated 4.7.2000, but they have been indulging into illegal activities to evict the plaintiff from the suit property and hence, the plaintiff is constrained to file the suit seeking for permanent injunction against the defendants. Since the defendants are attempting for mutation of revenue records with the fourth defendant, such authority has been impleaded as party to the suit.

3. Defendants 2 and 3 filed written statement raising the following contentions:-

i) The general power of attorney dated 4.7.2000 alleged to have been executed in favour of the plaintiff stands cancelled on 28.2.2005 and such cancellation has been duly registered, however, the plaintiff has filed the suit suppressing those facts.

ii) The suit in O.S.No.605 of 2005, was a vexatious one, filed by the plaintiff under the guise of protecting himself from eviction from the suit property, with an intention to give trouble when the suit property involved in the said suit was sold to one Easwaran and Rajasekaran and the present suit has been filed by the plaintiff only to interfere with the peaceful possession and enjoyment of the suit property by the defendants.

iii) The other suit viz., O.S.No.97 of 2013 filed by the second defendant has no relevance with the present suit and the present suit property. That suit relates to a property purchased by the plaintiff and the second defendant jointly. When such property was not divided between them, the plaintiff had sold half of the same to one Dhanalakshmi on 26.6.2009 and hence, the second defendant had filed the said suit and since the plaintiff made some interference, he had been added as party to the said suit. The said suit was adjourned to 6.3.2017, however, the plaintiff, suppressing all these facts, filed the suit with false contentions that the defendants had fabricated documents.

iv) There is no mention in the general power of attorney with regard to handing over possession of the suit property to the plaintiff. On 28.2.2005 itself, the said deed was cancelled and thereby, the plaintiff is not entitled to claim any right over the suit property. The plaintiff has not filed any document to prove his possession. The allegation that the plaintiff had issued notices on 10.12.2007 and 15.2.2011 is a lie and he has not filed any proof for issuance of such notice. The threat alleged to have been wielded by the defendants is also a lie. The notice dated 24.5.2016 issued by the plaintiff is in respect of a property sold by the second defendant to one Rajasekaran and Easwaran with which, the second defendant has no connection, however, the notice has been to the second defendant also with ill motive.

v) The plaintiff was never in possession and enjoyment of the suit property and hence, no question of initiating any steps to evict him arose.

vi) On 28.2.2005, the first defendant had executed a general power of attorney in favour of the second defendant, who, in turn, had executed a sale deed in his favour, the third defendant on 31.3.2005, which was duly registered as Document No.973/2005 and since then, the third defendant has been in peaceful possession and enjoyment of the same and hence, the plaintiff or the first defendant has no right or title to the suit property.

vii) The third defendant had obtained permission from the

Chitode Panchayat vide Na.Ka.No.266/2015 and thereupon, had constructed a house, which has also been subjected to Property Tax on 13.10.2015 itself and door number has been assigned as 33/1. The suit property had been subjected to property tax in the name of the third defendant from the year 2012 itself and defendants 2 and 2 had been residing in the suit property from the year 2012 itself, however, the plaintiff, by furnishing false address for defendants 2 and 3, has filed the present suit.

viii) The proof of payment of property tax filed by the plaintiff is not in respect of the suit property.

ix) The plaintiff, by fabricating documents, had filed the suit with false allegations and thereby, the suit is liable to be dismissed.

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

i) Whether the plaintiff is in possession and enjoyment of the suit property?

ii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

iii) To what other reliefs?

5. Before the Trial Court, the plaintiff had examined himself as PW1 and marked 8 documents Exs.A1 to A8. On the side of the

defendants, the second defendant examined himself as DW1 and marked 13 documents as Exs.B1 to B13.

6. On examination of the oral and documentary evidence, the Trial Court dismissed the suit. On examination of the entire materials and the judgment of the Trial Court, the first Appellate Court concurred with the finding of the Trial Court. Aggrieved against the same, the plaintiff has come up with the present Second Appeal.

7. Heard the learned counsel appearing for either side and perused the judgments of the courts below in the light of the question of law raised by the Appellant.

8. Though the appellant sought to raise three questions, claiming to be substantial questions of law, he appears to have challenged the correctness of the findings rendered by the courts below without drawing any adverse inference against the defendants based on Exs.A1 to A3, by which, according to him, title to the suit property has been conveyed to him by the first defendant.

9. The plaintiff claims title through Exs.A2 and A3, unregistered general power of attorney and a declaration dated

4.7.2000 executed by the first defendant, whereas, it is the case of defendants 2 and 3 that subsequently, the general power of attorney dated 4.7.2000 was cancelled on 28.2.2005 and such cancellation has been duly registered and thereafter, the first defendant had executed another general power of attorney in favour of the second defendant, who, in turn, sold the suit property in favour of his wife, the third defendant by a registered sale deed dated 31.3.2005, Ex.B7.

10. It is relevant to note that while Exs.A2 and A3, through which the plaintiff claims title, are unregistered documents, Ex.B7 sale deed executed by the second defendant in favour of the third defendant is a registered one and thus, the plaintiff has not proved a valid title to the suit property. Further, it is seen that the plaintiff has not chosen to question the title claimed by the third defendant by way of seeking a relief of declaration of his title to the suit property and that the sale deed, Ex.B7 in favour of the third defendant is not a valid one.

11. The suit for permanent injunction simpliciter filed by the plaintiff is not maintainable in the absence of any prayer for declaration of his title, especially, when the third defendant's title has been proved by a registered sale deed and her possession has

been proved by production of Exs.B8 to B10, Patta Transfer Order, Property Tax Receipt and EB receipt, Exs.B11 to B13, certificate issued by the Executive Officer, Chithode, Green House Plan and Photos with CD in respect of the building constructed. Though it is the case of the plaintiff that he found some encumbrance in respect of the suit property and fabrication of a sale deed by the second defendant in favour of his wife, the third defendant by obtaining a general power of attorney from the first defendant, the plaintiff has not filed the suit for declaration and instead, he has filed the suit for permanent injunction simpliciter without proving his title to the suit property nor his possession of the same.

12. These aspects have been rightly considered by the courts below and the Trial Court has rightly rejected the claim of the plaintiff in light of the ratio laid down in ***Anathula Sudhakar vs. P.Buchi Reddy*** (2008) 4 SCC 594.

13. On re-appreciating the entire oral and documentary evidence, the first appellate court, concurred with the findings of the Trial Court both on facts and in law and rightly held that the documents filed by the plaintiff in support of his claim for title have not been registered as contemplated under the statute. The appellate court has also rightly held that since the plaintiff has not

taken any steps to cancel the registered sale deed in favour of the third defendant, inference could be drawn that the plaintiff had accepted the said sale deed in favour of the third defendant.

14. It is seen that the first defendant had cancelled the general power of attorney executed in the year 2000 in favour of the plaintiff and executed another general power of attorney in favour of the second defendant in the year 2005 itself and thereupon, the second defendant had executed a registered sale deed, Ex.B7 in favour of his wife, the third defendant on 31.3.2005 itself. Whileso, the plaintiff claims to have sent lawyer's notices Ex.A5 to A7 on 10.12.2007, 15.2.2011 and 25.5.2016 to the defendants, however, while filing the suit, he has filed it praying for the relief of permanent injunction alone without any relief of declaration of his title, especially, when the third defendant has a built a house in the suit property by availing necessary permission from the authority concerned and subjected the same to property tax in her name as evidenced by the documents filed on the side of the defendants.

15. The plaintiff/appellant, having missed the bus by going into deep slumber all these years without taking any steps to cancel the sale deed executed by the second defendant in favour of the

third defendant, now comes up with a suit for permanent injunction simpliciter without a relief for declaration of his title challenging the title deed in favour of the third defendant.

16. Having carefully analysed the materials available on record including the judgments of both the courts, this court is of the view that no substantial question of law is involved in the appeal requiring admission.

17. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

> *"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other*

substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

18. In view of the above, in the absence of any substantial question of law, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

17.7.2023

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To

1. Additional Sub Judge,
   Erode.

2. I Additional District Munsif, Erode.

3. The Section Officer,
   V.R. Section, High Court, Madras.

A.D.JAGADISH CHANDIRA,J.

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P.D. JUDGMENT IN
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