IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.20 of 2018
&
C.M.P.No.334 of 2018

P.Visalakshi ...Appellant

Vs.

1.Nagaraj
2.K.M.Mylsamy ... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.04.2017 in A.S.No.60 of 2016 on the file of the I Additional District Judge, Erode, confirming the judgment and decree dated 04.02.2016 in O.S.No.219 of 2013 on the file of the Principal Subordinate Judge, Erode.

For Appellant : Mr.S.Parthasarathi
Senior Counsel
for Ms.P.T.Ramadevi

For Respondents : Mr.S.Rajmakesh for R1
Mr.Venkataseshan for R2

JUDGMENT

The plaintiff in the suit is the appellant. She filed a suit seeking declaration that sale deed dated 06.02.2013 executed by the second defendant in favour of the first defendant with regard to the suit property was not binding on her and also sought for injunction restraining the respondents 1 & 2 /defendants 1 & 2 from interfering with the peaceful possession and enjoyment of the suit property. She also sought for injunction restraining the second respondent from encumbering the suit property to the third parties. The suit was dismissed by the trial Court and findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings against her, the unsuccessful plaintiff is before this Court.

2. According to the appellant/plaintiff, she purchased the suit property on 10.05.2010 and she has been in possession and enjoyment of the same from the date of purchase. During February 2011, the appellant approached the first respondent to get a loan of Rs.50,000/- and as a security for the said loan transaction, the first respondent asked the appellant to execute general power of attorney in favour of the second respondent. Though the second respondent was not known to the appellant, as first respondent insisted for such a document the appellant executed a registered general power of attorney in favour of the second respondent on 22.02.2011. Thereafter, the first respondent paid a sum of Rs.50,000/- as loan to the appellant on the next day, the first respondent entered into sale agreement for purchasing suit property with the second respondent in his capacity as power agent of appellant.

3. It was the specific case of the appellant that the general power of attorney and suit sale agreement were nothing but a collateral security for loan transaction. In spite of several request by the appellant to receive back the amount of Rs.50,000/- and cancel the agreement of sale and power of attorney, the respondents failed to accede to the same. After acquiring knowledge about the attempt of the first respondent to sell the suit property, the appellant issued a lawyer's notice to the second respondent on 08.04.2013 cancelling the power deed executed in his favour. The second respondent issued a reply notice stating that the general power of attorney was executed to him empowering him to sell the property and therefore, he was entitled to deal with the suit property. It was also claimed by the second respondent that as per the instruction of the appellant, the suit property was already sold to the first respondent. The second respondent also claimed that on the date of execution of general power of attorney, a sum of Rs.20,00,000/- was paid to the appellant towards the value of the suit property and after receipt of the said amount the possession of the suit property was handed over to the second respondent along with title documents. It was also alleged that after receipt of the notice from the appellant the respondents attempted to take over the possession of the suit property from her and therefore, she was constrained to file a suit for the above said relief.

4. The first respondent herein filed a written statement denying the averments in the plaint as if the appellant borrowed a loan of Rs.50,000/- from the first respondent and as a security for the same general power of attorney and sale agreement were executed in favour of the respondents 2 & 1 respectively. It was specifically claimed by the first respondent that the appellant never approached him for any financial assistance and the first respondent never lent any amount to the appellant.

5. It was claimed that the second respondent was doing real estate business and he wanted to purchase the suit property from the plaintiff for a consideration of Rs.20,00,000/- and as he was in need of money in respect of the said transaction, the first respondent paid a sum of Rs.5,00,000/- to the second respondent as a loan. Subsequently, the appellant executed a registered general power of attorney on 22.02.2011 in favour of the second respondent in respect of the suit property after receiving the entire value of property. (i.e., Rs.20,00,000/-). The appellant also executed a Varthamana letter on 23.02.2011 in favour of the second respondent acknowledging the receipt of Rs.20,00,000/- from him and executed the registered general power of attorney. The possession of the suit property was also delivered to the second respondent along with original title deeds. Therefore, the second respondent in his capacity as general power of attorney executed a registered sale agreement in favour of the first respondent on 23.02.2011 and both the general power of attorney and registered sale agreement were attested by the plaintiff's son Arun Krishna. Since the second respondent was unable to sell the suit property to the third parties as per his wish, the first respondent agreed to purchase the suit property for a total sale consideration of Rs.21,00,000/-. The second respondent executed a registered sale deed dated 06.02.2013 in favour of the first respondent. On these pleadings, the first respondent sought for dismissal of the suit.

6. The second respondent herein also filed a written statement denying the averment of the appellant as if registered general power of attorney executed by her in favour of the second respondent and registered sale agreement executed by the second respondent in favour of the first respondent were security for a loan transaction. The alleged offer of the appellant to repay the borrowed amount was also denied. The second respondent also averred that the appellant received a sum of Rs.20,00,000/- from the second respondent towards the value of the suit property and executed a registered general power of attorney on 22.02.2011. It was also claimed that the appellant executed a Varthamana letter dated 23.02.2011 in favour of the second respondent acknowledging the receipt of Rs.20,00,000/-. The second respondent also made other averments in the line of the written statement filed by the first respondent.

7. The appellant filed a reply statement denying the execution of Varthamana letter by her. It was claimed that at the time of loan transaction, the first respondent obtained her signature in the bank papers and stamp papers and the same was utilized by the respondents to create Vathamana letter and receipt against the appellant.

8. On these pleadings, both the parties went to the trial and before the trial Court the appellant was examined as PW1 and her son was examined as PW2. On behalf of the appellant, 8 documents were marked as Ex.A1 to Ex.A8. On the side of the respondents, the first respondent was examined as DW1 and two other witnesses were examined as DW2 and DW3. On behalf of the respondents, 8 documents were marked as Ex.B1 to Ex.B8.

9. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the plea of appellant that registered general power of attorney in favour of the second respondent and registered sale agreement in favour of the first respondent were executed only as a security for loan transaction was not proved and accordingly the suit filed by the appellant was dismissed. Aggrieved by the same, the appellant preferred the first Appeal in A.S.No.60 of 2016 on the file of the I Additional District Judge, Erode. The First Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellant has come up with this Second Appeal.

10. The learned Senior Counsel for the appellant submitted that the claim of the respondents that a sum of Rs.20,00,000/- was paid on the date of execution of the general power of attorney in favour of the second respondent was not proved by leading any acceptable evidence and in such circumstances, the Courts below ought to have believed the case of the appellant that general power of attorney was executed in favour of the second respondent only as security for the loan transaction.

11. The learned Senior Counsel for the appellant further submitted that the second respondent in whose favour the general power of attorney was executed by the appellant was not examined as witness and hence, adverse inference shall be drawn against the case of the respondents. The learned Senior Counsel for the appellant further submitted that if the entire value of the suit property was paid to the appellant on the date of execution of general power of attorney, the respondents could have got a pucca sale deed instead of going for the general power of attorney. Therefore, the learned Senior Counsel for the appellant further submitted that the attendant circumstances prevailing at the time of execution of general power of attorney probalized the case of the appellant that the power of attorney was executed as security for the loan transaction.

12. It is not in dispute that the appellant had executed a registered general power of attorney in favour of the second respondent on 22.02.2011. It is also not in dispute that in pursuance of the power conferred under power of attorney dated 22.02.2011, the second respondent executed a sale agreement in respect of the suit property on 23.02.2011 in favour of the first respondent.

13. Both the documents are registered documents. It is case of the appellant that both the documents were executed only as a security for the amount of Rs.50,000/- borrowed by her from the first respondent. In order to prove the said loan transaction the appellant has not examined any independent witness on her behalf**.** The appellant was examined as PW1 and her son was examined as PW2. It is also not in dispute that PW2 attested both the general power of attorney as well as the sale agreement. Therefore, except the interested testimony of appellant and her son there is no acceptable evidence available on record to show that there was a loan transaction between the appellant and the first respondent and these two registered documents were executed only as security for the said loan transaction. The interested testimony of the appellant and her son are not sufficient to impeach the registered document executed by her. The appellant is not an illiterate person, she is a Doctor by profession and the alleged act of the appellant borrowing a meagre sum of Rs.50,000/- and executing a general power of attorney in respect of immovable property in favour of the first respondent as a security for loan transaction was not at all acceptable having regard to her standing in society as a Doctor. The appellant, being a Doctor, could have easily obtained a personal loan from Nationalized bank to meet her financial needs, if any, instead of approaching the respondents that too by offering an immovable property as a security by way of dubious transaction.

14. The Courts below which had the benefit of watching the demeanor of the appellant as PW1 rightly came to the conclusion that the story of loan transaction pleaded by the appellant was not believable, in the light of her educational qualification. When the appellant was examined as PW1 she deposed that she was in need of money to meet her medical expenses. However, the said fact was not pleaded in the plaint. She only pleaded that under compelling circumstances, she approached the first respondent for a loan of Rs.50,000/-.

15. It is not in dispute that the general power of attorney executed by the appellant in favour of the second respondent and the sale agreement executed by the second respondent in favour of the first respondent were attested by the appellant's son namely PW2. Even after execution of sale agreement by the second respondent in favour of the first respondent in pursuance of power deed, the appellant had not taken any steps to cancel the power. She waited for nearly two years and issued the notice only on 08.04.2013 cancelling power.

16. In the plaint averments, appellant did not whisper about her signing blank stamp papers. When respondents in their written statement pleaded that appellant executed a Varthamana letter for having received entire value of property covered by power deed, plaintiff had chosen to file a reply statement as if she signed blank stamp papers at the time of borrowal and the same could have been used to prepare Varthamana letter. The failure of appellant to plead said fact in plaint creates a suspicion such an averment introduced in reply statement is an after thought. Further the story of well educated doctor signing blank stamp papers for the sake of loan amount of Rs.50,000/- is highly unbelievable.

17. In the facts and circumstances of the case, the Courts below rightly came to the conclusion that the appellant failed prove her plea that the general power of attorney in favour of the second respondent was executed as security for loan transaction and the said findings of the Courts below are not vitiated by any perversity in appreciation of evidence. Therefore, I do not find any substantial question of law arising for consideration to interfere with the concurrent findings arrived at by the Courts below.

18. a) In the result, the Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently CMP also closed.

12.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

1.The I Additional District Court, Erode.

2.The Principal Subordinate Court, Erode.

S.SOUNTHAR, J.

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