



SA.No.1542 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

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THE HONOURABLE MS. JUSTICE P.T.ASHA

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1.T.V.Tamba Rao(died)

2.Gandhi Bai

... Appellants

(1st appellant died. The 1st and the 2nd appellants are brought on record as LR's of the deceased 1st appellant viz., T.V.Tamba Rao vide order of this Court dated 17.09.2020 (by TRNJ) made in SA.No.1542 of 2011 as per memo dated 29.07.2020 in USR No.9881 of 2020).

Vs.

Sarasa Bai

... Respondent

PRAYER: Second Appeal filed under Section 100 of the CPC, against the judgment and decree dated 15.07.2011 in A.S.No.55 of 2010 on the file of the learned Subordinate Judge of Kancheepuram, which is confirming the judgement and decree dated 18.08.2010 made in OS.No.42 of 2007, on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellants : Ms.V.Srimathi

For Respondent : Ms.A.Sumathy



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judgment

The unsuccessful defendant before the Courts below is the appellant before this Court, challenging the concurrent judgment and decree passed by the learned Subordinate Judge, Kancheepuram in A.S.No.55 of 2010 which is confirming the judgment and decree dated 18.08.2010 made in OS.No.42 of 2007, passed by the learned District Munsif cum Judicial Magistrate, Uthiramerur.

2. The brief facts necessary for disposing of the Second Appeal is hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

3.The above Second Appeal has been admitted on the following substantial questions of law:

(i)Whether the plaintiff is not estopped from disputing the sale deed under Ex.B3 was unsustainable when the 1st defendant has executed the sale deed on the basis of the power given to him by the plaintiff under Ex.B1?



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(ii)Whether the sale deed executed by the agent under Ex.B3 would not have binding effect upon the principal especially when it was made during the subsistence of the power deed?

(iii)Whether the suit framed is maintainable in law without even challenging the sale deed executed by the power agent?

4.The dispute is only with reference to the property described herein below:

Schedule of Property

In Kancheepuram District, Uthiramerur Taluk, Uthiramerur Village, Nanja S.No.415/2-0.28, 415/1B-0.03, 418/1.0.62, 414-0.37, 415/1A-0.32, 336/3A-0.40, 336/3B-0.51, a well with 5HP Motor pumpset service connection no.148, deposit situated in S.No.336/3B.

List of Documents

1.	12.03.1971	..Sale deed in favour of plaintiff
2.	12.06.1973	..Sale deed in favour of plaintiff
3.	12.04.1994	..Will in favour of plaintiff
4.		..Survey notice
5		..Survey notice
6		..Survey notice
7.	26.02.1992	..Kist receipt
8.	08.02.1993	..Kist receipt
9.	30.04.1997	..Kist receipt



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|-----|------------|---------------------------|
| 10. | 26.06.1999 | ...Kist receipt |
| 11. | 10.12.1995 | ...Death Certificate |
| 12. | 25.06.1996 | ...Legal Heir Certificate |

5. The plaintiff has filed the suit to declare her title to this property and for consequential injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the same. The plaintiff's case is that item nos.1 to 3 were purchased by her between the years 1971-1973. The 4th item was allotted to her in family partition in the year 1997 and item nos.5 to 7 were bequeathed to her by her husband, namely Guruvappa Naidu by way of Will in the year 1994. The said Guruvappa Naidu died on 10.12.1995. The plaintiff would submit that she was an illiterate and issueless widow. The first defendant is none other than plaintiff's nephew and the second defendant is his wife. The first defendant, taking advantage of his close relationship and the old age and illiteracy of the plaintiff, had obtained signatures in typed papers before the Registrar Office at Uthiramelur. The plaintiff got little apprehensive about this since she found the conduct of the defendants to be a little weird. Therefore, she had sought the help of other relatives to pursue the records of the Sub-Registrar Office. She was shocked to learn that the first defendant got a Power of Attorney Deed executed in his favour on 08.11.2006 and on the



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very same day, a Will in favour of his wife viz., the second defendant.

Immediately, on coming to know about the documents, without much delay, the plaintiff had cancelled the Will and the Power of Attorney Deed on 24.01.2007 before the Sub Registrar, Uthiramerur. After coming to know about the cancellation of the documents, the defendants have proceeded to trespass into the suit property, which was successfully thwarted by the plaintiff with the help of others. Originally, the plaintiff had filed the suit for permanent injunction and she came to learn that the first defendant had created the sale deed in favour of the second defendant, which is totally a sham and nominal document created with a fraudulent intent, thereby prompted the plaintiff to file the present suit for declaration as well.

6. The defendants had entered appearance in the above suit and filed the written statement, in which, they would categorically submit that the Power of Attorney and the Will had been executed by the plaintiff with her full consent and fully comprehending the documents and for the reason that she requires assistance of the second defendant to take care of her in her old age. The first defendant had also raised a plea that the plaintiff had not sought to cancel the execution of the sale deed. It was the further case of the



defendant that the sale deed had been executed on 20.01.2007 itself and the cancellation of the Power Deed thereafter, is without any basis.

7. The District Munsif -cum-Judicial Magistrate, Uthiramerur, had framed the following issues, which are translated herein below into the English language:

(i) Whether the plaintiff is entitled to get the relief of declaration and permanent injunction as prayed for?

(ii) Whether the suit is not maintainable as contended by the defendant?

(iii) To what relief, the plaintiff is entitled for?

8. The plaintiff had examined herself as PW1 and marked Exs.A1 to A16 to substantiate her case. On the side of the defendants, the first defendant had examined himself as DW1 and other witnesses namely Ananthapadmanabhan, Thirumurthy Rao, Elumalai respectively, were examined as DW2 to 4. They had marked Exs.B1 to B14, to prove their contentions.



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9. The learned District Munsif -cum-Judicial Magistrate, Uthiramerur, on perusing the evidence and pleadings and after hearing the arguments, proceeded to decree the suit as prayed for. The learned Judge, observed that the sale deed though said to have been executed on 20.01.2007, was submitted for registration at later and that apart, payment of sale consideration, which is sought to be proved by Ex.B2 was also found to be a fabricated document.

10. Aggrieved by the said judgment and decree, the defendants had filed a suit in A.S.No.55 of 2010 on the file of the learned Subordinate Judge, Kancheepuram. The learned Subordinate Judge also concurring with the findings and reasonings given by the trial Court, had dismissed the appeal. As against the judgment and decree passed by the lower Appellate Court, the the appellant has approached this Court.

11. Heard the learned counsels on either side.

12. It would be necessary to touch upon a few dates and events. On 08.11.2006, the Power of Attorney was executed by the plaintiff in favour



of the first defendant, the registration copy is marked as Ex.A12 and the Original Power Deed is marked as Ex.B1. Ex.B8, is the registered Will of the plaintiff bequeathing the properties on the 2nd defendant, which was registered on the same day. On 09.11.2006, a receipt is claimed to have been executed by the plaintiff in favour of the first defendant, acknowledging the receipt of a sum of Rs.2,90,000/-. The above amount constitutes the entire sale consideration.

13. On 24.01.2007, a registered deed cancelling the power by the plaintiff (Ex.A13) a registered Deed, cancelling the Will (Ex.B14) were executed by the plaintiff. The defendants' case as pleaded from the documents is that on 08.11.2006, the Power of Attorney had been executed in favour of the first defendant as also the Will in favour of the second defendant. Therefore, on 09.11.2006, the plaintiff has executed the receipt in favour of the first defendant in which document, it is stated that the plaintiff had agreed to sell the suit property to the first defendant for a total sale consideration of Rs.2,90,000/-, which amount she had also received and executed the sale deed, however, Ex.B3 does not make any reference to the second defendant.



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14. Thereafter, on 20.01.2007, four days prior to the cancellation of Power of Attorney and Will by the plaintiff, the first defendant as the power agent of the plaintiff appears to have executed the sale deed in favour of his wife. This deed is however, registered only on 13.02.2007, much after the cancellation of the Power of Attorney on 24.01.2007. The sale deed further recite that the amount of Rs.2 lakhs had been received from the first defendant vide receipt dated 09.11.2006.

15. The learned counsel for the appellant had relied upon the judgment reported in 2014(3) CTC page 258 in the case of ***Senthilselvan and Others Vs. Srinivasan, rep. by his Power Agent, Vijayarengan***, wherein, the learned Judge has observed that unless and otherwise, intimation of cancellation of the Power of Attorney is given to the Power Agent, the subsequent deed executed by the power agent on the strength of cancellation of Power of Attorney would not be valid. This judgment cannot be relied upon by the defendants as they have come to the Court with a fraudulent case. The sale deed Ex.A1 is said to be executed on 20.01.2007, but has been registered only on 13.02.2007. This would



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clearly prove that the defendants were very much aware about the cancellation of Power of Attorney. Though the plaintiff would claim that the entire consideration has been paid on 09.11.2006, it is rather strange that the second defendant has not got the sale deed registered on the very same day as it was executed. This itself would clearly show that the sale deed is a manipulated and fraudulent document. That apart, the sale receipt viz., Ex.B2 which is stated to be issued by the Principal to the agent does not give details about the source, from whom the Power Agent had received the money, which he has given to the defendant.

16. On the contrary, a reading of Ex.B2 would indicate that the sale was finalised in favour of the first defendant, who has given the sale consideration. Therefore, the findings of both the Courts below cannot be countenanced. That apart, the sequence of events would clearly show that the Power of Attorney, which was executed on 08.11.2006 was cancelled on 24.01.2007 by the plaintiff who is an illiterate woman immediately upon coming to know about the execution of the Power of Attorney. Therefore, any transaction that had taken on the basis of fraudulently obtained, Power of attorney will not clothe the purchaser with any right.



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17. Considering the fact that the sale deed itself is fraudulently created, where there is no proof to show the passing of consideration to the plaintiff except for Ex.B2, which is a questionable document, there is no necessity to seek for cancellation of the said document. Therefore, the substantial questions of law are answered against the defendants.

18. In fine, the Second Appeal stands dismissed confirming the judgement and decree of the Courts below. No costs.

27.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The learned Subordinate Judge of Kancheepuram
2. The learned District Munsif cum Judicial Magistrate,
Uthiramerur.



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P.T. ASHA, J,

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