



WEB COPY



S.A.No.1206 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:15.09.2023

Delivered on: 24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.1206 of 2014

1.N.Sivakumar

2.P.Natrajan

... Appellants

Vs.

R.Peter Pereira

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 20.12.2012 made in A.S.No.29 of 2010 on the file of III Additional Sub-Court, Coimbatore in reversing the judgment and decree dated 29.04.2010 made in O.S.No.2612 of 2007 on the file of I Additional District Munsif, Coimbatore.

For Appellants : Mr.T.M.Naveen
for
Mr.T.P.Manoharan

For Respondents : Mr.K.J.Parthasarathy



S.A.No.1206 of 2014

WEB COPY

JUDGMENT

The unsuccessful defendants before the First Appellate Court are the appellants herein. The respondent, as plaintiff filed O.S.No.2612 of 2007 seeking declaration of the sale deed dated 14.05.2007 as one being illegal, null and void unenforceable and non-est in law and for consequential reliefs of permanent injunction to restrain the appellants herein from interfering with the plaintiffs peaceful possession and enjoyment and also from alienating or encumbering the Suit property based on the sale deed dated 14.05.2007.

2. The case of the plaintiff before the Trial Court was that originally the property belonged to Ms.Thelma Cecilia Pereira, the sister of one Raymond Pereira the father of the plaintiff. The plaintiff's grand mother, A.M.Pereira had executed a registered Will dated 10.01.1985 bequeathing the suit property to Thelma Cecelia Pereira. The Will was probated before the Sub Court, Coimbatore in O.P.No.49 of 2002. After the demise of the testatrix, A.M.Pereira on 26.11.1990, Thelma Cecelia Pereira became entitled to the suit property and she was in possession and enjoyment of



S.A.No.1206 of 2014

WEB COPY

the same. The said Thelma Cecelia Pereira, out of love and affection, executed a registered settlement deed in favour of the plaintiff's father, Raymond Pereira, who in turn, executed another settlement deed on 24.04.2007, in favour of the plaintiff in registered Document No.2331 of 2007. According to the plaintiff, pursuant to the said settlement deed, he has been in physical possession of the suit property, together with all original documents. The plaintiff came to know that in August 2007, the 1st defendant who is an errand of Thelma Cecelia Pereira fabricated documents and the plaintiff came to know that a sham and nominal and void document in the nature of sale deed had been executed in favour of the 2nd defendant, by the 1st defendant, claiming to be the power of attorney of Thelma Cecelia Pereira, which power of attorney was dated 29.03.2002. According to the plaintiff, the said power of attorney was obtained by fraud and the defendants had colluded amongst themselves to bring about the sale deed which is challenged in the suit. According to the plaintiff, the market value of the property was Rs.75,00,000/- in April 2007, but the consideration reflected in the sale deed in favour of the 2nd defendant was only Rs.20,00,000/- which again establishes the collusive nature of the transaction. The plaintiff therefore laid the Suit for the reliefs set out herein



S.A.No.1206 of 2014

above:

WEB COPY

(i) The said suit was contested by the defendants alleging that the plaintiff was not in possession and enjoyment as claimed and the property was occupied mostly by tenants; the plaintiff never took care of Thelma Cecelia Pereira and it was only the 1st defendant who was taking care of her, till her death; Thelma Cecelia Pereira never executed a settlement deed out of love and affection, for the plaintiff's father; the power of attorney was a true and genuine document and the allegations of collusion was stoutly denied.

3. Before the Trial Court, the plaintiff examined himself as P.W.1 and one Mr.A.Paulraj as P.W.2. On the side of the defendants, the 1st defendant examined himself as D.W.1 and three other witnesses were examined on the side of the defendants. Exs.A1 to 22 were marked on the side of the plaintiff and Exs.B1 to B9 were marked on the side of the defendants.

4. The Trial Court held that Thelma Cecelia Pereira had not served



S.A.No.1206 of 2014

WEB COPY

any termination notice regarding the power of attorney and that no steps were taken to examine Thelma Cecelia Pereira who was very much alive and ultimately held that the plaintiff did not prove his case and dismissed the suit.

5. Aggrieved by the findings of the Trial Court, the plaintiff preferred A.S.No.29 of 2010 before the III Additional Sub-Judge, Coimbatore. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal, against which the present Second Appeal has been filed at the instance of the defendants.

6. At the time of admission of the above Second Appeal, the following substantial question of law has been framed:

“ When in view of Section 208 of the Indian Contract Act, T.C.Pereira can revoke Ex.B.4 Registered Deed of Power of Attorney executed by her in favour of the 1st appellant only by way of executing a Registered Revocation Deed and also informing and making him known about such revocation, was the Court below right in relying on Sections 201 and 207 of the Indian Contract Act and holding that the said Deed of Power of Attorney was impliedly revoked by T.C.Pereira on



WEB COPY



S.A.No.1206 of 2014

18.04.2007 when she executed Ex.A3 Settlement Deed in favour of her brother viz., the father of the Respondent and consequently, Ex.A.21/22 Sale Deed dated 14.05.2007 executed by the 1st Appellant based on such Deed of Power of Attorney in favour of the 2nd Appellant is invalid?"

7. I have heard Mr.T.M.Naveen for Mr.T.P.Manoharan, learned counsel appearing for the appellants and Mr.K.J.Parthasarathy, learned counsel appearing for the respondent. I have also perused the material documents produced by way of typedsets and also decisions on which reliance has been placed by the respective counsel.

8. Learned counsel appearing for the appellants would state that the First Appellate Court clearly fell in error relying on Secs.201 and 207 of the Indian Contract Act,1872 (hereinafter referred to as the 'Act') and failed to place reliance on Sec.208 of the Act. According to the learned counsel for the appellants, the Trial Court had rightly discussed the issues framed by it and found that despite Thelma Cecelia Pereira being alive at



S.A.No.1206 of 2014

WEB COPY

the relevant point of time when the Trial of the Suit was conducted, the plaintiff did not take any steps to examine her and the First Appellate Court also ought to have drawn adverse findings and ought to have confirmed the findings of the Trial Court.

9. He would also revolve his arguments regarding the admitted fact that the Power of Attorney Ex.B.4 was never cancelled by a proper and regular revocation deed, much less the said Thelma Cecelia Pereira putting the 1st defendant on notice about any such termination and therefore he would justify the action of the 1st defendant in exercising the powers conferred upon him under Ex.B.4 in executing the sale deed in favour of the 2nd defendant.

10. Per contra, Mr.K.J.Parthasarathy would contend that when Thelma Cecelia Pereira had executed the settlement deed in favour of the plaintiff's father it tantamounted to an implied revocation of the Power of Attorney and nothing prevented the said Thelma Cecelia Pereira to execute any document dehors the Power of Attorney executed in favour of the 1st



S.A.No.1206 of 2014

WEB COPY

defendant. The learned counsel for the respondent, therefore prayed for dismissal of the Second Appeal as the substantial question of law has to be answered only against the appellants.

11. The counsel for the appellants had relied on the following decisions:

(i) s *Krishna Mohan Kul @ Nani Charan Kul & Another Vs. Pratima Maity & Ors*, reported in (2004) 9 SCC 468, for the proposition that under the Evidence Act, the onus of proof in case of transactions executed in fiduciary relationship was always on the beneficiary, irrespective of whether such party was a defendant or plaintiff. According to the counsel for the appellant, the plaintiff's father was in fiduciary relationship with Thelma Cecelia Pereira, his sister and therefore was able to bring about the settlement deed in his favour and the burden of proving the said settlement deed was very much on the plaintiff.

(ii) *Anil Rishi Vs. Gurbaksh Singh*, reported in 2006 (5) SCC 558, where also the Hon'ble Supreme Court held that the universal rule of burden of proof U/s. 101 was having an exception where a party who is in



S.A.No.1206 of 2014

WEB COPY

a dominating position and there was a fiduciary relationship between the parties the onus therefore would be on the beneficiary, but however, before such a finding is arrived at, the averments regarding the alleged fiduciary relationship must be established before drawing a presumption of undue influence against the person in a position of active confidence is drawn.

(iii) In ***Raja Ram Vs. Jai Prakash Singh and Ors***, reported in **2019 8 SCC 701**, also the Hon'ble Supreme Court held that for undue inference' clear and specific pleadings are necessary and onus would shift on the defendant U/s.16 of the Contract Act r/w Sec.111 of the Evidence Act only after the plaintiff established a prima facie case and further held that merely because the parties were closely related, it would not automatically lead to a presumption of undue influence.

(iv) In the case of ***Subhra Mukherjee and another Vs. Bharat Coking Coal Ltd & Ors***, reported in **(2000) 3 SCC 312**, the Hon'ble Supreme Court held that the burden lies on the plaintiff to prove his case based on the materials available and that the plaintiff cannot rely on the weakness or absence of defence of the defendant to discharge the onus.

(v) In ***Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (dead) and Ors***, reported in **(2007) 6 SCC 737**, the Hon'ble



S.A.No.1206 of 2014

Supreme Court has held that in a suit for recovery of possession on the strength of title the burden is on the plaintiff to establish title and he can not rely on the weakness of the defence or failure of the defendants to establish the title set up by them.

(vi) In ***Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and Ors***, reported in ***AIR 1968 SC 1413***, the Hon'ble Supreme Court held that a party in possession of best evidence which would throw light on the issue in controversy withholding it would empower the Court to draw an adverse inference against such party notwithstanding that onus of proof does not lie on him.

For a similar proposition learned counsel for the appellant relied on ***Ajay Kumar D.Amin Vs. Air France***, reported in ***(2016) 12 SCC 566*** and ***Tomaso Bruno & another Vs. State of Uttar Pradesh***, reported in ***(2015) 7 SCC 178*** and Division Bench of this Court in ***Andalammal Vs. Rajeswari Vedachalam & Ors***, reported in ***1985 (98) LW 248 (DB)*** and another judgment of this Court in ***A.S.Rathinam Vs. A.S.Ponnammal & Ors***, reported in ***2003(2) L.W 490 (DB)***.

12. Learned counsel for the appellants would also contend that the 2nd



S.A.No.1206 of 2014

WEB COPY

appellant was a bonafide purchaser and the entry regarding the settlement deed alleged to have been executed by Thelma Cecelia Pereira in favour of her brother did not also find a place in the encumbrance certificate.

13. Per contra, the learned counsel for the respondent/plaintiff would rely on the decision, *Bhatori (smt) Vs. Ram Piari (Smt)* reported in (1996) **11 SCC 655**, where the Hon'ble Supreme Court held that when a Power of Attorney had played fraud upon the principal and got her properties transferred, the principal was entitled to lay a suit for declaration and other reliefs and that fraud unravells the contract and it is void.

14. In *R.Ravichandran Vs. The State of Tamil Nadu*, etc reported in **2002-2 L.W 590**, the learned Single Judge of this Court held that registration of a document is a constructive notice and merely because a note is appended to the Encumbrance Certificate that the omission of any entry would grant immunity to the registration officials, it would not exonerate the Registration Officials for the omission which was clearly a negligent one, causing serious prejudice to aggrieved parties.

15. In *Chacko and another Vs. Mahadevan*, reported in (2007) 7



S.A.No.1206 of 2014

WEB COPY

SCC 363, the Hon'ble Supreme Court has held that the Second Appeal confines only to questions of law and when the First Appellate Court decrees the Suit by setting aside the sale deed executed by the appellant on the ground that it was vitiated by fraud, then the finding recorded by the First Appellate Court could not be interfered by the High Court in the Second Appeal exercising powers under Sec.100 of Code of Civil Procedure.

16. In the case of ***Deb Ratan Biswas and Ors Vs. Most.Anand Mayi Devi & Ors***, reported in ***2011-3-L.W.166***, the Hon'ble Supreme Court held that even after execution of Power of Attorney, the principal can act independently and does not have to take the consent of the Attorney since the Attorney is only an agent of the Principal.

17. Being conscious of the ratio laid down by the Hon'ble Supreme Court with regard to burden of proof in fiduciary transactions, scope and application of the provisions of the Contract Act, I find that the only question that would need to be addressed is as to whether the Power of Attorney executed by Thelma Cecelia Pereira on 29.05.2002 in favour of



S.A.No.1206 of 2014

WEB COPY

the 1st appellant would have to be revoked or terminated before enabling Thelma Cecelia Pereira to deal with the property independently. The parties are not at dispute with regard to the title of the said Thelma Cecelia Pereira. However, it is the case of the appellants, in defence that the brother of Thelma Cecelia Pereira never took care of her and it was only the 1st appellant who took good care of the said Thelma Cecelia Pereira and therefore taking advantage of the relationship viz., brother and sister, the plaintiff father had got the settlement deed executed in his favour.

18. I would usefully refer to Sections 201, 207 and 208 of the Indian Contract Act, 1872 and the same is extracted:

“ 201. Termination of agency.—An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.



WEB COPY



S.A.No.1206 of 2014

207.Revocation and renunciation may be expressed or implied.—Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

208.When termination of agent's authority takes effect as to agent, and as to third persons. – The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

19. Sec.201 of the Act deals with termination of agency or revocation of authority of a power agent. In terms of the said Section the agency stands terminated by the principal revoking his authority or when the agent renounces the business of agency or when the business of the agency is completed or by either death or unsoundness of the principal or agent or when the principal is adjudicated as insolvent under the provisions of any Act being in force for the relief of insolvent debtors.

20. Sec.207 clearly stipulates that revocation and renunciation need



S.A.No.1206 of 2014

WEB COPY

not be necessarily expressed but may be implied from the conduct of the principal or agent, respectively.

21. Sec.208 deals with the termination taking effect as to the agent and third parties. The termination, in terms of Sec.208 does not take effect before it becomes known to the agent or third persons, before it becomes known to them.

22. On a reading of the illustrations appended to Sec. 208 of the Act, it is seen that none of them relate to any right or interest to immovable property. The specific case of the learned counsel for the appellants is that since the principal, Thelma Cecelia Pereira never put the 1st appellant on notice about any revocation or termination of the Power of Attorney Ex.B.4, Sec.208 would come into play and therefore no reliance can be placed on Sec.207 of the Act.

23. I am unable to countenance the said submission advanced by the counsel for the appellants. When Sec.207 preceding Sec.208 of the Act provides for revocation and renunciation by even an implied conduct of the



S.A.No.1206 of 2014

WEB COPY

principal, there is no impediment for the principal to deal with the property that belongs to the principal. When a settlement deed came to be executed on 18.04.2007 and the same was also duly registered before the concerned Sub Registrar, it was an implied act of revocation/renunciation of the Power of Attorney dated 29.05.2002 executed in favour of the 1st appellant. Therefore, on the date of the execution of the settlement deed by Thelma Cecelia Pereira on 18.04.2007, it resulted in an implied revocation of the Power of Attorney dated 29.05.2002 and the 1st appellant had no authority to deal with the property of the principal on or after 18.04.2007.

24. The First Appellate Court has found that there was no fraud played or undue influence exercised by the plaintiff in bringing about the execution of the settlement deed in his favour. The said finding is a finding of fact and cannot be interfered by this Court exercising jurisdiction under Sec.100 of Code of Civil Procedure.

25. Though the counsel for the appellants would also draw any attention to Ex.B.3 Will under which Thelma Cecelia Pereira bequeathed the suit property to the defendant, the said Will also gets superceded and



S.A.No.1206 of 2014

WEB COPY

impliedly revoked by the testatrix, by executing a settlement deed in favour of her brother, Raymond Pereira. The First Appellate Court has adverted to all these factual and contentious issues and come to a reasoned finding and also found from in the evidence of D.W.1 that Thelma Cecelia Pereira was in sound mind when she executed Ex.A.3 settlement deed in favour of her brother Raymond and also relied on the admissions of P.W.1 that he was aware that the plaintiff has mutated the revenue records in his favour and that he was collecting rents from the tenants. In the light of such admissions of the 1st appellant as D.W.1 before the Trial Court, I do not find any error or infirmity in the findings of the First Appellate Court that the respondent/plaintiff did not play any fraud or took any undue advantage of the fiduciary relationship that plaintiff's father held with his sister, Thelma Cecelia Pereira in bringing about the settlement deed in his favour. I also do not find any specific denial of the execution of the settlement deed by Thelma Cecelia Pereira in favour of her brother Raymond. Even in the written statement, though at one breadth the said document is disputed, at another breadth, it is pleaded by the defendant that the settlement deeds were brought about to grab the suit property only.

26. The First Appellate Court also did not find the non-examination



S.A.No.1206 of 2014

WEB COPY

of Thelma Cecelia Pereira to be fatal to the case of the respondent/plaintiff in view of the pleadings before the Court as well as the admission of D.W.1 regarding execution of settlement deed by Thelma Cecelia Pereira in favour of her brother Raymond Pereira. Even in so far as the provisions of the Contract Act, the First Appellate Court has rightly applied Sec.207 of the Act and held that there was an implied revocation of the Power of Attorney executed in favour of the 1st appellant.

27. A con-joint reading of Sections 201 and 207 of the Contract Act and especially the illustrations appended to these Sections, I am of the view that the principal viz., Thelma Cecelia Pereira was well within her right and authority to deal with the suit property, dehors the Power of Attorney and during its subsistence and the moment the settlement deed was executed by the principal herself, it resulted in an automatic implied termination of the Power of Attorney given to the power agent. The resultant position is that from the moment the settlement deed was executed by the principal, she herself did not have any subsisting right, title or interest in the suit property and therefore there is no substance in the contention advanced by the learned counsel for the appellants that since the termination of the Power of Attorney was not brought to the



S.A.No.1206 of 2014

notice of the power agent, he was entitled to deal with the property.

WEB COPY

28. For all the above reasons, I answer the substantial question of law against the appellant. The Second Appeal fails and is accordingly dismissed. However, there shall be no order as to costs.

24.11.2023.

Internet: Yes

Index: Yes/No

Neutral Citation: Yes/No

Speaking/Non-speaking order

kpr



WEB COPY



S.A.No.1206 of 2014

P.B.BALAJI, J.,

kpr

To

- 1.The III Additional Sub Judge, Coimbatore
2. The I Additional District Munsif, Coimbatore.

Pre-delivery Judgment in
S.A.No.1206 of 2014

24.11.2023