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C.M.P.No. 19360 of 2023

C.M.P.No. 19360 of 2023
in
A.S.No. 574 of 2023

P.T.ASHA, J.

The Second Appeal is filed challenging the Judgement and Decree passed in O.S.No.544 of 2015 on the file of the III Additional District Court, Coimbatore.

2. The above suit has been filed for cancellation of the following sale deeds executed by the 1st petitioner as power agent of the respondents 1 to 4 herein:

a)the sale deed dated 01.02.2010 in favour of the 2nd defendant in respect of the 1st item of the suit property.

b)the sale deed dated 01.02.2010 executed in favor of the 3rd defendant in respect of the suit 2nd item of the property; and

c)for a permanent injunction restraining the petitioners herein from disturbing the peaceful possession and enjoyment of the respondents 1 to 4 and to restrain the 5th respondent herein from



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disconnecting electricity connection to the suit properties which stand in the name of the 4th respondent herein.

3. It is the case of the plaintiffs that a power of attorney had been executed in favour of the 1st petitioner as a security for the amounts borrowed by one Thulasidass, the husband of the 1st respondent and the father of respondents 2 to 4 and also for the loans borrowed by the plaintiffs. The contention of the plaintiffs is that the power of attorney was only executed as a security and they had no intention of alienating the properties.

4. The defendants had refuted the contention of the plaintiff and stated that the amounts had been paid only as a sale consideration and not as a loan as stated in the plaint.

5. The Court below has however proceeded to decree the suit as prayed for stating that the circumstances surrounding the execution of the document make it appear that the power of attorney



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has been executed only as a security. Challenging the said Judgement and Decree, defendants 1 to 3 are before this Court.

6. Heard Mr.B.Ramamoorthy, learned counsel for the appellants and Mr.Mouli, for the caveator.

7. The bone of contention between the parties is whether the document was executed as a security or not. This is an issue which requires detailed consideration. If in the meantime the decree is permitted to be executed, the appeal would become infructuous. Therefore, in the interest of Justice, C.M.P.No.19360 of 2023 seeking stay of all further proceedings in O.S.No.544 of 2015 on the file of the III Additional District Judge, Coimbatore is allowed and the proceedings is stayed till the disposal of the appeal.

06.10.2023

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