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S.A.No.215 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.215 of 2017

N.Eswaramoorthy

... Appellant

VS.

1.Devaraj Jain

2.Arumugam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the Judgment and Decree dated 27.04.2016 in A.S.No.94 of 2010 passed by II Additional District Court cum Sessions Court, Tiruppur confirming the judgment and decree dated 15.04.2010 in O.S.No.198 of 2005 passed by the Subordinate Court, Tiruppur.

For Appellant : Mr.S.Mukunth
Senior Advocate
for M/s.P.Tamilavel

For Respondents : Mr.A.K.Kumarasamy
for M/s.K.Govi Ganesan



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the Power of Attorney executed by the appellant in favour of 1st respondent, he sold the suit property in favour of 2nd respondent under the Sale Deed challenged in the suit dated 28.06.2004. The appellant specifically raised a plea that he executed the Power of Attorney in favour of 1st respondent only to enable him to execute a Settlement Deed in favour of Tamil Nadu Educational Department for use of school. During December-2004, he acquired knowledge that patta for the suit property has been changed in the name of 2nd defendant. Thereafter, on verification, he found that 1st respondent utilising the Power of Attorney executed by him, sold the property to the 2nd respondent. Therefore, the appellant/plaintiff has filed a suit seeking cancellation of the sale deed and also for permanent injunction.

3. The 2nd respondent herein filed a written statement and the same was adopted by the 1st respondent. The respondents mainly resisted the suit on the ground that the Power of Attorney was executed by the plaintiff only to enable the 1st respondent to sell the suit property. It was specifically pleaded that on the date of execution of Power of Attorney itself, the plaintiff received the entire value of land as consideration and issued a receipt under Ex.B2. The 1st defendant wanted to give away the lands to the



schools' use and therefore, he settled the same in favour of Educational Department. However, later, it came to his knowledge that the lands could not be used for construction of school and hence, the settlement in favour of Education Department was cancelled and in his capacity as a power agent, he sold the property to the 2nd respondent. The sale proceeds were utilised for development of the school. After purchase of the suit property, the patta for the same was changed in the name of 2nd defendant and he has been in possession and enjoyment of the suit property. The allegation of the appellant that he executed the General Power of Attorney only for the purpose of settling the suit property in favour of the Educational Department was specifically denied by the respondents in their written statement.

4. Before the Trial Court, the appellant was examined as PW.1 and his maternal uncle was examined as PW.2 and yet another witness was examined as PW.3. On behalf of the appellant, 11 documents were marked as Exs.A1 to A11. On behalf of the respondents, the 1st respondent was examined as DW.1. The 2nd respondent, who had attested the power deed executed by the appellant was examined as DW.2. Yet another attesting



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witness was examined as DW.3. The scribe of the power deed was examined as DW.4. On behalf of the respondent, 4 documents were marked as Exs.B1 to B4.

5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that appellant failed to substantiate his case that General Power of Attorney was executed only to enable the 1st respondent to settle the property in favour of the School and it was not intended for selling the property to third party. Therefore, the Trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.94 of 2010 on the file of the II Additional District and Sessions Judge, Tiruppur. The First Appellate Court also concurred with the findings of the Trial Court. Hence, Aggrieved by the same, the appellant has come by way of this second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law:-

“(1) Are the Courts below correct in dismissing the suit for cancellation of the Sale Deed dated 28.06.2004 in favour of



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the 2nd respondent overlooking the legal position that the said sale is invalid for the reason that the property under the said sale deed was already settled in favour of T.N.Educational Department, Chennai under Settlement Deed dated 27.02.2001 [Ex.A2] and was unilaterally cancelled by the 1st respondent on 28.06.2004?

(2) Are the Courts below right in overlooking the fact that the unilateral cancellation of the Settlement Deed dated 28.06.2004 is in-valid and a conveyance of the suit property by the 1st respondent to the 2nd respondent not permissible under Sale Deed dated 28.06.2004? ”

7. The learned Senior Counsel appearing for the appellant submitted that both the Courts below failed to see that the General Power of Attorney- Ex.A1 executed by appellant in favour of 1st respondent was not intended for selling the suit property to a third party. But it was executed to enable the 1st respondent to settle the property in favour of Educational Department. The learned Senior Counsel further submitted that under Ex.A2, the 1st respondent settled the property in favour of Educational Department on 27.02.2001. Thereafter, unilaterally cancelled the Settlement



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Deed on 28.06.2004. The unilateral cancellation of Settlement Deed is unknown to law. Therefore, after settling the property in favour of Educational Department, the 1st respondent is not entitled to convey the property to the 2nd defendant.

8. In order to prove the main plea of the appellant that Ex.A1-General Power of Attorney was executed only to enable the 1st respondent to settle the property in favour of the Educational Department, the appellant has not produced any acceptable evidence before this Court. A perusal of Ex.A1-General Power of Attorney would make it clear that he executed a General Power of Attorney giving power to 1st respondent to sell his property to a third party. Therefore, the recitals in Ex.A1 is very clear Power Deed was executed to enable the 1st respondent to sell the property. The contents of Ex.A1 was proved by the respondents by examining DW.1 to DW.3. DW.2 and DW.3 are attesting witnesses to Ex.A1-General Power of Attorney. They clearly deposed about the execution of General Power of Attorney by the appellant to enable the 1st respondent to sell the property to third party.



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9. On the contrary, the witnesses examined on behalf of the plaintiff namely PW.2 and PW.3 clearly admitted that Ex.A1-General Power of Attorney was executed only for selling the suit property and there is no recital in Ex.A1 to the effect that it was executed for settling the property for Educational Department. Both the Courts below on proper appreciation of evidence of DW.2 and DW.3 and admissions of PW.1 to PW.3 rightly came to the conclusion that execution of General Power of Attorney by appellant in favour of the 1st respondent to sell the property to 3rd party was duly proved and appellant failed to prove his averment that it was executed only to enable the 1st respondent to settle the property in favour of Educational Department.

10. When Power Deed was executed under Ex.A1, empowering the 1st respondent to sell the property, he is not entitled to execute the Gift Deed in favour of third party. When power is given to him to sell the property, he is expected to sell the property for valuable consideration and he is answerable to his principal for the consideration received by him. In such circumstances, it is not open to him to execute the Gift Deed without getting any consideration in respect of the property covered by the Power Deed.



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Therefore, Ex.A2-Settlement Deed executed by 1st respondent in favour of Educational Department is clearly outside the scope of Power Deed in his favour. Therefore, the document will not convey any title to the Educational Department. In such circumstances, cancellation of Settlement Deed is only a formal act. Even in the absence of cancellation of Ex.A2-Settlement Deed in favour of Educational Department, it would not convey any title to settlee under the document as the same was executed outside the scope of power conferred on the 1st respondent under Ex.A1. Hence, even if cancellation deed executed by 1st defendant is invalid in eye of law, still as discussed earlier, settlement deed executed by 1st defendant in favour of Educational Department will not convey any title to the settlee for the reasons mentioned above. In such circumstances, notwithstanding execution of settlement deed, 1st defendant is very well entitled to execute sale deed in favour of 2nd defendant and convey good title. Therefore, the substantial questions of law framed at the time of admission are answered against the appellant and in favour of the respondents.

11. As discussed earlier, both the Courts below on proper appreciation of evidence of attestors to Ex.A1 and admissions of PW.1 to



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PW.3 rightly came to the conclusion that Ex.A1-General Power of Attorney was executed in favour of 1st respondent to enable him to sell the property to third party. In such circumstances, the conclusion reached by the Courts below that appellant failed to prove his contention as if, Ex.A1 was executed to enable the 1st respondent to settle the property in favour of Educational Department is not proved. Therefore, in view of answer given to substantial questions of law framed at the time of admission, the Second Appeal is dismissed by confirming the judgement and decree passed by the Courts below.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

29.11.2023

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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To

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- 1.The II Additional District Court
cum Sessions Court, Tiruppur.
- 2.The Subordinate Court, Tiruppur.



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S.SOUNTHAR, J.

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