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S.A.No.40 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.40 of 2023
and CMP.No.1258 of 2023

1.A.Karthikeyan
2.A.Malliga

.. Appellants

Vs.

R.Saminathan

.. Respondent

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree passed in A.S.No.79 of 2020 dated 04.07.2022 on the file of the Principal District Judge, Tiruppur District, in confirming the judgment and decree made in O.S.No.220 of 2013 dated 11.02.2020 on the file of the Principal Subordinate Judge, Tiruppur District, by allowing the present Second Appeal.

For Appellants : Mr.M.Guruprasad

JUDGMENT

This second appeal is directed as against the judgment and decree 04.07.2022 passed in A.S.No.79 of 2020 on the file of the Principal District Judge, Tiruppur District, thereby confirming the judgment and decree made in



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O.S.No.220 of 2013 dated 11.02.2020 on the file of the Principal Subordinate Judge, Tiruppur District, thereby decreed the suit as prayed for.

2. The appellants are the defendants in the suit filed by the respondent for partition.

3. The case of the respondent is that the suit property originally belonged to Saravana Gounder who had two sons and two daughters. The said Saravana Gounder had not executed any document in respect of the suit property. The appellants are the legal heirs of late Arjunan, who is the son of the Saravana Gounder, died on 07.11.1993. The other two daughters also had executed a Release Deed in favour of the deceased Arjunan and Sundaramoorthy on 28.09.1995 in respect of their half share over the property. The appellants filed a suit in O.S.No.244 of 1996 for partition as against Sundaramoorthy and in that suit, they were allotted 'B' schedule of the suit property.

4. While being so, the second appellant borrowed a sum of Rs.5 lakhs from the respondent's wife for educational and maintenance expenses of first appellant herein. In order to settle the loan, she had executed a Power of Attorney in favour of the wife of the respondent herein. In turn, she executed a



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Sale Deed in favour of the respondent by a registered Sale Deed dated 06.09.2002. Thereafter, he was issued with Patta No.1165 in respect of the suit schedule property and all the revenue records were mutated in his name. On 03.07.2009, the second appellant cancelled the Power of Attorney Deed dated 13.01.2000 and on the same day she had executed a Gift Deed in respect of the suit property in favour of the first appellant herein.

5. While so, on the strength of the said Gift Deed, the first appellant also filed a suit for permanent injunction on the file of the District Munsif Court, Tiruppur in O.S.No.405 of 2009. In pursuant to the Sale Deed executed in favour of the respondent herein he demanded his undivided half share in respect of the suit property. Hence, the suit.

6. Resisting the same, the appellants filed a written statement stating that the suit property was allotted in their favour in the partition suit in O.S.No.244 of 1996. The second appellant borrowed a sum of Rs.1,50,000/- from the wife of the respondent herein on 13.01.2000 and executed Power of Attorney and had been paying monthly interest for the same. In fact, the appellants are in possession and enjoyment of the suit property. Therefore, they never intended to sell the property and no sale consideration was passed on. Hence, the first



appellant also filed a suit for injunction in O.S.No.405 of 2009. Subsequently, it was transferred and re-numbered as O.S.No.385 of 2011 on the file of the Principal Subordinate Court, Tiruppur, and it is pending.

7. On the guise of the pleadings the Trial Court framed the following issues which reads as follows;-

- “1. Whether the plaintiff is entitled for preliminary decree for partition of the suit property into two equal shares and to allot one such share to the plaintiff and put the plaintiff in separate possession of the share so allotted to him?
2. Whether the plaintiff is entitled for the relief of Permanent Injunction as claimed for?
- 3.To what other relief the plaintiff is entitled and for cost of the suit?”

8. After completion of pleadings, the respondent had examined PWs1 and 2 and Exs.A1 to 38 were marked and on the side of the appellants, they had examined DW1 and no document was marked as exhibits.

9. On perusal of oral and documentary evidence, the trial Court decreed the suit in favour of the respondent herein. Aggrieved by the same, the



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appellants preferred an appeal suit and the same was dismissed confirming the judgment and decree passed by the trial Court. Hence, the second appeal.

10. The learned counsel for the appellants would submit that no sale consideration was passed on at the time of execution of Power of Attorney by the second appellant in favour of the wife of the respondent herein. She had only borrowed a sum of Rs.1,50,000/- and in fact, the receipt also proved to that extent. Without her knowledge, the Sale Deed was executed in favour of the respondent herein, on the strength of the Power of Attorney. It is sham and nominal and as such, it is invalid in the eye of law. In fact, subsequently, the second appellant cancelled the Power of Attorney executed in favour of the wife of the respondent and executed a Gift Deed in favour of the first appellant. They are in possession and enjoyment of the property and as such, the first appellant also filed a suit in O.S.No.385 of 2011 for bare injunction in respect of the suit property. It is pending on the file of the Sub-Court, Tiruppur.

11. A perusal of records revealed that admittedly, the second appellant borrowed money from the wife of the respondent herein and executed a Power of Attorney in the year 2000 itself. Thereafter, the power holder executed a Sale Deed in favour of the respondent in respect of the suit property. On 06.09.2002,



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on the basis of the Sale Deed, the respondent was issued with Patta No.1165.

Thereafter, all the revenue records were mutated in his name by her.

Admittedly, the suit property was an undivided one and as such, the respondent filed a suit for partition in respect of the suit property. After a period of seven years, the second appellant cancelled the Power of Attorney executed in favour of the wife of the respondent herein and in turn, she executed Settlement Deed in favour of the first appellant herein. On the strength of the Settlement Deed, the first appellant filed a suit for bare injunction in respect of the very same property in O.S.No.385 of 2011 and it is pending on the file of the Sub-Court, Tiruppur. It has nothing to do with the suit filed by the respondent herein for partition. After a period of seven years, the second appellant had taken a stand that the entire sale consideration was not passed on and as such, the Sale Deed executed is sham and nominal. If at all no sale consideration was passed on, she would have very well challenged the Sale Deed executed in favour of the respondent herein.

12. That apart, after a period of seven years from the date of execution of Sale Deed, the second appellant cancelled the Power of Attorney and it shows that the appellants, after having cancelled the Sale Deed, only to grab the property, had taken so many stands. Therefore, the Courts below rightly



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decreed the suit filed by the respondent and this Court finds no infirmity or illegality in the order passed by the Court below.

13. Accordingly, the second appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.01.2023

Speaking/Non-speaking order
Index : Yes/No
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To

1. The Principal District Judge,
Tiruppur District.
2. The Principal Subordinate Judge,
Tiruppur District.



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G.K.ILANTHIRAIYAN.J.

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