



S.A.No.841 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.841 of 2023

and

C.M.P.No.26711 of 2023

1.Jesudass

2.Marthal

... Appellants

Vs.

Baby

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 24.01.2020 passed by the learned Subordinate Judge, Coonoor, in A.S.No.19 of 2018 confirming the judgement and decree dated 20.03.2018 passed by the learned District Munsiff, Kotagiri in O.S.No.20 of 2013.

For Appellants : Mr.L.Mouli

For Respondent : Dr.R.Gouri, Caveator for R.1.



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JUDGEMENT

The unsuccessful defendants before the Courts below are the appellants before this Court. The facts of the case are set out herein below briefly and the parties are referred to in the same ranking as before the Trial Court.

2. It is the case of the plaintiff who had filed the suit O.S.No.20 of 2013 on the file of the District Munsif cum Judicial Magistrate, Kothagiri, seeking (i) a declaration that the sale deed dated 28.06.2011 registered before the Sub-Registrar, Kotagiri as Document No.1068/2011, is a sham and nominal document obtained by coercion, misrepresentation and undue influence and is therefore null and void, (ii) for a permanent injunction restraining the 2nd defendant from encumbering or alienating the suit property and (iii) for an injunction restraining the 2nd defendant from taking forcible possession of the suit property.



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3. The plaintiff would submit that she is the absolute owner of a Tea Estate described in the schedule to the suit. She has been in peaceful possession and enjoyment of this property which measures 0.40 acres. Item No.1 in the schedule mentioned Tea Estate was given to the plaintiff by her father under a registered Will deed dated 31.07.1985. Item No.2 in the schedule mentioned property was purchased by her under a registered sale deed dated 30.11.1990. The plaintiff has been enjoying the properties as a single unit. On 03.01.1987, the plaintiff's father had died and the Will had come into force.

4. The plaintiff would further submit that on 20.11.1998 she had mortgaged the properties with M/s.Vijaya Bank, Kotagiri Branch for a loan of Rs.2,00,000/- which was borrowed by one Mrs.Visalatchi, a close friend of the plaintiff. The plaintiff had executed the mortgage as a guarantor.



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5. On account of her husband's ill health, she had decided to sell the suit property to third parties to meet the medical expenses. The 1st defendant came forward to buy the suit property and therefore a sale agreement dated 19.11.2003 was executed between the two. The property was agreed to be purchased for a total sale consideration of Rs.3,10,000/- and on the date of the agreement a sum of Rs.90,000/- was received as advance. The balance sale consideration of Rs.2,20,000/- was to be paid within 3 months. As per the agreement, when the 1st defendant pay the balance sale consideration fully, the plaintiff agreed to give power of attorney in favour of the 1st defendant. As per the agreement, possession of the schedule mentioned properties was not given to the defendant. The plaintiff would submit that she was always ready and willing to perform her part of the contract. After the agreement period of 3 months was over and despite the plaintiff's repeated demands, the 1st defendant did not pay the balance sale consideration.



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6. However, on 08.09.2006, without paying the entire sale consideration with the sole intent of disturbing the plaintiff's peaceful possession and enjoyment of the property, the 1st defendant started harassing the plaintiff by attempting to trespass into the property. A police complaint was also lodged and the 1st defendant was warned.

7. Thereafter, the plaintiff had filed a suit O.S.No.207 of 2006 on the file of the District Munsif, Kotagiri for an injunction restraining the 1st defendant from trespassing into the suit property. This matter was referred to the Lok Adalat and parties entered into an agreement wherein the 1st defendant had agreed to pay the entire loan amount to M/s.Vijaya Bank and further agreed to pay the balance sale consideration of Rs.60,000/- to the plaintiff. The plaintiff had agreed to give power of attorney in favour of the 1st defendant. Both parties had agreed to the said settlements and consequently, the suit was dismissed.



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8. However, after the disposal of the suit, the 1st defendant did not clear the bank's loan nor pay the balance sale consideration to the plaintiff within the agreed period. Therefore, the plaintiff had issued a legal notice dated 07.12.2010 to the 1st defendant and she had also cancelled the power of attorney which she had executed pursuant to the settlement. The 1st defendant to whom the notice was addressed, used his influence with the postal authorities had opened the cover and noted contents but did not receive the notice. He thereafter immediately executed a sale deed in favour of his wife Marthal. The petitioner had therefore come forward with the suit in question.

9. The defendants had filed a written statement denying the plaintiff's case and submitting that in the suit O.S.No.207 of 2006 it was held that the plaintiff had not proved her possession over the suit schedule properties and the suit came to be dismissed. Against this,



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there was no appeal and therefore, the suit is hit by *res judicata*. They would also submit that the plaintiff has no right, title or interest over the suit schedule properties. The suit is also hit by the provisions of Order 2 Rule 2 of C.P.C. Therefore, they had sought for the dismissal of the suit.

10. The learned Trial Judge had framed 4 issues. On the side of the plaintiff, the plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.7. On the side of the defendant, 3 witnesses were examined and Ex.B.1 to B.6 were marked. Ultimately, the learned Trial Judge, on perusing the evidence both oral as well as documentary had decreed the suit as prayed for.

11. Challenging the said judgment and decree the defendants had filed A.S.No.19 of 2018 on the file of the Sub Court, Coonoor. Before the Lower Appellate Court, the defendants had also taken out an



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interlocutory applications, namely, I.A.No.106/2018 for producing additional evidence. The Lower Appellate Court, on considering the arguments on either side had dismissed both the interlocutory application as well as the appeal and thereby confirmed the judgement and decree of the Trial Court. Aggrieved by the same, the defendants had filed the above Second Appeal.

12. Heard, the counsel Mr.Mouli appearing on behalf of the appellants.

13. A perusal of the records would indicate that during the pendency of trial in an earlier suit O.S.No.207 of 2006, whose judgement and decree have been marked as Ex.B.5 and B.6, the parties had jointly filed a memo before the Court. In the said memo, the plaintiff had admitted the receipt of Rs.1,80,000/- from the defendant and the 1st defendant had agreed to pay the balance sale consideration



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of Rs.60,000/- to the plaintiff and settled the bank's debt of Rs.3,52,000/-. On completion of these obligations, the plaintiff had further agreed to execute the sale deed in favour of the 1st defendant.

14. It appears that the 1st defendant had not come forward to complete his obligations under this settlement. In fact, the plaintiff had also executed a power of attorney dated 21.12.2009 (Ex.A.2) in keeping with the terms of the settlement. Since the 1st defendant was not coming forward to perform his part of the contract, the plaintiff had proceeded to cancel the power of attorney. The power has been given to the 1st defendant only on account of the fact that he had undertaken to settle the bank's loan and pay the balance sale consideration of Rs.60,000/- to the plaintiff both of which have not been complied with by them.



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15. The plaintiff has also revoked the power after issuing necessary notice which notice has not been received by the 1st defendant. The 1st defendant would admit that the notice has been sent only to the address given in the plaint and where the summons in the suit has been served. The return cover of the legal notice Ex.A.4 would indicate that the notice was being re-sent since the addressee had not claimed it. Hence, there is knowledge about the notice and the revocation thereafter cannot be found fault with.

16. The 1st defendant had executed the sale deed Ex.A.3 hurriedly in favour of the 2nd defendant only after coming to learn about the cancellation of the power. The 2nd defendant is none else than the wife of the 1st defendant. Therefore, the sale deed executed by the 1st defendant in favour of the 2nd defendant for a sale consideration of Rs.3,05,200/- is a created document made with the intent of removing the property from the hands the plaintiff and that



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too without making any payment as agreed upon. The Trial Court as well as the Lower Appellate Court have in extenso considered the evidence and dismissed the suit. Therefore, I see no reason to interfere with the concurrent judgement and decree of the Courts below. Further, the defendants have not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.11.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional District and Session Court, Chengalpattu
2. The Sub Court, Madurantagam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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