



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE N.SESHASAYEE**

S.A.No.169 of 2023
and C.M.P.No.5013 of 2023

1.A.Madalaimuthu
2.Chinnaraji
3.Athisayamary
4.Arokkiyam

... Appellants

Vs.

Simon (died)
1.Sowriyannan
2.Anthonysamy @ Mariaselvam
S/o.Arokkiyam,
Power of Attorney of Respondent 1

... Respondents

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C, seeking to set aside the judgment and decree of the learned Subordinate Judge, Palacode dated 27.03.2018 in A.S.No.01 of 2017, confirming the judgment and decree of the District Munsif Court, Palacode, dated 10.09.2013 in O.S.No.89 of 2008.



For Appellants : Mr.M.Vignesh

For Respondents : Mr.R.Sevlakumar

JUDGMENT

The defendants in O.S.No.89 of 2008 are the appellants herein. They successively failed to defend the suit filed by the plaintiffs / respondents, which they laid for declaration of their title and for possession.

2.The facts are not complicated. The suit property originally belonged to certain Anthony. On 11.08.1989, the said Anthony executed a power of attorney document (Ex.B1) in favour of 1st defendant. Prior to Ex.B1, Anthony had executed a Will (Ex.A2), dated 31.05.1989 in favour of his children, plaintiffs 1 and 2. The said Anthony died on 22.04.1996. Thereafter, 1st defendant, on the strength of Ex.B1, sold the suit property to defendants 2 to 4. It is in these circumstances, the plaintiffs had laid the suit. The indisputable facts available on record did not provide any difficulty to the Courts below to conclude that on the death of Anthony, the power of attorney document had come to an end and that 1st defendant could not have any authority to execute the sale deed pertaining to suit property in favour



of the defendants 2 to 4. The decree of the First Appellate Court in A.S.No.01 of 2017 is now in challenge.

3. Heard the learned counsel.

4. The facts being what they are, the only submission made by the learned counsel is that 1st defendant has passed on the sale consideration obtained from defendants 2 to 4 to the plaintiffs. Not only that the plaintiffs claim title to the suit property under Ex.A2 Will, but Ex.A2 viz. Will is also not genuine.

5. This Court does not find the twin submissions made by the counsel for the appellants impressive. First, when the death of the principal, agency come to an end, and thereafter whatever which the 1st defendant had done pursuant to Ex.B1, power of attorney cannot be sustained in law. Turning to, he challenging the genuineness of the Will is concerned, he being a stranger to the family, he is not likely to succeed to the estate of Anthony in the eventuality of the Will being not genuine, and hence he does not even have *locus standi* to challenge it.



N.SESHASAYEE, J.

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Anu

6.In fine, this Court does not find any reason to interfere with the order of the Courts below. Accordingly, this Second Appeal is dismissed. No Costs.

Consequently, the connected miscellaneous petition is closed.

09.03.2023

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To.

1. The Subordinate Judge, Palacode
2. The District Munsif Court, Palacode

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