



S.A(MD)Nos.314 and 660 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)Nos.314 and 660 of 2023

and

C.M.P(MD) Nos.7081 and 15562 of 2023

S.A(MD)No.314 of 2023

Ayyammal

...Appellant

-Vs-

D.Rajendran

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.09.2019 passed in A.S.No.43 of 2017 on the file of the Additional District Court, Tenkasi, confirming the judgment and decree dated 03.10.2016 passed in O.S.No.66 of 2009 on the file of the Principal Subordinate Court, Tenkasi and to allow the second appeal.

For Appellant : Mr.R.J.Karthick

For Respondent : Mr.S.S.Thesigan



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S.A(MD)No.660 of 2023

Ayyammal

...Appellant

-Vs-

1.Sankar Timber Depot,
Represented by its Partner,
Vishanji L.Patel
S/o.Valkabai,
Door No.291, Nehru Timber Market,
Chennai-112.

2.Anand V.Patel

3.M.Muthukumar

4.D.Rajendran

5.Shiv Timber Industries,
Door No.1/918, Courtralam Road,
Piranoor Border,
Shencottai Taluk,
Represented by its Partners,
Prakash V.Patel and
Tulsi A.Patel
Both sons of K.Patel
Door No.1/920, Courtralam Road,
Piranoor Border,
Vallam Village,
Shencottai Taluk.

6.Suresh K.Patel

7.Sakthivel

8.Tamilvel

... Respondents

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S.A(MD)Nos.314 and 660 of 2023

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.09.2019 passed in A.S.No.44 of 2017 on the file of the Additional District Court, Tenkasi, confirming the judgment and decree dated 03.10.2016 passed in O.S.No.131 of 2010 on the file of the Principal Subordinate Court, Tenkasi and to allow the second appeal.

For Appellant : Mr.R.J.Karthick

For Respondents : Mr.S.S.Thesigan

COMMON JUDGMENT

SA(MD)No.314 of 2023 is filed challenging the concurrent judgments in A.S.No.43 of 2017 on the file of learned Additional District Judge, Tenkasi and in O.S.No.66 of 2009 on the file of learned Principal Subordinate Judge, Tenkasi.

2. SA(MD) No.660 of 2023 is filed challenging the concurrent judgments in A.S.No.44 of 2017 on file of the learned Additional District Judge, Tenkasi and in O.S.No.131 of 2010 on the file of learned Principal Subordinate Judge, Tenkasi.

3. The appellant is the plaintiff in both the cases. The suit in O.S.No.66 of 2009 was filed against the respondent/defendant Rajendran seeking the relief of



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permanent injunction restraining the respondent from interfering with the appellant/plaintiff's possession and enjoyment of the suit property. The suit in O.S.No.131 of 2009 was filed by the appellant /plaintiff against i) Sankar Timber Depot ii) Anand V.Patel iii) M.Muthukumar iv) Rajendran v) Shiv Timber Industries vi) Suresh K.Patel, vii) Sakthivel and viii) Tamilvel seeking the relief of declaration that the sale deed dated 14.08.2000 executed by the second defendant in favour of first defendant is null and void and for permanent injunction restraining the respondents/defendants from interfering with her possession and enjoyment of the suit property. The suit property in both cases is one and the same.

4. It is seen from the plaint averments in O.S.No.66 of 2009 that the plaintiff claims that the suit property is originally belonged to (i) Arunachalam (ii) Nainar (iii) Puranam and (iv) Challappa. They have sold the suit property to the plaintiff on 10.05.1995. The plaintiff constructed a residential building in the suit property and established a saw mill in the name of Sri Murugan Saw Mill. She has been running the saw mill from the date of purchase by paying necessary taxes. The building in the suit property bears Door No.99 B later as 590(A),



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590(B), 590(C) and 590(D) and then 4/590, 591, 592, 593, 594. One Anand V.Patel used to supply wooden log to the plaintiff. The transaction was carried on in an open and current account basis. In the said transaction, he claims that the plaintiff had to pay Rs.5,00,000/- apart from Rs.10,00,000/- borrowed. As a security, Anand V.Patel insisted the plaintiff to execute a general power attorney deed. With no option, plaintiff executed a general power of attorney deed on 23.05.2000 and registered it on 19.07.2000. This general power of attorney deed was not intended to be acted upon. It was executed only as a security. As claimed by Anand V.Patel, he had not lent a sum of Rs.10,00,000/- as loan to the plaintiff. Plaintiff came to know that Anand V.Patel was trying to sell the suit property by fabricating the documents. Therefore, the plaintiff had cancelled the general power of attorney deed dated 19.07.2000 on 03.08.2000 and the same was informed to the Anand V.Patel. Despite knowing about the cancellation of the general power of attorney deed, Anand V.Patel had executed the sale deed in favour of Sankar Timber Depot, Madras, on 12.12.2000. The said document is illegal and will not bind the plaintiff. On the basis of this illegal sale deed, the partner of Sanker Timber Depot, Vishanji L.Patel threatened the plaintiff to part with the possession of the suit property. When that was refused, defendant



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threatened the plaintiff at the instance of Anand V.Patel and Vishanji L.Patel to handover the possession of the suit property. In the said circumstances, the suit was filed.

5. In the written statement filed by the defendant, it is admitted that the suit property belongs to the plaintiff. It is stated that the plaintiff suffered a loss in the saw mill business and therefore, she executed a general power of attorney deed in favour of Anand V.Patel on 23.05.2000. In pursuance of the said power of attorney deed, Anand V.Patel had sold the suit property to Vishanji L.Patel on 14.08.2000. For want of proper stamp duty, the said document was kept pending for registration. Plaintiff borrowed a loan with Canara Bank mortgaging the suit property. On the basis of the telegram sent by Canara Bank, Vishanji L.Patel had repaid a sum of Rs.6,33,500/-. It was the payment of the loan borrowed by the plaintiff. The plaintiff had also given a letter to the Canara bank stating that “ we hereby declare that we have no right, title and interest whatsoever over the aforesaid property. All the original documents pertaining to the above property may be handed over to him against his acknowledgment.” On the basis of sale, mutation was taken place in the name of Vishanji L.Patel. Vishanji L.Patel had



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executed a sale agreement in favour of the defendant for selling the suit property to the defendant. He also executed a general power of attorney deed in favour of Muthukumar on 02.03.2009. The plaintiff was not in possession and enjoyment of the suit property. She managed to show the advocate commissioner that she was in possession of the suit property after making forcible entry and operating the machineries.

6. The suit in O.S.No.131 of 2010 is filed for declaration of title and injunction or in alternative, declaration and possession. Identical averments are made in the plaint as we found in O.S.No.66 of 2009. That apart, it is alleged that the plaintiff filed the suit in O.S.No.66 of 2009 against the defendant Rajendran. She also filed I.A.No.218 of 2009 seeking Ad-interim injunction. The Court on going through the records passed an order Ad-interim injunction till 24.06.2009. Advocate commissioner was also appointed. The Advocate Commissioner inspected the suit property and filed his report and plan. The report and plan show that the plaintiff was in possession and enjoyment of the suit property. The sale deed dated 14.08.2000 is the fabricated sale deed. The defendants 1 and 2 are close relatives. They had executed this sale deed between themselves in order



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to defeat the right of the plaintiff in the suit property. The general power of attorney deed dated 02.03.2009 in favour of third defendant-Muthukumar is also illegal. Therefore, the suit was filed for the aforesaid reliefs.

7. In the written statement filed by the defendants it is alleged that the suit property belong to first defendant through sale. He intended to sell the suit property to fourth defendant through his power agent third defendant. It is true that the suit property belonged to the plaintiff through a sale deed dated 10.09.1995 and the plaintiff was running a saw mill in the suit property in the name of Sri Murugan Saw Mill. Plaintiff executed a general power of attorney deed in favour of the second defendant in respect of the suit property on 23.05.2000. In Pursuance of the said general power of attorney deed, second defendant sold the suit property to the first defendant. Possession also handed over to the first defendant. First defendant partner Vishanji L.Patel settled a loan of Rs.6,33,500/- borrowed by the plaintiff from Canara Bank. Plaintiff had also given a letter stating that she has no right, title and interest in the suit property and has no objection for handing over the documents to Vishanji L.Patel. There was due of Rs.5,05,655/- towards commercial taxes. As per the orders of this



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Court in WP(MD)No.1214 of 2003, first defendant paid a sum of Rs.2,00,000/- towards commercial tax. After obtaining interim injunction, plaintiff managed to show, by break opening the lock that she was running a saw mill, to the commissioner. Necessary mutation has been taken place in the name of the first defendant. First defendant is in possession and enjoyment of the suit property.

8. The plaintiff filed reply statement denying the written statement averments. It is claimed in the reply statement that the sale in favour of the first defendant had been executed only after knowing the cancellation of the general power of attorney deed. The general power of attorney deed was not in force on the date of execution of sale on 14.08.2000. Therefore, the sale is not valid. Payment of the bank loan will not confer any title on the property to the first defendant. Those documents have been created by the defendants. The letter alleged in the written statement was not given by the plaintiff. The plaintiff is not aware of the notice given by the Commercial Tax Officer to the first defendant.

9. In the additional written statement filed by the defendants 1 to 4, it is



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stated that the sale deed in favour of the fourth defendant and the sale deed executed by the fourth defendant in favour of fifth and sixth defendants are legal and valid documents. The suit property is now in possession and enjoyment of the of the fifth and sixth defendants. The suit is barred by limitation. The suit is not properly valued and proper Court fee was not paid.

10. This was denied by the plaintiff in the reply statement. It is stated that the suit was filed for appropriate relief on payment of proper Court fee.

11. In the joint trial conducted, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A23 were marked and on the side of the defendants D.W.1 was examined and Ex.B1 to Ex.B47 were marked and Commissioner's Report, Plan and objection to Commissioner's Report and Plan were marked as Ex.C1 to Ex.C3.

12. On considering the oral and documentary evidence, the learned Trial Judge had dismissed the suits. The plaintiff filed the appeals in A.S.No.43 of 2017 against the judgment in O.S.No.66 of 219 and in A.S.No.44 of 2017 against



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the judgment in O.S.No.131 of 2010. The learned first Appellate Judge had concurred with the findings of the learned Trial Judge and dismissed both the appeals. Therefore, the plaintiff has filed these second appeals.

13. The learned counsel for the appellant submitted that the Courts below have not considered the fact that the plaintiff had no necessity for executing a general power attorney deed to the second defendant to manage the suit property, when the plaintiff is residing in the same locality. The sale consideration was not paid to the plaintiff. Both the Courts below have failed to note that a power agent cannot act against the interest of the principal/plaintiff. Ex.B4, power of attorney deed, was cancelled vide Ex.A3-cancellation deed on 03.08.2000 and that was duly communicated to the second defendant. In the said circumstances, Ex.B5 sale deed executed by the second defendant in favour of the first defendant, is illegal. It is evident from the fact that Ex.B5, sale deed, was registered only on 12.12.2000. Ex.B5 is hit by cancellation of Ex.B4 power of attorney deed. Neither the first defendant nor other defendants, who claim title through him, cannot claim to have any title over the suit property. The defendants are powerful persons and they created documents using their influence.



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Therefore, the learned counsel for the appellant prays for setting aside the judgment of Courts below and for decreeing both the suits.

14. In reply, the learned counsel for the respondents in both the cases submitted that the cause of action for filing O.S.No.131 of 2010 was available when the plaintiff filed a suit in O.S.No.66 of 2009. However, the plaintiff had filed O.S.No.66 of 2009 only for the relief of bare injunction. Other prayer sought in O.S.No.131 of 2009 has not been sought in O.S.No.66 of 2009. Therefore, the subsequent suit in O.S.No.131 of 2010, is hit by Order 2 Rule 2 of CPC. General power of attorney deed, namely, Ex.A2, was executed by the plaintiff in favour of the second defendant on 23.05.2000 and registered on 19.07.2000. This general power of attorney deed is said to have been cancelled by the plaintiff through Ex.A3 on 03.08.2000. The said document was registered only on 11.10.2000. Prior to its registration, the second defendant executed Ex.B5 sale deed, on 14.08.2000 in favour of the first defendant. Ex.B5 sale deed could not be registered on 14.08.2000 due to some issue regarding valuation of the property and payment of stamp duty. Ex.A3 cancellation deed was executed giving a date on 03.08.2000 and registered on 11.10.2000. Ex.A3 came into



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existence only to create litigation in respect of the suit property. After purchase of the suit property by the first defendant, revenue records have been changed in the name of the first defendant and the defendants have produced Ex.B1 to Ex.B47 documents to show that they are in possession and enjoyment of the suit property. The plaintiff borrowed the money from Canara Bank and at the insistence of Canara Bank, the first defendant had alone paid the bank loan. The plaintiff had also given a letter stating that she has no objection for returning the document to the first defendant. The first defendant had also paid the commercial tax due. These facts cumulatively show that Ex.B5 sale is a genuine sale and that was acted upon. There is no prayer asked for cancellation of sale deed. The suit was filed with the delay. Taking into consideration all these aspects, both the Courts below have rightly dismissed the suits and thus, the learned counsel for the respondents prayed for dismissal of the second appeals.

15. Considered the rival submissions and perused the records.

16. It is evident from the pleadings, evidence and submissions of the learned counsel appearing for the parties that there is no dispute with regard to the fact that the suit property belonged to the plaintiff. She constructed the



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building in the suit property and running a saw mill, called Sri Murugan Saw Mill, in the suit property. It is also not in dispute that the plaintiff had also executed Ex.A2 general power of attorney deed in favour of the second defendant. However, it was claimed by the plaintiff that this general power of attorney deed was executed only as a security and not intended to be acted upon. The fact remains that Ex.A2 general power of attorney deed was acted upon and in pursuance of this document, second defendant executed Ex.B5 sale deed in favour of the first defendant on 14.08.2000. Ex.B5 is challenged on the ground that Ex.A2 general power of attorney deed was cancelled by the plaintiff through Ex.A3 cancellation deed on 03.08.2000. This Court finds from the records that Ex.A3 cancellation deed had been registered only on 11.10.2000. When it is not registered on 03.08.2000, it cannot be contended that Ex.A3 cancellation deed was executed on 03.08.2000.

17. The learned Trial Judge on going through the oral and documentary evidence, recorded a finding that Ex.A6 notice was issued only after execution of Ex.B5 sale deed. It was found that when the plaintiff claimed that Ex.A2 general



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power of attorney deed was executed at the insistence of the second defendant, plaintiff had not chosen to come to the Court and give evidence in this regard. It was also found that the plaintiff cannot take a stand against the contents of the registered document, i.e., she cannot take a position that Ex.A2 general power of attorney deed was executed only for security. The evidence of P.W.1 in this regard shows that she has no evidence to show that she has to pay Rs. 5,00,000/- to the second defendant.

18. The contention regarding the claim of the plaintiff that Ex.A2 was executed as a security, was rejected for the reason that there is no evidence produced to show that there was a monetary transaction between the plaintiff and the second defendant, plaintiff had to pay money to the second defendant and to discharge that, Ex.A2 was executed, as security.

19. With regard to the claim of the plaintiff that Ex.A2 general power of attorney deed was executed at the insistence of the first defendant, it was found from the evidence of P.W.1 that when the general power of attorney deed was executed, nobody had threatened the plaintiff. Second defendant had not come to



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the Registrar's Office and some one had come on behalf of him. Therefore, it was found that the claim of the plaintiff that Ex.A2 had been executed at the insistence of the first defendant was not correct.

20. It was also found from the evidence that Ex.A3 had come into existence only after execution of Ex.B5 sale deed. Even assuming that Ex.A2 general power of attorney deed was cancelled through Ex.A3 cancellation deed, it would come into effect only from the date of giving notice to the agent. When Ex.A6 notice was received by the second defendant only on 30.04.2001, it is evident that second defendant had knowledge about the alleged cancellation of general power of attorney deed only on 30.04.2001. When the sale deed was executed on 14.08.2000 through Ex.B5 sale deed, the sale has to be held as valid. Another finding recorded was that when the sale deed was executed by the second defendant through Ex.B5 sale deed to the first defendant, as power agent of the plaintiff, plaintiff ought to have sought for the relief of cancellation of sale deed.



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21. P.W.1 had given evidence to the effect that Sankar Timber is being run in the suit property and after 2009, the possession of the suit property is not with the plaintiff. Another finding recorded by the Trial Judge is that the cause of action concerning the prayer in O.S.No.131 of 2010 was available to the plaintiff even when the suit in O.S.No.66 of 2009 was filed. However, instead of filing a comprehensive suit, the plaintiff had filed the suit only for the relief of permanent injunction. Thus, it is held that the suit in O.S.No.131 of 2010 is hit by Order 2 Rule 2 of CPC. Finding that the plaintiff was not in possession of the suit property, the suit is hit by Order 2 Rule 2 of CPC, Ex.B5 sale deed was executed when Ex.A2 power of attorney deed was in force, the learned trial Judge dismissed the suit. These findings were confirmed by the appellate Court.

22. Ex.B7 is the important document in this case and the same reads as follows:-

This has reference to our Loan Account No. 10009 with your bank. We hereby authorise you to receive the balance amount outstanding in our above said account of Rs.6,33,500/- (Rs.Six Lakhs Thirty Three Thousand and Five Hundred) from Shankar Timber Depot No.291, Nehru



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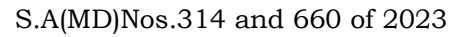
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Timber Market, Chennai-112.

You shall after receipt of the aforesaid amount hand over to Sri.VikshanjiL.Patel, Partner, Shankar Timber Depot, Chennai-112, pertaining to our property being land admeasuring about 60.5 cents together with buildings thereon comprised in S.No.89-4, Vallam Village, Shencottah Taluk, which has been deposited with you and created an equitable mortgage.

We hereby declare that we have no right, title and interest whatsoever over the aforesaid property. All the original documents pertaining to the above property may be handed over to him against his acknowledgment.

23. This letter shows that the plaintiff had given this letter to the bank authorising the bank to receive Rs.6,33,500/- towards the balance outstanding in her account. She had also declared that she had no right, title and interest whatsoever in the suit property. She directed the bank to hand over all the original documents pertaining to the suit property. This document clinches the issue and confirms that Ex.A2 general power of attorney deed is a true and genuine power of attorney deed. When Ex.A2 is a true and genuine power of attorney deed, the sale deed executed by the second defendant in favour of the



24. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd.*, 1962 reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

25. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no



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substantial question of law arises for consideration in this second appeal.

26. In fine, these Second Appeals are dismissed confirming the judgments of the Courts below. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District Judge,
Tenkasi.
- 2.The Principal Subordinate Judge,
Tenkasi.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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