



S.A.(MD) No.636 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.636 of 2023
and
C.M.P.(MD) No.14884 of 2023

1.T.Venmani

2.V.Gopi

3.V.Senthilkumar

4.K.Nehru

5.R.Malarkodi

6.S.Dhanalakshmi

7.Vijayabalan

..Appellants

Vs.

1.S.Rajeswari

2.N.Subbarayan

3.Deivakanni

4.T.Dharmaraj

5.J.Rajasekar

6.V.Lakshmi



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Kaliammal (died)

7.T.Anjammal

8.T.Rajamani

Venu @ Venugopal (died)

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 07.12.2021 made in A.S.No.3 of 2020 on the file of Principal Sub Court, Kumbakonam confirming the judgment and decree dated 30.11.2018 made in O.S.No.194 of 2013 on the file of Principal District Munsif Court, Kumbakonam.

For Appellants

: Mr.S.Siva Thilakar

JUDGMENT

This second appeal is filed challenging the concurrent judgments of Courts below in A.S.No.3 of 2020 on the file of the learned Principal Subordinate Judge, Kumbakonam in O.S.No.194 of 2013 on the file of the learned Principal District Munsif, Kumbakonam.

2.The respondents 1 and 2/plaintiffs filed a suit in O.S.No.194 of 2013 seeking for the relief of permanent injunction against the appellant and for other reliefs. The case of the respondents 1 and 2/plaintiffs is that the suit properties, namely 'A' and 'B' schedule properties were purchased by Kanjamalai through



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Doc.No.1143/1968 on the file of Registrar of Kumbakonam. After purchase, Kanjamalai was enjoying the suit properties as absolute owner. After his death, his wife, namely, K.Kaliyammal and their sons, K.Thangaiyan, K.Venugopal, K.Nehru and K.Subbaiyan have been enjoying the suit properties as legal heirs of the deceased Kanjamalai. They executed a registered general power of attorney deed in favour of one Karpagam in respect of 'A' schedule property in Doc.No. 282/1995 on the file of the Registrar of Kumbakonam. They had also executed another general power of attorney deed in Doc.No.282/1995 on the file of Registrar of Kumbakonam in respect of 'B' schedule property.

3.The power agent of legal heirs of the deceased Kanjamalai executed a registered sale deed in favour of the first plaintiff in Doc.No.3469/2010 on 15.07.2010 on the file of the Sub Registrar, Kumbakonam in respect of 'A' schedule property. Similarly, they also executed a sale deed in favour of second plaintiff through Doc.No.3468/2010 on 15.07.2010 on the file of the Sub Registrar, Kumbakonam in respect of 'B' schedule property. After purchase, the plaintiffs have been enjoying the suit properties as absolute owners.

4.One of the legal heirs of the deceased Kanjamalai, namely Subbaiyan and Thangaiyan died before the registration of sale deeds. The legal heirs of the said Subbaiyan and Thangaiyan and daughters of the deceased Kanjamalai have



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executed a general registered power deed dated 20.05.2011 in favour of 14th defendant, Rajasekar. Deivakanni and Malarkodi have received the entire share amount and executed the acceptance deed through power agent to the plaintiffs in Doc.No.1253/2012 dated 10.12.2012. Meanwhile, the defendants tried to encroach the suit property on 07.05.2013, which necessitated the filing of the suit.

5.In the written statement filed by the 8th defendant and adopted by the defendants 1 to 4, 6, 7 and 10 to 13, it is contented that the suit has been filed to usurp the properties of the defendants. The plaintiffs have no right in the suit properties. The plaintiffs are not in possession and enjoyment of the suit properties. The suit properties are being enjoyed by the defendants as the legal heirs of the deceased Kanjamalai. The plaintiffs had executed power deeds and sale deeds taking advantage of the illiteracy of the legal heirs of Kanjamalai. Kanjamalai and his legal heirs had been in close contact with the second plaintiff. They borrowed money from the second plaintiff. As a security, the plaintiffs obtained the power of attorney deeds from the legal heirs of Kanjamalai. They also secured the original title deeds with the help of the power of attorney deeds dated 17.10.1995 and 26.10.1995. The sale deed had been executed. Those documents are not legally binding the legal heirs of the deceased Kanjamalai. The suit properties are still being enjoyed in common without any division. There are other legal heirs of Kanjamalai. Without their participation in executing the sale



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deeds, the sale in favour of the plaintiffs will not bind the defendants. As stated earlier, taking advantage of the illiteracy of the defendants, the power deeds dated 17.10.1995, 26.10.1995 and 20.05.2011 and the document dated 10.12.2012 had also been created. Those documents will not bind the defendants. The sale is not supported by any consideration.

6.After contest, the trial Court on the basis of the oral and documentary evidence found that the plaintiffs have established their case for granting the relief of permanent injunction and accordingly, decreed the suit and that was confirmed by the first appellate Court. In the said circumstances, this second appeal is filed by the appellants.

7.It is the submission of the learned counsel for the appellants that the power of attorney deeds, acceptance deeds and sale deeds had been created taking advantage of the illiteracy of the legal heirs of the deceased Kanjamalai. There are other legal heirs, who are not parties to any of these documents. Without their participation, the execution of any document alienating the right in the property will not bind them. This aspect was not considered by the Courts below and thus, he prayed for admission of this appeal.

8.Considered the rival submissions and perused the records.



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9. It is not in dispute that the suit properties were purchased by Kanjamalai. When the defendants claimed that apart from the legal heirs of Kanjamalai, who had executed the general power of attorney deeds and acceptance deed in favour of the plaintiffs, there are other legal heirs, it is the primary duty and responsibility of the defendants to prove the claim by producing the legal heirship certificate of the deceased Kanjamalai to show as to who are the legal heirs and who are all left out/not participated in the execution of power of attorney deeds. However, this Court finds from the judgment of the trial Court that the defendants have not produced any documentary evidence in support of their case. On the other hand, the plaintiffs/respondents 1 and 2 have produced Ex.A1 to Ex.A8 documents to show the execution of power of attorney deeds by the legal heirs of the deceased Kanjamalai in favour of Karpagam, execution of sale deed by Karpagam in favour of plaintiffs, execution of power of attorney deed in favour of 14th defendant by defendants 1 and 2 and the acceptance deed executed by 14th defendant in favour of the plaintiffs. All these documents are registered documents. It is not open to the parties, who had executed the registered documents, to give evidence against the documents. It is prohibited under Section 92 of the Indian Evidence Act. No effective steps have been taken for proving any of the allegations made against the execution of the power of attorney deeds and sale deeds. Mere pleading is not enough and without evidence, pleadings cannot



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be acted upon. Thus, this Court is of the view that when the plaintiffs have positively established by producing oral and documentary evidence over the title and possession in respect of the suit properties, the defendants have miserably failed to counter the case of the plaintiffs by producing relevant oral and documentary evidences. There is no reason to take a different view of the matter than that was taken by the Courts below.

10.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:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so**,
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)**
4. The question is not free from difficulty and calls for discussion of alternative views.

11.In the case before hand, the appellants have not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.



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12.In the result, this Second Appeal is dismissed. The judgments of both the Courts below are hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

01.11.2023

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To

- 1.The Principal Sub Judge,
Kumbakonam.
- 2.The Principal District Munsif,
Kumbakonam.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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