



S.A(MD)No.706 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.706 of 2016
and
C.M.P(MD) No.10924 of 2016

Arun Sankar Karunanithi

...Appellant/Appellant/
Plaintiff

-Vs-

1.Muthulakshmi

2.Srirengam

... Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment made in A.S.No.67 of 2015 on the file of the learned Principal District Judge, Tirunelveli, Tirunelveli District, dated 13.07.2016 confirming the decree and judgment of the learned Subordinate Judge, Ambasamuthiram, Tirunelveli District, dated 15.04.2015 made in O.S.No. 69 of 2011.

For Appellant : Mr.S.Palani Velayutham

For Respondents : Mr.H.Arumugam



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JUDGMENT

The plaintiff is the appellant before this Court. He filed a suit for declaration and injunction against the respondents. The suit was dismissed by the trial Court and the findings of the trial court was confirmed by the first appellate Court. Aggrieved by the concurrent findings against him, the appellant/plaintiff is before this Court.

2. According to the appellant/plaintiff, the suit properties were originally belonged to the first respondent and she executed a power deed in favour of one Muthu Vadivoo on 08.10.2010. The said Muthu Vadivoo managed the suit property as power agent of first respondent and sold the suit property to the appellant on 18.05.2011 under two registered sale deeds for valuable consideration and handed over the possession. It was further averred that from the date of sale in his favour, the appellant had been in possession and enjoyment of the suit property. It was further stated in the plaint that the second respondent is a close relative of the first respondent and they threatened the appellant to re-convey the suit property to them, but the appellant did not head to their



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pressure. Therefore, the respondents tried to trespass into the suit property and consequently, the appellant was constrained to file the present suit for declaration and injunction.

3. The respondents filed a written statement and resisted the suit on the ground that the power deed executed in favour of Muthu Vadivoo was cancelled by the first respondent on 27.04.2011 and the said fact was intimated to the said Muthu Vadivoo by registered post. However, having acquired knowledge about cancellation of the power deed, the said Muthu Vadivoo refused to receive the same. It was further averred in the written statement that the above said Muthu Vadivoo sold the suit property to the appellant as if the suit properties were her absolute properties. However, the suit properties were never sold to the said Muthu Vadivoo and in the absence of any document to prove the title of Muthu Vadivoo, the appellant cannot acquire any title by virtue of sale deed executed by the said Muthu Vadivoo in his favour. It was specifically pleaded by the respondents herein that the vendor of the appellant herself has no title over the suit property and she cannot convey any title to the appellant. The respondent also



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denied the averments contained in the plaint as if they attempted to trespass into the suit property. On the contrary, the respondents claimed possession over the suit property.

4. Before the trial Court, the appellant was examined as P.W.1 and two other witnesses were examined on his behalf as P.W.2 and P.W.3 and 17 documents were marked as Ex.A.1 to Ex.A.18. On behalf of the respondents, the first and second respondents were examined as D.W.2 and D.W.1 respectively and the respondents marked 16 documents on their side as Ex.B1 to Ex.B6.

5. The trial Court, on an appreciation of evidence available on record, came to the conclusion that the vendor of the appellant Muthu Vadivoo had no title over the suit property and hence, she cannot convey good title to the appellant and consequently, dismissed the suit. Aggrieved by the same, the appellant filed first appeal in A.S.No.67 of 2015 on the file of the Principal District Court, Tirunelveli. The first appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.



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6. The learned counsel for the appellant vehemently contended that the vendor of the appellant paid a sale consideration of Rs.21,30,000/- to the first respondent and obtained a power deed in her favour under Ex.A3 and the same was attested by the appellant himself. After receiving the value of the suit property as consideration, the first respondent executed a power deed in favour of the Muthu Vadivoo on 08.10.2010 under Ex.A3. In pursuance of the valid power granted to her, the said Muthu Vaidivoo sold the suit property to the appellant and hence, the same is binding on the first respondent. The learned counsel has also placed reliance on Ex.A7 dated 08.10.2010, alleged sale receipt issued by the first respondent in favour of the Muthu Vadivoo.

7. The contention raised by the learned counsel for the appellant cannot be accepted in the light of the documentary evidence available on record. Both the Courts below on perusal of Ex.A1 and Ex.A2-sale deeds executed by Muthu Vadivoo in favour of the appellant, came to the conclusion that as per the recital found in Ex.A1 and Ex.A2, Muthu Vaidivoo in her capacity as owner of the suit property, sold the property to the appellant. However, to prove the title of Muthu Vadivoo over the suit property, the appellant had not produced any document



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before the trial Court and therefore, both the Courts below came to the conclusion that when the appellant's vendor Muthu Vadivoo's title over the suit property is not proved, the sale deed executed by Muthu Vadivoo in favour of the appellant, would not convey good title to the appellant. The sale receipt-Ex.A7 relied on by the appellant will not convey any title to Muthu Vadivoo. When there is no evidence available on record to show that the suit properties were conveyed by the first respondent in favour of Muthu Vaidivoo in the manner known to law, the appellant is not entitled to claim title over the suit property.

8. The appellant only produced the general power deed given in favour of Muthu Vadivoo as Ex.A3. Therefore, it is clear that Muthu Vadivoo is only a power agent of the first respondent. However, in the sale deed executed in favour of the appellant, she had not sold the properties in her capacity as power agent of the first respondent. She sold the property as if she is the real owner of the suit property. As far as the power deed executed in favour of Muthu Vadivoo is concerned, the first respondent appeared to have cancelled the power deed under Ex.B2. The fact of cancellation was intimated to Muthu Vadivoo through a letter, but the said letter was not received by her. The letter sent to the said



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Muthu Vadivoo was returned with an endorsement 'refused'. In these circumstances, the Courts below came to the conclusion that in the absence of any evidence available on record to show that Muthu Vadivoo had any right over the suit property, the sale deed executed by her in favour of the appellant under Ex.A1 and A2, would not convey any title over the suit property and consequently, dismissed the suit for declaration and injunction. In such circumstances, I do not find any substantial questions of law in the second appeal and consequently, the same is dismissed.

9. In fine,

(i) the Second Appeal is dismissed by confirming the judgment and decree dated 13.07.2016 passed in A.S.No.67 of 2015 confirming the decree and judgment of the learned Subordinate Judge, Ambasamuthiram, Tirunelveli District, dated 15.04.2015 made in O.S.No.69 of 2011.

(ii) In the facts and circumstances, there will be no order as to costs.



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(iii) consequently, connected miscellaneous petition is closed.

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

1.The Principal District Judge,
Tirunelveli, Tirunelveli District.

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2.The Subordinate Judge,
Ambasamuthiram, Tirunelveli District.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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