BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.75 of 2016

R.Selvi ...Appellant/Respondent/ Plaintiff

-Vs-

G.Tamilmani ... Respondent/Appellant/ Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment passed in A.S.No.03 of 2010 on the file of the Principal Sub Court, Thanjavur, dated 30.04.2010 reversing the decree and judgment passed in O.S.No.114 of 2007 on the file of District Munsif Court, Thiruvaiyaru, dated 18.11.2009.

For Appellant	:	Mr.V.K.Vijayaraghavan for Mr.M.R.S.Prabhu
For Respondent	:	Mr.V.Chandrasekar

JUDGMENT

The plaintiff is the appellant. The suit was filed for recovery of possession and the same was decreed by the trial Court. On appeal filed by the respondent, the first appellate Court reversed the findings of the trial Court and allowed the same. Aggrieved by the said judgment and decree, the appellant/plaintiff is before this Court.

2. According to the plaint averments, the suit property was originally belonged to the respondent. The appellant entered into a sale agreement with the respondent for purchase of the suit property on 10.04.2007. The agreed sale consideration was Rs.95,000/-. The appellant, who was residing in the portion of the suit property, paid a sum of Rs.89,500/- on several occasions and the said amount was mentioned as advance amount in the suit sale agreement. The time fixed for performance of the agreement, was three months. It was further averred in the plaint that the respondent appointed the appellant's husband as her power agent on 10.04.2007 and executed a registered power deed, which was marked as Ex.A.2. Though the appellant was ready and willing to pay the balance sale

consideration and get the sale deed executed in her favour, the respondent had postponed the same. It was further averred in the plaint that when the appellant requested the respondent to vacate the portion of the suit property, which was in her occupation, during 2nd week of May 2007, the respondent demanded a further sum of Rs.15,000/- and therefore a panchayat was convened and as per the decision of the panchayat, the appellant has to pay Rs.15,000/- to the respondent as against the balance sum of Rs.5,000/- and the respondent shall be allowed to reside in the portion of the subject matter of the sale agreement, which is now shown as the suit property, for the limited period of one month. As per the decision of the panchayat, the appellant paid a sum of Rs15,000/- to the respondent on 16.05.2007. With the consent of the respondent, the appellant's husband in his capacity as power agent of the respondent executed a pucca registered sale deed in favour of the appellant on 16.05.2007 and the same is marked as Ex.A3. Though the respondent agreed to vacate the suit property within a month, he failed to honour the said promise. Hence, finding no other alternative, the appellant issued a lawyer notice dated 25.06.2007 terminating the permission granted to the respondent to reside in the suit property and called upon her to vacate the same. Though the respondent received the notice on

27.06.2017, he failed to give any reply and hence, the appellant was constrained to file a suit for recovery possession.

3. The respondent herein filed a written statement denying the execution of suit sale agreement and registered power deed in favour of the appellant's husband. It was specifically averred by her that both the documents were executed under coercion by the appellant's husband and his men. Therefore, it was further submitted that the sale deed executed in favour of the appellant in pursuance of the said power deed obtained under coercion was also not valid. It was further averred by the respondent that she borrowed a loan of Rs.35,000/- from the mother-in-law of the appellant and in lieu of interest for the said sum, the appellant was allowed to enjoy the portion of the suit property under a document dated 25.06.2001. Thereafter, the respondent again borrowed a sum of Rs.21,000/- from the mother-in-law of the appellant and totally the respondent owed a sum of Rs.56,000/- to the mother-in-law of the appellant and the appellant was allowed to occupy a portion of the suit property only in lieu of interest for the same. It was averred in the written statement that the husband of the plaintiff and his men kidnapped the respondent and obtained her signature in various

documents under coercion. It was further averred that the appellant forcibly entered into the suit property and demolished the superstructure that stood thereon and on complaint by the respondent to the police, the appellant reconstructed the superstructure in the suit property and allowed the respondent to occupy the same. On these pleadings, the respondent sought for dismissal of the suit.

4. Before the trial Court, the husband of the appellant was examined as P.W.1 and six documents were marked on the side of the appellant as Ex.A1 to Ex.A.6. On behalf of the respondent, she was examined as D.W.1 and four documents were marked on her side as Ex.B1 to Ex.B4.

5. The trial Court, on appreciation of the evidence available on record, came to the conclusion that the respondent failed to prove the plea of coercion raised by her in the written statement and consequently, upheld the title of the appellant based on Ex.A3-sale deed and granted a decree for recovery of possession. Aggrieved by the same, the respondent filed an appeal in A.S.No.3 of 2010. The First Appellate Court reversed the findings of the trial Court and held

that the appellant as a plaintiff failed to substantiate her case by independent evidence and consequently, allowed the appeal. Aggrieved by the said judgment and decree, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law:-

1. When Exs.B1 to B4 were xerox copies and DW1 has specifically admitted that their originals were with her, whether the adverse inference not drawn by the appellate Court against her is correct?

2. Whether the respondent/defendant could adduce oral evidence contrary to the recitals found in Exs.A1 to A3 (registered power deed, agreement of sale and registered sale deed) which would clinchingly prove the case of the plaintiff?

3.When the defendant has admitted the due execution of sale agreement, registered power of attorney and registered sale deed filed under Exs.A1 to A3, whether the Appellate Court could presume 'coercion' when there was no evidence for the same?

4.Whether the appellate Court is correct in vacating the well considered findings and judgment of the trial Court without giving specific findings for the same?

7. The learned counsel for the appellant submitted that the respondent having admitted the execution of sale agreement in favour of the appellant and the power deed in favour of the appellant's husband and pleaded employment of coercion, failed to prove her plea of coercion and hence, the first appellate Court ought not to have reversed the well considered findings of the trial Court. It is the submission of the learned counsel for the appellant that when coercion is pleaded by a party, it is for him to prove that the concerned document was obtained by coercion through unimpeachable evidence and in the case on hand, he failed to lead any evidence in support of the plea of coercion and hence, the documents are binding on him.

8. The learned counsel for the appellant further submitted that the respondent admitted the execution of power deed in favour of the appellant's husband, but however till date she had not taken any steps to cancel the power deed executed in favour of the appellant's husband. Thirdly, the learned counsel for the appellant submitted that the respondent as D.W.1 categorically admitted that the originals of Ex.B1 to Ex.B4 were available with her, but however those documents were not produced. Therefore, adverse inference shall be drawn against the respondent.

9. The learned counsel for the respondent submitted that the sale agreement relied on by the appellant was not at all mentioned in the power deed and the sale deed was executed in favour of the appellant. Therefore, the case of the appellant cannot be believed. The learned counsel further submitted that though under Ex.A1-sale agreement, a large property was agreed to be sold to the appellant, under Ex.A3, only a portion of the same, namely, the suit property alone was sold to her. It creates a serious doubt about the genuineness of Ex.A1 to Ex.A3. The learned counsel further submitted that the husband of the appellant in his capacity as power agent of the respondent, sold the property to the appellant and the same, on the face of it, is not acceptable and hence, the first appellate Court rightly reversed the findings of the trial Court and allowed the appeal on the ground that the appellant had not approached the Court with clean hands. Hence, the learned counsel for the respondent sought for dismissal of the second appeal.

10. The present suit is one for recovery possession based on the title of the appellant. It is undisputed that originally the respondent was the owner. As per the pleadings of the appellant, the respondent entered into a sale agreement

with the appellant for sale of the property to the appellant on 10.04.2007 after receiving substantial portion of the sale consideration. The respondent has also executed a registered general power of attorney in favour of the appellant's husband giving power to sell her properties. Subsequently, in pursuance of the valid power executed in his favour, the husband of the appellant sold the suit property to the appellant on 16.05.2007. While resisting the suit, the respondent raised a plea of coercion. According to the respondent, the power deed in favour of the appellant's husband, which was marked as Ex.A2 and the sale agreement in favour of the appellant, which was marked as Ex.A1, were obtained by employing coercion. It was her case that appellant's husband and his men kidnapped her and obtained her signature in those documents by putting her under duress. It is settled law that if coercion is pleaded by a party, the burden is on him to prove the employment of coercion by the other party. If he fails to discharge the burden by proving employment of coercion, the document is binding on him.

11. In the case on hand, the document in respect of which coercion was allegedly employed by the appellant's husband was dated 10.04.2007. The suit was filed on 16.07.2007. The written statement was filed by the respondent on 16.11.2017. Till the filing of the written statement, the respondent had not raised

the plea of coercion by whatever means. A contract vitiated by coercion is voidable at the option of the party, whose consent to that contract, was obtained by employment of coercion. Such party should exercise the option of avoiding the contract within a reasonable time, immediately after alleged coercion cease to exist.

12. The respondent was examined as D.W.1. During her examination, she admitted her signature in Ex.A1 and Ex.A2. She also admitted that one Mathiazhagan, S/o.Manickam attested those documents as attestor. She also admitted she had seen the attestor attesting the document. Further, Ex.A2, power deed executed by the respondent is a registered document. She admitted that Ex.A2, power deed was registered before the Sub Registrar and the attestor Mathiazhagan signed in Ex.A2 at the Sub Registrar's Office. She further admitted that immediately after execution of power deed in favour of the husband of the appellant, within a month sale deed was executed by the appellant's husband in his capacity as power agent in favour of the appellant and the said fact was also known to her, but however she had not taken any steps to cancel the power deed or the sale agreement in the manner known to law.

13. A perusal of D.W.1's evidence regarding the fact of her affixing her signature in Ex.A1 and Ex.A2 and the attestation of the document, etc., make it clear that the respondent willingly executed a power deed in favour of the appellant's husband and the execution of sale deed by the power agent in favour of appellant was also known to her. She had not taken any steps to challenge the same till the filing of suit. Moreover, before filing of the suit, the appellant issued a lawyer notice on 25.10.2007 calling upon the respondent to vacate the suit property, wherein the sale agreement executed by her, power deed in favour of the appellant's husband and sale deed in favour of the appellant etc., were referred to. For the reasons best known to her, the respondent failed to give any reply. Therefore, adverse inference shall be drawn against the respondent and the plea of coercion made by her in the written statement can only be treated as an afterthought.

14. As rightly contented by the learned counsel for the appellant, though the respondent marked the xerox copies of certain documents, to prove the usufructuary mortgage pleaded by her, as per her own admission as D.W.1, the originals of those documents were available with the respondent, but she failed to

produce the same before the Court. When the respondent, who is in possession of the best evidence, failed to produce the same before the Court, naturally adverse inference shall be drawn against her. The first appellate Court failed to take into consideration that the respondent miserably failed to establish the plea of coercion set out by her and on an erroneous view held that the appellant failed to prove her title. Ex.A2 and Ex.A3, namely, power deed and sale deed in favour of the appellant's husband and appellant are registered documents. The respondent admitted the execution of Ex.A2, but pleaded coercion. She failed to prove the plea of coercion and hence Ex.A2-power deed is binding on her. She also admitted that sale deed executed by her power agent, namely, the husband of the appellant in favour of the appellant, was known to her, but however she had not taken any steps to challenge the sale deed. When the registered sale deed in favour of the appellant stands in her name, it is for the party, who impugns the registered sale deed, to establish that the sale was not genuine. The first appellate Court by wrongly casting the burden on the appellant/plaintiff, overlooking the plea of coercion and other admissions of the respondent as D.W.1, on an erroneous view allowed the appeal. Hence, the same is liable to be set aside.

15. In view of the discussions made above, all the substantial questions of law framed at the time of admission are answered in favour of the appellant and accordingly, the second appeal is allowed by setting aside the judgment and decree passed by the first appellate Court.

16. In fine,

(i) the Second Appeal is allowed by setting aside the judgment and decree dated 30.04.2010, made in A.S.No.03 of 2010 on the file of the Principal Sub Court, Thanjavur.

(ii) The judgment and decree dated 18.11.2009 made in O.S.No.114 of 2007 on the file of the District Munsif Court, Thiruvaiyaru, is restored.

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

02.02.2023

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

1.The Principal Sub Court, Thanjavur.

2. The District Munsif Court, Thiruvaiyaru.

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

S.SOUNTHAR, J.

CP

S.A(MD)No.75 of 2016

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