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A.S.No.356 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.356 of 2015

Judgment reserved on 27.03.2024	Judgment pronounced on 30.10.2024
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Alabama Thamizhselvi @ Ezhilarasi ... Appellant

Vs.

Sankaran ... Respondent

Prayer: This First Appeal is filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 21.04.2015 made in O.S.No.93 of 2010 on the file of the learned III Additional District Judge, Puducherry.

For Appellant : Mr.N.Suresh

For Respondent : Mr.T.P.Manoharan, Senior Counsel
For Mr.T.M.Naveen



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JUDGMENT

The defeated defendant is the appellant herein.

2. The respondent / plaintiff has filed a suit to declare that the plaintiff is the absolute owner of the property mentioned in the schedule to the plaint and to deliver vacant possession of the same to the plaintiff and directing the defendant to return / hand over the original sale deed dated 22.05.2006 to the plaintiff, in respect of the suit property, by way of mandatory injunction and for costs.

3. The plaint proceeds on the basis that a Power of Attorney Deed was given to the plaintiff by the defendant in connection with three properties held by him and by virtue of the power deed, he was given a general power to sell two items of the property and to construct the house in the third item. Absolutely, there is no recital in the power given to the plaintiff to purchase a new property in the name of the defendant.

4. The plaintiff subsequently pleaded that the suit property was purchased by the plaintiff in his name on 22.05.2006 and he had sold two plots of the defendant on the strength of the power of agent and so the suit



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property was purchased before selling two items of the defendant and hence, he is the owner of the property and hence seeks for declaration to declare he is the absolute owner of the property and to deliver vacant possession of the same and alleged that by using rowdyism he has taken away sale deed and hence asked for direction to return the original sale deed 22.05.2006 by way of mandatory injunction. The size of the plot is 1200sq.ft. The defendant has filed the written statement and plea of non-joinder of necessary party namely father of the plaintiff is necessary party.

5. It is pleaded that the defendant has possessed of two items of property measuring 1809 sq.ft and 2990 sq.ft comprised in Re-survey No.224/4, Cadastar No.309, Patta No.18, situated in Saram Village, Oulgaret Commune Puducherry. Besides these two items, the defendant is also possessed of another item of property an extent of 2970 sq.ft comprised in R.S.No.143/7ft, Town Survey No.13/8 situated at Murungapakam Village, Mudaliarpatt Commune Panchayat, Puducherry.

6. The plaint further proceeds on the basis that the defendant wanted to put up construction in the vacant plot at Murugapakkam, she thought it fit to give power to the plaintiff. Hence, she executed a registered general Power



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Deed dated 25.01.2006 in respect of aforesaid three items of property by authorising and empowering him to sell away the two items of property alone situated at Saram Village and out of the sale proceeds to be realized, directed him to go ahead with construction in the vacant plot at Murungapakkam. The Power Deed does not permit him to sell away this property, but only authorizes him to put up construction therein. The defendant is herewith filing the original Power of Attorney Deed dated 25.01.2006 and it may be read as part of this written statement.

7. The defendant further stated that based upon the power deed, two items of the properties have also been sold and he has directed the plaintiff to proceed with the construction of the house with the amount derived from the sale of too costs.

8. There is a specific plea by the defendant that before putting up house construction, the plaintiff and defendant came to know that a vacant plot to an extent of 1200sq.ft (suit property herein) is available for sale on the immediate East of the property belonging to the defendant. Hence, the defendant directed the plaintiff to purchase that property also by sending amount to him. The plaintiff also intimated to the defendant that he



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purchased the vacant plot an extent of 1200sq.ft (suit property herein) from its owner on 22.05.2006. The defendant was made to believe that the said plot was purchased by the plaintiff as her power of attorney agent. Thereafter, the plaintiff drew a plan for the proposed house construction to be put in the property already owned by the defendant by means of registered sale deed dated 22.08.1994 and also in the plot of an extent of 1200sq.ft. (suit property herein) and accordingly the plaintiff started to put up house construction in both the properties with the amount sent by the defendant by means of cheques referred to in the plaint and also with the sale proceeds realized from the two plots at Saram Village.

9. As per the Blue Print Plan, the plaintiff has put up house construction for the defendant in the entire property namely in 2970sq.ft plus 1200sq.ft (suit property herein) totaling 4170sq.ft by leaving 7 feet space on the Eastern side of the entire property and this total extent of 4170sq.ft property is built by compound wall.

10. Subsequently, power deed was cancelled on 21.05.2010 and hence he could say that he is the owner of the property.

11. During the trial, plaintiff was examined as P.W.1 and marked as



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Exs.A1 to A16. Power Agent of the defendant was examined as D.W.1 and marked as Ex.B1-Photograph with CD. Ex.B2 is the statement of accounts.

Ex.B3 is the Photographs 6 in nos. Ex.B4 is the CD. Ex.B5 is the General Power of Attorney executed between Danasekaran and the defendant.

12. Based upon the oral and documentary evidence, the learned III Additional District Judge, Puducherry has come to the conclusion that the plaintiff is the owner of the property, since the property sale deed is stands in the name and directed the defendant to hand over the sale deed within one month. Aggrieved against the said judgment and decree, he has preferred this appeal suit.

13. Heard Mr.N.Suresh, the learned counsel appearing for the appellant and Mr.T.P.Manoharan, learned Senior Counsel appearing for the respondent.

14. At the outset, this Court finds that the suit is filed for declaration of the title of the plaintiff and for delivery of possession of the schedule property. The plaint schedule property, I find that it is 1200sq.ft vacant site.

15. In the prayer at para VI (i) of the plaint, the plaintiff seeks for delivery of vacant possession. In other words, he is seeking the recovery of vacant possession of 1200sq.ft as described in the schedule.



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16. It remains to be stated that as per the written statement, he has already put up construction as directed by the defendant measuring 2975sq.ft totalling 4170sq.ft by leaving 7ft space on the eastern side and a compound wall was built up area is 4170sq.ft as could be seen from Para 7 of the written statement.

17. In this connection, P.W.1 whose father was engaged has not spoken about the building. With regard to the relief of declaration of title, the plaintiff plea is that the sale deed in his name. The defendant/plaintiff in the written statement taken a stand that the suit property was purchased from her money in the name of the plaintiff. The trial Court disbelieved the same since the sale deed stands in the name of the plaintiff, accordingly, gave the declaration. There is a specific prayer in the suit with regard to recovery of possession in the schedule as pointed out earlier, it is a vacant site.

18. In the written statement, it is a built up area of 4170sq.ft. Ex.B1 is the photograph Ex.B2 is the statement of accounts. Ex.B3 is the photographs in 6 Nos and Ex.B4 is the C.D were filed by the defendant, I find that absolutely there is no discussion about the said evidence adduced by the



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defendant assumes significance.

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19. It is a specific case of the defendant that by misusing funds sent by the defendant, the plaintiff has purchased the property in his name and on the basis of the power deed, the plaintiff put up construction annexing the property of the defendant with that of the plaintiff and made a single house unit which cannot be fabricated or separated and reliance is based upon Ex.B1 photograph with C.D and Ex.B3 photographs and Ex.B4 C.D, there is no discussion or a finding by the trial Court.

20. Hence, I find that whether the stand of the defendant with regard to the construction of the building to the extent of 4170sq.ft along with the compound wall is a point to be determined in respect of the prayer 1(b) in the plaint. As pointed out in the plaint, the schedule consisting of only land and not the building.

21. Admittedly, the plaintiff father was engaged by the defendant for the construction of the house. He has constructed along with his house as a single unit as a case of the defendant and the defendant claims that he has send a money to purchase the plot next eastern side of the defendant block. However, the plaintiff purchased the property in his name and he has annexed



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with his neighboring plot and made a single unit and hence, in the presence of the specific pleading of the defendant in Para Nos.6&7 as extracted supra, the Trial Court has not formulated any issues to that effect and the Trial Court has also not discussed Exs.B1 to B4 which is crucial either to grant a prayer 1(b) with regard to delivery of vacant possession or to reject the same and hence, I find that the case has necessarily to be remanded back to the trial Court to give an opportunity to both the parties to advance their respective cases in respect of the relief 1(b) in the schedule of the property as it stands today.

22. In the absence of any discussion with regard to Exs.B1 and Ex.B4, I find that there is a fit case for remand.

23. Accordingly,

(i) This Appeal Suit is allowed.

(ii) The judgment and decree of the trial Court in O.S.No.93 of 2010 is set aside and the matter is remitted back to the learned III Additional District Judge at Puducherry.

(iii) For further arguments and additional evidence if any, by either of the parties and such exercise has to be completed within a period of three months from the date of receipt of a copy of this order.

30.10.2024



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Index : Yes / No

Neutral Citation : Yes/No

To

- 1.The III Additional District Judge, Puducherry.
- 2.The Section Officer,VR Section, High Court,Madras.



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RMT.TEEKAA RAMAN, J.

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