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S.A.No.509 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 19.02.2024	Judgment Pronounced on 22.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.509 of 2018
and C.M.P.No.14023 of 2018

C.Saradha

..Appellant

Vs.

Lawrence

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 18.01.2017 made in A.S.No.76 of 2011 on the file of the Subordinate Judge, Tambaram, confirming the judgment and decree dated 28.02.2011 passed in O.S.No.215 of 2002 on the file of the Principal District Munsif, Alandur.

For Appellant : Mr.A.Chidambaram

For Respondent : Mr.N.Rajan



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JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 18.01.2017 made in A.S.No.76 of 2011 on the file of the Subordinate Judge, Tambaram, confirming the judgment and decree dated 28.02.2011 passed in O.S.No.215 of 2002 on the file of the Principal District Munsif, Alandur.

2.The 2nd defendant, in a suit for declaration to declare the Power of Attorney dated 08.06.1994, executed by the plaintiff in favour of the 1st defendant as forged, fabricated, non-est, null and void and not binding on the plaintiff and to direct the defendants to return the original documents relating to the suit property and to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, is the appellant herein.

3.The parties are described as per their litigating status before the Trial Court.

4.(a) The brief facts that necessary to decide the Second Appeal are



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that the plaintiff claims to be the absolute owner of the suit property bearing Old.No.128, New No.99 at Anakaputhur Village, Sri Venkateswara Nagar in Plot No.22, bearing S.No.291/2 to an extent on 1.270 sq ft, having purchased the same under a registered Sale Deed dated 09.03.1979 and that in furtherance of the same, he has been in possession and enjoyment of the suit property, also obtaining patta in his favour.

(b) According to the plaintiff, she had borrowed a sum of Rs.30,000/- from the 1st defendant in the year 1996 and only a sum of Rs.24,000/- was paid to him, after deducting a sum of Rs.6,000/- towards future interest. As security, the 1st defendant had obtained the original Sale Deed dated 09.03.1979, original Patta and Chitta from the plaintiff and promising to return the same, once the plaintiff settled the borrowed amount. However, threatening the plaintiff at pistol point, the 1st defendant forced the plaintiff to sign in Six Hundred rupees stamp papers and other blank papers on 31.07.2000. On the very next day, the plaintiff has lodged a police complaint in Choolaimedu Police Station and since no action was taken, a legal notice has been issued on 04.09.2000 to the 1st defendant, calling upon him to return the original documents, blank papers, etc,. Since the receipt of said notice was evaded by the 1st defendant, the plaintiff issued another notice on



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26.09.2000, to which there was no reply, despite the 1st defendant having received the same. On 13.09.2000, the plaintiff verified the Encumbrance Certificate and found that on 29.08.2000, the 1st defendant, as Power agent of the plaintiff, had executed a Sale Deed in favour of the 2nd defendant in respect of the suit property and since the plaintiff never executed any Power of Attorney in favour of the 1st defendant and the Sale Deed as well as the Power of Attorney were forged and brought about by collusion, the plaintiff instituted the suit.

5.The 2nd defendant, having purchased the suit property, filed a written statement stating that he has purchased the suit property for a valuable sale consideration of Rs.2,00,000/- and ever since the date of purchase, he has been in possession and enjoyment of the suit property, mutating revenue records in his name and also paying all taxes and charges. The delay in filing the suit was also questioned by the 2nd defendant and the suit was sought to be dismissed.

6.The Trial Court decreed the suit holding that the plaintiff was the owner of the property and the Power of Attorney was null and void and consequently, the Sale Deed executed by the 1st defendant in favour of the 2nd



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defendant was not valid and holding that it is a settled position of law that possession follows title and the relief of permanent injunction was also granted.

7. Aggrieved by the decree, the 2nd defendant preferred an appeal in A.S.No.76 of 2011. The First Appellate Court dismissed the appeal, confirming the judgment and decree of the Trial Court. Aggrieved by the concurrent findings, the 2nd defendant has come up by way of the Second Appeal.

8. The above Second Appeal was admitted by this Court on 19.11.2018, on the following substantial questions of law:

"1. Are not the Courts below wrong in entertaining the suit for mere declaration of the Power of Attorney alone in the absence of questioning the Sale Deed while Sale Deed itself had been executed and Registered in favour of the Applicant by the Power Agent of the Respondent, the 1st Defendant even before the filing of the suit?"

2. Whether the Courts below are justified in shifting the burden of proof regarding the specific case of the Respondent pleaded in the plaint that the Power



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of Attorney Deed had been obtained from him by the 1st Defendant under threat and coercion without applying the rulings of the Hon'ble Apex Court reported in 2005 (3) L.W.P 493?

3. Are not the Courts below wrong in granting permanent injunction regarding possession of the suit property in favour of the respondent while it had been established by the Appellant that possession had been delivered to her in pursuance of the sale and she is in actual physical possession and enjoyment thereof by mutating her name in revenue records as on the date of the suit?"

9.I have heard Mr.A.Chidambaram, learned counsel for the appellant and Mr.N.Rajan, learned counsel for the respondent.

10.(a) Mr.A.Chidambaram, learned counsel for the appellant would submit that the plaintiff has to be non suited on the ground that the Sale Deed has not been challenged and mere challenge to a voidable document, the General Power of Attorney would not entitle the plaintiff to succeed. He would also state that the 2nd defendant is a bonafide purchaser for value and the 1st defendant remained exparte and also died before trial of the suit.



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(b) The learned counsel would also invite my attention to the dates namely, the factum of the Power of Attorney being dated 08.06.1994 and the Sale Deed, admittedly being registered on 29.08.2000 and the notice issued by the plaintiff on 25.09.2001 and further, even according to the plaintiff, the plaintiff had applied for Encumbrance Certificate on 13.09.2000 and came to know about the sale in favour of the 2nd defendant, but despite the same, the plaintiff did not choose to question or challenge the sale and the suit was filed only in the year 2002, after the Sale Deed had been validly executed and registered by the Power of Attorney in favour of the 2nd defendant. He would also contend that it is not open to the plaintiff to claim that the Power of Attorney was forged after a lapse of ten years.

(c) The learned counsel for the appellant would also place reliance on the decision of this Court in ***Poornasami (Died) and Others Vs. Natarajan and Another*** reported in ***(2020) 1 MAD LW 518***, where this Court held that in a suit for bare injunction, without a prayer for declaration of title and for setting aside the alienation was not valid. He would therefore pray that the Second Appeal being allowed.



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11.(a) Per contra, Mr.N.Rajan, learned counsel for the respondent would submit that the plaintiff has denied the execution of the General Power of Attorney. Admittedly, the said General Power of Attorney was unregistered and not even produced before the Trial Court, which the Courts below have rightly taken note of. He would also contend that since the 1st defendant remained exparte and did not choose to examine himself as a witness, it would amount to admission of all the allegations made by the plaintiff and therefore, it is not necessary for the plaintiff to prove any of the allegations in the plaint.

(b) Further, the learned counsel also contend that the Sale Deed was a sham and nominal document and the purchaser was not a bonafide purchaser and the consideration reflected was only Rs.2,00,000/-. He would also state that the 2nd defendant did not even choose to enter the witness box and adverse inference will have to be drawn against the 2nd defendant. According to the respondent, the plaintiff was in possession and the documents filed by the 2nd defendant were all subsequent to the filing of the suit. He would also refer to the evidence, where D.W.1 admits that he is the close relative of the 1st defendant and the 2nd defendant was only a staff of the 1st defendant and therefore, on purpose, the defendants had avoided the witness box.



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12.Having considered the rival submissions advanced by the learned counsel on either side, I proceed to decide the substantial questions of law.

13.Admittedly, the execution of the Power of Attorney has been denied by the plaintiff and the first prayer in the suit is to declare the said Power of Attorney as null and void, fabricated, sham and nominal and not binding on the plaintiff. Admittedly, on the date of filing of the suit, the Power of Attorney had been acted upon to the knowledge of the plaintiff and the 1st defendant, as Power of Attorney Agent of the plaintiff, had executed and registered a Sale Deed in favour of the 2nd defendant. Unfortunately, the plaintiff has not chosen to challenge the said Sale Deed and has merely chosen to seek declaration of the Power of Attorney as null and void and for mandatory injunction to return the documents.

14.Even from the conduct of the plaintiff, it is seen that even though he came to know about the sale of the property in September 2000, when he applied for Encumbrance Certificate in Application No.313 of 2000 and came to know of the Sale Deed executed by the 1st defendant as Power of Attorney by the plaintiff in favour of the 2nd defendant on 29.08.2000 vide



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Doc.No.1837/2000, the plaintiff has chosen to approach the Court only in the month of May 2002. If really the plaintiff's valuable immovable property had been knocked off under the guise of a fabricated or forged Power of Attorney, no prudent property owner would remain silent for a period of two years and his immediate reaction would have been to rush to the Court, without any loss of time. Further, pursuant to the Sale Deed, the defendant has also established that he has been put in possession of the suit property by the 1st defendant and he has been in enjoyment of the same. The plaintiff also does not seek for relief of recovery of possession.

15.The plaintiff, even after lodging the police complaint on 01.08.2000 and the police refusing to take any action, that is not known by the plaintiff, for reasons best known to the plaintiff, did not take any earnest steps immediately thereafter and in fact even issuance of notice to the defendant, the suit also came to be filed much later, after a period of 1 ½ years, only in May 2002. The 2nd defendant has also exhibited Patta, Chitta and Adangal in his name, which all go to show that the 2nd defendant has been in possession on the date of filing of the suit. Unfortunately, the Courts below have erroneously proceeded to decide the suit without noticing that the relief sought for was only to declare the Power of Attorney as null and void and



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when the Power of Attorney had already been exercised and acted upon, nothing survived to be granted in favour of the plaintiff, unless the plaintiff had also sought for prayer to declare the Sale Deed of the 2nd defendant as null and void.

16. In similar circumstances, this Court in ***Poornasami (Died) and Others Vs. Natarajan and Another's*** case, has held that even when the criminal proceedings were pending, it would not vitiate the execution of deeds unless set aside before the Court of law and in the absence of challenge to the registered Sale Deed, the plaintiff was not entitled to any relief. The ratio laid down by this Court, following decision of the Hon'ble Supreme Court would squarely apply to the facts of the present case. The suit for declaration in respect of the General Power of Attorney alone was highly insufficient and the plaintiff is not entitled to succeed in the absence of challenge to the registered Sale Deed in favour of the 2nd defendant. Consequently, the plaintiff is also not entitled to the relief of permanent injunction.

17. The Courts below have not appreciated the legal position and requirement under the Specific Relief Act and also the various precedents laying down the ratio regarding necessity of seeking proper declaratory relief. Therefore, the findings of both the Courts below are perverse and suffer from



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material irregularity, warranting interference under Section 100 of Code of Civil Procedure. The substantial questions of law are answered in favour of the appellant herein.

18.In fine, the Second Appeal is allowed. The judgment and decree dated 18.01.2017 in A.S.No.76 of 2011 on the file of the Subordinate Judge, Tambaram, confirming the judgment and decree dated 28.02.2011 in O.S.No.215 of 2002 on the file of the Principal District Munsif, Alandur, are set aside. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Subordinate Judge, Tambaram.
- 2.The Principal District Munsif, Alandur.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI., J.

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Pre-delivery judgment made in



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