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S.A.No.1165 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

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THE HONOURABLE MR.JUSTICE V. SIVAGNANAM

S.A.No.1165 of 2013
and MP.No.1 of 2013
and CMP.No.20949 of 2022

S.Soundararajan

... Appellant

Vs

B.Nithyakalyani

...Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in AS.No.8 of 2011 dated 25.07.2013 on the file of the Subordinate Judge, Ponneri confirming the judgment and decree in OS.No.176 of 2004 dated 06.04.2010 on the file of the District Munsif, Thiruvottiyur.

For Appellant : Mr.N.Thiagarajan
For Respondents : Mr.K.A.Sundar
for Mr.P.K.Sivasubramanian

JUDGMENT

The appellant is the defendant in OS.No.176 of 2004 on the file of the District Munsif, Thiruvottiyur. The respondent/plaintiff filed the suit against the appellant/defendant for permanent injunction with regard to the plaint schedule property.



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2. The trial Court after framing issues and after considering the oral and documentary evidences, the trial Court found that the plaintiff was in possession and decreed the suit as prayed for granting permanent injunction.

3. Aggrieved by the said judgment and decree, the defendant/appellant filed an appeal before the Sub Court, Ponneri in AS.No.8 of 2011, the learned Appellate Judge after considering the judgment and documentary evidences confirmed the judgment and decree of the trial Court dated 01.07.2004. As against the said judgment and decree, the appellant filed the present second appeal before this Court.

4. The learned counsel for the appellant submitted that in this case, the appellant/defendant disputed the sale deed dated 10.12.1997 in favour of the plaintiff. It is contended that before execution of the aforesaid sale deed the mother Mrs.Ammakannammal @ Alamelammal gave registered power of attorney in favour of the defendant on 31.01.1997. Since the title is disputed, without deciding the title, permanent injunction has been granted by the trial Court and the same was confirmed by the lower appellate Court.



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5. The learned counsel for the respondent/plaintiff submitted that subsequent to the judgment and decree of the trial Court dated 06.04.2010, on 07.09.2015, Mrs.Ammakannammal @ Alamelammal sold the plaint schedule property to the 3rd parties by way of registered sale deed. Now she is not in possession of the plaint schedule property.

6. In the meanwhile, in this appeal, one S.Seethalakshmi filed petition to implead herself in the second appeal on the ground that as per the sale agreement dated 04.11.1997, she is interested in the plaint schedule property. Therefore, she prayed to allow this petition and to implead herself in the second appeal as proposed second respondent.

7. On perusal of the records, judgment and decree of the Courts below it is found that Mrs.Ammakannammal @ Alamelammal is the person who enjoyed the property, admittedly, she executed a power of attorney in favour of the defendant on 31.10.1997, for the purpose of maintaining the property and the contents of the said power of attorney was reflected in the judgment of the trial Court that she has not received any consideration for executing



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the power of attorney. Apart from this, she being the principal, she executed the settlement deed in favour of the plaintiff/respondent dated 10.12.1997 – Ex.A1 by way of registered document and put her in possession.

8. In pursuance of the aforesaid settlement deed she was in possession and she had filed documents Exs.A2 to A4 before the trial Court. The trial Court also relied upon the evidences for possession of the plaintiff and granted permanent injunction as prayed for by the plaintiff. By executing a power of attorney to some person the principal will not lost her rights over the property. The defendant being the power of attorney holder is not competent to dispute the powers of the principal. Apart from this subsequent to the judgment and decree, it is brought to the notice of the Court that the plaintiff sold the property to the 3rd party on 07.09.2015 by way of registered sale deed. In these circumstances, the injunction decree granted in favour of the plaintiff against the defendant has become infructuous and is not enforceable by the plaintiff and now she is out of possession.



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9. Further, the trial Court granted permanent injunction in favour of the plaintiff and the trial Court satisfies based on oral and documentary evidence as she is in possession by showing sufficient evidences on record. There is no substantial questions of law involved on the findings recorded by the trial Court and no perversity warranting interference by this Court under Section 100 CPC.

10. In the result, the second appeal is not maintainable. Hence, the second appeal is dismissed. Consequently, connected miscellaneous petitions in MP.No.1 of 2013 is closed and CMP.No.20949 of 2022 to implead the petitioner as the proposed second respondent is dismissed. No costs.

05.04.2024

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Additional Subordinate Judge, Vridhachalam, Cuddalore District.
2. The II Additional District Munsif, Vridhachalam, Cuddalore District.

V. SIVAGNANAM, J.



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