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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.405 of 2013

M.Chinnathambi @ Mani

... Appellant/plaintiff

Vs.

Kannaiyan

... respondent/Defendant

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 11.10.2012 made in A.S.No.115 of 2011 on the file of the learned I Additional Subordinate Judge, Salem confirming the judgment and decree dated 01.06.2011 passed in O.S.No.546 of 2010 on the file of the I Additional District Munsif, Salem.

For Appellant : Mr.N.Suresh

For Respondent : Mr. A.Tamilvanan



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JUDGMENT

This Second Appeal has been preferred against the Judgment and decree dated 11.10.2012 made in A.S.No.115 of 2011 on the file of the learned I Additional Subordinate Judge, Salem confirming the judgment and decree dated 01.06.2011 passed in O.S.No.546 of 2010 on the file of the I Additional District Munsif, Salem.

2. For the sake of convenience, the parties are referred to as per their rankings in the suit.

3. The plaintiff pleads that the defendant is the owner of the suit schedule mentioned property. On 8.10.2004, the defendant executed Power of Attorney appointing the plaintiff as his agent. This document is registered vide document no.323 of 2004 on the file of the Salem (East) District Registration Office at Salem. On 14.07.2004, the defendant approached him for selling the suit property fixing the price at Rs.1,85,000/-. The plaintiff agreed to purchase the same and paid an



advance of Rs.10,000/-. Deducting the amount of Rs.10,000/- already paid, the plaintiff pleaded that he paid balance of Rs.1,75,000/- on 18.10.2004.

4. In the meantime, one Palaniappan approached the plaintiff and offered to purchase the property @ Rs.105/- per sq.feet and an agreement was entered into between the plaintiff and the said Palaniappan on 12.10.2007. The said Palaniappan presented a suit in O.S.No.17 of 2008 on the file of the Principal Subordinate Judge, Salem for recovery of amount paid by him as he was not willing to proceed with the sale transaction.

5.It is the further case of the plaintiff that the defendant had approached him for some more amount than Rs.1,85,000/- that has been offered for sale of the property. As the plaintiff was not willing for the same, the Power of Attorney executed by the defendant in favour of the plaintiff was cancelled by a document dated 11.02.2008. Therefore, the plaintiff came forward with the suit for declaration that the cancellation



of Power of Attorney dated 11.02.2008 is non-est and not binding on him and also for the relief of permanent injunction restraining the defendant from in any manner alienating the property.

6. The defendant, on entering appearance, presented a statement, praying to reject the claim made by the plaintiff. The same is as follows:\

(i) He admitted that he executed the Power of Attorney in favour of the plaintiff,

(ii) He also admitted the cancellation of Power of Attorney

(iii) Palaniappan had filed a suit against him and since there was a dispute with respect to pathway running over the property, he was not willing for converting the sale agreement entered into between himself and the plaintiff into a sale deed, but wanted to refund the advance amount that he received from the plaintiff. He further pleaded that the entire amount paid by Palaniappan was repaid by the defendant and not by the plaintiff.

7. On the strength of their respective pleadings, the parties went on



trial. On the basis of these pleadings, the following issues were framed:

i) Whether the plaintiff is entitled to declaration relief as prayed for?

ii) Whether the plaintiff is entitled to permanent injunction as prayed for?

8. The plaintiff entered the witness box and examined himself as PW.1 apart from examining one Maiyappan as PW2. He marked Exs.A1 to A13. Similarly, the defendant entered the witness box as DW1 and examined the Advocate who contested O.S.No.17 of 2008 as DW2. He marked Exs.D1 to D9.

9. After a detailed trial, the learned trial Judge dismissed the suit holding that the plaintiff is not entitled to any relief. Aggrieved by the same, regular appeal was presented in A.S.No.115 of 2011 on the file of the learned I Additional Subordinate Judge, Salem. The said Appeal also came to be dismissed, confirming the judgment and decree of the trial Court. Against which, the present Second Appeal.



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10. Mr.N.Suresh, the learned counsel for the plaintiff/appellant would argue that the Power of Attorney is a power coupled with interest and therefore, the same cannot be cancelled. He relied upon a judgment of this Court reported in “*T.Sivaperumal Vs. s.Viswanathan & Others*”, reported in CDJ 2013 MHC 4354.

11. Per contra, Mr.A.Tamilvanan, learned counsel for the defendant/respondent submitted that this is not a case of Power of Attorney coupled with interest. It was a simple General Power of Attorney and therefore, the Principal always has right to cancel the same. Apart from this, he relied upon Ex.B6 receipt to show that in the suit filed for recovery of money by Palaniappan against the parties in the present suit, an amount of Rs.1,20,000/- was received by Palaniappan from the defendant Kannaiyan and not from Chinnathambi @ Mani, the plaintiff herein. He has further stated that the plaintiff as a Power of Attorney did not render accounts that he was supposed to do so as per the Power of Attorney, which prompted the defendant to cancel the same.



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12. This Court, did not admit the Second Appeal but had ordered notice regarding the admission on 04.09.2013.

13. Mr.N.Suresh, learned counsel for the appellant suggested that the Second Appeal may be admitted on the following substantial questions of law:

(i) When admittedly pursuant to an agreement of sale, the defendant having received the entire consideration and a Power of Attorney was also executed in favour of the plaintiff, is it open to the defendant to cancel the Power of Attorney, unilaterally on the contrary to the provisions of Section 202 etc, of the Contract Act?

(ii) When it is well settled in law that when an interest is created either under the Power of Attorney or simultaneously, the Power of Attorney cannot be cancelled without prior notice. Still is the learned Subordinate Judge right in holding that the cancellation is valid?

14. However, Mr.A.Tamilvanan, learned counsel for the respondent would argue that none of the above questions of law arise in



the present Appeal inasmuch as this is not a case where the Power of Attorney was coupled with interest.

15. Heard the learned counsel appearing for the parties and perused the entire materials placed on record.

16. Section 202 of Indian Contract Act reads as follows:

“202. Termination of agency, where agent has an interest in subject-matter.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.”

17. A Power of Attorney whether termed revocable or irrevocable does not place it beyond the power of cancellation by the Principal. Under Section 202 of the Indian Contract Act, where the agent himself has a interest in the property which forms a subject matter of an agency unless and until there is a contract to the contrary, the agency cannot be terminated to the prejudice of such interest.



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18. Interpreting Section 202 of the Indian Contract Act, the Supreme Court has held as to what the Power of Attorney coupled with interest' in the case of “**Seth Loon Karan Sethiya Vs. Ivan E. John and Others**” in AIR 1969 SC 73. The relevant portion as found in para 5, reads as under:

“5. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable.”

19. Similarly, a Division Bench of Delhi High Court in “**Shri**



Harbans Singh versus Smt.Shanti Devi” reported in ILR (1977) II Delhi page 649, was pleased to hold that Power of Attorney to be coupled with interest seems to have the following criteria:

- (i) it should be for valuable consideration;
- (ii) it should be for effectuating any security and
- (iii) to secure the interest of the agent

20. It is settled law that an agreement of sale does not confer any right in the property. The person, who is an agreement holder has right to convert the sale agreement into sale deed by enforcing the same. By virtue of the fact that the Power of Attorney has been entered into and an agreement of sale has been executed by the Principal in favour of the agent, it cannot be said a interest in the property has been created in favour of the agent. Reading of the Power of Attorney, in this particular case, shows no such interest has been created in favour of the plaintiff.

21. Further plea that the plaintiff had repaid a sum of Rs.1,20,000/- to Palaniappan and therefore, the plaintiff has an interest in the property is also defeated by virtue of evidence of DW2 vide Ex.B6.



It has been categorically shown before this Court that the amount which was said to have been received by the plaintiff from one Palaniappan was repaid by the Principal namely the defendant herein. No steps have been taken by the plaintiff in order to enforce the agreement of sale, which is said to have been entered into between him and the defendant.

22. In the light of the principles laid down by the Supreme Court that unless and until an interest is created in favour of the agent over the property, which is subject matter of agency, it is always open to the principal to cancel the Power of Attorney. When interest, not having been created over the property, in this particular case, the Principal has power to cancel the Power of Attorney executed by him. In the present case, the defendant has rightly cancelled the power of attorney executed by him in favour of the plaintiff.

23. In view of the above discussion, none of the questions of law suggested by Mr.Suresh, learned counsel for the appellant arise for consideration. Accordingly, the Second Appeal stands dismissed.



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Consequently, the Judgment and decree dated 11.10.2012 made in A.S.No.115 of 2011 on the file of the learned I Additional Subordinate Judge, Salem confirming the judgment and decree dated 01.06.2011 made in O.S.No.546 of 2010 on the file of the I Additional District Munsif, Salem are hereby confirmed. There shall be no order as to costs throughout.

29.01.2024

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To

- 1.The I Additional Subordinate Judge, Salem
- 2.The I Additional District Munsif, Salem



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V.LAKSHMINARAYANAN.J.

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