



S.A No.910 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

Second Appeal No.910 of 2021

Ramu

... Appellant

..Vs..

1.Vasudevan

2.N.Sivaraj

3.K.C.Bhasi

4.The Sub Registrar of Assurances

Gudalur Sub Registrar Office

Gudalur, The Nilgiris District.

...Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 05.02.2021 passed in A.S No.1 of 2018 on the file of the Subordinate Judge, Gudalur, The Nilgiris, confirming the judgment and decree passed in O.S No.93 of 2006 dated 31.10.2017 by the Additional District Munsif, Gudalur, The Nilgiris District.

For Appellant

: Mr.C.Venkatesan

For Respondents

: Mr.A.Ilaya Perumal
for R1 to R3



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J U D G M E N T

WEB COPY This second appeal has been filed challenging the concurrent findings of the Courts below.

2. The plaintiff is the appellant herein. The respondents are defendants in the suit. In the forthcoming paragraphs, the parties are described as per the litigative status in the suit.

3. The suit has been filed seeking for a declaration that the Power of Attorney bearing Registration No.74 of 2004 executed in favour of the first defendant and the two sale deeds registered as Document Nos.1001 of 2004 and 1054 of 2004 are null and void as according to the plaintiff, the said documents are forged and fabricated documents. The plaintiff has categorically contended that he never executed any Power of Attorney bearing Registration No.74 of 2004 in favour of the first defendant. Therefore, according to him, the consequential sale deeds referred to supra are also fabricated and forged documents. However, the contesting defendants namely, the defendants 1 to 3 who are the respondents herein



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would categorically contend that the Power of Attorney registered as Document No.74 of 2004 and the sale deeds registered as Document Nos.1001 of 2004 and 1054 of 2004 are genuine documents.

4. Based on the pleadings of the respective parties, the trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to claim declaration that the document no.1001/04, 1054/04 and 849/04 are as null and void?*
- 2. Whether the plaintiff is in possession of the suit property?*
- 3. Whether the plaintiff is entitled to permanent injunction?*
- 4. Whether the defendants are entitled to claim compensatory cost?*
- 5. To what other relief?*

Re-cast Issues:

- 1. Whether this Court has pecuniary jurisdiction to try this suit?*
- 2. Whether the suit is bad for non-joinder of necessary parties?*
- 3. Whether the power of attorney bearing document no.74 of 2004 dated 10.08.2004 on the file of SRO, Gudalur executed in favour of 1st defendant by impersonation?*
- 4. Whether the plaintiff is entitled for the relief of declaration as claimed in the plaint?*



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5. Whether the plaintiff is entitled for the relief of permanent injunction as claimed in the plaint?

6. To what other relief?

5. Before the trial Court, the plaintiff has filed 24 documents which have been marked as Ex.A1 to A24 and the plaintiff himself examined as a witness (PW1). No other witness was examined on the side of the plaintiff. On the side of the defendants, 9 documents have been marked as exhibits namely B1 to B9 and four witnesses were examined namely DW1- the 1st defendant, DW2- the 2nd defendant, DW3- the 3rd defendant and DW4 (Chandran), the lessee of the suit schedule property.

6. The trial Court after giving due consideration to the pleadings and evidence available on record, has come to the conclusion that the plaintiff is not entitled for the reliefs sought for in the plaint by giving the following reasons:

a) The plaintiff has not discharged his initial burden of proving the case as he has failed to prove that the Power of Attorney is a forged and fabricated document. The plaintiff has



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failed to get an opinion from an expert as per Section 45 of the

WEB COPY *Indian Evidence Act, 1872*

b) The plaintiff has not examined his other two brothers who had also jointly executed the Power of Attorney (Ex.A4, Ex.B2) which is the subject matter of the challenge in the suit. The plaintiff has not paid the appropriate court fees in the suit as the suit ought to have been valued under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act.

7. The trial Court namely, the Additional District Munsif Court, Gudalur dismissed the suit in O.S No.93 of 2006 by its judgment and decree dated 31.10.2017. Aggrieved by the findings of the trial Court, the plaintiff filed the first appeal before the Subordinate Court, Gudalur in A.S No.1 of 2018. The Subordinate Court by its judgment and decree dated 05.02.2021 passed in A.S No.1 of 2018 also confirmed the findings of the trial Court and dismissed the first appeal filed by the appellant. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed.



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8. Eventhough the Power of Attorney registered as Document No.74

of 2004 was registered in the year 2004, the suit was filed by the plaintiff only in the year 2006. No reasons have been given in the plaint for the delay in filing the suit. The plaintiff would claim that the Power of Attorney is a forged and fabricated document if so, he would have certainly approached the Court for cancellation of Power of Attorney immediately after coming to know that the forged and fabricated Power of Attorney namely Power of Attorney bearing Registration No.74 of 2004 was executed. In the pleadings, the plaintiff has not pleaded the reasons for not filing the suit immediately after the registration of the Power of Attorney bearing No.74 of 2004. He has also not pleaded as to when he came to know about the execution of the alleged forged and fabricated Power of Attorney bearing Registration No.74 of 2004. Similarly, no reasons have been given in the plaint for not filing the suit immediately with regard to the consequential documents namely the sale deeds bearing Document Nos.1001 of 2004 and 1054 of 2004.



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9. Under Section 101 of the Indian Evidence Act, the initial burden to prove the case is on the plaintiff and only after he discharges his initial burden, the onus shifts to the defendants. In the case on hand, the plaintiff has not examined his two brothers who had also jointly executed the Power of Attorney bearing Registration No.74 of 2004 (Ex.A4 and Ex.B2). They are also not parties to the suit filed by the plaintiff. In the normal course, they would have joined with the plaintiff and filed the suit jointly against the defendants. They were also not examined as witnesses on the side of the plaintiff.

10. The trial Court as well as the lower Appellate Court have rightly held that the plaintiff has not discharged his initial burden of proving the case by not getting an expert opinion with regard to the genuineness of the documents namely, the Power of Attorney bearing Registration No.74 of 2004 and the sale deeds bearing Document Nos.1001 of 2004 and 1054 of 2004 under Section 45 of the Indian Evidence Act.



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11. Though the learned counsel for the appellant would contend before this Court that an application was filed under Section 45 of the Indian Evidence Act before the lower Appellate Court and the said application was admittedly not numbered and taken up for consideration by the lower Appellate Court, both the Courts below have rightly held that the plaintiff has not discharged his initial burden of proving the contentions as pleaded in the plaint. Both the Courts below have concurrently held that since the suit has been filed for declaration, the plaintiff ought to have valued the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. Instead, the plaintiff has valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act.

12. Necessarily, when a suit has been filed for a declaration to declare a Power of Attorney and consequentially to declare the sale deeds as null and void, the suit has to be properly valued under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. The contentions raised before this Court have already been considered by the Courts below only based on the pleadings and evidence available on record and there is no infirmity in



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the said findings as the plaintiff has not been able to prove that the Power of Attorney bearing Document No.74 of 2004 and the sale deeds bearing Document Nos.1001 and 1054 of 2004 are forged and fabricated documents. The suit filed by the plaintiff in O.S No.93 of 2006 has been rightly dismissed by the trial Court and confirmed by the lower Appellate Court. There is no debateable question of fact or law involved for this Court to consider under Section 100 of CPC. Since there is no substantial questions of law involved, there is no merit in this second appeal.

13. In the result, the judgment and decree dated 05.02.2021 passed in A.S No.1 of 2018, on the file of the Subordinate Judge, Gudalur, The Nilgiris District, confirming the judgment and decree passed in O.S No.93 of 2006 dated 31.10.2017 by the Additional District Munsif, Gudalur, The Nilgiris District stands confirmed and this Second Appeal stands dismissed.

No costs.

19.06.2024

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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WEB COPY To

- 1.The Subordinate Judge
Gudalur, The Nilgiris District.
- 2.The District Munsif
Gudalur, The Nilgiris District.
- 3.The Section Officer
V.R.Section, High Court of Madras.



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ABDUL QUDDHOSE, J.

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