



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.869 of 2021
and
C.M.P.No.16569 of 2021

Sathanantan

... Appellant

Vs.

1.Balapathira Prasad
Jeeralal Sontholia

2.Dhritin Tyagi

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the judgement and decree passed in AS No.51/2019 on the file of the Principal Sub Judge at Puducherry, dated 11.03.2021 confirming the judgement and decree passed in OS No.369/2006 on the file of Learned II Additional District Munsif at Puducherry dated 23.07.2018, and prays that the appeal be allowed with costs.

For Appellant : M/s.V.Moorthi.



JUDGEMENT

The plaintiff is the appellant before this Court seeking to challenge the judgement and decree passed by the Principal Sub Court at Puducherry in A.S.No.51 of 2019 in and by which the learned Judge has confirmed the judgement and decree passed by the II Additional District Munsif, Puducherry in O.S.No.369 of 2006.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff has filed the suit for the following reliefs:-

(i) declaring that Power of Attorney of 09.03.2001 by 1st Defendant to and in favour of Plaintiff is irrevocable in nature until Sale of Property in Schedule to Plaint through Plaintiff,

(ii) consequently declaring that alleged Revocation of Power of Attorney of 09.03.2001 by falsities & fraudulent



representations as alleged in purported Letter of 06.10.2001 by 1st Defendant to Plaintiff is Void ab-initio & Non-est in eye of law and is thus legally inactionable in any manner for any legal purpose,

(iii) consequently granting Permanent Injunction restraining Defendants, their men, agents or anyone claiming through them from disturbing or interfering with Plaintiff's peaceful possession & enjoyment of Property in Suit without recourse to law & until amicable Delivery of Possession thereof by Plaintiff under Sale by 1st Defendant Purchaser/s arranged by Plaintiff.

4. It is the case of the plaintiff that he is engaged in the business of Real Estate, Building Promotion and Construction Contracts at Puducherry and being in the business for long period of time, he had established a name for himself. The 1st defendant owned the suit schedule property. The property was being occupied and used by



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industries in the name of "Tiruveni Metals and Alloys Pvt. Ltd.", "Tiruveni Steels Pvt. Ltd.", and "Pondicherry Rolling Mills". The aforesaid industries could not function for a long and the property got entangled in several claims and litigations. Industrial activities had also come to an end and all the structures, goods and effects of the industry which were lying in the suit premises were in disused state and as a result these goods were causing damage to the suit property.

5. The 1st defendant who is residing at Chennai desired to sell the said properties for a huge consideration. However, he was not in a position to get the desired price on account of the disputes and litigations. Therefore, he had to arrange for the protection and maintenance of the said properties until the settlement of the problems and sale of the properties.

6. It is in this backdrop that the 1st defendant had approached the plaintiff in the month of January 2000 to arrange for the physical protection and security of all the properties and also to arrange for its



sale. In the mutual negotiation that had been held between the plaintiff and the 1st defendant in the presence of common friends, the parties had agreed on the terms regarding the possession and sale of the properties. The plaintiff was solely responsible for these acts which included spending money for the purpose. The remuneration that the parties had agreed upon was a sum of Rs.100/- per Sq.Ft. of the property.

7. In pursuance of the terms aforesaid, the 1st defendant had executed a general power of attorney dated 09.03.2001 in favour of the plaintiff. The 1st defendant had also handed over physical control and management of the said property to the plaintiff for executing the terms of the agreement. Thereafter, the plaintiff had protected and maintained the property by not only investing huge sums of money but also his time and effort. However, the plaintiff found that despite the agreement, the 1st defendant was not coming forward to sell the property. On the contrary, the 1st defendant had sent a letter dated 06.10.2001 to the plaintiff informing him that the power had been



revoked and that he had appointed another power agent (the 2nd defendant herein). The plaintiff was shocked to receive such a letter since he had invested a considerable amount of money on the property. When he had approached the 1st defendant, he was informed that the letter was only a legal formality to impress a prospective purchaser.

8. While so, on 10.10.2001, the 2nd defendant had gathered outside the property with his henchmen and was trying to desperately enter the property. The plaintiff had physically prevented the 2nd defendant from entering into the property. The plaintiff would submit that it is only the plaintiff who is in exclusive, open and continuous possession of the suit property on the basis of the agreement with the 1st defendant and the said power of attorney dated 09.03.2001 executed by the 1st defendant is an irrevocable one as the power was to be kept alive till the sale of the property. Further, the plaintiff has also spent huge sums of the money on the property. Therefore, the plaintiff has come forward with the suit in question.



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S.A.No.869 of 20



9. A written statement was filed by the 1st defendant which was adopted by the 2nd defendant wherein they had admitted the execution of the power of attorney dated 09.03.2001 in favour of the plaintiff. The defendants denied the contention of the plaintiff that the industries were not functioning. The defendant had admitted that the 1st defendant was desirous of selling the property for a proper consideration. It is for this reason that the plaintiff was appointed as a power agent to take care of the property of the 1st defendant with specific clauses.

10. The defendants would further submit that the plaintiff had misused his authority by opening his office without obtaining permission from the 1st defendant and selling various items of property. The plaintiff had not rendered true and proper accounts every month as contained in clause No.9 of the power deed. Therefore, the 1st defendant had cancelled the power. The defendants would submit that the present suit is liable to be dismissed for the simple reason that even according to the plaintiff, he had received Rs.100/- per



Sq.ft. as commission for the property. This fact has been suppressed by the plaintiff and the plaintiff has not paid Court fee for the claim amount. Therefore, they prayed for the dismissal of the suit as the power agent had violated the terms of the power deed.

11. The Trial Court had framed the issues and plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.18. Despite several opportunities, the defendants had failed to cross examine P.W.1 and had also failed to appear before the Court. Therefore, they were called absent and set exparte.

12. The learned Trial Judge on considering the evidence dismissed the suit. Challenging the same the plaintiff had filed A.S.No.51 of 2019 on the file of the Principal Sub Judge, Puducherry. The learned Appellate Judge also confirmed the judgement and decree of the Trial Court and dismissed the appeal.

13. Heard the counsel for the appellant/plaintiff.



WEB COPY

S.A.No.869 of 20



14. The plea of the plaintiff that the power of attorney Ex.A.4 was irrevocable has been dealt with by the Lower Appellate Court by extracting clauses 3, 7, 8, 10, 12 and 13. On a careful consideration of the recitals therein, the plaintiff was only permitted to perform such acts that are required for the proper upkeep and maintenance of the suit property. It has been clearly stated that Ex.A.4, power of attorney was not supported by consideration. This deed did not give the power to the plaintiff to sell or license the suit property nor was he permitted to put up any construction and carry out major repairs in the suit property. Therefore, it is crystal clear that the power of attorney is not one coupled with interest and is not an irrevocable one.

15. Ex.A.8 - letter of undertaking between the plaintiff and the 1st defendant, shows that the plaintiff was entitled to discharge the loan in respect of the suit property borrowed by the 1st defendant from the UCO Bank. However, no document has been produced on the side of the plaintiff to prove that he has discharged the 1st defendant's loan



to the UCO Bank. For the sale of the property, the commission at the rate of Rs.100/- per Sq.ft. had been fixed. The agreement clearly stipulated that the plaintiff was not authorised to sell the property but could only arrange for prospective buyers. The Courts below have correctly come to the conclusion that Ex.A.4 is not coupled with any interest and nor is it an irrevocable one. The further argument that the agency could not be terminated may not enure to the plaintiff since it is only in cases where the agency is coupled with an interest in the property that the agency cannot be terminated. In this regard a perusal of Ex.A.4 power deed would clearly show that the power has been given only for the proper maintenance of the suit property which is an unused industrial site. Therefore, the Courts below had held that the termination of the agency by the 1st defendant was very much in order.

16. The Courts below have rightly considered the documents on record and dismissed the suit. The plaintiff has not been able to show as to how the judgement and decree of the Courts below are erroneous. I see no reason to set aside the concurrent judgement and decree of the



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S.A.No.869 of 20



Courts below. Further no substantial question of law have been made out in the above Second Appeal, accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.03.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Sub Judge at Puducherry.
2. The II Additional District Munsif at Puducherry.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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