IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.751 of 2024

R.Kalaivani ... Appellant

Vs.

1. Savithriamma
2. M.Radhamma
3. M.Sharadhamma
4. M.Umadevi
5. M.Nagaraj
6. M.Baghyalakshmi

(Respondents 1 to 6 are represented by their registered General Power of Attorney holder)

7. T.L.Harinath .. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 19.01.2022 made in A.S.No.34 of 2019 on the file of Addl. District Court, Hosur modifying the judgment and decree dated 24.04.2019 passed in O.S.No.121 of 2012 on the file of Principal Subordinate Court, Hosur.

For Appellants : Mr.Ravi
Senior Advocate for
M/s. Ravi Law Chambers

JUDGMENT

Challenging the concurrent findings of the courts below rendered in A.S.No. 34 of 2019 by the Principal Subordinate Judge, Hosur arising out of trial court findings in O.S.No.121 of 2012 on the file of Addl. District Judge, Hosur, this Second Appeal was preferred by the plaintiff.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for the relief of specific performance in O.S.No.121 of 2012 against the defendants 1 to 7, claiming possession and other consequential relief. Before the trial court, 7th defendant, who is power agent of defendants 1 to 6 remained exparte. The defendants 1 to 6 have contested the suit. According to the plaintiff, he entered into a sale agreement with the defendants through their power agent to purchase the property originally belong to one Muniyappa as their separate and self-acquired property. Subsequently, he died intestate leaving behind his wife and children, defendants 1 to 6 as his legal heirs. All the

defendants 1 to 6 have jointly executed a General Power of Attorney in favour of 7th defendant on 19.05.2010 authorising and empowering him to sell the suit schedule property on behalf of them. Accordingly, the 7th defendant, as a power agent entered into a sale agreement with the plaintiff on the same day and received an advance amount of Rs.2,00,000/- from the plaintiff and agreed to execute the sale deed within a period of 11 months. Since the defendants are in need of funds to meet the family expenses and also to clear sundry debts and also to purchase other properties, finally, the sale price was finalised at Rs.9,00,000/-. Accordingly, the 7th defendant received a sum of Rs.3,00,000/- on 13.10.2010 and thereafter he received a sum of Rs.3,00,000/- on 03.02.2011 and subsequently, he received another sum of Rs.50,000/- on 02.03.2011 and made an endorsement to that effect. The total consideration was fixed at Rs.9,00,000/-, out of which, a sum of Rs.8,50,000/- was paid and he has agreed to receive the balance amount of Rs.50,000/- at the time of execution and registration of sale deed. The plaintiff is also ready and willing to perform her part of contract and to pay balance sale consideration. However, when he approached 7th defendant along with mediators to execute the sale deed, he evaded. Thereafter, he came to know that the defendants 1 to 7 have colluded and fraudulently cancelled the general power of attorney dated 29.07.2011 after receiving huge amount from the plaintiff even when the sale agreement dated 19.05.2010 is in force in favour of plaintiff. Therefore, he issued a notice dated 05.04.2012 to the defendants and the same were returned with an endorsement “refused”. Though the 7th defendant received notice, he had not complied the demand of notice. Hence, the suit was filed against them, in which the 7th defendant remained exparte.

4. The defendants 1 to 6 have contested the suit stating that the 1st defendant is wife and other defendants 2 to 6 are legal heirs of T.Muniyappa and they have obtained a sum of Rs.3,00,000/- towards loan from the 7th defendant on 17.05.2010 for medical expenses of son of 6th defendant and agreed to pay 6% interest, which comes around Rs.18,000/- per month. But, the 7th defendant instructed them to execute a general power of attorney in his favour in respect of suit property as security. Accordingly, for the medical treatment, they have executed a General Power of Attorney. On executing the same, the 7th defendant issued a self-cheque for Rs.2,70,000/- after deducting one month interest and registration charges and the same

was submitted for collection and they received a sum of Rs.2,70,000/- on 20.05.2010 from the bank. Subsequently, the 7th defendant colluded with the plaintiff by playing fraud against the defendants 1 to 6 and created a fabricated sale agreement on the day of execution of General Power of Attorney without the knowledge of defendants 1 to 6. Therefore, they have raised objections and contended that it is only a money transaction. Thereafter, they came to know about fraudulent act of 7th defendant and plaintiff, hence, they gave a complaint to the Superintendent of Police, Krishnagiri and the same was numbered as C.No.42/ALG/KGI/2012. During enquiry, the 7th defendant gave a statement that he paid a sum of Rs.19,00,000/- to the defendants, which is contrary to the sale considertion mentioned in the alleged agreement and on knowing the same, the defendants 1 to 6 have cancelled the General Power of Attorney on 29.07.2011.

5. Before the trial court, both parties have adduced oral and documentary evidence. The trial court framed four issues. On considering both oral and documentary evidence, the trial court held that the plaintiff is

not entitled for the relief of specific performance for the reason that the stamp papers for Ex.A1, Sale agreement as well as Ex.A2 General Power of Attorney were purchased from the same stamp paper vendor in the name of plaintiff and 7th defendant respectively on 17.05.2010, thereby both have colluded together and created sale agreement for unlawful gain. They have also contended that the General Power of Attorney was executed only on 19.05.2010 and on the same day itself, the sale agreement was also consequently registered, which would shows that there was a collusion between the plaintiff and 7th defendant. It is also an undisputed fact that without getting power of attorney, the sale negotiation held between them, which itself shows that they played fraud on the family of defendants 1 to 6 and also contended that the payment of consideration was also not proved by the plaintiff. Furthermore, in respect of possession, the evidence of P.W.1 gave consequential findings as if she is in possession of property, but as per the terms of Ex.A1, it was not specifically mentioned nor there is a specific pleading in respect of possession. Moreover, the evidence of P.W.1 extracted by the trial court in paragraph 11, in which she had clearly stated that she is not aware of execution of sale agreement. So, the entire fact reveals that the plaintiff is not a bonafide purchaser and accordingly, the relief claimed by the plaintiff was declined and the suit was dismissed. Against which, the plaintiff preferred an appeal in A.S.No. 34 of 2019, wherein the first appellate judge independently analysed the entire facts and evidence on record and elaborately discussed the same in paragraphs 14 and 15 of the judgment. The first appellate judge held that the General Power of Attorney was given to 7th defendant on 19.05.2010 and on the same day, sale agreement was executed consequently between 03.00 p.m. to 04.00 p.m., which would shows that there is a collusion between them. As per the contentions of defendants, due to the urgency of medical treatment in respect of their family member, they have received only a sum of Rs.2,70,000/- from the 7th defendant, through which, it proves that the same was received as loan, not the alleged sale consideration and in respect of possession, the first appellate judge referred the evidence given by P.W.1 and during her evidence, she has stated that she is in possession of property, which is not supported by pleadings. Considering that, the first appellate judge confirmed the findings of trial judge and dismissed the appeal. But, the first appellate judge also gave a direction to the defendants directing them to refund the advance amount of Rs.2 lakhs. Challenging the said findings, now the plaintiff preferred this Second Appeal.

6. The learned counsel for appellant would submit that the both courts below erroneously concludes that there was a collusion between plaintiff and the 7th defendant. In fact, the defendants 1 to 6 have colluded with 7th defendant and attempted to defraud the claim of plaintiff. Both the courts below also failed to appreciate that the defendants have ignored to perform their part of contract within a stipulated period, but the same was not properly appreciated by the courts below. So, he prayed to admit this Second Appeal on the following question of law :-

> (i) Whether in law after reversing the judgment of the trial court in dismissing the suit in toto and after finding that the plaintiff is entitled to return of advance amount of Rs.2,00,000/- with interest, has not the lower appellate court erred in not granting decree for the specific performance?

7. Considering both side submissions as well as on perusal of records, it reveals that the alleged sale agreement as well as General Power of attorney was registered on the same day between the plaintiff and the 7th defendant, who is power agent of defendants 1 to 6. The findings of courts below held that on the date of execution of General Power of Attorney, the 7th defendant entered into a sale agreement in respect of suit property. The defence of defendants 1 to 6 is that they have approached 7th defendant for a loan to meet out urgent medical treatment for the son of 6th defendant and they executed a general power of attorney. On executing the same, the 7th defendant issued a self-cheque for Rs.2,70,000/- after deducting one month interest and registration charges (out of Rs.3,00,000/-) and the same was submitted for collection and they received a sum of Rs.2,70,000/- on 20.05.2010 from the bank. According to plaintiff, the sale consideration was fixed at Rs.9,00,000/- and he paid the amount of Rs.8,50,000/- on three occasions and for the remaining sum of Rs.50,000/-, time was fixed for 11 months, but there is no proof that he paid the sale consideration to defendants 1 to 7. The 7th defendant remain exparte. The learned counsel for appellant failed to take notice to summon the 7th defendant to prove his

claim. Moreover, on seeing the conduct of plaintiff and 7th defendant, there is suspicious circumstances surrounding on the genuineness of the alleged agreement, however, when the plaintiff prayed for exclusive relief of specific performance, she is bound to prove her relief beyond reasonable doubt. But, as on date, she is in possession of property and in the sale agreement, there is no recitals about handing over the possession of property. It would not clearly reveals that P.W.1 was not aware of the particulars of stamp vendor and also recitals made in the alleged sale agreement. This itself shows that she is not a bonafide purchaser. Therefore, both the courts below rightly appreciated the evidence of P.W.1 and disagreed with the claim of execution of sale deed. In the said circumstances, the plaintiff approached the court with unclean hands and as per the findings as well as evidence of P.W.1 would clearly reveals that she colluded with 7th defendant and created a fabricated sale agreement said to be entered between her and the defendants 1 to 6 through their power agent, 7th defendant, which is totally illegal under law. As per the contentions of defendants 1 to 6, they have received a sum of Rs.2,70,000/- and the same alone is liable to be refunded. However, the first appellate court held that the refund of amount of Rs.2,00,000/- alone was ordered instead of Rs.2,70,000/-. Accordingly, the defendants are directed to refund the advance amount of Rs.2,70,000/- with interest at the rate of 6% from the date of agreement i.e. on 19.05.2010 till realisation within a period of three months from the date of receipt of copy of this order. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

29.10.2024

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

Sub-Judge,
Arakkonam.

T.V.THAMILSELVI, J.

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