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S.A.No.331 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.331 of 2014

and

MP.No.1 of 2014 & CMP.No.22925 of 2019

1.Settiyanna Gounder (died)

2.Perumayammal

3.Balasubramaniam (died)

4.Sengottaiyan

[appellants 2 to 4 are LR's of 1st appellant]

5.Chellappan

6.M.Haneefa

7.Salmabanu

8.B.Senthil Kumar

9.B.Ramesh Kumar

...

Appellants

[Appellants 8 & 9 brought on record as LR's of the deceased 3rd appellant viz Balasubramaniam vide order of Court dated 04.11.2019 made in CMP.No.22921, 22924 and 22925/2019 in SA.No.331/2014]

Vs.

1.Arivalagan

2.Rajathee

...

Respondents/Plaintiffs



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PRAYER: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 21.12.2012 made in A.S.No.21 of 2012 on the file of the II Additional Sub-Ordinate Judge of Salem reversing the judgement and decree dated 23.11.2010 made in O.S.No.234 of 2008 on the file of the I Additional District Munsif Court at Salem.

For Appellants : Dr.P.Jagadeesan
For Respondents : Mr.L.Rajendran for RR1 & 2
: No appearance -R3

JUDGEMENT

This Second Appeal has been preferred against the judgment and decree passed in A.S.No.21 of 2012, on the file of the learned II Additional Subordinate Judge, Salem, dated 21.12.2012, reversing the judgment and decree dated 23.11.2010 made in O.S.No.234 of 2008 on the file of the I Additional District Munsif Court at Salem.

2. The defendants are the appellants against whom the plaintiffs have filed a suit to declare that the sale deed dated 31.07.2006 executed by the 1st defendant in favour of the second defendant vide document No.1539 of 2006 and the sale deed dated 11.10.2006 executed by the second defendant in favour



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of the 3rd defendant vide document No.2200 of 2006 are sham, nominal, fraudulent, invalid documents, and for consequential injunction. The trial Court has dismissed the suit. On the first appeal preferred by the plaintiffs, the first appellate Court allowed the first appeal and set aside the judgment of the trial Court and the suit was decreed. Now, the defendants have preferred this second appeal challenging the judgment of the first appellate Court.

3. The short facts pleaded in the plaint are as under:

The suit properties belonged to the 1st plaintiff through purchase by virtue of a sale deed dated 17.04.1997; from then onwards the plaintiffs and their children were in enjoyment of the same. The plaintiffs are illiterates. The second plaintiff is the wife of the 1st plaintiff. The 1st defendant is known to the plaintiffs and came into contact while repairing his tractor. The 1st defendant has to pay a sum of Rs. 50,000/- to the plaintiffs towards the tractor's service charges. But the 1st defendant has not paid the same. The 1st defendant obtained signatures of the 1st plaintiff in an unfilled promissory note and in unfilled stamp paper in the year 1997. He had also got a power of attorney in respect of other property that belonged to the plaintiffs to an extent of 3600 sq.ft. Since the 1st defendant used to threaten the plaintiffs, the plaintiffs had



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paid more than Rs.1.36 lakhs from the years 1997 to 2000 to the 1st defendant.

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3.1. The 1st defendant, by misusing the power of attorney deed dated 18.09.2000, executed a sale deed in favour of Balasubramaniam and Sengottaiyan. The said Balasubramaniam and Sengottaiyan are the sons of the 1st defendant. Hence, the plaintiffs have given a police complaint. Thereafter, the 1st defendant has entered into a sale agreement with the 2nd defendant, Sellappan, on 04.08.2003. The time for execution of sale agreement is one year; even after the completion of the agreement, the same was not acted upon.

3.2. The plaintiffs cancelled the general power of attorney deed in favour of the 1st defendant by virtue of a cancellation deed dated 29.03.2006 and the notice of cancellation was given through the counsel of the 1st defendant. Thereafter, the 1st defendant created a registered sale deed in favour of the 2nd defendant, Sellappan, in respect of the suit property dated 31.07.2006. Thereafter, the 2nd defendant created a registered sale deed in favour of Hanifa, the 3rd defendant, on 11.10.2006. The 4th defendant, document writer, had assisted in writing the fraudulent sale deeds, knowing fully well that the sale deeds were created fraudulently. The 5th defendant had also registered those sale deeds, knowing fully well that the general power of attorney has already



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been cancelled. The sale deeds executed by the 2nd defendant in favour of the 3rd defendant are all sham, nominal, Fraudulent and invalid in the eye of law.

Now the 3rd defendant, despite of knowing the facts, tried to construct a building over the suit property by forcibly trying to take over the suit property in collusion with the 1st and 2nd defendants and their henchmen. The plaintiffs once again made a complaint. Hence, the plaintiffs have filed the suit for declaration to declare the sale deed executed by the 1st and 2nd defendants dated 31.07.2006 as invalid.

4. The written statement filed by the 1st defendant is adopted by the 4th defendant. The plaintiff has executed a power of attorney deed dated 11.02.1998 in favour of the 1st defendant in respect of two houses measuring an extent of 3600 sq. ft. and 1200 sq. ft. after receiving a sum of Rs.3.25 lakhs. On the same day, the plaintiffs executed a receipt for a sum of Rs.3.25 lakhs and thereafter, on 18.09.2000, the plaintiffs executed a sale deed in favour of the 1st defendant's sons in respect of 3600 sq. ft. On 04.08.2003, the 1st defendant entered into a sale agreement in respect of the remaining 1400 sq. ft. in favour of the 2nd defendant.

4.1. On 31.07.2006, the 1st defendant executed a sale deed in favour of



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the 2nd defendant in respect of 1200 sq. ft. On 11.10.2006, the 2nd defendant had executed a sale deed in favour of the 3rd defendant, and thereafter, the 3rd defendant had put up a construction over the said house site measuring an extent of 1200 sq. ft., and he is in enjoyment of the same. As the sale deed has been registered only in pursuant to the power given in favour of the 1st defendant, the sale deeds are valid and enforceable. In the mean while, the plaintiffs had executed another power of attorney on 18.09.2000 in favour of the 1st defendant.

5. On the basis of the above pleadings, the trial court framed the following issues:

"1. whether the plaintiffs are entitled to get a relief of declaration in respect of the sale deeds as alleged in the plaint?

2. Whether the plaintiffs are entitled to the relief of injunction as prayed? and

3. To what further reliefs?"

6. During the course of the trial, on the side of the plaintiffs, two



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witnesses have been examined as PW.1 and PW.2 and Ex.A1 to Ex.A19 were marked. On the side of the defendants, four witnesses have been examined, as D.W.1 to D.W.4 and Ex.B1 to Ex.B12 were marked.

7. At the conclusion of the trial and on appreciation of the materials available on records, the Trial Court has dismissed the suit, and the appeal preferred by the plaintiffs before the First Appellate Court was allowed and the suit was decreed.

8. Now, the defendants have preferred the second appeal have raised the following substantial questions of law:

1. Whether the lower Appellate Court is right in holding that under the Power of Attorney Act, a cancellation of the specific power will also render automatic cancellation of an existing earlier power?

2. Whether the First Appellate Court and the trial Court ought to have framed the issued on the question of payment of court fees under Sec.40 of the Family Nadu Court fees Act and dismissed the suit for non-payment of proper and necessary court fees, especially in a suit for



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cancellation of the documents and the parties to the lis are parties to the document?

3. Whether the suit as framed is maintainable, especially when the plaintiff has not asked for a declaration of title and only for cancellation of the sale deed?

4. Whether the suit as framed is maintainable, especially when the plaintiff has not prayed for possession having known that third parties rights have intervened and third parties, who are the subsequent purchasers having been made parties, have constructed houses thereon?

5. Whether the plaintiff can ask for the cancellatino of the sale deed after receiving the sale consideration, which is admitted by the plaintiff under Ex.B2?"

9. The learned counsel for the appellants submitted that the 1st defendant has executed a sale deed in favour of the 2nd defendant only on the strength of the power of attorney executed by the plaintiffs on 11.02.1998. Even though the plaintiffs have cancelled the subsequent power of attorney deed on 18.09.2000 i.e., in respect of only 1200 sq. ft., On 31.07.2006 when the 1st defendant executed a sale deed in favour of the 2nd defendant, it was *not* within the knowledge of the 1st defendant that the plaintiffs had cancelled the power of



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attorney deed dated 18.09.2000. And further, the 2nd defendant sold the suit property in favour of the 3rd defendant, and the 3rd defendant has put up a construction and he is in possession of the same. The plaintiffs so far have not sought any relief for recovery of possession. These facts were not considered by the First Appellate Court and hence the judgment of the First Appellate Court is liable to be set aside.

10. The learned counsel for the respondents submitted that the First Appellate Court is right in its observation that when there is already an earlier power of attorney deed executed in the year 1998, there is no necessity for the subsequent power deed of the year 2000. A cancellation of the subsequent power deed dated 18.09.2000 would automatically cancel the earlier power deed also, and hence the First Appellate Court had thought it fit to declare that the sale deeds executed subsequent to the cancellation of the power deed are invalid.

11. The second appeal lies only on the very narrow campus. The fact that the suit property originally belonged to the plaintiffs was not denied. The further fact that the plaintiffs had executed the original power of attorney deed in favour of the 1st defendant on 11.02.1998 was also not denied. Subsequently, on



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31.07.2006, based on the strength of the power granted in favour of the 1st defendant, he executed a sale deed dated 18.09.2000 in respect of 3600 sq. ft. in favour of the Balasubramiam and Chenkottaian, who are the sons of the 1st defendant. It is to be noted that in the power of attorney document of the year 11.02.1998, two items of property were mentioned; one is in respect of a property measuring an extent of 3600 sq.ft vacant site and another is a property measuring an extent of 1200 sq.ft vacant site. The plaintiffs have no objection in respect of 3600 sq. ft., which has already been sold in favour of the 1st defendant's son on 18.09.2000. The objection is only with regard to the remaining extent of 1200 sq.ft which was once again the subject matter of another power of attorney deed dated 18.09.2000.

12. But the contention of the 1st defendant is that the second power of attorney deed dated 18.09.2000 is very much valid and only because of that the 1st defendant had executed a sale agreement in respect of the 2nd defendant on 04.08.2003. But the respondents/plaintiffs have stated that the power of attorney deed that was executed on 18.09.2000 has been cancelled on 29.03.2006 and that the sale agreement dated 04.08.2003 has been created by the 1st defendant by himself. At the time when the sale agreement dated 04.08.2003 was executed, both the powers of attorney executed on 11.02.1998



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and on 18.09.2000 are very much in force. But the sale deed has been executed by the 1st defendant in favour of the 2nd defendant only on 31.07.2006, before the said deed, the plaintiffs had cancelled the power of attorney deed dated 18.09.2000 by way of executing a cancellation deed on 29.03.2006. So, it is claimed by the plaintiffs that any sale deeds that have been executed consequent to the said date of 29.03.2006 will be invalid and that the 1st defendant did not have power to pass any valid title in respect of the purchaser, namely the 2nd defendant, on 11.10.2006.

13. The First Appellate Court has raised a valid point by observing that when there is already a power deed dated 11.02.1998, there is no necessity to execute another power deed on 18.09.2000 in respect of the same property. It might be because through the sale deed dated 18.09.2000, a portion of the subject matter of the earlier power of attorney deed dated 11.02.1998 has been alienated on 18.09.2000 and hence, a fresh power of attorney is thought to be fit in respect of only one item, i.e., the suit property measuring an extent of 1200 sq. ft. Whatever the case, by virtue of the execution of the second power of attorney deed, the first power of attorney deed has become superfluous, or it merges with the second power of attorney deed dated 18.09.2000. When the second power of attorney deed dated 18.09.2000 is cancelled, that would only



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presume that the earlier power of attorney deed dated 11.02.1998 has also been cancelled. Though the plaintiffs have not executed a cancellation deed in respect of the power deed dated 11.02.1998, the power of attorney deed dated 11.02.1998 would have superseded automatically in view of the subsequent power of attorney deed dated 18.09.2000. It appears that the 1st defendant had taken advantage of the earlier power of attorney deed dated 11.02.1998. By presuming that the earlier power of attorney deed is very much in force, he had chosen to execute the subsequent sale deed dated 31.07.2006.

14. No doubt, the sale deed dated 31.07.2006 has been executed subsequent to the cancellation of the power of attorney deed dated 29.03.2006. So, the First Appellate Court has thought it fit to declare that at the time when the sale deed dated 31.07.2006 was executed, the 1st defendant did not have the power, and hence, he cannot pass any valid title in favour of the owner of the property, namely the plaintiffs. As the subsequent power of attorney deed dated 18.09.2000 would supersede the earlier deed dated 11.02.1998, the cancellation of the power deed dated 18.09.2000 would automatically render the earlier power of attorney deed also cancelled.

15. In fact, the earlier power of attorney has merged with or got



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superseded in view of the second power of attorney deed dated 18.09.2000 and

hence, a separate cancellation of the earlier power of attorney will not arise. The cancellation of the subsequent power of attorney deed dated 18.09.2000 would itself deprive the power of the 1st defendant to deal with the suit property any further. Even if any sale agreement has been executed by the 1st defendant in favour of any third party, the 3rd party ought to have claimed his right, if any, only against the plaintiffs who are the rightful owners and who got back their power from the 1st defendant to deal with the property. **Hence the first substantial question of law is answered against the appellants.**

16. The next question is only in respect of payment of court fee under Section 40. It is submitted that the plaintiffs ought to have valued the suit according to the value of the sale deed and paid the court fee under Sec.40 of the Indian Court Fees Act-1870. Only when the plaintiff is a party to the sale deed he would have needed to pray the relief for cancellation of the sale deed. The plaintiff has not claimed the relief of cancellation of the sale deed but only a relief of declaration to declare that the impugned sale deeds are invalid and illegal. Admittedly, the plaintiffs were not parties to the impugned sale deeds.

17. The very contention of the plaintiffs is that the 1st defendant did not



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have the power to execute the sale deed in favour of the 2nd defendant as on 31.07.2006 and hence, the 2nd defendant could not have passed the title to the 2nd defendant himself. As the plaintiffs have questioned the entitlement of the 1st defendant to execute a sale deed in favour of the other defendants, he has filed the suit by pleading that the sale deed was executed by the 1st defendant without any valid power and hence, it should be declared as null and void.

18. So in all probabilities, the plaintiffs cannot be expected to pay the court fee under Section 40 of the Indian Court Fees Act-1870 because the plaintiffs are clear about the reliefs they want to claim in the suit. Hence, the plaintiffs cannot be found fault for not paying the court fee under Section 40 of the Act. Thus, the **2nd and 3rd substantial questions of law are also answered against the appellants.**

19. It is the further contention of the learned counsel for the appellants that the 3rd defendant(who is in possession of the suit properties) that the plaintiffs have not chosen to seek the relief of recovery of possession and had limited their prayer only in respect of declaration. Even the 3rd defendant has not preferred any suit to save his alleged possession in the suit property. In fact, the contention of the learned counsel for the respondents/plaintiffs is that



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subsequent to the judgment made in the first appeal, the plaintiffs have executed a sale deed in favour of Loganathan on 25.01.2019 and the loganathan has executed a sale deed in favour of one Rajendiran on 20.08.2019 and subsequently Rajendirean is in possession of the suit property.

20. So it is for the purchasers of the plaintiffs to raise any suit for recovery of possession if they were not in possession of the suit property by stating that the plaintiffs themselves were not in possession of the suit property while executing the sale deeds in their favour, when the sale deed was executed in their favour. As the 3rd defendant also did not file any suit to safeguard his alleged possession, and since the course of the trial is only concerned with validating the sale deed, I do not find the suit to be defective for not seeking the relief of recovery of possession. Therefore, **the rest of the substantial questions of law are also answered against the appellant.**

21. In the result, this Second Appeal is **dismissed** and the judgment and decree dated 21.12.2012 made in A.S.No.21 of 2012 on the file of the II Additional Sub-Ordinate Judge of Salem is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking/ Non-Speaking
Internet: Yes/No
Neutral: Yes/No
jrs



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To

1. The II Additional Subordinate Judge, Salem.
2. The I Additional District Munsif, Salem.
3. The Section Officer, V.R.Section,
High Court, Madras.



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R.N.MANJULA, J.

jrs

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