



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

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RESERVED ON : 06.03.2024

PRONOUNCED ON : 05.06.2024

RMT.TEEKAA RAMAN, J.

1. The unsuccessful Plaintiff in OS.No.5 of 2013 on the file of the Principal District Judge, Puducherry is the Appellant in AS.Nos.649 and 651 of 2019.
2. For the sake of convenience, the parties hereinafter referred to as per their litigation status before the Trial Court.
3. The Plaintiff has filed the suit for declaration to declare the sale deed executed by the 3rd Defendant (husband of the original Plaintiff) in favour of the 2nd Defendant, Kowsalya as null and void.
4. The plaint proceeds on the basis that when the Plaintiff was bedridden, due to old age and illness, her brother's wife, namely, Zita Albert, who resides adjacent to her property, in the guise of the Plaintiff's Power Agent with an ulterior motive to grab her property, preferred the suit in OS.No.5 of 2013, challenging the sale deed dated 22.03.2010 executed by her vendor, the 3rd Defendant in her favour on the ground that the suit property is a 'community property' of the Plaintiff under the French Civil Code and the 3rd Respondent has no absolute right to alienate the suit property without the consent of his wife, the Plaintiff. Further ground is that the sale consideration was not paid and it was pocketed by the 1st Respondent and further the 3rd Defendant



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

was not in sound mind and had no proper sense to execute the Power of Attorney to sell the suit property.

5. The suit was filed by the Plaintiff seeking a declaratory decree that a particular Power of Attorney executed by her husband (3rd Defendant) and the consequential sale deed executed by the Power of Attorney Agent are both null and void.

6. The Power of Attorney Agent was impleaded as the 1st Defendant in the suit. The purchaser, to whom the property was sold was impleaded as the 2nd Defendant. A counter claim was filed by the 2nd Defendant, claiming declaration of title on the basis of the sale deed. Both the suit and the counter claim were tried and the suit was dismissed and in the counter claim, a decree was passed on 08.04.2019 and hence, challenging the dismissal of the suit and decreeing the counter claim, the above appeals in AS.Nos.649 and 651 of 2019 came to be filed before this Court.

7. In CMP.No.2656 of 2022, filed by the Plaintiff/ Appellant in AS.No.651 of 2019, wherein the counter claim filed by the Defendant was decreed, the Plaintiff has sought for stay of operation of the decree as the 2nd Defendant filed an execution Petition. By an order dated 06.04.2022, interim stay of all further proceedings in execution petition was granted till 10.06.2022 and the same was extended from time to time.

8. Now, the 2nd Defendant in the suit has filed CMP.No.23121 of 2002 to vacate



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

the interim stay granted in CMP.No.2656 of 2022 on 06.04.2022 in AS.No.651 of 2019 and CMP.No.23124 of 2022, seeking the relief of interim injunction, restraining the Appellant to lease out the suit property to any third party or to create any encumbrance over the suit property, pending disposal of the appeal.

9. This Court heard the learned counsel on either side and perused the records.

10.The learned counsel for the Appellant/ Plaintiff would contend that the suit was instituted on the ground that during the subsistence of marriage between the Plaintiff and the 3rd Defendant, the property was purchased and hence, it is a “community property” since both the parties are French nationals. As per the French Civil Code, the property purchased during the subsistence of marriage has to be treated as “community property” and hence the 3rd Defendant (husband of the Plaintiff) has no absolute right to alienate the suit property without the consent of his wife. The learned counsel would further contend that the sale consideration was not paid and the entire sale consideration was pocketed by the 1st Defendant (General Power of Attorney) and also claimed that the 3rd Defendant was not in a sound state of mind.

11.The learned counsel for the Respondent/2nd Defendant, who has filed the petition to vacate the order of interim stay, would contend that the Trial Court, after a full fledged trial, had rendered a finding that the claim of the Plaintiff



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

that it is a “community property” was negatived and the Defendant's further plea that the Defendant was not in the proper sense for execution of the Power of Attorney has been negatived and the counter claim was allowed by the Trial Court.

12.In reply thereto, the learned counsel for the Appellant would contend, by relying upon **2006 12 SCC 734 (Rohit Singh Vs. State of Bihar)** that the Defendant could not be permitted to raise a counter claim against a co-defendant by virtue of Order 8 Rule 6A of CPC since it could be raised by the Defendant against the claim of the Plaintiff and not against the co-defendant and also relied upon **CDJ 2023 SC 532 (Damodhar Narayan Sawale Vs. Shri Tejrao Bajirao Mhaske)** and further contended that in **2005 2 SCC 217 (Janki Vashdeo Bhojwani Vs. Indusind Bank Limited)**, it was held that a Power of Attorney Holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts, but cannot depose for the principal for the acts done by the principal and not by the Power of Attorney holder. Like wise, the Power of Attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross examined.

13.After hearing the rival submissions and taking note of the fact that these are civil miscellaneous petitions and from the records, I find that the original



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

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Plaintiff is dead and he claimed maintenance right over the property. With regard to the nature of the community property, the parties, namely the Plaintiff and the 3rd Defendant are French nationals. While Article 1441 relates to “community” when dissolved, Articles 1443 and 1444 deal with process of separation of property.

14.The Division Bench of this Court in AS.No.95 of 2018 by judgement, dated 12.01.2022, has held that the suit schedule properties were purchased during the subsistence of marriage and therefore form part of the “community property”. In such circumstances, it was held that the French Civil Code shall be the lex causae in determining the rights of the parties and under the same, the Wife is entitled to $\frac{1}{2}$ share in the suit schedule properties as prayed for by her. Hence, I find that the Petitioner has made out a prima facie case in her favour and on the death of the original Plaintiff, some of the legal representatives were brought on record and interim stay already granted by this Court on 06.04.2022 is to be made absolute.

15.In fine, interim stay already granted by this Court on 06.04.2022 is made absolute and CMP.No.2656 of 2022 is ordered accordingly. CMP.No.23121 of 2022 for vacating the stay shall stand dismissed. In respect of the relief sought for in CMP.No.23124 of 2022, wherein the Defendant based upon the counter claim has sought for interim injunction, restraining the Appellant to lease out the suit property to any third party, it is made clear that any



CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

alienation pending disposal of the appeal is subject to the result of the appeals. Accordingly, CMP.No.23124 of 2022 is ordered accordingly.

05.06.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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CMP.Nos.2656, 23121 and 23124 of 2022 in AS.Nos.649 and 651 of 2019

RMT.TEEKAA RAMAN, J.

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Pre-Delivery Judgement in
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05.06.2024