



A.S.No. 577 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2024

CORAM:

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

A.S.No. 577 of 2022
and
C.M.P. No. 22398 of 2022

S.Vallikannu,
W/o. R.Sundaresan

.. Appellant

Vs

C.Selvaraj,
S/o. late Chinnasamy

... Respondent

PRAYER : Appeal Suit filed under Sec. 96 of Civil Procedure Code, praying to set aside the judgment and decree dated 19.10.2022 passed by the V Addl. District Judge, Coimbatore in I.A.No.3 of 2022 in O.S.No.693of 2021.

For Appellant : Mr.AR.L.Sundaresan,
Senior Advocate for
Ms.S.A.Kanmani

For Respondent : Mr.D.Balamurugan for
Mr.K.Vasanthanayagan

JUDGMENT



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The appellant herein is the plaintiff in the suit in O.S.No.693 of 2021, on the file of V Addl. District Judge, Coimbatore, who filed the said suit against defendants 1 and 2 for the relief of declaration to declare the cancellation deed dated 09.08.2021 executed by the defendants by cancelling the power of attorney dated 06.02.1995 as illegal and void and not binding the plaintiff and also with the consequential relief directing the defendants to execute the sale deed concerning the suit 'B' schedule property in favour of her as per the oral agreement dated 20.07.1991 and also the Varthamana letter cum receipt dated 06.03.1995.

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

3. Before the trial court, the respondent/1st defendant appeared through his counsel and filed an application in I.A.No. 3 of 2022 under Order VII Rule 11 (a) and (d) of C.P.C. praying to reject the plaint stating that there is no cause of action to file a suit and the alleged cause of action relied on by the plaintiff also barred by limitation. The said application was contested by the appellant/plaintiff. On hearing both sides, the trial judge allowed the said application. Accordingly, the suit



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was rejected. Challenging the said finding, the plaintiff preferred this Appeal Suit.

4. The learned senior counsel for appellant would argue that under Order VII Rule 11 of C.P.C., the trial judge is empowered to reject the plaint based on the plaint averment without taking note of defence taken by the defendants, but in the present case, the trial judge decided the suit on merit that the suit is barred by limitation, as such is illegal and the same is liable to be set aside. He would further submit that the trial judge erroneously rejected the plaint concluding that it is barred by limitation without considering the fact that the power of attorney is coupled with interest and unilateral cancellation made by the defendants and the same is warranted the plaintiff to approach the court, which has not been properly appreciated by the trial judge as such is unjust and liable to be set aside. The learned senior counsel also pointed out that based on the power of attorney, possession was handed over to her and several sites have already been sold to third parties and there is no question of limitation arose in the prayer for specific performance, since already the sale agreement has been performed in part, thereby the trial judge erred in



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rejecting the plaint as barred by limitation under Order VII Rule 11 (a) and (d) of C.P.C. Hence, she prayed to set aside the findings by allowing this Appeal Suit.

5. By way of reply, learned counsel for respondent would submit that based on the alleged power of attorney dated 06.02.1995, nearly about 25 years later, the plaintiff filed the said suit for the relief of specific performance as such is totally barred by limitation and the same was rightly appreciated by the trial judge by allowing the application filed in I.A.No. 3 of 2022, which needs no interference by this court. Accordingly, he prayed to dismiss this appeal suit as no merit. The learned counsel also pointed out that even as per the plaint averment, the plaintiff relied the alleged oral agreement dated 20.07.1991 within one year period concluded to be performed, which itself proves that after the year of 1992, the plaintiff has no right to the relief of specific performance based on the alleged oral agreement and it is also barred by limitation, since the specific period of one year was relied on by the plaintiff. So, based on the plaint averment, the trial judge rightly rejected the plaint. Therefore, the findings of trial judge as such is maintainable,



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thereby he prayed to dismiss the Appeal Suit as no merit.

6. Heard and considered rival submissions of learned senior counsel for appellant and learned counsel for respondent and perused the materials available on record.

7. Considering both side submissions and on perusal of plaint in O.S.No. 693 of 2021 on the file of District Judge, Coimbatore, it reveals that appellant/plaintiff filed a suit for declaration to declare the cancellation deed made by the defendants 1 and 2 as null and void and also claiming the relief of specific performance in respect of 'B' schedule property in his favour. As per the plaint averment, the plaintiff entered into an oral agreement with the defendants, who are owners of property on 20.07.1991 for a total consideration of Rs.10,06,000/- and the amount was paid on various dates through cheques. Thereafter, on 06.02.1995, a power of attorney was executed, through which the plaintiff was authorised to deal with 'A' schedule property. Based on the power of attorney, the vacant possession was delivered and after the payment of sale consideration, a letter cum receipt was executed on 06.03.1995 by the defendants, thereby the defendants have no further right in the suit



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property and also affirmed through the varthamana letter that the plaintiff is entitled to enjoy the property as absolute owner, thereby the power of attorney is coupled with interest. Accordingly, she converted the suit property into house sites and the plaintiff dealt with the property by selling out 27 sites out of 37 sites formed in the said layout and the remaining unsold sites are detailed in 'B' schedule property and the sale deeds were executed from 27.10.1997 to 2011. The plaint averments further reveal that on 18.08.2021, there is a communication letter received from the defendants that they have cancelled the power of attorney, thereby the same was communicated. Therefore, the contention of plaintiff is that the cancellation of power of attorney unilaterally by the defendants is invalid under law and not binding the plaintiff. Hence, the necessity arose for the plaintiff to file a suit for specific performance in respect of remaining sites shown in 'B' schedule property as well as the cause of action itself arose for declaration of cancellation deed, thereby the power of attorney was cancelled as null and void and the suit was filed in the year of 2021 within the limitation period. However, on the side of respondent/1st defendant, he has filed an application in I.A.No. 3



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of 2022 stating that nearly about 26 years later from the alleged oral sale agreement, the plaintiff approached the court for the relief of specific performance as such is time barred one. Based on that, the trial judge passed an order by rejecting the plaint holding that the relief of specific performance claimed by the plaintiff, as such is time barred, since the alleged oral agreement was cancelled on 09.08.2021.

8. On further perusal of plaint averment, it would also clearly reveals that cause of action for the suit arose mainly due to cancellation of power of attorney by the defendants in the year of 2021. Therefore, till the year of 2021, the power of attorney was alive and the same would be the claim made in plaint averment as well as defence taken by defendants. Even as per the cancellation of document, prima facie reveals that the defendants have decided to maintain the property by themselves and they did not want the power of attorney alive, accordingly, they wanted to cancel the power of attorney. Therefore, till the year of 2021, the power of attorney was alive and after cancellation of document, the plaintiff approached the court, since the power of attorney is coupled with interest, in which, the defendants have no right to cancel the document



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unilaterally. Hence, the cause of action arose, thereby the plaintiff filed a suit after cancellation of document. So, the suit, as such is maintainable in law and the findings given by the trial judge needs no interference by this court. Accordingly, the findings given by the trial judge is set aside and this Appeal Suit is allowed. However, the defendants 1 and 2 are entitled to take all their defence before the trial court and the trial judge is directed to complete the trial and dispose the suit without influence of the findings of this court and empowered to deal with the suit independently. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.08.2024

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

XVI Addl. Judge, District Court,
Coimbatore.

T.V.THAMILSELVI, J.



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Pre-delivery judgment in
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