



S.A.No.907 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.907 of 2023

and C.M.P.No.29226 of 2023

Aruna

...Appellant

Vs

1.Elumalai

2.The Thasildhar,

Arcot Taluk Office, Arcot,

Ranipet District.

3.The Sub Registrar,

Kalavai Sub Registrar Office,

Kalavai, Arcot Taluk,

Ranipet District.

4.Murugan

...Respondents

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code, as against the Judgment and Decree dated 13.09.2023 in A.S.No.04 of 2023 on the file of the II Additional District Court, Vellore at Ranipet confirming the Judgment and Decree dated 24.02.2023 passed in O.S.No.149 of 2009 on the file of the Sub Court, Ranipet.



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For Appellant :M/s.Saravabhauman Associates for

Mr.K.Venkatasubban

J U D G M E N T

The plaintiff in the suit is the appellant before this Court in the Second appeal.

2. The Second appeal is filed challenging the Judgment and Decree dated 13.09.2023 passed in A.S.No.04 of 2023 on the file of II Additional District Court, Vellore at Ranipet, confirming the Judgment and Decree dated 24.02.2023 in O.S.No.149 of 2009 on the file of the Sub Court, Ranipet.

3. The defendants 1 to 4 are the respondents in the above appeal.

4. For the sake of convenience, the parties are referred as per the ranking before the trial Court.

5. It is the case of the plaintiff that the plaintiff purchased the suit property from one Kannammal under a registered sale deed dated 15.02.2006 in Ex.A1. Thereafter the plaintiff had executed a General Power of Attorney Deed in favour of the 1st defendant on 07.01.2008 in Ex.A2. Subsequently, the plaintiff had revoked the General Power of Attorney executed by the plaintiff in favour of the 1st defendant, by registered cancellation dated 06.08.2009 in Ex.A3. Since the plaintiff came to know that 1st defendant in collusion with



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the 3rd defendant has attempted to create false document to grab the plaintiff's property, issued legal notice in Ex.A4 and it was acknowledged by the defendants. Since the 1st defendant attempted to trespass into the suit property, the plaintiff has come up with the suit for bare injunction.

6. The 1st defendant resisted the suit by way of filing written statement, stating that the plaintiff had executed a General Power of Attorney in favour of the 1st defendant in Ex.A2 with all the rights, to sell, mortgage and to do cultivation in the suit property. Based on the Power of Attorney Deed, the 1st defendant has executed mortgage deed in favour of 4th defendant on 02.06.2008 in Ex.B2 for valuable consideration. Thereafter, the 1st defendant as power agent of the plaintiff has executed registered sale deed in favour of the 4th defendant on 15.06.2009 in Ex.B5. Thereafter, with the ulterior motive, the plaintiff has cancelled the power of attorney but however even prior to that, the sale to 4th defendant has been completed and the plaintiff is not in possession of the suit property at any point of time. Hence, prayed for dismissal of the suit.

7. During trial, the plaintiff examined himself as P.W.1 and examined another witness as P.W.2 and marked Ex.A1 to A8. The 4th defendant is the purchaser and examined himself as D.W.1 and marked Ex.B1 to B5. The trial Court after considering the evidences and documents dismissed the suit.



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8. The trial Court came to the conclusion that admittedly the plaintiff had executed a General Power of Attorney in favour of the 1st defendant on 07.01.2008 in Ex.A2, thereafter, the sale in favour of the 4th defendant in Ex.B5 was executed at which point of time, power of attorney was in force. Thus after completion of sale to the 4th defendant, the plaintiff has lost the right in the property. Aggrieved by the said findings of the trial Court, the plaintiff filed Appeal in A.S.No.4 of 2023 on the file of II Additional District Court, Ranipet.

9. The lower Appellate Court after re-appraising the evidence, dismissed the appeal confirming the judgement and decree of the trial Court. Aggrieved by the concurrent finding of the Courts below, the plaintiff is before this Court with the above Second appeal.

10. The learned counsel for the appellant/plaintiff contended that even though the plaintiff has executed the General Power of Attorney in favour of the 1st defendant in Ex.A2, subsequently, the power of attorney deed was cancelled executing registered cancellation deed in Ex.A3 and also the plaintiff duly issued a legal notice on 17.08.2009 in Ex.A4 intimating the cancellation of the power of attorney. However the 1st defendant in collusion with the 4th defendant has executed a mortgage deed on 02.06.2008 in Ex.B2



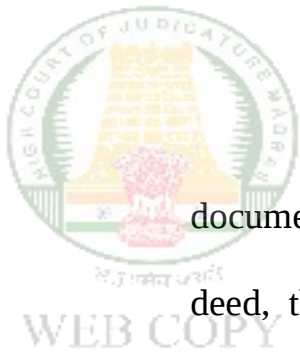
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and thereafter, executed a registered sale deed in favour of the 4th defendant on 15.06.2009 in Ex.B5. According to the learned counsel for the plaintiff, in view of the cancellation of power of attorney, the sale will not bind the plaintiff.

11. The learned counsel for the appellant/plaintiff further contended that the Courts below have not considered the documents and evidences adduced and the findings are perverse and sought for allowing the second appeal.

12. Heard the counsel for the appellant and perused the documents on record.

13. Admittedly, the plaintiff was the owner of the suit property, who purchased the same from one Kanniammal through sale deed dated 15.02.2006 in Ex.A1. After purchase, the plaintiff admittedly had executed registered Power of Attorney dated 07.01.2008 in Ex.A2 in favour of the 1st defendant, nominating the 1st defendant as power agent. As per the Power of Attorney deed, the 1st defendant has been authorised to mortgage, sell and carry on cultivation and carry on all the activities in respect of the suit property. Even though, it is the case of the plaintiff that they have duly cancelled the power of attorney deed dated 06.08.2009 in Ex.A3 and they have also issued legal notice on 17.08.2009 in Ex.A4, a perusal of the



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documents, would go to show that based on the registered Power of Attorney deed, the 1st defendant had executed mortgage deed in favour of the 4th defendant on 02.06.2008 in Ex.B2. Thereafter, the 1st defendant has also executed a registered sale deed in favour of the 4th defendant on 15.06.2009 in Ex.B5. As per the registered sale deed executed in Ex.B5, the 4th defendant has become the owner of the property.

14. Perusal of the deed dated 15.06.2009 would go to show that the possession of the property has been handed over to the purchaser on the date of execution of the sale deed in Ex.B5 in favour of the 4th defendant. Admittedly, the power of attorney executed by the plaintiff in Ex.A2 in favour of the 1st defendant was in force on the date of sale in Ex.B5. Therefore, on the date of execution of sale deed, the plaintiff has lost all the rights in the suit property. Subsequent cancellation of General Power of Attorney dated 06.08.2009 in Ex.A3 and issuance of legal notice in Ex.A4 is in no way relevant and it will not affect the sale executed in favour of the 4th defendant in Ex.B5.

15. In the suit, the 1st defendant has filed written statement clearly pointing out the above particulars, particularly execution of the sale deed in favour of the 4th defendant on 15.06.2009 in Ex.B5. But the plaintiff has not chosen to amend the plaint and not even challenged the mortgage deed



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executed in Ex.B2 or the sale deed executed in favour of the 4th defendant.

When the plaintiff has admittedly lost the right in the suit property, and once the suit property has been sold in favour of the 4th defendant, plaintiff has no rights over the property and therefore the dismissal of the suit for bare injunction by the trial Court and the confirmation of the same by the appellate Court is sustainable.

16. The Courts below have arrived at concurrent findings of facts which are based on the materials available on record and I do not find any illegality or perversity in the findings of the Courts below.

17. In view of the above reasonings, this Court does not find any substantial question of law that arises in the second appeal for consideration. Therefore, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

07.02.2024

Index : Yes/No

Speaking order/non-speaking order

mpa



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G.ARUL MURUGAN, J.,

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To

1. The II Additional District Court, Vellore at Ranipet.
2. The Sub Court, Ranipet.

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and C.M.P.No.29226 of 2023

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