



A.S.(MD).No.123 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on :21.11.2023

Delivered on: 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

M.P.(MD)No.1 of 2014

M/s.Ultra Marina & Pigments Ltd.,

A registered Company having its office at

Thirumalai House, Road No.29,

SION, Mumbai-400 022, through its

Authorized Signatory

cum Manager, Sales.

.. Appellant / Plaintiff

Vs.

1.Kala Karmegam

2.P.Karmega Mani

3.Ramesh Babu

... Respondents / defendants



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Prayer:- Appeal filed under Section 96 r/w. Order 41 Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 07.03.2014 in O.S.No.36 of 2011 on the file of the Additional District Court, Dindigul.

For Appellant : Mr.H.Lakshmi Shankar
For Respondents : Mr.S.Gokul Raj for R1
Mr.L.Vakeeswaran for R3
No Appearance for R2

JUDGMENT

RMT.TEEKAA RAMAN
and
P.B.BALAJI,J.

The unsuccessful plaintiff is the appellant before us. The plaintiff filed a suit in O.S.No.36 of 2011, before the Additional District Court, Dindigul for declaring its title to the suit property and for consequential relief for recovery of possession from the defendants and also for mandatory injunction directing the defendants to remove the encroachments and superstructures put up in the suit property.



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2. (i). The brief facts of the case pleaded by the plaintiff are that the plaintiff is the owner of the suit property, having purchased the same under a registered sale deed, dated 22.05.1982. In the year 1996, the second defendant, who is the husband of the first defendant, approached the plaintiff's Company with an offer to find a suitable purchaser for the suit property or in the alternative, purchase it for himself, for a price to be agreed later. According to the plaintiff, the second defendant advanced a sum of Rs.47,00,000/- and it was agreed that the said amount would be adjusted at the time of final settlement of the sale transaction. In view of the payment of Rs.47,00,000/-, the plaintiff executed a power of attorney in favour of the 2nd defendant's wife, namely, the first defendant on 10.10.1996.

2(ii). The plaintiff also issued receipts in the name of the first defendant, in respect of the money received from the second defendant. Thereafter, the second defendant did not come forward to finalise the sale transaction and also expressed his inability to purchase the said property and also informed the same to the plaintiff, over phone and the plaintiff returned the advance amount of Rs.47,00,000/- by way of five demand drafts, dated 07.04.2000 drawn on “Bank of India”, Madurai, favouring the



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second defendant.

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2(iii) According to the plaintiff, the said demand drafts were sent by registered post to the second defendant, along with a covering letter, confirming that the transaction had fallen-through. In the said letter it was also mentioned that in view of the transaction not being proceeded with, the power of attorney executed by the plaintiff in favour of the first defendant also came to an end. According to the plaintiff, the said communication along with the demand drafts was received by the second defendant.

2.(iv). It is further contended by the plaintiff that despite receiving the said sum of Rs.47,00,000/- and also the information that the power of attorney came to an end, the defendants colluded among themselves and brought about an agreement of sale on 10.04.2000 to defeat the plaintiff's right. It is the specific allegation of the plaintiff that only after getting knowledge about the cancellation of power of attorney and the same being informed to the second defendant on 07.04.2000, the defendants have created the documents, as if the third defendant has made payment of sale consideration in advance, on 01.11.1996, 22.07.1998, 16.12.1999 and finally on the date of the alleged agreement, i.e.,



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10.04.2000. A suit was also filed by the third defendant in O.S.No.148 of 2000 and all these attempts were made by the defendants only to grab the suit property.

2.(v). The plaintiff has further stated that on 26.04.2000, the defendants entered in another agreement of sale, whereunder, it is mentioned that possession of the suit property has been handed over to the third defendant and that the third defendant was permitted to fence the property and also develop the same. The third defendant obtained an interim order in O.S.No.148 of 2000, despite not being put in possession by the defendants 1 and 2 who themselves were not in actual possession. Even otherwise, it was only after getting the *exparte* order, the third defendant attempted to enter into the suit property and also demolished a portion of the compound wall. It is also stated that the plaintiff preferred a second appeal in S.A.(MD)No.1146 of 2008, challenging the injunction granted in favour of the third defendant in O.S.No.148 of 2000, which was confirmed in first appeal. The plaintiff contends that taking advantage of the decree of permanent injunction in favour of the third defendant, the third defendant erected temporary structures in the suit property in the month of November - 2010 and therefore, the plaintiff was constrained to



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file the suit for the relief of declaration, possession and mandatory injunction.

3. The first defendant filed a written statement stating that the plaintiff had executed a power of attorney in her favour in order to sell the suit property. According to the first defendant, the entire sale consideration of Rs.16,00,000/- was paid in the year 1996 itself, and instead of a sale deed, the plaintiff executed a power of attorney. The further contention of the first defendant is that in furtherance of the power of attorney, he executed a sale agreement on 10.04.2000, after receiving an advance amount of Rs.4,00,000/-. The first defendant reiterated the alleged payments made on 01.11.1996, 22.07.1998, 16.12.1999 and lastly on 10.04.2000. The first defendant further states that the third defendant paid a further sum of Rs.8,00,000/- to her and a sum of Rs.4,00,000/- alone remained to be paid by the third defendant. Considering the said payments, the first defendant handed over possession to the third defendant, under an agreement dated 26.04.2000, permitting the third defendant to develop the property and also fence the same. The first defendant has further stated that the power of attorney was admittedly cancelled only on 12.07.2000 and the



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sale agreement was executed much earlier on 10.04.2000 and therefore, the agreement was valid and binding on the plaintiff. The first defendant also refers to the suit in O.S.No.148 of 2000 filed by the third defendant and stated that suit was decreed and confirmed in an appeal and as against the same, the plaintiff had preferred the Second Appeal and the same is pending before the High Court. The first defendant further pleads the defence of limitation as the suit has been filed after 15 years from the date of possession being handed over to the third defendant.

4. The third defendant filed a written statement stating that he is a *bonafide* agreement holder who was put in possession, in part performance of the agreement of sale with the plaintiff, through the plaintiff's power of attorney agent, the first defendant. The suit is also barred by limitation and further the third defendant has already paid a sum of Rs.12,00,000/- as against the total sale consideration of Rs.16,00,000/- and therefore, his possession was entitled to be protected by the Court.

5.(a) The plaintiff filed a reply statement to the written statement filed by both the first and third defendants denying the allegation that the



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first defendant had paid the entire sale consideration of Rs.16,00,000/- in the year 1996 itself and that instead of sale deed, a power of attorney was executed. Further, the plaintiff has also stated that there was no negotiation for sale of the property at any point of time with the first defendant and the entire money paid by the second defendant was returned and the original power of attorney was also given back to the plaintiff. The claim of the first defendant was therefore false and baseless.

5(b) The first defendant was never put in possession at any point of time and she cannot claim any interest adverse to that of the plaintiff. The self serving claim of possession being 15 years back is contrary even to the case pleaded by the third defendant in O.S.No.148 of 2000. The agreements dated 10.04.2000 as well as 26.04.2000 are false and concocted and only in order to grab the suit property. It is also stated that the third defendant is not entitled to take shelter under the provisions of the Transfer of Property, as the agreement itself is not proper and even according to the third defendant, he claims to have been put in possession *de hors*, the agreement of the year 1996. The second defendant has also conveniently avoided from appearing and contesting the present suit.



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6. The trial Court framed the following issues:

- 1.வழக்குச் சொத்து வாதிக்கு பாத்தியப்பட்டது என விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
- 2.அதன் தொடர்பரிகாரமாக வாதிக்கு சுவாதீன பரிகாரம் கிடைக்கத்தக்கதா?
3. வழக்குச் சொத்தில் உள்ள கட்டுமானங்களையும் மேற்கோப்புகளையும் பிரதிவாதிகள் அகற்ற வேண்டுமென வாதிக்கு செயலுத்துக்கட்டளை கிடைக்கத்தக்கதா?
- 4.3-ம் பிரதிவாதியுடன் 10.04.200-ம் தேதி ஏற்பட்ட கிரைய ஒப்பந்தம் செல்லத்தக்கதா?
5. இவ்வழக்கு காலாவதி தோசத்தால் பாதிக்கப்பட்டுள்ளதா?
6. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?

7. Before the trial Court, one Mr.Sundaram was examined as P.W.1 and one Ramanan was examined as P.W.2 and 9 documents were marked as Ex.A1 to Ex.A9 on the side of the plaintiff. On the side of the defendants, the first defendant examined herself as D.W.1 and 4 documents were marked as Ex.B1 to Ex.B4. The trial Court, after trial, held that the plaintiff was not entitled to the relief of declaration, recovery of possession and mandatory injunction and dismissed the suit.



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8. Aggrieved by the said dismissal of the suit, the plaintiff has preferred the present Appeal Suit on the following grounds:

The trial Court failed to see that the defendants were only claiming as power of attorney holder and agreement holder under the plaintiff and therefore, could not have any independent title or adverse title; the defendants did not set up a clear case of adverse possession even in the written statement; the bar under Section 53-A of the Transfer of Property Act cannot be taken along with a plea of adverse possession; the trial Court failed to see that the third defendant did not enter the witness box to give evidence; the trial Court failed to see that the pleadings in the earlier suit in O.S.No.148 of 2000 run contrary to the stand taken by the defendants in the written statement; the defendants had miserably failed to establish that possession was handed over by the plaintiff to the first defendant and that thereafter, the first defendant handed over the same to the third defendant excepting for self serving recital in Ex.B3; the trial Court despite being informed about the S.A.(MD)No.1146 of 2008 being allowed in favour of the plaintiff, erroneously held that the appeal was allowed only on a technical ground of maintainability and the findings of the Courts had been set aside; the trial Court failed to appreciate the



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evidence of P.W.1 and P.W.2 and erroneously came to the conclusion that the plaint was not duly verified in terms Order XXX Rule 1 C.P.C., despite no such objections being taken by the defendants in the written statement; the trial Court ignored Ex.A8 and Ex.A9 and erroneously dismissed the suit on the ground that the documents were not filed along with the plaint, but only after the cross examination of P.W.1; the trial Court ought not to have dismissed the suit on the ground of non-filing of the resolution for filing the suit along with the plaint; the trial Court ought to have also seen that the very same Sales Manager, on behalf of the plaintiff in the present suit had also signed the vakalat and other legal papers in the earlier round of litigation in O.S.No.148 of 2000; the trial Court ought not to have dismissed the suit on a flimsy reason of improper verification of the plaint, which was only a curable defect; the evidence of P.W.1 established the clear collusion between the defendants, which has been totally disregarded by the trial Court; the trial Court has ignored vital admissions of D.W.1, regarding the execution of power of attorney with the plaintiff and that the third defendant never approached her for more than 14 years to offer to pay the balance sale consideration of Rs.4,00,000/- and get the sale deed registered; the protection under Section 53(A) cannot be claimed by the



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third defendant, even assuming that the third defendant is in possession and an agreement holder, in the light of the evidence adduced by D.W.1; the trial Court failed to see that the alleged payments made even prior to the agreement of sale were artificial and only to defeat the plaintiff's right in and over the suit property; the trial Court failed to see that there was not even a recital acknowledging payment of Rs.16,00,000/- or handing over possession as claimed by the defendants. The plaintiff therefore sought for the judgment and decree of the trial Court to be reversed.

9. We have heard Mr.H.Lakshmi Shankar, learned counsel for the appellant and Mr.V.Gokul Raj, learned counsel for the first respondent and Mr.C.Vakeeswaran, learned counsel for the third respondent. We have also gone through the records, pleadings, oral and documentary evidence and the various decisions on which reliance is placed on by the learned counsel for the parties.

10. The following points arise for determination in the present Appeal:



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(I) Whether the plaint has been duly verified in compliance with the mandate of Order XXX Rule 1 C.P.C?

(II) Whether the defence of protection under Section 53-A of T.P. Act can be set up in the facts of the present case?

(III) Whether the suit is barred by limitation and whether the plaintiff is entitled to the relief of declaration, recovery of possession and mandatory injunction?

11.(a) The fact that the suit property belongs to the plaintiff is admitted. The case of the defendants themselves is only that the first defendant is a power of attorney agent of the plaintiff and the third defendant is an agreement holder, who entered into an agreement of sale to purchase the suit property and that the said agreement was executed by the first defendant in her capacity as power agent and therefore, in the light of the admitted pleadings of the respective parties, there is no difficulty in holding that the plaintiff is the owner of the suit property.

11(b). The plaintiff has come to Court stating that the second defendant approached the plaintiff promising to sell the suit property for a good market price and that he had advanced a sum of Rs.47,00,000/-. It is



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the further case of the plaintiff that the transaction did not go through as contemplated and a sum of Rs.47,00,000/- was returned by the plaintiff to the second defendant and in consideration of the payment made by the second defendant, the plaintiff admits to have executed a power of attorney in favour of the first respondent, who is none else then the wife of the second defendant. It is the specific case of the plaintiff that the original power of attorney was returned to the plaintiff on repayment of the advance amount of Rs.47,00,000/- to the second defendant.

12. However, controverting the said averments in the plaint, the second defendant has not chosen to file any written statement and even in the written statement filed by the first respondent, the claims made by the plaintiff with regard to payment of Rs.47,00,000/- to the plaintiff by the second defendant and subsequent repayment of the same to the second defendant, consequent to which, the original power of attorney deed executed in favour of the first defendant was also handed over to the plaintiff, are not specifically denied.

13. The case of the first defendant is that the power of attorney



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was cancelled only on 12.07.2000 and before the said date, she had already entered an agreement of sale in Ex.B3, dated 10.04.2000. Ex.A1 is the power of attorney. It is a registered power of attorney empowering the agent, namely, the first defendant to negotiate for sale of the suit property, to execute sale deeds and all other documents and deal with the suit property. Ex.B2 is the receipt which is issued by the plaintiff / Company in favour of the first defendant. The said receipt acknowledges a sum of Rs. 16,00,000/- said to have been paid as an advance for the suit property by the first defendant in and by 7 demand drafts, details of which have been set out in the said receipts itself. Receipt is dated 20.09.1996, which is prior to the power of attorney executed by the first plaintiff on 10.10.1996. The receipts also only mention that the said sum of Rs.16,00,000/- paid to the plaintiff is only towards advance. The said receipt does not indicate the actual sale consideration agreed upon between the parties and it also does not indicate as to what is the balance sale consideration payable by the first defendant. The agreement of sale is a registered document. In the said sale agreement, it is stated that the plaintiff has agreed to sell the suit property for a total sale consideration of Rs.16,00,000/- and received an advance of Rs.4,00,000/-, leaving the balance consideration of Rs.



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12,00,000/- to be paid within a period of one year from the date of the agreement of sale. It is the specific case of the plaintiff that even prior to the agreement of sale dated 10.04.2000, the second defendant was intimated about the cancellation of the power of attorney on 07.04.2000 in and by a letter and along with it, the demand draft for a sum of Rs, 47,00,000/- were also sent and received by the second defendant. However, the plaintiff has not chosen to file any document / evidence to substantiate these contentions. Subsequently, the said power of attorney came to be cancelled on 12.07.2000, which is an admitted position. In the light of the available evidence adduced by the parties, we proceed to hold that the power of attorney was cancelled only on 12.07.2000 and not on 07.04.2000 as claimed by the plaintiff / Company.

14. On perusal of Exs.B3 and B4 viz., Ex.B3-sale agreement dated 10.04.2000 and Ex.B4 supplementary sale agreement dated 26.04.2000, we find from the said sale agreement that the first defendant has offered the suit property for sale to the third defendant on the strength of the power of attorney executed by the plaintiff in her favour.

14(b) The first defendant acknowledged receipt of a sum of Rs.



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4,00,000/- as advance, the details of which are as follows:

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Rs.1,50,000/- paid by cash on 01.11.1996; Rs.1,00,000/- paid in cash on 22.07.1998, Rs.1,00,000/-paid in cash on 16.12.1999 and Rs. 50,000/- paid in cash on the date of the agreement, namely, 10.04.2000. The said agreement has been entered into only on 10.04.2000 and registered on the same day.

14(c) The preamble portion of the said agreement of sale also indicates that the said agreement of sale could have been brought about only around the said date of the agreement being entered into, namely April 2000. However, strangely, the parties recorded the payment of advances and all the said payments are said to have been made by way of cash payments.

14(d) Yet another point is that Ex.B4 is styled as an agreement of sale dated 26.04.2000, in continuation of the sale agreement dated 10.04.2000. The said agreement had been executed by the first defendant in favour of the third defendant acknowledging receipt of further sum of Rs.8,00,000/- and in view of such payment, the first defendant, representing the plaintiff, has handed over possession of the schedule property to the third defendant with a right to fence the property and make developments thereon and also



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put up watchman shelter, permanent or temporary, in the suit property. It is also stated that in case of delay in execution of the sale deed, the vendors shall pay interest on Rs.12,00,000/-.

15. Curiously, there is a recital in the said agreement that both the vendor and purchaser had mutual understanding and have not registered the said agreement, since the earlier sale agreement has been registered and both the parties felt that the Registration of the subsequent sale agreement would be unnecessary. There is a further clause in the said agreement dated 26.04.2000 that the purchaser has every right to protect the possession in case of any hindrance by the vendor and that the vendor and purchaser have agreed not to initiate any action under the Specific Relief Act, seeking specific performance till 10.04.2001, that is, one year from the date of the agreement of sale in Ex.B3.

16(a). An endorsement was also made in Ex.B3 and as also seen from Ex.B3, on the reverse of the last page of the sale agreement, acknowledging receipt of a sum of Rs.8,00,000/- on 26.04.2000 from the third defendant and that she has handed over possession of the suit



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property to the third defendant.

16(b). We are at a loss to understand as to how an agreement holder who entered into an agreement of sale for the first time on 10.04.2000 can make payment of advances in the years 1996, 1998 and 1999. We could at least understand if there was any recital in the agreement of sale to the effect that the parties negotiated terms or at least proposed to enter into an agreement even in the year 1996. However, no such recitals are available in Ex.B3.

16(c). Ex.B4 – supplementary sale agreement also appears to have been executed only for the purposes of recording a further payment of Rs.4,00,000/-, which is said to have been made by the third defendant, the fact of possession being handed over to the third defendant with a right to the third defendant to make improvements is on the property. Such covenants in the said agreement of sale, dated 26.04.2000 appear to be very artificial and contrary to a normal agreement of sale, where standard covenants are agreed to between the parties.

16(d). Thus, we find that strange covenants like the purchaser being conferred with the rights to be protected in case of hindrance by the vendor are also inserted. This certainly creates a doubt in the minds of the



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Court as to whether the said agreement was actually intended or entered into under *bonafide* circumstances. Further, there is also no probable reason for the parties to agree that for one whole year, neither the vendor nor the purchaser would initiate proceedings under the Specific Relief Act.

16(e). We are mindful of the fact that the plaintiff is a Limited Company. It is to be seen whether the actions of the first defendant representing the plaintiff, were with the consent or full knowledge of the plaintiff. Further, D.W.1 had admitted in her evidence that the original power of attorney was handed over to the plaintiff and the further fact that the plaintiff had exhibited the said original power of attorney in Ex.A1 would clearly cast a serious doubt over the claim made by the defendants with regard to the alleged agreement of sale between the first defendant claiming to be an authorized power of attorney agent of the plaintiff on the one hand and the third defendant, as purchaser, on the other hand.

17. We have also gone through the judgment of the learned Single Judge in S.A.(MD)No.1146 of 2008 marked as Ex.A6 and the decree for injunction granted in favour of the third defendant has been reversed and the suit in O.S.No.148 of 2000, on the file of the District



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Munsif Court, has been dismissed, setting aside the findings of the trial Court and the first Appellate Court. No doubt, the Second Appeal came to be allowed by this Court, placing reliance on Section 41 (h) of the Specific Relief Act. Be that as it may, in view of the categorical admission by the parties that the plaintiff is the lawful owner of the suit property and in the absence of any registered document taking away the right, title and interest of the plaintiff, the burden is only on the defendants, to establish the fact that the possession of the defendants is not unlawful. The case of the plaintiff is very specific with regard to relief of recovery of possession. The allegation in the plaint is that based on the collusive agreements amongst the defendants, the third defendant has entered into the suit property in the month of November – 2010, after obtaining a decree in O.S.No.148 of 2000. The said averment is not even denied by the first defendant. The second defendant has not chosen to contest the suit by filing a written statement. It is only the third defendant, who set up a plea that he was put in possession of the suit property under the agreement, dated 26.04.2000. One interesting aspect which should have been noted and is pointed out by the learned counsel for the plaintiff is that in the last page of the judgment of the agreement of sale dated 26.04.2000, it is



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mentioned that the deed of agreement of sale in continuation of the earlier deed of agreement dated 10.04.2000 is executed at Madurai, on 26.11.2000. While preparing a document of this nature, the parties would normally not venture to mention a future date. This also raises suspicion to some extent on the actions of the defendants 1 and 3._

18. We have also noticed that in the cross examination of P.W.1, a suggestion has been put to the said witness that the payment of Rs.47,00,000/- to the second defendant claimed to be in the nature of return of the advance paid by the second defendant, related to a different transaction. This suggestion only probablises the case of the plaintiff and does not in any way help the case projected by the defendants. On the side of the defendants, only the first defendant – D.W.1 has been examined before the trial Court. She has admitted that both she and husband reside together and they have common interest. She has also admitted that she did not derive any title under Ex.A1 – power of attorney, but, only an authorization to deal with the suit property. She also further admits that Ex.B2 receipts does not mention the sale consideration, but, only refers to an advance payment of Rs.16,00,000/-. She further admits that Ex.B2 does



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not refer to any agreement of sale, having been entered into between the plaintiff and her husband. She also admitted that there is no document to establish that possession of the suit property was either with her or the third defendant. That apart the first defendant has also stated that she is only a house wife and her husband was well conversant with the case that he was attending the Court along with her. The first defendant has also admitted that the third defendant is her family friend. She has also claimed that Ex.B1 is the only parent document for the suit property based on which the defendants are claiming right Ex.B1 is nothing but the Power of Attorney dated 10.10.1996 executed by the plaintiff in favour the first defendant. On an overall assessment of the evidence of P.W.1 and D.W.1, it is clear that the documents in exhibits Ex.B3 and ExB4 have been brought about taking advantage of knowledge of the power of attorney being cancelled and in order to usurp the suit property. There is absolutely no iota of evidence produced by the defendants to establish that the plaintiff company put the first defendant in possession in the first place, for her to thereafter part with possession to the third defendant pursuant to the agreement of sale. Section 53-A is extracted hereunder:

53A. Part performance.-- Where any person contracts to transfer for consideration any immoveable



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property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has. in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

19. In order to claim protection under Section 53-A of Transfer



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of the Property Act, the agreement holder or purchaser ought to have to be in possession in pursuance to the agreement of sale and only if this condition is satisfied, the agreement holder can seek to invoke the protection available. Here, admittedly, it is the case of the third defendant that he was put in possession by the first defendant and that too under an unregistered agreement. Admittedly, there is no agreement of sale between the plaintiff and the first defendant and the first defendant has not been able to show as to how she came into possession of the suit property. This coupled with the fact that the plaintiff has categorically alleged that taking advantage of the judgment and decree in O.S.No.148 of 2000 granting permanent injunction in favour of the third defendant, the third defendant trespassed into the suit property in November 2010, which necessitated filing of the present suit, clearly goes to show that the possession of the third defendant, even assuming is true, cannot be under the agreement of sale.

20. Further as rightly contended by the learned counsel for the plaintiff, the defence set up by both the defendants 1 and 3 is only that they were power agent and agreement holder respectively and therefore the



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defendants cannot set up any plea of adverse possession, being in possession for cover 15 years and therefore the suit is not maintainable. However, we are unable to countenance the said submission. The defendants can never set up the plea of adverse possession in their favour.

21. With regard to issue of limitation, we find that the suit has been filed on 06.04.2011 on the strength of the plaint allegation that in and around November 2010, the third defendant trespassed into the suit property and erected temporary constructions.

22. Per contra, it is the specific case of the third defendant that he came into the possession of the suit property on 26.04.2000, under the supplementary agreement of sale. Thus viewed from both these angles, the suit being filed within 12 years from the third defendant being put in possession according to the defendants and also from the alleged date of trespass, is within the statutory period of limitation. Therefore, we answer the said issues in favour of the appellant and hold that the suit is not time barred.



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23. Once the suit is not time barred, the relief of declaration and being virtually conceded by the defendants, the relief of recovery of possession becomes consequential. The defendants have also not been able to establish their plea of being put in possession in part performance of any agreement of sale and on the contrary they claim only under the plaintiff being the power agent and the agreement holder. The plaintiff is at perfect liberty to seek for recovery of possession.

24. Coming to the next issue regarding the authorization and verification of the plaint, no doubt, initially the person, who signed the plaint has not been authorized or duly verified in terms of Order XXX Rule 1 C.P.C. However, this is only a curable defect. Subsequently in and by Ex.A8 and Ex.A9, the plaintiff has ratified the action of such authorised signatory who signed and verified the plaint. Therefore, we are unable to agree with the findings of the trial Court that for not filing the authorization / resolution along with the suit, the suit is liable to fail. The Hon'ble Supreme Court also, in several cases has held that such actions of authorization and representation can be ratified even on a subsequent date.



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The evidence viz., Ex.A8 and Ex.A9 would meet the requirement of law and therefore, we are unable to uphold the order of the trial Court that the suit is not maintainable for not filing the resolution or authorization along with the plaint. This point also answered in favour of the appellant.

25 The learned counsel for the plaintiff would place reliance on the decision of the Hon'ble Supreme Court in *Moolchand Bakhra V. Rohan* reported in *2002-1-MLJ-161*, wherein, the Hon'ble Supreme Court held that the claim of possession under Section 53-A is inconsistent with the plea of adverse possession and a written agreement is necessary for the doctrine part performance to apply. He would also place reliance on the decision of the Hon'ble Supreme Court in *Iswar Bhi C.Patel @ Bachu Bhai Paten V. Harihar Behera* reported in *1999-3- SCC-457*, where the Hon'ble Supreme Court held that adverse inference has to be drawn against the defendant, who does not present himself for cross examination and refused to enter the witness box to rebut the allegations made against him. This decision has been relied on by the learned counsel for the plaintiff with regard to the conduct of the second defendant, who has abstained from even filing a written statement despite several of the allegations in the



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plaint being directed against him.

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26. Per contra, the learned counsel for the first defendant / first respondent would place reliance of the Judgment of the Hon'ble Supreme Court in ***R.Hemalatha V. Kashthuri*** reported in ***2023-2-CTC-839***, wherein, the Hon'ble Supreme Court held that an unregistered agreement can be admitted in evidence in view of Section 49 of the Registration Act. However, we are unable to apply the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, for the simple reason that the suit before us is not for one for specific performance but the suit is for declaration and recovery of possession filed by the appellant.

27. The learned counsel for the third respondent would place reliance on the decision of the Hon'ble Supreme Court in ***Shrimant Sharmrao Suryavanshi V. Pralhad Bhairoba Suryavanshi (D)*** reported in ***2002-2-MLJ-115 (SC)***, where the Hon'ble Supreme Court has held that for applying the doctrine of part performance, the conditions are that there must be a contract to transfer, for consideration, an immovable property; the contract must be signed by the transferor or by some one on his behalf; the writing must be of such words that can imply a transfer; the transferee



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must be in possession of the property, and the transferee must have done something in furtherance of the contract or part of the contract. The Hon'ble Supreme Court further held that if the conditions set out in Section 53- A of T.P Act, are complied with, then the law of limitation does not come in the way for the defendant taking the plea of Section 53A of T.P. Act in order to protect his possession, even if the suit for specific performance of the contract is barred by limitation.

28. In the instant case, we find that the third defendant has not complied with even the primary condition of having performed or being willing to perform his contract. D.W.1 herself admitted that for more than 10 years, the 3rd defendant did not offer the balance sale consideration and get the sale deed registered. Admittedly, the third defendant has not even issued a notice seeking specific performance, much less filed a suit in that regard. Therefore, he cannot claim to have performed or that he was always ready and willing to perform his part of the contract. Also, the third defendant cannot claim to be entitled to protection under Section 53A, as we have already found that Section 53-A does not apply to the facts of the present case, as the third defendant has not been able to



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establish that he has been placed in possession under the agreement of sale.

29. On the other hand, the specific case of the plaintiff is that only in November – 2010, the third defendant trespassed into the suit property, warranting filing of the suit for recovery of possession. Admittedly, the possession of the third defendant cannot be adverse to that of the plaintiff, since the case of the defendants themselves is admittedly claiming right under the plaintiff alone. Apart from the power of attorney – Ex.B1, the defendants have also not been able to show or produce even a scrap of evidence to justify their possession to be lawful. We have already held that the plea of part performance is not available to the third defendant. Thus, the plaintiff, being the lawful owner of the suit property is entitled to recovery of possession. This point is also answered in favour of the plaintiff.

30. In fine, the judgment and decree of the trial Court is hereby set aside. The Appeal Suit is allowed. The third defendant shall vacate and handover the possession to the plaintiff within period of three months from the date of receipt of copy of this judgment and shall also remove all the constructions, temporary or permanent made thereon, at his cost,



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failing which, the plaintiff shall be entitled to execute the decree against the third defendant. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
05.01.2024

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

To

- 1.The Additional District Court,
Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls/kpr

judgment in
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and
M.P.(MD)No.1 of 2014

05.01.2024