



A.S(MD) No.95 of 2016

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Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.95 of 2016
and
CMP(MD) No.6311 of 2016

Rajendran

... Appellant/1st Defendant

Vs.

1.Nagarajan
2.Vanaja
3.Manikandan
4. Madanraj

..Respondents2 to 4/Defendants

Prayer : This Appeal Suit has been filed under Order 41 Rule 1 and 2 r/w.Section 96 of C.P.C., to set aside the judgment and decree made in O.S.No.11 of 2013 on the file of the Principal District Court, Pudukottai dated 30.11.2015 and to dismiss the suit by allowing the appeal.

For Appellant	: Mr.A.Arumugam
For R-1	: Mr.K. Balasubramanian Senior Counsel for Mr.R. Paranjothi
For RR 2 to 4	: Mr.R.SuriyaNarayanan



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JUDGMENT

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This Appeal Suit has been filed as against the judgment and decree passed in O.S.No.11 of 2013 on the file of the Principal District Court, Pudukottai dated 30.11.2015, wherein the first respondent herein being the plaintiff has filed the suit against the appellant herein and respondents 2 to 4 herein. The trial Court has decreed the suit and as against the decree and judgement passed by the trial Court, the present appeal has been filed by the first defendant.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The averments of the plaint are as follows:

Originally the suit property belongs to one Vaithiyalinga Chettiyar and thereafter the said Vaithiyalinga Chettiyar died. Then the property was inherited through one Manoharan, S/o. Vaithiyalinga Chettiyar. After the demise of the said Manoharan the property was inherited by defendants 2 to 4 herein and they were in possession and enjoyment of the property. The first defendant is the power agent of the defendants 2 to 4 and the first defendants sold the property to the plaintiff for a sum of



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Rs.10,00,000/- and sale deed was executed by the first defendant dated 23.04.2010 as power agent to defendants 2 to 4. After the sale deed when the plaintiff was attempted to clean the property one Sornam and Sasireka belongs to Aranthangi came there and claimed that the property was purchased by them from one Ganesan Chettiyar and the said Ganesan Chettiyar was the relative (pankali) of Manokaran Chettiyar. The first defendant by suppressing the above said fact sold the property to the plaintiff. Thereafter the plaintiff approached the first defendant and while asking about the same he replied that the suit in O.S. No. 35 of 2008 is pending and the same will be decreed in his favour. Believing the words of the above said first defendant the plaintiff has not taken any steps. Thereafter the suit in O.S. No.35 of 2008 was ended as against the first defendant and the appeal also ended as against the first defendant and the same was known to the plaintiff recently. Thereafter the plaintiff approached the first defendant to return back the sale amount but he did not repay the said amount. As a result on 15.12.2012 the first defendant refused to repay the amount and thereby on 20.12.2012 the plaintiff has issued notice to the first defendant and the same was received by him and then on 07.01.2023 issued reply through his counsel. The first defendant suppressed the pending suit and fraudulently executed sale deed



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thereby the first defendant is liable to repay the said amount since the first defendant is the power agent of defendants 2 to 4 they also made as party to the suit, therefore the first defendant is liable to pay the said amount with interest @6 % from the date of sale deed.

4. The brief averments of the written statement filed by the first defendant are as follows:

The averments made in the plaint are false, frivolous and the suit not maintainable either in law or facts. The suit is barred by limitation and there is no dispute with regard to the relationship of the parties. The first defendant is the power agent of the defendants 2 to 4 and after knowing about the said power deed, the plaintiff approached the first defendant for sale of the suit property and thereby the first defendant executed sale deed in favour of the plaintiff. The plaintiff after purchase of the property he is in possession and enjoyment of the property. Now suit has been filed as against the first defendant and this first defendant is the only the power agent and the principals 2 to 4 respondents /defendants are only responsible for the suit amount. The defendants 2 to 4 are colluded with the plaintiff and filed this suit to grab money from the first defendant. There is no cause of action for the suit, therefore the suit is liable to be dismissed.



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5. The brief averments of the counter filed by the defendant 2 and 3 are as follows:

On 31.01.2005 these defendants on behalf of their minor children executed power deed in favour of the first defendant and thereafter the first defendant has not paid any sale price of the property to the defendant and no grounds were stated by the first defendant and the first defendant committed fraud, thereby he alone is liable to pay the above said sale price, thereby the suit is liable to be dismissed.

6. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

a) Whether the plaintiff is entitled to get the suit amount from the first defendant?

b) To what other relief?

7. In order to prove the case before the trial Court, on the side of the plaintiff they have examined P.W.1 and marked Exs.A1 to A8 and on the side of the defendants the D.W. 1 and D.W.2 were examined and documents Exs.B.1 to B.6 were marked.



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8. After analysing the evidence adduced on both sides, the trial Court decreed the suit and directed the first defendant to pay the said amount with interest @ 6% per annum and dismissed the suit as against the defendants 2 to 4.

9. Aggrieved by the above said decree and judgment the first defendant has preferred this appeal on the following grounds:

i) the Court below ought to have held that the burden of proof is on the plaintiff to show that he is entitled to the amount claimed in the plaint and he has failed to prove the same.

ii) the Court below ought to have held that Ex.A1 and its contents are true and valid and binding on the plaintiff in the present suit and the present plaintiff is legally estopped from questioning the same.

iii) the Court below ought to have seen that the conduct of the plaintiff and held that the plaintiff is not entitled to any decree. In the entire plaint, plaintiff has chosen to state why the defendants in earlier suit are owners and why the said persons are having superior title than the present appellants principals.

iv) The Court below ought to have seen that at the time of sale, possession was delivered to the present first defendant and it is

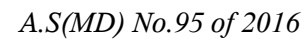


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an indication that the vendors of the first respondent are owners of the property. Possession of ownership in law a man in possession is also presumed to be owner of the property, unless and until contrary is proved.

v) The court below ought to have seen that the entire pleadings in the plaint, the documents produced by the plaintiff will not show that plaintiff vendors are not the owners of property the defendant is in the earlier suit are the owners of the property.

10. The learned counsel appearing for the appellant would contend that the plaintiff has filed suit as against the defendants 1 to 4. The first defendant is the power agent of the defendants 2 to 4. Originally the property belongs to the defendants 2 to 4 and they executed power deed in favour of the first defendant and based on the above said power deed the first defendant executed sale deed in favour of the plaintiff for a sum of Rs.20,00,000/-. The plaintiff also after having knowledge about the power deed he purchased the properties from the defendants 2 to 3 and in that sale the first defendant acted as power agent but there is no relief sought for the plaintiff as against the original owners of the property ie., principals/defendants 2 to 4, therefore framing of suit itself is not maintainable. The plaintiff admitted that the first defendant



11. The learned counsel appearing for the first
ndent/plaintiff would contend that the plaintiff has filed the suit



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as against the defendants since the first defendant alone executed sale deed and received sale consideration thereby the suit is maintainable and other defendants were added as proper and necessary parties. Since the first defendant alone received the amount the prayer is only sought as against the appellant/first defendant. The appellant/first defendant has not denied the receipt of sale consideration and according to defendants 2 to 4 they have not received the sale consideration from the first defendant and thereby the first defendant alone is liable to pay the suit amount. Hence the trial Court after considering all these aspects correctly directed the first defendant to repay the sale consideration with interest @ 6% and correctly decreed the suit and therefore the decree and judgment passed by the trial Court is in order and the present appeal is liable to be dismissed.

12. The learned counsel appearing for the respondents 2 to 4 would contend that they already executed power deed in favour of the appellant/first defendant but thereafter there is no contact between the first defendant and the defendants 2 to 4. The first defendant has not paid the sale consideration and thereby this defendant alone is liable to pay any amount to the plaintiff. The trial Court also after taking into consideration adduced by both side



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counsel directed the first defendant to repay the said amount and therefore the appeal is liable to be dismissed.

13. This Court heard both sides and perused the records and upon hearing both sides perusing the records and judgment of the trial Court the points for determination in this appeal are as follows:

- i) Whether the suit is maintainable without seeking relief as against the original vendor i.e., defendants 2 to 4 ?
- ii) Whether the suit is barred by limitation?
- iii) Whether the appellant/plaintiff is entitled to the relief as prayed for in the plaint ?
- iv) Whether the appeal suit is liable to be allowed or not?
- v) To what other relief the parties are entitled to?

Point No.1

14. In this case, there is no dispute that the respondents 2 to 4 / defendants have executed power deed in favour of the appellant /first defendant and the appellant /first defendant sold the property to the first respondent /plaintiff, based on the power deed. The first respondent /plaintiff also had knowledge about the power deed, then purchased the property from the appellant /first defendant as power agent of respondents 2 to 4 /defendants. The



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suit was filed as against the power agent as well as principals, but the prayer is only sought as against the appellant /first defendant whereas, the plaintiff admitted that he purchased the property from the appellant /first defendant based on the power deed and sale deed was executed by the power agent on behalf of the principal/defendants 2 to 4. Whiles, it is the duty of the first respondent /plaintiff to seek relief as against the principals as well as agent. But in this case, there is no relief sought for by the plaintiff as against the principal and only as against the agent. In this context, the learned counsel for the appellant would contend that, the first respondent /plaintiff has not sought any relief as against the respondents 2 to 4/ defendants, who are the principals for the reason that, they have not received sale amount from the first defendant.

15. It is well settled that once that the power agent appellant /first defendant received the amount from the first respondent/plaintiff, and executed sale deed and possession was also given to the plaintiff, it has to be presumed that, the sale price was settled to the principals unless the contrary is proved, the agent on behalf of the principal only received the amount based on the power deed. The dispute with regard to the non payment of sale amount to



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the principal is between the principals and the power agent and the plaintiff being the purchaser has no role to speak about the consideration paid to the principals by the power agent. Moreover, the date of sale deed is 23.04.2010 thereafter no steps was taken by the principals i.e., respondents 2 to 4 /defendants as against the appellant /first defendant for recovery of sale consideration. Therefore, the contention of the first respondent/plaintiff that he has not sought for any relief as against the respondents 2 to 4 / defendants is not acceptable. In this context it is useful to refer to Section 230 of Indian Evidence Act, which reads as follows:

“230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—

In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

- (1)where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;*
- (2)where the agent does not disclose the name of his principal;*
- (3)where the principal, though disclosed, cannot be sued”.*

16. On bare reading of the above said provision it is clear that, in the absence of any contract to that effect an agent general cannot personally enforce contracts entered into by him on behalf of his principal, nor his he personally bound by them. In the case on hand also, it is admitted by both parties that the appellant/first



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defendant was power agent of the respondents 2 to 4/defendants.

Therefore as per section 230 of the Indian Contract Act, the agent cannot be personally enforce contracts entered by him on behalf of his principal ie., respondents 2 to 4/defendants. In this context, the first respondent/plaintiff has referred Section 233 of the Indian Contract Act, which reads as follows:

“233. Right of person dealing with agent personally liable.—

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable”.

17. As per the above said Section 231 of the Indian Contract Act, in cases where the agent is personally liable the person dealing with him may hold either him or his principal or both of them liable. But in the case on hand, the agreement was entered by the appellant/first respondent on behalf of the respondents 2 to 4/defendants. For better understanding it is useful to refer the illustration found in the Section 233 of the Indian Contract Act.

“A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton”

18. On careful perusal of the illustration it is clear that if the party who entered into contract with the agent afterwards discovers



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that he was acted as agent for some other persons can he sue either in the name of the agent or principal or for both. In the case on hand the case is different, the first respondent/ Plaintiff after knowing about the status of parties and based on power deed entered into agreement thereby Section 233 of the Indian Contract Act is no way helpful to the first respondent/plaintiff. Therefore, without seeking any relief as against the principals, the relief as against the appellant /first defendant on his individual capacity, the suit is not maintainable. Thus point No.1 is answered.

Point No.2

19. The appellant /first defendant has set up plea that the suit is barred by limitation and there is no specific date mentioned in the plaint as to which date, the plaintiff came to the knowledge about the ownership that the first defendant has no right over the property. However, the sale deed is dated 23.04.2010 and the plaintiff has filed suit dated 14.02.2013 and therefore, the suit filed within three years from the date of sale. Therefore, the contention of the appellant/first defendant is not acceptable. The suit is not barred by limitation. Thus, the point no.2 is answered accordingly.



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Point No.3

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20. In this case, the 1st respondent /plaintiff has filed suit as against the appellant /first defendant and the respondents 2 to 4/defendants. The prayer is only as against the appellant /first defendant who sold the property as power agent on behalf of the respondents 2 to 4/defendants, but the first respondent /plaintiff has sought for relief only as against the appellant /first defendant. This Court has also decided in the previous points that the suit is not maintainable without seeking any relief as against the respondents to 4 /defendants, who are principals and without seeking any relief as against the principals the suit as against the power agent in his individual capacity alone is not maintainable. Therefore, the plaintiff is not entitled to any relief through this suit. Thus the point no. 3 is answered accordingly.

Point No.4

21. This Court has decided in previous points that, the framing of suit is not maintainable as there is no prayer but the trial Court without considering the same, directed the appellant /first defendant to pay the said amount by holding that already the suit was filed in O.S. No.35 of 2008 on the file of the District Munsif Court, Aranthangi and the same was ended as against the appellant /first defendant. Thereafter, the appeal in C.A.NO. 67 of 2011 was filed



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and the same was also dismissed and the first respondent/plaintiff was not under the possession of the property. But according to the first respondent / plaintiff, he is in possession and enjoyment of the property. On the date of sale deed itself, possession was given to the first respondent /plaintiff but whereas, the first respondent /plaintiff who got the sale deed without challenging the above said sale deed, mere suit for recovery of money is not maintainable and the sale deed in favour of the appellant /first defendant was not brought to the knowledge of the Court in earlier proceedings in O.S. No.35 of 2008. Further, the trial Court failed to consider that framing of suit itself is not maintainable since there is no relief sought for as against the original owner of the property, i.e., the principal, who executed power of attoreny in favour of the first defendant.

22. Even according to the first respondent /plaintiff, the previous suit in O.S.No.35 of 2008 was filed by the respondents 2 to 4 defendants herein as against the one Sornam and Sasirekha for the relief of permanent injunction and no title was involved in that suit. Thereafter, the appeal was filed as against the decree and judgment in A.S.No.67 of 2011 and the same was also dismissed, as the matter has been compromised between the parties. There is no reference about the terms of compromise and therefore, the



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contention of the first respondent /plaintiff that the suit was ended against the respondents 2 to 4 /defendants 2 to 4 is not acceptable one. Even according to the Exp.s A2,7 and 8, the respondents 2 to 4 / defendants herein only are the parties to the suit and that suit was not represented through the power agent of the respondents 2 to 4 /defendants herein i.e., suit is O.S. No.35 of 2008 was not conducted by the appellant /first defendant, who is the power agent of the respondents 2 to 4 defendants. Therefore, the contention of the first respondent / plaintiff, that the suit was ended as against the respondents 2 to 4 /defendants is not acceptable one. Whereas once the plaintiff who got the sale deed in accordance with law and same has to be challenged in the manner to law. Until the sale deed is challenged, it is presumed that the sale deed is in existence and thereby without challenging the sale deed, the suit is not maintainable. The first respondent/plaintiff after knowing about the result of previous suit he ought to have filed suit for declaration of his title or reconvey the properties to his vendors i.e,2 to 4 respondents/defendants through Court of law. Without doing so filed the suit for recovery of money as against to the power agent. It is true that if the power agent committed any fraud then he is liable to pay the money, but in the case on hand he was acted as power agent and only convey the property on behalf of the principals



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ie., respondents 2 to 4/defendants herein. The first respondent/plaintiff who admitted the power deed and relationship of the defendants as agent and principal he ought to have sought for relief as against the principals. The trial Court without considering the above aspects erroneously decreed the suit by directing the appellant /first defendant to pay the suit amount. Therefore this appeal is liable to be allowed by setting the decree and judgment of trial Court as they are unsustainable. Thus point no. 4 is answered.

Point No.5

23. In view of the above discussion made in the previous points the decree and judgment passed by the trial Court are not sustainable and the same are liable to be set aside.

24. In the result, this appeal is allowed and the decree and judgment passed by the trial Court in O.S.No.11 of 2013 on the file of the Principal District Court, Pudukottai is set aside and the suit is O.S. No.11 of 2013 is dismissed. No costs. Consequently connected miscellaneous petition is closed.

05.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

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1. The Principal District Court, Pudukottai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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