



SA(MD)No.774 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.774 of 2016

1.M.Sarala (died)

2.M.Kishore Menon

3.D.V.Sujatha Menon

...Appellants

(Appellants 2 and 3 were brought on record as LR's of the deceased sole appellant vide order dated 04.03.2022)

Vs.

1.M.Srinivasan @ Seeni

2.S.Baskaran

3.K.Nagaraj

4.N.Thavamani

... Respondents

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in A.S No.12 of 2005 dated 16.12.2015 on the file of the Subordinate Judge, Palani (Kodaikanal Camp Court) reversing the judgment and decree passed by the District Munsif cum Judicial Magistrate, Kodaikanal in O.S No.73 of 1997 dated 30.03.2005.



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For Appellants : Mr.S.Manohar
For Respondents : Mr.M.Shankar for R1
No appearance for R4

ORDER

The first respondent herein filed O.S No.73 of 1997 on the file of the District Munsif Court / Judicial Magistrate, Kodaikanal seeking declaration that the suit property belonged to him and for consequential injunction and for further declaration that the sale deeds executed by the first defendant in favour of the second defendant on 21.09.1995 and 03.10.1995 are null and void. The suit was dismissed vide judgment and decree dated 30.03.2005. Aggrieved by the same, the plaintiff filed A.S No.12 of 2005 before the Sub Court, Pazhani. The first appellate court vide judgment and decree dated 16.12.2015 reversed the decision of the trial court and decreed the suit as prayed for. Challenging the same, the fourth defendant in the suit filed this second appeal.

2.During the pendency of the second appeal, the appellant passed away and her legal heirs have come on record. This second appeal was admitted on the following substantial questions of law :



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"(A) Whether the first Appellate Court was right in decreeing the suit without considering that Exhibit A.6 was cancelled by Exhibit A.1 without notice?

(B) Whether the first Appellate Court was right in decreeing the suit for permanent Injunction when the Revenue records in respect of the properties stand in the name of the appellant and when the 1st respondent has not proved possession?

(C) Whether the court below is justified in holding that though Ex.A.8 sale deed was executed and registered on 21.09.1995 i.e., much later to the Ex.A.7 which is cancellation of Power deed which was executed on 25.09.1995 have precedence over Ex.A.7 overlooking Section 47 of the Indian Registration Act?

(D) Whether or not the decree of the lower Appellate Court is perverse when the lower Court rendered an inconsistent finding and conclusion without application of mind and non-consideration of evidence?

(E) Whether the first Appellate Court was right in decreeing the suit when Court fees has not been paid under Section 40 of Tamil Nadu Act 25 of 1955?

(F) Whether the first Appellate Court was right in granting a relief of permanent injunction when the



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plaintiff has not even filed revenue records or patta to prove possession and without considering Exhibit B.16 in the name of the appellant herein?”

An Additional substantial question of law was framed which reads as follows :

“Whether the first appellate court ought to have seen that Ex.B6, the power of attorney, based on which Ex.A9 was executed was not cancelled?.”

3.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of second appeal and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the judgment of the first appellate court and restore the decision of the trial court. Per contra, the learned counsel appearing for the plaintiff submitted that the impugned judgment and decree is well reasoned and that it does not call for any interference.

4.I carefully considered the rival contentions and went through the evidence on record. Srinivasan @ Seenivasagam admittedly owned the suit property. He had executed a registered general power of attorney dated 18.11.1981 (Ex.A6) in favour of the first defendant in



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respect of Item No.2 of the suit schedule property. He had also executed another registered general power of attorney dated 17.03.1988 (Ex.B6) in favour of the first defendant in respect of Item No. 1 of the suit schedule property. The case of the plaintiff is that he had cancelled the power of attorney dated 18.11.1981 vide deed dated 25.09.1995 (Ex.A7). Item No.1 of the suit schedule property was sold by the first defendant in favour of the second defendant vide sale deed dated 03.10.1995 (Ex.A9) and registered on 04.10.1995. It is relevant to note here that Ex.A9 sale deed dated 03.10.1995 was executed on the strength of the power of attorney dated 17.03.1988 (Ex.B6) executed by the plaintiff in favour of the first defendant. The plaintiff had nowhere claimed that Ex.B6 dated 17.03.1988 in respect of Item No.1 of the suit schedule was ever cancelled by him. Therefore, the first defendant, the power agent of the plaintiff was entitled to sell the property in favour of the second defendant. The original appellant herein had purchased item no.1 of the suit property from the second defendant vide sale deed dated 18.01.1996. Copy of the said sale deed has not been marked. But then, there are averments to that effect in the written statement. Non-marking of the said sale deed executed in favour of the fourth defendant may not be of any consequence. If the document executed in favour of the second defendant is sustained, then, the document



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executed in favour of the fourth defendant will also be sustained. If the document standing in favour of the second defendant is set aside, then the fourth defendant's document will also automatically go. I, therefore, answer the additional substantial question of law in favour of the appellant.

4.Coming to the second item of the suit schedule property, it is seen that the plaintiff had executed Ex.A6 general power of attorney dated 18.11.1981 based on which Ex.A8 sale deed was executed in favour of the second defendant. It is true that Ex.A8 was presented for registration only on 05.10.1995. The first appellate court went by the fact that the registration of Ex.A8 was subsequent to the cancellation of the power of attorney which was on 25.09.1995. It is well settled that registration of document will relate back to the execution of the document which in this case was on 21.09.1995. The plaintiff ought to have argued and established before the court below that Ex.A8 though purported to have been executed on 21.09.1995 was in fact executed only subsequently after the power agent became aware of the cancellation of his power of attorney. In this case, no such evidence was put forth. That apart, the original appellant before me was the purchaser from the second defendant. The second defendant cannot



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be put to prejudice on account of the unilateral cancellation of power of attorney by the plaintiff. After cancelling the power of attorney executed in favour of the first defendant, the plaintiff must have made it known to the public at large either by paper publication or by issuing notice to the registering authority. No such step was taken by the plaintiff. That is why, the trial court rightly came to the conclusion that the cancellation made by the plaintiff under Ex.A7 will not have any bearing on the validity of Ex.A8. I, therefore, have no hesitation to answer the substantial question of law (c) in favour of the appellant. The plaintiff had only asked the relief of declaration and permanent injunction. The revenue records filed by the defendants clearly indicate that the defendants are in possession of the suit property. Ex.B16 is the copy of the patta standing in favour of the fourth defendant / original appellant herein. The original appellant had clearly demonstrated that the revenue record stood in her favour. The decree of injunction could have been given only by rendering a clear finding regarding possession. In the absence of revenue record in favour of the plaintiff, the first appellate court could not have granted decree of permanent injunction. I therefore answer the substantial question of law (b) also in favour of the appellants herein. It is not necessary to answer the other substantial question of law. The impugned judgment and decree is set aside. The



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decision of the trial court is restored. This second appeal is allowed.

No costs.

24.10.2024

Index : Yes / No
Internet : Yes/ No
Skm

To

1.The Subordinate Judge, Palani (Kodaikanal Camp Court)

2.The District Munsif cum Judicial Magistrate, Kodaikanal

Copy to :

The Record Keeper,
V.R Section,
Madurai Bench of the Madras High Court.



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G.R.SWAMINATHAN, J.

SKM

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