



S.A(MD)No.50 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.06.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A(MD)No.50 of 2017

and

CMP.(MD).Nos. 1116 and 1117 of 2017

S.Muthukaruppan ...Appellant/Appellant/Plaintiff
Vs.

1.S.Fakir Mohammed(died)

2.A.Subramanian

3.Mohamed Rahamadullah

4.Sheik Abdullah

5.Sarabanu

6.Basheer Mohamed

7.Meharbanu

8.Noorul Fathima

9.Mohamed Saleem

10.Shahul Hameed

11.Mohamed Kasim ...Respondents/Respondents/Respondents

(R3 to R11 are brought on record as

LRs of the deceased 1st Respondent

vide Court order dated 11.04.2023)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 17.06.2016 in A.S.No.17 of 2014 on the file of the Subordinate Judge, Devakottai, confirming the judgment and decree dated 20.11.2013 in O.S.No.67 of 2008 on the file of the District Munsif, Devakottai.

For Appellant: Mr.VR.Shanmuganathan

For R3 to R11:Mr.M.Vallinayagam, Senior Advocate
for Mr.I.Anand Kumar



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For R2 : No appearance

JUDGMENT

The plaintiff in the suit O.S.No.67 of 2008 on the file of the District Munsif Court, Devakottai is in appeal against the confirming judgment and decree dated 17.06.2016 of the lower appellate court in A.S.No.17 of 2014 on the file of the subordinate Judge, Devakottai.

2.The parties will be referred to as per their litigative status in the trial court.

Gist of facts:

3. The plaintiff is the son of the 2nd defendant and an advocate by profession. The plaintiff states that the suit property is punja lands in Devakottai Taluka. The suit property belonged to the 1st defendant, he having purchased the same under a registered sale Deed dated 13.05.1981. The Patta for the suit property stands in the name of the 1st defendant in Patta No. 2361. Whiles, on 15.05.1995 the 1st defendant executed a registered power of attorney in favour of the 2nd defendant with respect to the suit property. On the



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same day, the 1st defendant after receiving part payment of consideration executed an unregistered sale agreement in favour of the 2nd defendant and delivered possession of the suit property to the 2nd defendant. According to the plaintiff as the power of attorney was coupled with interest, the 2nd defendant was free to deal with property. The 2nd defendant in turn executed a registered sale Agreement in favour of the plaintiff on 01.10.2002. The sale consideration was fixed at Rs.1,50,000/- and an advance of Rs. 25,000/- was also received by the 2nd defendant, who agreed to execute the sale Deed on receipt of full sale consideration. Though the plaintiff was always ready and willing to perform his part of the contract, the 2nd defendant due to ill health did not complete the sale transaction. On 20.08.2005, the plaintiff paid the entire balance sale consideration to the 2nd defendant the receipt of which was endorsed in the original sale Agreement on 01.10.2002. On receipt of the entire sale consideration, the 2nd defendant put the plaintiff in possession of the suit property. The plaintiff was put in possession of the suit property and so he did not worry about the



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delay in execution of the sale Deed. As the 1st defendant was threatening to cancel the power of attorney executed in favour of the 2nd defendant and also trying to eject the plaintiff forcibly out of the suit property, the plaintiff was constrained to file the above suit for the aforesaid relief's.

4. The 1st defendant filed a written statement denying all the contentions raised in the plaint. According to the 1st defendant, the 2nd defendant was his close confidante. In 1995, the 1st defendant was leaving abroad and was in need of money. While he was trying to dispose the suit property, the 2nd defendant advised him to convert it into plots so as to yield better income. The 1st defendant out of trust executed the power of attorney in favour of the 2nd defendant. According to the 1st defendant under the power Deed the 2nd defendant was not given the right to alienate the property but was given only the right to settle the sale consideration and to maintain accounts. As the 2nd defendant was close friend, the 1st defendant handed over the original documents to the 2nd defendant.



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The 2nd defendant taking advantage of the fact that the 1st defendant was leaving abroad obtained his signature in blank papers. The 2nd defendant did not take any steps and so around January 2000, the 1st defendant asked him to return the original documents and the signed blank papers. The 2nd defendant in July 2002 stated that the documents could not be traced. The 1st defendant thereafter came to know that the 2nd defendant was trying to alienate the suit property to his own family members. After due enquiry the 1st defendant was given to understand that the 2nd defendant had executed a sale Agreement in favour of the plaintiff, his son. The 1st defendant and his wife therefore cancelled the general power of attorney on 25.03.2008. The cancellation of the general power of attorney was intimated to the 2nd defendant through legal notice dated 03.04.2008. The 2nd defendant tried to trespass into the suit property and therefore the 1st defendant filed suit for permanent injunction. As a counter blast the plaintiff filed the present suit with ulterior motive. The 1st defendant further stated the plaintiff and the 2nd defendant colluded to defraud him of the suit properties and that



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the plaintiff could not claim any right on the basis of unregistered sale Agreement.

5. According to the 2nd defendant, the 1st defendant executed a general power of attorney in his favour. On the same day the 1st defendant executed an unregistered sale Agreement for a consideration of Rs.50,000/- and delivered possession of the property to him. The 2nd defendant stated that the general power of attorney in respect of the suit property was an irrevocable one and hence the 1st defendant had no right to cancel the same. The second defendant based on the power of attorney executed a registered sale agreement in favour of the plaintiff on 01.10.2002 for sale consideration of Rs.1,50,000/- and received Rs.25,000/- as advance. After receipt of balance sale consideration he delivered the possession of the suit property to the plaintiff. The plaintiff was in possession of the suit property since the date of the registered sale agreement. The second defendant further stated that he had no objection for granting the relief against the first defendant and



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decreeing the suit as prayed for.

6.The trial Court framed the following issues:

(i)Whether the plaintiff is in lawful possession of the suit property?

(ii)Whether the plaintiff is entitled for the suit reliefs?

(iii)To what relief?

Evidence and Documents:

7.Before the trial Court, the plaintiff examined himself as P.W.1 and five documents were marked as Ex.A1 to Ex.A5. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and no document was marked.

8.The trial Court, based on the oral and documentary evidence, dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred an appeal before the Subordinate Court, Devakottai in A.S.No.17 of 2014. The lower



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appellate Court on appreciation of the entire facts and law, concurred with the finding of the trial Court and dismissed the appeal. Aggrieved by the concurrent judgment of the Courts below, the plaintiff has filed the above second appeal.

9.The second appeal was not admitted and only notice was ordered. With the consent of both the learned counsels, the main second appeal which is of the year 2017 is taken up for final hearing.

Substantial question of law:

10. After hearing the counsels, the following substantial question of law was framed.

"(i)Whether the Courts below failed to see that an unregistered sale deed can be looked into for the purpose of ascertaining nature of possession and that in the instant case Ex.A6 unregistered sale Agreement proves the handing over of possession to the second defendant under whom the plaintiff claims."



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Submissions on either side:

11.The learned counsel for the plaintiff/appellant submitted that the lower appellate Court failed to note that though Ex.A6 was an unregistered document, the same could be looked into for the collateral purpose of delivery of possession to the second defendant through whom the plaintiff took possession. The learned counsel vehemently argued that the Courts below without appreciating Ex.A6 and the evidence of D.W.1 in proper perspective nonsuited the plaintiff.

12.The learned counsel appearing for the respondent/1st defendant on the other hand submitted that the Courts below had given concurrent findings of fact that the plaintiff had failed to establish possession and therefore, the said finding could not be interfered with under Section 100 of C.P.C.

13.I have heard both the learned counsels and I have perused the materials on record.

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Analysis of the submissions:

14.The summary of facts of the case are that the first defendant as the owner of the property executed a power of attorney deed in favour of the second defendant on 15.05.1995. On the very same day, the first defendant executed Ex.A6 unregistered sale agreement in favour of the second defendant. The second defendant executed the registered sale agreement in favour of the plaintiff on 02.10.2002 under Ex.A.1. It is the plaintiff's case that the sale consideration under Ex.A.1 was fixed at Rs.1,50,000/- and a sum of Rs.25,000/- was paid as advance. The plaintiff further claims that subsequently the balance of sale consideration was paid to the second defendant on 20.08.2005 and the second defendant handed over the possession of the suit property to the plaintiff and an endorsement was also made in the registered sale Agreement Ex.A.1. The plaintiff claims the relief of injunction on the basis that he was put in possession of the suit property by the 2nd defendant. The first defendant on the other hand, claims that he

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never parted with the possession of the property and that even as per Ex.A1, the possession of the property was always with the first defendant. The 1st defendant therefore, contends that when the second defendant himself did not have possession of the property then he could never have handed over possession to the plaintiff. The first defendant contends that as the plaintiff is the son of the second defendant and also an advocate he colluded with the second defendant to grab his property.

15. The plaintiff relies on Ex.A6, unregistered sale Agreement executed between the 1st defendant and the 2nd defendant to establish that he was put in possession of the suit properties by the 2nd defendant and hence he was entitled to the relief of permanent injunction. When the plaintiff sought to mark Ex.A6 before the trial court in I.A.No.417 of 2011, the trial court dismissed the application. The plaintiff did not challenge the dismissal of I.A.No.417 of 2016. The plaintiff thereafter filed I.A.No.414 of 2013 for permission to pay penalty on the 11/15



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unregistered sale Agreement and even the said application was dismissed. The said order was also not challenged. Only the signature of the 1st defendant in the unregistered sale Agreement was marked as Ex.A6 on the basis, of the evidence of D.W1. Thereafter before the first appellate court, the plaintiff filed I.A.No. 40 of 2016 for marking the same unregistered sale Agreement. The lower appellate court rejected the said application stating that the plaintiff failed to challenge the orders passed by the trial court in the aforesaid application and hence rejected the same. In my view the appellate court had rightly rejected I.A.No.40 of 2016.

16. As only the signature in the unregistered sale Agreement was marked as Ex.A6, the recital in the document cannot be looked into. Therefore contention of the plaintiff that the recitals in the unregistered Agreement will throw light on delivery of possession to the 2nd defendant cannot be accepted. Once the document is not marked, the recitals cannot be looked into even for the collateral purpose of proving possession. Hence the substantial question of



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17. I have gone through the judgment of the Courts below and I am satisfied that the Courts below have analysed the evidence on record in proper perspective. As rightly contended by the learned counsel for the respondent in the absence of any perversity, the provisions of Section 100 of C.P.C do not permit this Court to reappreciate the facts. Therefore, I find no merit in the second appeal and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

dsn/ns

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1.The Subordinate Judge,
Devakottai.

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- 2.The District Munsif,
Devakottai.
- 3.The Section Officer,
The Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.MALA,J.

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