



S.A.(MD)No.72 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.72 of 2004

- 1.Ramasamy Naicker (Died)
- 2.Kosalai Ammal
- 3.R.Rajasekaran
- 4.Subburaj
- 5.Maheswaran
- 6.Saravanan
- 7.R.Seenivasan
- 8.Sudharsana Selvam

... Appellants

(Appellants 3 to 8 brought on record as LR's of the deceased 1st appellant vide order dated 27.10.2009 in S.A.(MD)No.72 of 2004)

Vs

Paneersamy Thevar

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.18 of 2001, dated 08.04.2002 on the file of the learned Subordinate Judge, Kovilpatti, confirming the judgment and decree dated 27.02.2001 passed in O.S.No.81 of 1999 on the file of the District Munsif, Kovilpatti.

For Appellants : Mr.T.Lenin Kumar

For Respondent : Mr.M.P.Senthil



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JUDGMENT

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The defendants are the appellants. The respondent filed a suit for declaration of title and injunction. The suit was decreed by the trial Court. The first appeal filed by the appellants was dismissed by confirming the findings of the trial Court. Aggrieved by the concurrent findings, the defendants are before this Court.

2. According to the respondent / Plaintiff, the defendants executed two power of attorneys in favour of Shanmugathai and she sold the suit property to the plaintiff through the documents dated 30.10.1996. Thus, the plaintiff claimed title to the suit property. It was also averred by the plaintiff that the second defendant had obtained agricultural loan from State Bank of India and the first defendant obtained loan from various persons. In order to discharge those loans, the defendants executed power of attorney in favour of Shanmugathai on 26.08.1996 and the plaintiff made arrangement for discharge of loan obtained by the defendants. According to the plaintiff, pursuant to the sale in his favour, the Tahsildar issued necessary order for change of patta and the defendants attempted to interfere with his possession. Therefore, the plaintiff was constrained to file a suit for declaration of tile and



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injunction.

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3. The appellants/defendants filed a written statement denying the execution of power of deeds in favour of Shanmugathi. It was the case of the appellants/defendants that the defendants were illiterates and taking advantage of that fact, the plaintiff in the guise of getting the signature in a receipt for discharge of mortgage debt, obtained signature in the power deeds. The various allegations made by the plaintiff regarding the arrangement made by him to discharge the loan amount were denied in the written statement. The defendants also denied the allegations that they attempted to interfere with the possession of the suit property.

4. Before the trial Court, the plaintiff was examined as P.W.1. The attessor to sale deed in his favour was examined as P.W.2. The scribe, who prepared the power deeds executed in favour of Shanmugathai, was examined as P.W.3. On behalf of the plaintiff, 17 documents were marked as Ex.A1 to Ex.17. The first defendant was examined as D.W.1 and one of the attestors to power deeds was examined as D.W.2. On behalf of the defendants, 10 documents were marked as Ex.B1 to Ex.B.10.



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5. The trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff was entitled to declaration of title and consequential injunction. Aggrieved by the same, the unsuccessful defendants filed an appeal in A.S.No.18 of 2001 on the file of Sub-Court, Kovilpatti. The first appellate Court affirmed the findings of the trial Court. Hence, the defendants are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by an order dated 19.08.2004:

“1. Whether the conclusion of the Court below that Ex.A6 and A7 sale deeds are valid and binding on the defendants is correct when the passing of the consideration under the two sale deeds has not been proved and Shanmugathai, the power of Attorney Holder has not been examined.

2. Whether the conclusion of the Court below that the plaintiff has been in possession and enjoyment of the suit properties after his purchase is correct in view of Ex.B2 to B5 and C1 and C2”

7. The learned counsel appearing for the appellants submitted that



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the plaintiff failed to give any evidence with regard to the payment of consideration for Ex.A6 and Ex.A7 sale deeds in his favour. The learned counsel further submitted that the plaintiff failed to produce any satisfactory evidence to prove the possession over the suit property subsequent to the alleged purchase. Therefore, the Courts below ought not have granted the decree for declaration of title and injunction. The learned counsel also contended that the defendants were illiterates, they signed the power deeds Ex.A1 and Ex.A2 without knowing the character of the documents and the said plea of defendants was supported by the evidence of D.W.2 and the same has not been considered by the Courts below in proper perspective.

8. The learned counsel appearing for the respondent submitted that though the defendants raised a plea of fraud while challenging the registered power deeds executed by them, till date, they have not taken any steps to cancel the power deeds or to set aside the sale deed executed in pursuance of said power. Therefore, the remedy of seeking to set aside the sale in favour of the plaintiff got barred by limitation. The learned counsel also by taking this Court to the evidence of D.W.1 submitted that both the Courts below, on appreciation of evidence of D.W.1 came to the



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conclusion that he is a knowledgeable person and capable of understanding the nature of the document.

9. Ex.A1 and Ex.A2 power deeds executed by the first and second defendants in favour of Shanmugathai, wife of plaintiff, are registered documents. The power deed is not a document which requires compulsory attestation. In order to prove Ex.A1 and Ex.A2, the plaintiff examined the scribe of documents as P.W.3. He clearly deposed about the execution of power deeds by defendants 1 and 2. Apart from the evidence of P.W.3, Ex.A1 and Ex.A2 are registered documents, the registration itself is prima facie proof of execution. The defendants raised a defence that their signatures in the registered documents were obtained by employment of fraud. Therefore, the burden is on them to prove the allegation of fraud. Ex.B8 and Ex.B10 are the notices issued by the defendants to the plaintiff, wherein they alleged about employment of fraud at the time of execution of Ex.A1 and Ex.A2. Ex.B8 and Ex.B10 were issued in the year 1999. Ex.B10 was issued on 30.03.1999. The suit was filed only on 09.06.1999. Though the defendants acquired knowledge about Ex.A1 and Ex.A2 power deeds and



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Ex.A6 and Ex.A7 sale deeds executed in pursuance of said power deeds, for the reasons best known to them, they have not taken any steps to set aside the documents.

10. As rightly contended by the learned counsel for the respondent that the remedy available to the defendants to set aside the registered documents on the ground of fraud is barred by limitation. In order to prove the allegation of fraud, the defendants examined one of the attestors to Ex.A1 and Ex.A2 as D.W.2. A perusal of evidence of D.W.2 would suggest that he deposed as if he was not present at the time of registration of the document. However, a perusal of Ex.A1 and Ex.A2 would suggest that he was present at the time of registration and identified the executants. Therefore, D.W.2 is not a witness who is speaking truth. Further, from the cross examination of D.W.2, it appears that there was some dispute between the plaintiff and D.W.2 with regard to certain contract matters. In such circumstances, it is not safe to rely on the evidence of D.W.2 to come to the conclusion that defendants 1 and 2 put their signatures in Ex.A1 and Ex.A2 without knowing the character of the documents.



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11. When D.W.1 was examined, he clearly admitted in his cross examination that earlier he got a discharge of mortgage debt from a third party and in that occasion, the mortgagee issued a receipt. He also subsequently admitted he was aware in case of discharge of mortgage debt, the mortgagee alone need to sign in discharge receipt. Therefore, he appears to be a person of full knowledge and legal consequences. The defence raised by the defendants as if their signatures were obtained in the power deeds by misrepresenting the character of the document as if it was a receipt for discharge of mortgage debt is not acceptable to this Court.

12. After sale in their favour, the plaintiff got the revenue documents mutated as seen from Ex.A10. The patta passbook for suit property was issued to the plaintiff on 17.10.2000. Ex.A15 is the chitta for the suit property which stands in the name of the plaintiff. Ex.A10 and Ex.A15 proved the possession of the plaintiff over the suit property immediately preceding the presentation of the suit. Both the Courts below on appreciation of oral evidence of P.W.1 and admission of D.W.1 came to the correct conclusion that Ex.A1 and Ex.A2 are genuine



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documents. The said conclusion reached by the Courts below are not vitiated by any perversity enabling this Court to interfere with the findings of the facts. Ex.A6 and Ex.A7 are registered sale deeds, the recitals thereon talks about passing of consideration. The defendants who challenge the sale deeds must establish the document was invalid. Whether power agent of defendants who received sale consideration from purchaser paid it to the defendants or not is a matter between defendants and their power agent. If defendants' agent failed to pay consideration, the defendants are at liberty to take appropriate action against the power agent.

13. In view of the discussion made earlier, I do not find anything to interfere with the findings of the Courts below. The questions of law framed at the time of admission are answered against the appellants and in favour of the respondent. Accordingly, the second appeal shall stand dismissed. There shall be no order as to costs.

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Neutral Citation : Yes / No

Index : Yes / No

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To
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- 1.The Subordinate Judge, Kovilpatti.
- 2.The District Munsif, Kovilpatti.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

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