



A.S.No.506 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24-07-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.506 of 2019

1.Rajendran
S/o.P.Srinivasa Nayakkar,
78/47, Maariyaman Kovil Street, Kaveripakkam Village,
Arokkanam Taluk, Vellore District.

2.R.Prakash
S/o.P.S.Rajendran
78/47, Maariyaman Kovil Street, Kaveripakkam Village,
Arokkanam Taluk, Vellore District.

Appellant(s)/Defendant(s) 1 & 4

Vs

1.P.M.Ganasekaran
S/o.Murugesu Reddy,
Cheyyanur, Village Cheyar Taluk, Tiruvannamalai District.

1st Respondent/Plaintiff

2.Shanmugham
S/o.Murugappa Naayakar,
Avalur Village, Arokkanam Taluk, Vellore District.

2nd Respondent/2nd Defendant

3.R.Sathyanantham
S/o.P.S. Rajedran,
No.78/47, Maariyaman Kovil Street, Kaveripakkam Village,



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Arokkananm Taluk, Vellore District.

3rd Respondent/3rd Defendant

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First Appeal filed under Section 96 CPC to set aside the judgment and decree dated 18.12.2018 passed in O.S.No.17 of 2017 on the file of the Additional District Court (Fast Track Court), Arni, Tiruvannamalai District.

For Appellant(s): Mr.R.Siddharth

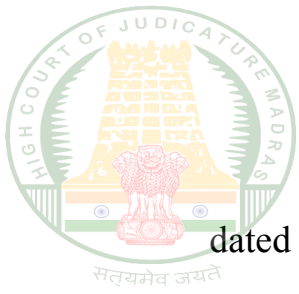
For R1: Mr.P.Satheesh Kumar

JUDGMENT

Unsuccessful defendants 1 and 4 have preferred the present appeal against the judgment and decree dated 18.12.2018 passed in O.S.No.17 of 2017 on the file of the Additional District Court (Fast Track Court), Arni, Tiruvannamalai District.

2. The parties are referred to as per rankings in the trial Court.

3. Suit is filed for declaring the document executed by the plaintiff in favour of the first defendant dated 13.01.2010 is only a mortgage deed and not a deed of general power of attorney; canceling the sale deed

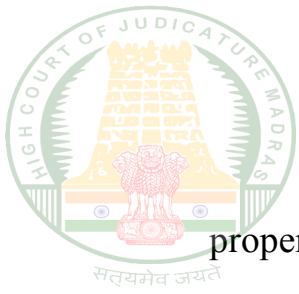


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dated 10.01.2014 executed by the first defendant in favour of the fourth defendant is null and void; and for seeking permanent injunction. The trial Court decreed the suit, aggrieved by which, the defendants 1 and 4 have preferred the present appeal.

4. The brief case of the plaintiff is as follows:

The plaintiff has purchased the suit item nos.1 to 11 from one Venkatesan Vagaira on 02.06.2008 and thereafter, he was in peaceful possession and enjoyment of the same. The plaintiff has also purchased the suit item nos.12 to 19 from one Ellamal Vagaira. The plaintiff is in absolute possession and enjoyment of the suit properties based on the two sale deeds. The plaintiff is running a brick kiln in one portion of the suit property in the name and style of “G.S.B. Brick Chamber” and doing agriculture in the remaining portion suit properties. For his business purpose, he approached the second defendant/Shanmugam, broker, through him the first defendant/Rajendran was introduced. The first defendant, for the payment of Rs.10,00,000/- as a loan, demanded a mortgage deed in respect of the suit



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properties and the plaintiff had agreed to pay the interest at the rate of 36% per annum. Pursuant to the same, a mortgage deed was executed on 13.01.2010 and the plaintiff received a sum of Rs.10,00,000/- from the first defendant. Accordingly, the plaintiff had paid the first defendant a sum of Rs.60,000/- i.e. Rs.30,000/- interest and Rs.30,000/- per month for the period from February 2010 to June 2013. The plaintiff had paid the first defendant a sum of Rs.21,60,000/- in respect of the said mortgage loan. On account of confidence reposed over the defendant, the plaintiff had not received any receipts for the payment of said amount of Rs.21,60,000/-. During the second week of January 2014, the first defendant met the plaintiff and demanded the plaintiff to repay the balance amount, for which, the plaintiff has demanded one year time for repaying the balance amount in respect of the said mortgage loan. However, the first defendant refused to grant any time. Meanwhile, as the first defendant threatened the plaintiff for attaching the suit properties, the plaintiff approached the Sub-Registrar, Kaveripakkam and obtained the Encumbrance Certificate, through which, the plaintiff came to know that the first defendant instead of obtaining the mortgage deed, he obtained a general power of attorney deed. The first



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defendant in collusion with other defendants executed a sale deed dated 10.01.2014 in favour of the fourth defendant. The plaintiff was under the impression that he has handed over the originals to the first defendant under the mortgage deed. The plaintiff has also subscribed his signature on ten stamp papers and handed over the original documents pertaining to the suit properties and other properties to the first defendant. The alleged power deed and sale deed are voidable documents. Hence, the suit.

5. **The brief case of the first defendant is as follows:** The plaintiff approached the first defendant for alienating the suit properties and the sale consideration was fixed at a sum of Rs.11,00,000/- and thereby, the plaintiff has executed an agreement for sale on 13.01.2010 and acknowledged the advance amount of Rs.10,00,000. The first defendant has also paid the balance amount of Rs.1,00,000/- later and obtained the receipt for the same. The first defendant sold the property in favour of his son/fourth defendant on 10.01.2014 for a sale consideration of Rs.17,74,000/-.



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6. The brief case of the fourth defendant is as follows:

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The plaintiff out of his free will and full knowledge had executed the power of attorney deed dated 13.01.2010 and based on the full and valid consideration, the sale deed came dated 10.01.2014 came to be executed. After purchase of the property, the fourth defendant took the possession. When the plaintiff attempted to disturb his possession, the fourth defendant was constrained to file a suit for declaration in O.S.No.36 of 2015 on the file of the Principal District Court, Cheyyar. In fact, in I.A.No.137 of 2015, an order of interim stay was granted against the plaintiff. The above suit is still pending. Hence, as a counter blast to the suit filed by the fourth defendant and with a view to grab the suit schedule properties, the plaintiff has come forward with the present suit. The plaintiff has never intended to execute any mortgage deed and he has intently executed the power of attorney deed dated 13.01.2010 for alienating the suit schedule properties and hence, the sale deed dated 10.01.2014 is perfectly valid and binding on the plaintiff. Hence, he prayed to dismiss the suit.

7. The second defendant has filed a memorandum stating that he



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adopts the written statement filed by the fourth defendant.

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8. On the basis of the above pleadings, the trial Court has framed the following issues:

- (1) Whether the plaintiff has executed only a mortgage deed to the first defendant on 13.01.2010 and the said document is not a power of attorney?
- (2) Whether the sale deed executed by the first defendant in favour of the fourth defendant is liable to be declared as void?
- (3) Whether the plaintiff is entitled for permanent injunction against the first defendant?
- (4) To what other reliefs?

9. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1, Rose was examined as PW2, Balakrishnan was examined as PW3 and Exs.A1 to A28 were marked. On the side of the defendants, the first defendant/Rajendran was examined as DW1, second defendant/Shanmugam was examined as DW2 and Exs.B2 to B8 were marked.

8. Findings of the trial Court:



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It is usual for the purchasers of the land to approach the sellers and not *vice versa*. Similarly, it is usual for the borrowers to approach the money lenders. The plaintiff was doing business and therefore, he would have approached the defendant only for borrowing the money and not for sale of properties. The sale agreement in Ex.B3 does not contain the signature of the first defendant as the agreement requires the signature of both parties. The first defendant has not produced any document to prove the payment of the alleged balance sale consideration of Rs.1,00,000/-. The third defendant being the son of the first defendant and the fourth defendant being the purchaser, the third defendant remained *ex parte*. Since the fourth defendant having been living with the first defendant under a shelter, the question of consideration and the sale deed may not arise. The fourth defendant has not even chosen to depose evidence about his *bona fide* purchase. The first defendant with an intention to defraud the plaintiff has created the sale deed in Ex.B5 only for nominal and the document is void. The fourth defendant has failed to establish his possession.

9. The learned counsel appearing for the appellants/defendants 1



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and 4 would submit that the trial Court has failed to note that the plaintiff as well as his witnesses were unable to produce any document in support of their case that the plaintiff has repaid the sum of Rs.21,60,000/- to the first defendant. The trial Court has erred in accepting the case of the plaintiff relying upon the mortgage deed entered into between his father-in-law and the first defendant in 2009, when the said mortgage deed was not marked as a document by the plaintiff. When the plaintiff has accepted his signature both in the general power of attorney deed as well as in the sale deed in Exs.B4 and B5, respectively, then, he cannot plead *contra* to the documents. The trial Court has failed to note that subsequent to the sale deed executed in favour of the fourth defendant, possession was also handed over to the fourth defendant and in support of the same, the defendants have marked documents in Exs.B6 and B7. Further, submit that when the possession was with the fourth defendant, the plaintiff ought to have filed a suit for recovery of possession also, but, he has filed the suit only for declaring the document executed by the plaintiff to first defendant on 13.01.2010 is a mortgage deed and to cancel the sale deed dated 10.01.2014. The trial Court erred in decreeing the suit and prays to allow the appeal.



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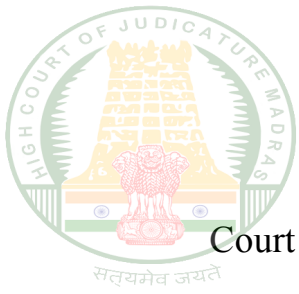
10. *Per contra*, the learned counsel appearing for the first respondent/plaintiff would submit that the plaintiff required additional funds for running his brick kiln and therefore, he approached the first defendant through the second defendant. The first defendant demanded the plaintiff to execute a mortgage deed in respect of the suit properties. On 13.01.2010, the plaintiff borrowed from the first defendant a sum of Rs.10,00,000/- and had executed a document purporting to be a mortgage deed. Accordingly, from February 2010 to January 2013, the plaintiff had paid to the first defendant a sum of Rs.21,60,000/- in respect of the said mortgage loan. On account of confidence reposed over the first defendant, the plaintiff had not obtained any receipts for the payment of the said amount of Rs.21,60,000/-. The evidence deposed by the first defendant does not correlate with his pleadings. The trial Court has clearly observed that the first defendant has not produced any document to prove the payment of the alleged balance sale consideration of Rs.1,00,000/-. In fact, the fourth defendant having been living with the first defendant under his shelter, the question of consideration and sale deed may not arise. Even the fourth defendant has



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not chosen to depose evidence before the trial Court to speak about he is the alleged *bona fide* purchaser of the property. When the plaintiff has been in possession and enjoyment of the suit properties, the first defendant could not sell the same to the third parties. Absolutely, the alleged sale deed is not supported by any sale consideration and it has been created with an intention to defraud the plaintiff. Apart from referring the present suit, the appellants have also chosen to file two suits, in which, one suit was filed by the fourth defendant in O.S.No.63 of 2015 on the file of the Additional District Munsif Court, Cheyyar and the same was dismissed for default on 26.08.2022. The first defendant has also set up his another son *viz.* third defendant to file a suit for specific performance in O.S.No.16 of 2017. The third defendant remained *ex parte* in the present suit. Though the suit was simultaneously tried along with the present subject matter of this appeal, the said suit was dismissed by the trial Court. Aggrieved over the same, the third defendant, who was the plaintiff in the suit has preferred an appeal before this Court in A.S.No.524 of 2019 and the same was dismissed by this Court at the admission stage itself. The first defendant filed two suits by using two of his sons after filing of the present suit by the plaintiff. The trial



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Court considering all the pleadings and evidences has rightly decreed the suit and no interference is warranted.

11. This Court has considered the submissions made on either side and perused the materials on record.

12. The points for determination that arise in this appeal are whether the plaintiff has executed only a mortgage deed to the first defendant on 13.01.2010 and the said document is not a power of attorney? and whether the sale deed executed by the first defendant in favour of the fourth defendant is to be declared as void?

13. It is seen from the records that the third defendant/Sathyanantham has filed a suit for specific performance against the plaintiff/Ganasekaran in O.S.No.16 of 2017 on the file of the Additional District Court (Fast Track Court), Arani. The trial Court dismissed the suit on 18.12.2018. Further, it is seen from the records that the above suit in O.S.No.16 of 2017 and the suit in O.S.No.17 of 2017 on the file of the Additional District Court (Fast Track Court), Arani, which is under challenge in this appeal, were simultaneously tried and the judgment and



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decree came to be passed on the same day on 18.12.2018. Aggrieved over the dismissal of the suit in O.S.No.16 of 2017 dated 18.12.2018, the third defendant has preferred an appeal in A.S.No.524 of 2019 before this Court and this court dismissed the appeal on 30.01.2020 at the admission stage itself. The relevant portion of the judgment is extracted hereunder:

“8. The trial Court, considering the deposition, arrived at a conclusion that the suit schedule property itself is falsely created by the plaintiff and the suit itself was instituted on account of previous enmity between the plaintiff and the defendant. The very nature of document filed before the Court by the plaintiff was scrutinised by the Trial Court and the manner, in which, the document was prepared, revealed that it was created in order to institute the suit. This being the categorical finding of the Trial Court, this Court is of the considered opinion that the suit for specific performance being a discretionary relief and equity is a prime ground, which is to be considered by the Court. The relief of specific performance cannot be granted, in the event of any such ambiguity. The Trial Court considered all these aspects in right perspective and in consonance with the documents and evidence produced by the respective parties, dismissed the suit for specific performance. On perusal of the entire documents and evidences as well as the findings of the Trial Court, this Court has no hesitation in arriving at a conclusion that there is no perversity or infirmity as such and



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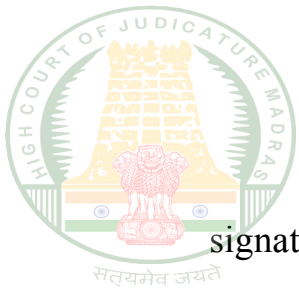
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consequently, the judgment and decree dated 18.12.2018 passed in O.S.No.16 of 2017 is confirmed and the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

14. DW1/first defendant being into the real estate business, having deposed that the plaintiff stopped him from selling the suit property to third parties, sold the suit property to his own son viz. fourth defendant. It is pertinent to mention that the said evidence of DW1 does not correlate with the pleadings. It is also relevant to mention that in favour of whom the sale was allegedly executed and the same being challenged before the trial Court, failed to examine him.

15. DW1 in his evidence has categorically deposed about the execution of sale agreement in Ex.B3 dated 13.01.2010 and execution of power of attorney deed in Ex.B4 on the same day i.e. 13.01.2010.

16. A perusal of Ex.A3 sale agreement shows that the signature of the first defendant does not find place, as the agreement requires the



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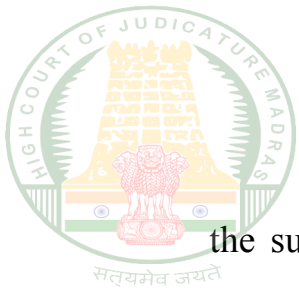
signature of both parties.

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17. Admittedly, the fourth defendant having been living with the first defendant under his shelter, in such circumstances, the passing of consideration and execution of sale deed in favour of the fourth defendant by the first defendant in Ex.B5 dated 10.01.2024 creates doubt over the execution of the alleged power of attorney in Ex.B4. The fourth defendant has not chosen to appear before the trial Court to depose evidence about his alleged *bona fide* purchase. The fourth defendant has failed to establish his possession of the suit property.

18. After considering the evidence adduced on either side, the trial Court came to the conclusion that the first defendant has created the sale deed dated 10.01.2014 in Ex.B5 only for nominal and the document is void. The sale deed is not supported by sale consideration and it has been created with an intention to defraud the plaintiff.

19. Admittedly, the plaintiff has been running the brick kiln business in the suit properties, when the plaintiff has been in possession of



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the suit properties, which establishes under Ex.A4 series EB receipts and Ex.A28 series EB receipts, the first defendant could not sell the suit properties to the third parties.

20. In the light of the above discussions, this Court do not find any reasons to interfere with impugned the judgment and decree of the trial Court. The points are answered accordingly.

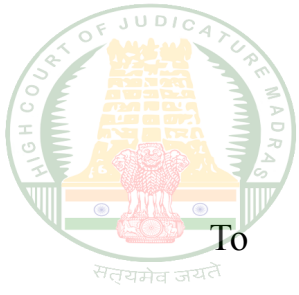
In the result, the First Appeal is dismissed by confirming the judgment and decree 18.12.2018 passed in O.S.No.17 of 2017 on the file of the Additional District Court (Fast Track Court), Arni, Tiruvannamalai District.

24.07.2025

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Index:Yes
Speaking/Non-speaking order
Internet:Yes; Neutral Citation:Yes

M.JOTHIRAMAN, J.

nsd



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To

WEB COPY The Additional District Judge,
Arni, Tiruvannamalai.

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