



A.S.No.587 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.587 of 2017

1.G.Janaki
2.M.S.Sekar

...Appellants

Vs.

Rajeswari

...Respondent

PRAYER: First Appeal has been filed under Section 96 of the Civil Procedure Code against the judgment and decree passed in O.S.No.26 of 2012 dated 31.07.2017 by the learned Principal District Judge, Thiruvarur.

For Appellants : Mr.P.Vijendran

For Respondent : Mr.T.Arul

J U D G M E N T

Aggrieved over the Judgment and Decree dated 31.07.2017, passed in O.S.No. 26 of 2012, by the Principal District Judge, Thiruvarur, the defendants have preferred the appeal suit.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.



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3.The plaintiff's case is that the first defendant is the owner of the suit property. The second defendant is the husband of the first defendant. The first defendant borrowed a sum of Rs.22,00,000/- from the plaintiff's husband on 27.06.2011 and agreed to give 12 % interest for the borrowed amount. The first defendant had also executed an unregistered mortgage deed and other deeds and agreed to return the borrowed amount within one year. For security purposes, the first defendant had executed a power of attorney in favour of the plaintiff's husband. As per the terms of the mortgage deed, the first defendant has to repay the borrowed amount with interest within 26.06.2012, but she failed to do so. Thereafter, in pursuance of the power of attorney deed executed by the first defendant, the plaintiff's husband executed a sale deed in favour of the plaintiff on 06.07.2012. In pursuance of the sale deed, the plaintiff changed her name in the revenue records and obtained patta and other relevant documents. Since the defendants failed to handover the possession, the plaintiff filed a suit for recovery of possession and thus, pleaded to allow the suit.



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4.The defendants contested the suit and filed a written statement and specifically denied the allegations averred in the plaint and contended that the first defendant is the owner of the property. She had purchased the property vide document No.1194/2001 and she is working as a Tahsildar, Needamangalam Taluk, Thiruvarur District. The second defendant is the husband of the first defendant. He was working as a conductor in Transport Corporation at Tiruvarur and thereafter, after getting voluntary retirement, he was doing contract work. While so, the second defendant required money for his business and the defendants approached the plaintiff's husband for loan. He agreed to give the loan for a sum of Rs.22,00,000/- and demanded to mortgage a property. For security purposes, the first defendant handed over an unregistered mortgage deed, registered power of attorney deed, unsigned SBI cheques and IOB cheques. Thereafter, received a sum of Rs.22,00,000/- on 27.06.2011 and agreed to repay the amount at 12% interest per annum. The defendants repaid the amount partly. The plaintiff failed to give a receipt for the amount that was paid. Thereafter, the plaintiff failed to acknowledge the receipt of Rs.5,50,000/- from the defendants. In this



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circumstances, without informing to the first defendant, in pursuance of the power of attorney executed by the first defendant, in favour of the plaintiff's husband, the plaintiff's husband entered into a sale agreement with one James Parimannan on 16.05.2012, for selling the suit property and received Rs.10,00,000/- as advance, which was registered vide document No.2408/2012. Since the agreement was not concluded after two months, the document was cancelled on 05.07.2012. Thereafter, the plaintiff's husband executed a sale deed in favour of his wife/ plaintiff. The sale deed will not bind the first defendant. The compromise between the parties failed. The suit is not maintainable and thus, pleaded to dismiss the suit.

5.The trial Court, upon the above pleadings, framed the following issues for consideration;

1.Whether is there right to get back the suit property from the defendants?

2.To what relief?



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6.In support of the plaintiff's case, Pws 1 to 4 were examined and Exs.A1 to A14 were marked and on the side of the defendants, Dws 1 to 3 were examined and Exs.B1 to B37 were marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court found that the sale deed dated 06.07.2012 in favour of the plaintiff is true and valid and in pursuance of the sale deed, all relevant documents and electricity connection have been changed in the name of the plaintiff and the plaintiff got title over the property and entitled for recovery of possession. Hence, decreed the suit without costs and granted three months time to the defendants to hand over the possession. Aggrieved over the judgment and decree of the trial Court, the defendants have preferred the first appeal.

8.The following points arise for determination in the first appeal.

1.Whether the sale deed dated 06.07.2012 in favour of the plaintiff is valid and enforceable one?



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2. Whether the plaintiff is entitled for recovery of possession as prayed for?

3. Whether the plaintiff's husband misused the power of attorney executed by the first defendant and executed the sale deed in favour of the plaintiff?

4. To what other reliefs?

9. The learned counsel for the appellants/defendants submitted that the trial Court overlooked the fact that the second defendant is the husband of the first defendant. He borrowed a sum of Rs.22,00,000/- and the first defendant executed an unregistered mortgage deed, registered power of attorney deed on the suit property and two blank cheques in favour of the plaintiff and in pursuance of the mortgage deed, amount has been paid by the defendants but the plaintiff failed to give receipt for the amount. Instead of filing the suit for recovery of money based upon the mortgage deed, the plaintiff filed suit for recovery of possession, which is not maintainable. The Trial Court has overlooked the fact that the



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plaintiff is entitled to return the money from the defendants in pursuance of the mortgage deed and not the property. The Trial Court failed to consider and appreciate the documents filed by the parties and also failed to consider before the period of return of amount, plaintiff obtained the sale deed by using the power of attorney executed by the first defendant and reiterated other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal suit.

10.The learned counsel for the respondent/plaintiff supported the judgment of the trial Court and contended that there is no mention about the mortgage deed between the plaintiff's husband and the first defendant either in Ex.A1 sale deed dated 06.07.2012 and Ex.A14 power of attorney dated 27.06.2011. In the absence of any mentioning in the sale deed and the power of attorney, it cannot be concluded that the mortgage deed executed by the first defendant in favour of the plaintiff's husband in pursuance of the power of attorney executed by the first defendant/owner of the suit property and the plaintiff's husband rightly



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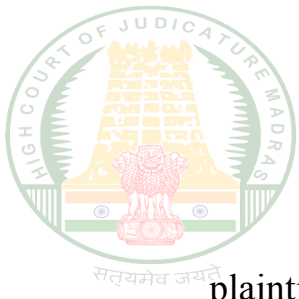
executed a sale deed in favour of the plaintiff for valid consideration.

The trial Court rightly observed this, decreed the suit as prayed for and there is no ground for interference and thus, pleaded to dismiss the appeal as it has no merit.

11.I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

12.On perusal of the records, the following facts are noticed. Admittedly, the suit property is owned by the first defendant. It is not in dispute that the first defendant purchased the suit property from one G.Parameshwaran, by way of document No.1194/2001, which is evidenced by Ex.B5 sale deed dated 14.05.2001.

13.The first defendant executed a power of attorney in favour of the plaintiff's husband on 27.06.2011. It is evidenced by Ex.A14. In pursuance of Ex.A14 power of attorney deed dated 27.06.2011, the power agent/the plaintiff's husband executed a sale deed in favour of the



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plaintiff on 06.07.2012. It is evidenced by Ex.A1. On perusal of the sale deed, it is also noticed that there is no mention about the mortgage deed between the plaintiff and the first defendant. Further, on perusal of the records and evidence, it is noticed that at the time of execution of the sale deed, the power is in existence and the power of attorney deed dated 19.12.2012 has been cancelled by the plaintiff and it was registered on 26.12.2012, it is evidenced by Ex.B23. Therefore, at the time of execution of sale deed, the first appellant did not challenge the sale deed executed by her power agent.

14.Under these circumstances, in the absence of any violation of execution of sale deed executed by the power agent of the first defendant in favour of the plaintiff, there is no ground to hold that the sale deed Ex.A1 dated 06.07.2012 is invalid. Therefore, the trial Court has rightly held that the sale deed dated 06.07.2012 Ex.A1 is a valid one and the plaintiff is having a valid title over the plaint schedule property. The plaintiff is competent to ask for recovery of possession. Therefore, she filed the suit for recovery of possession. The trial Court therefore rightly decreed the suit and directed the defendants to hand over the possession



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within three months. Therefore, I find no ground for interference in the judgment of the trial Court and no merit in the appeal suit. Therefore, the points raised in the appeal suit for consideration are answered in favour of the respondent. Accordingly, the appeal suit is dismissed without costs. Consequently, a connected miscellaneous petition, if any, is closed.

sli

03.03.2025

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

- 1.The Principal District Court, Thiruvavur.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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V.SIVAGNANAM, J.

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