

Senthilselvan Vs. Srinivasan

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Court : Chennai

Decided On : Mar-20-2014

Judge : The Hon'Ble Mrs.Justice Pushpa Sathyanarayana

Appellant : Senthilselvan

Respondent : Srinivasan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:

20. - 03 2014 Coram The Hon'ble TMT. JUSTICE PUSHPA SATHYANARAYANA
Second Appeal No.965 of 2006 and M.P. No.1 of 2006 1. Senthilselvan 2.
Swaminathan 3. Selvakumaran Rep. By Power Agent Selvaraj Pillai .. Appellants
vs. Srinivasan rep. by his Power Agent Vijayarengan .. Respondent Appeal filed
under Section 100 of the Code of Civil Procedure against the judgment and decree
dated 01.12.2005 in A.S. No.24 of 2005 on the file of the Court of Additional
Subordinate Judge, Mayiladuthurai reversing the judgment and decree dated
23.12.2004 made in O.S. No.213 of 1994 on the file of the District Munsif Court,
Sirkali. For Appellant : Mr. S. Sounthar For Respondents : Mr. V. Subramanian for
Mr. A. Tamilvanan

JUDGMENT

Defendants 2 to 4 in the suit filed by the respondent herein, have filed this Second
Appeal challenging the judgment and decree dated 01.12.2005 in A.S. No.24 of

2005 passed by the First Appellate Court / Additional Subordinate Judge, Mayiladuthurai wherein and by which the judgment and decree dated 23.12.2004 passed by the trial Court / District Munsif, Sirkali, in O.S. No.213 of 1994, was reversed allowing the First Appeal at the instance of the plaintiff, who filed the Suit for declaration and recovery of possession.

2. The case of the plaintiff is that the suit property, which was assigned by the Government belongs to him and as he lives in Bangalore, he wanted to sell the suit property. Therefore, he appointed his brother Sethuraj / 1st defendant as Power Agent on 19.3.1993. Defendants 2 to 4 are the alleged purchasers of the suit property and they were represented by their father Selvaraj Pillai in the capacity of Power Agent. It is the allegation of the plaintiff that as the first defendant attempted to sell the suit property for a low price, suspecting the bona fide of the Power Agent, he revoked the General Power given to the first defendant and the said cancellation of power is registered with the Sub Registrar, Mayiladuthurai on 28.6.1993. According to the plaintiff, the property is worth more than Rs.5 lakhs, whereas he came to know that the property was sold to defendants 2 to 4 for a sum of Rs.3,05,200/- and he received a registered post informing that Rs.2,78,000/- was paid to the plaintiff at various instances. It is the specific case of the plaintiff that he did not receive any amount towards sale consideration of the suit property and that the first defendant, in connivance with the defendants 2 to 4, prepared sale deed dated 22.6.1993. According to the plaintiff, the defendants are aware of the revocation of power and obtained pre-dated stamp papers and got the sale deed executed in favour of defendants 2 to 4 on 18.10.1993. It is the further allegation of the plaintiff that the defendants have committed fraud on him and hence, the plaintiff after issuing advocate notice to the defendants, filed the original suit for declaring the sale deed dated 22.6.1993 as obtained by fraud and liable for cancellation and for recovery of possession of the suit property.

3. The first defendant denied the averments by filing written statement wherein it is contended that he was not aware of revocation of power given to him by the plaintiff and that the property is worth more than Rs.5 lakhs. In fact, the property was sold for Rs.1,40,000/- and the said fact was informed to the plaintiff in person.

The first defendant denied that he played fraud on plaintiff at any stage and claimed that the alleged sale deed is true and valid and it binds all the parties.

4. Defendants 2 to 4 have filed separate written statement and contended that during June 1993, they bargained with the first defendant to purchase the suit property for Rs.1,40,000/- and paid the entire money to the first defendant on different dates and got the sale deed registered on 18.10.1993 and from that date onwards, they are in possession and enjoyment of the suit property. It is further contended that after registration of power of attorney, without any intimation, the plaintiff revoked the power deed with mala fide intention. According to defendants 2 to 4, they are bona fide purchasers and at the time of execution of sale deed in their favour, the power of attorney was in force. It is their further contention that the suit is filed with bad intention and prayed for dismissal of the suit.

5. Before the trial Court, Vijayarengan, power agent of the plaintiff, was examined as P.W.1 and marked Exs. A.1 to A.5. On the side of the defendants, one Selvaraj Pillai, power agent of the defendants 2 to 4, was examined as D.W.1 and Exs. D.1 to D.5 were marked.

6. The Trial Court / learned District Munsif, Sirkali, on consideration of the evidence adduced and the materials available thereon, finding that the plaintiff did not give notice before revocation of power deed and that since the power deed was registered at one place and revoked at another place, concluded that the sale deed is genuine and valid, dismissed the suit by judgment dated 23.12.2004. On appeal, the First Appellate Court / learned Additional Sub-Judge, Mayiladuthurai, on appreciation of the facts and law, concluded that the sale deed was not genuine as the same was prepared fraudulently and holding that the plaintiff is entitled for recovery of the suit property from defendants 2 to 4, allowed the appeal by setting aside the judgment and decree of the Trial Court. Aggrieved by the reversal of decision, the defendants 2 to 4 have come up with this second Appeal.

7. At the time of admission of this Second Appeal, the following substantial questions of law were framed for consideration:- 1. Whether the Lower Appellate Court is erred in accepting Ex. A.6, when the same is not proved in the manner known to law?.

2. Whether Ex. A.6 will bind the appellants and their power agent Selvaraj when they were not party to the same?.
8. Heard the learned counsel appearing for the parties and perused the records.
9. For the sake of convenience, the parties are referred to their status in the suit.
10. The plaintiff executed a Power of Attorney on 19.3.1993 in favour of his brother, who is the first defendant. As the first defendant acted detrimental to the interest of plaintiff, he cancelled the same on 28.6.1993. Despite the cancellation, it is alleged that the first defendant had sold the property to defendants 2 to 4 on 22.6.1993 and registered on 18.10.1993. The defendants 2 to 4 had paid the sale consideration to the first defendant but he was delaying the execution alleging that the power was cancelled. Therefore, the plaintiff has filed the suit for declaration that the sale deed is not binding on him.
11. The plaintiff had issued Ex. A1 Notice on 24.12.1993 which is much after the registration of the sale deed on 18.10.1993. Ex. A.2 is the reply dated 07.01.1994 and Ex. A.4 is the deed of cancellation of Power of Attorney. Ex. A.6 which has no date, is the letter written by defendants 2 to 4 to the plaintiff. The first defendant though filed his written statement, he was set ex parte in the suit and died subsequently. It is contended by the learned counsel for the defendants 2 to 4 / appellants that the Lower Appellate Court had decreed the suit based on Ex. A.6 which is not proved in the manner known to law.
12. Learned counsel appearing for the plaintiff / respondent contended that (a) the value of the property is much more than what it was sold; (b) the sale was executed by ante-dating the sale deed before the cancellation of Power of Attorney; (c) the sale deed was executed in a single stamp paper of value Rs. 1,000/-; (d) the stamp vendor was not examined to prove the fact that it was not ante-dated. Though originally the sale consideration was mentioned as Rs.1,40,000/-, at the time of registration, it was revised to Rs.2,64,640/- and registration charges were paid twice; and (e) If the guideline value itself was Rs. 2,64,640/-, then the market value would be much more than that. Therefore, the plaintiff wanted to establish that the property was sold by the first defendant Power

of Attorney detrimental to the interest of the plaintiff for a value much less than the market value for which reason, the Power of Attorney given in favour of the first defendant was cancelled.

13. Learned counsel appearing for the defendants contended that the sale was executed even before the Power of Attorney was cancelled and that the first defendant was not informed about the cancellation of the Power of Attorney.

14. At this juncture, it would be appropriate to refer to the deposition of P.W.1, Vijayarengan, Power Agent of the plaintiff in the suit, who has deposed as follows:-
".1 k; gpupthjapad; gtiu nfd;ry; bra;tjw;F1khjj;jpw;F Kd;ngh. my;yJ nfd;ry; bra;j gpd;ngh mtUf;F mwptpg;g[mDg;gtpy;iy/ mJnghy; thjp 1k; gpupthjpf;F gtiu uj;J bra;Jtpl;nld; vd;W jghy; vGjppapUf;fpwhuh vd;why; mJnghy; ehd; ghf;f;ftp;y;iy/ gtiu uj;J bra;j gpd;g[k; 1k; gpupthjpf;F ve;j jghYk; mDg;gtp;y;iy vd;why; rhpjhd;/ xU gth; bfhLf;fg;gl;lth; mtUf;F bfhLj;j gtiu uj;J bra;jhfptpl;IJ vd;W bjhpe;jhy; jhd; gth; bfhLf;fKoa[k; vd;why; ehd; 29/8/1993 nyna uj;J bra;j tptuj;ij ehd; tha;bkhHpahf brhd;ndd;/ ehd; tha;bkhHpahf brhd;ndd; vd;w tptuj;ij Kjypy; jhf;fy; bra;j tHf;Fiuapnyh. my;yJ jpUj;jg;gl;l tHf;Fiuapnyh brhy;ytpy;iy vd;why; rhpjhd;/ mJnghy; uj;J bra;j Mtzj;ij kapyhLJiw khtl;l ,iz gjpthsh; mYtyfj;jpy; gjpt[bra;Js;nshk; vd;why; rhpjhd;/".

15. The other circumstance which the defendants tried to impress upon the Court was that the plaintiff had cancelled the Power of Attorney and registered the cancellation deed in Mayiladuthurai District Joint Registrar Office whereas the Power of Attorney was registered in Tharangambadi Sub-Registrar Office and there is no valid reason given for registering the Power of Attorney before Tharangmpadi Sub-Registrar and cancelling the same before different Registrar Office.

16. From a perusal of the materials available on record, it is seen that the Lower Appellate Court had decreed the suit based on Ex. A.6 which does not contain date. Ex. A.6 letter is written by one Jayaraman on behalf of Selvaraj Pillai, who is the father of Defendants 2 to 4, to the plaintiff. It is pertinent to note that Ex. A.6 does not even contain the date and the said Ex. A.6 is not examined or marked through the plaintiff. The said Jayaraman is a document writer and the Power of

Attorney of the plaintiff, who deposed as P.W.1, has stated that the scribe of Ex. A.6 could have been summoned to the Court and examined. However, it has not been done. It is also established by defendants 2 to 4 that Ex. A.6 was not sent by Postal envelope as there is no document marked by the plaintiff to prove the same. The trial Court has found that the hand writing in Ex. A.6 letter and the hand writing on the alleged envelope in which Ex. A.6 letter is alleged to have been sent, are different.

17. It is alleged by the plaintiff that even after the cancellation of the Power deed, defendants 2 to 4 had written Ex. A.6 requesting the plaintiff to execute the sale deed as the plaintiff had cancelled the Power of Attorney and it is alleged that the letter was received by the plaintiff on 23.9.1993 whereas the said letter Ex. A.6 does not contain any date. P.W.1 while countenanced with Ex. A.6, had deposed as follows:- ".th/r/M/6 Mtzj;jpy; jghy; fthpy;; cs;s vGj;Jf;fs; ePy ikapYk; mjpy; cs;s fojk; fUg;g[ikapYk; ,Uf;fpwJ vd;why; rhpjhd;/ mij vGjpa gj;jpu vGj;jh; v';F ,Uf;fpwhh; vd;W vdf;Fj; bjhpa[k;/ th/rh/M/6 Mtzj;jpy; gj;jpu vGj;jh; b\$auhkd; jdJ tpyhrj;ij vGjtpy;iy vd;why; rhpjhd;/ th/rh/M/6 Mtzj;ij vGjpaJ gj;jpu vGj;jh; b\$auhkd; jhd; vd;gJ vg;go vdf;Fj; bjhpa[k; vd;why; mth; vd;dplk; brhd;dhh;/ mth; ,e;jf; fojk; vGjp 2.3 ehl;fspy; vd;dplk; brhd;dhh;/ mjd;gpwF ehd; vd; mz;zzplk; bjhiyngrpapy; gj;jpu vGj;jh; ,J nghy; xU fojk; vGjpa[s;shh; te;jjh vd;W ehd; nfl;ftpy;iy. th/rh/M/6 vGjpa gj;jpu vGj;jiu bfhz;L te;J tprhhpf;f Koa[k;/ th/rh/M/6 Mtzk; vd;Dila bry;thf;if gad;gLj;jp b\$auhkd; vd;gtiu itj;J vGjr;brhy;yp vd;Dila tHf;fpw;fhf jahh; bra;Js;nsd; vd;why; rhpay;y/ th/rh/M/6 Mtzk; cs;s fthpy; mjpYs;s fojk; te;jJ vd;gjw;F vt;tpj MjhuKk; ,y;iy vd;why; rhpay;y/ th/rh/M/6 Mtzk; vd;dhy; jahhpf;fg;gl;l xU bgha;ahd Mtzk; vd;why; rhpay;y/ th/rh/M/6 Mtzk; fojj;jpw;Fk;. mjpYs;s ftUf;Fk; vGj;J tpj;jpahrk; epiwa ,Uf;fpwJ vd;why; rhpay;y/ b\$auhkd; vd;w egh; vdf;F ntz;lg;gl;lth; vd;why; rhpay;y/".

18. In the light of the deposition of P.W.1 on Ex. A.6 as above, there was no impediment for the plaintiff to have summoned the said scribe Jayaraman to the Court and examine him. It was also open to the plaintiff when he received Ex. A.6 to have called the said Jayaraman or the first defendant not to proceed with the sale as the Power of Attorney was already cancelled. But the plaintiff had not taken any such action. Therefore, the trial Court was right in not believing Ex.A.6, which is alleged to have been written by Jayaraman on behalf of Selvaraj Pillai,

who is the father of defendants 2 to 4. It is interesting to see that neither the defendants 2 to 4 nor their father on whose behalf Ex. A.6 was alleged to have been written, is the party to the said document. It is not anybody's case that Selvaraj Pillai, father of the defendants 2 to 4 or the defendants 2 to 4 themselves do not know to read and write. Therefore, it can be inferred that Ex. A.6 is not binding on the defendants who are not parties to the same and the burden is on the plaintiffs to establish the genuineness of the same.

19. From the conduct of the plaintiff and from the deposition of P.W.1, I have no hesitation to hold that Ex. A.6 is not a valid document. The plaintiff has not entered into the box to examine himself and mark Ex. A.6 through himself. The scribe of Ex.A.6 though could have been summoned to Court, has not been done so by the plaintiff and there is no valid reason forthcoming for the same. When the very case of the plaintiff is that the Power of Attorney was acting detrimental to his interest and has filed the suit alleging that the act of the Power of Attorney is not binding on him, he ought to have examined himself instead of examining Power of Attorney, who had no personal knowledge about the plaint allegations.

20. In this regard, it would be relevant to advert to Section 208 of the Indian Contract Act, 1872, which reads as follows:- ".208. When termination of agent's authority takes effect as to agent, and as to third persons. -- The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.". The above Section prescribes the extent of an agent's authority which clearly states that it is not binding on the third persons unless they are made aware of the same.

21. Learned counsel for the appellants in this regard, contended that where a principal gives an express authority to do a particular act or class of acts on his behalf, the principal is bound as regard their persons by every act done by the agent which is so authorised or which is necessary for the proper execution of the authority even though the existence of such authority is unknown to a third person. No doubt, if any limitation is imposed by the principal on an agent, it would not be binding against the third party unless they are made aware of that. Section 208 of

the Contract Act provides that the termination of the authority of an agent does not take effect till such time the third parties gain knowledge of the same.

22. In this case, the sale was executed by the first defendant under Ex. A3 on 22.6.1993. The same was cancelled under Ex. A.4 on 28.6.1993. Therefore, it is seen that on the date of execution of the sale deed, the authority given to the first defendant as an agent was in force and from the deposition of P.W.1 extracted supra, it is clear that the cancellation was not communicated to the first defendant in writing though he claimed to have informed him orally. It is relevant to see that the alleged oral intimation by the plaintiff about the cancellation of the power deed is not pleaded either in the original plaint or in the amended plaint. Therefore, it can be presumed that Section 208 of the Contract Act comes into operation.

23. It is the admitted case that the Power of Attorney executed by the plaintiff was originally registered in Tharangambadi and it was cancelled before the Joint Registrar, Mayiladuthurai. In this regard, attention is drawn to Sections 64 and 65 of the Registration Act and the same is usefully extracted below:- 64. Procedure where document relates to land in several sub-districts. -- Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No.1.

65. Procedure where document relates to land in several districts. -- (1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate. (2) The Registrar on receiving the same shall file in his Book No.1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars

subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No.1."

24. In this case, it is not established by the plaintiff whether the cancellation deed was sent to the Sub-Registrar in whose sub-district, the power of Attorney was registered. When the plaintiff had revoked the Power of Attorney, the notice of revocation / cancellation is to be given to the Registering Officer. The Registering Officer shall send intimation of the same to such other officers as may be specified by the person revoking the power. This is the rule under Section 52(b) of the Registration Act. Even this aspect was not proved by the plaintiff by either examining the Registrar or producing some relevant document to that effect. In view of the foregoing reasons, the plaintiff is not entitled to the declaratory relief that the sale deed dated 22.6.1993 is not binding on him and the consequential mesne profits claimed by him. In view of the above, the Second Appeal is allowed setting aside the judgment dated 01.12.2005 rendered by Lower Appellate Court in A.S. No.24 of 2005 and the suit O.S. No.213 of 1994 is dismissed restoring the judgment of the trial Court dated 23.12.2004. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed. 20 03 2014 Index : Yes Internet : Yes gri To 1. Additional Subordinate Judge Mayiladuthurai 2. District Munsif Court Sirkali PUSHPA SATHYANARAYANA, J.

gri Pre-Delivery Judgment in S.A. No.965 of 2006 Delivered on 20 03 2014

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