
(2015) 08 MAD CK 0234

In the Madras High Court

Case No : Civil Suit No. 296 of 2012, A. No. 2138/2012 and O.A. No. 359 of 2012

N.S.N. and Co. and Others

APPELLANT

Vs

Mehul J. Patel and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0234

Hon'ble Judges : G. Chockalingam, J

Bench : Single Bench

Advocate : G. Govindarajan, for the Appellant

Judgement

G. Chockalingam, J—The suit has been filed by the plaintiffs seeking for the relief [a] for declaration declaring that the Deed of Sale dated 24.04.2008, registered as Document No. 592 of 2008 on the file of Sub-Registrar, Triplicane, executed by the first defendant herein in favour of the second defendant in respect of the suit schedule property is without any authority and as such null and void and not binding on the plaintiffs; [b] for permanent injunction restraining the defendants 1 and 2, their agents, servants, men or any one acting on their behalf or under their instructions from in any manner encumbering or alienating the suit schedule property under the strength of Sale Deed dated 24.04.2008, registered as Document No. 592 of 2008 on the file of Sub-Registrar, Triplicane, executed by the first defendant herein in favour of the second defendant in respect of the suit schedule property and [c] for costs of the suit.

2. The case of the plaintiffs, as stated in the plaint, is as follows:-

The plaintiffs are the absolute owners of all that piece and parcel of undivided share of land measuring an extent of 2173.37 sq. ft., out of 1,29,367 sq. ft., comprised in R.S. No. 281/1, 281/2 (part), 281/3, 281/4 [O.S. No. 281/2 (Part) 281/5, 281/2 (part), 282/2, 282/3, 282/4, 282/8 (O.S. No. 282/6 (part) and 282/7)] of Triplicane Revenue Village, within the Revenue Division of Mylapore, Triplicane Taluk bearing Door Nos. 113 to 121 and 123 to 134, Raheja Towers,

Wind Delta of Block "A" together with superstructure measuring 6710 sq. ft., in the fourth Floor bearing Unit No. O-0405, Mount Road, Chennai, more fully described in the schedule, having purchased the same under registered Sale Deed dated 03.03.2004, Doc.No. 341 of 2004 on the file of the Sub-Registrar, Triplicane. From the date of said purchase of the schedule property, the plaintiffs are in possession and enjoyment of the same and they had leased out the schedule property to M/s. ABN Amro Central Enterprise Services Private Limited, for a monthly rent of Rs. 2,2,8,140/- initially for a period of 3 years renewable once in every 3 years, which has now been merged with Royal Bank of Scotland, the third defendant herein. The plaintiffs availed loan of Rs. 1,40,00,000/- from M/s. Vijaya Bank, Indra Nagar Branch, Bangalore, by creating mortgage over the suit schedule property and the said loan is still pending. The first defendant herein is the nephew of the second defendant. The first plaintiff along with the second plaintiff herein have instructed the first defendant herein to look after the administration of the suit schedule property by receiving rent and remitting the same in their account besides paying the tax etc., By taking advantage of instruction given by the plaintiffs, the first defendant sold the property in and by sale deed dated 24.04.2008, registered as Document No. 592 of 2008 stating that he is the power agent of the plaintiffs, to the second defendant. But, actually, no power was granted to the first defendant, who sold the property and withdraw the entire amount and misappropriated the same. But in the sale deed dated 24.04.2008, filed as Document No. 2, the first defendant had alleged as if the sale consideration was received in the name of the plaintiffs. As the defendants 1 and 2 by colluding with each other have got the Sale Deed dated 24.04.2008 executed in the name of the second defendant without any right or authority, the said Sale Deed is void ab initio and not binding on the plaintiffs. Hence the plaintiffs have filed the above suit for the relief stated above.

3. Though summons were already served on the defendants, they have not chosen to enter appearance either in person or through any counsel and they have also not chosen to file their written statement. Hence, the defendants were set ex-parte by this Court on 05.06.2013.

4. Thereafter, the case was posted before the learned Additional Master No. I, for recording ex-parte evidence. The husband of the proprietrix of the first plaintiff was examined as P.W.1 and marked Exs.P1 to P5 to substantiate the plaintiffs case as stated in the plaint. The evidence of plaintiffs is completed. Therefore, the learned Additional Master No. I placed the matter before the Court.

5. Heard, Mr.G.Govindarajan, learned counsel for the plaintiffs. No appearance for the defendants.

6. From the evidence of P.W.1 and the documents produced on the side of the plaintiffs, it is clear that the suit property was purchased by the plaintiffs on 09.03.2004 which is proved by the document Ex.P.1. It is also proved as per document Ex.P.3-Sale Deed that the plaintiffs, through their power agent, have sold the property to the second defendant. It is useful to extract the relevant

paragraph of Ex.P.3, which reads as follows:-

"This deed of absolute sale executed at Chennai on the 24th day of April, 2008 by M/s. NSN & Co., 10/2, Cunningham Crecent, Indira Krupa, Bangalore - 560 062 and Mrs. Pushkala Mohanan wife of Mr. Mohanan Variath, aged about 52 years, residing at #SF-9,#100, (old No. 19), Duke Mansion, Spensor Road, Bangalore - 560 005, both represented herein by its duly appointed Power Attorney Agent Mr. Mehul J Patel, son of Mr. Jayanthilal Patel, aged about 27 years residing at G-3, 62, Orchids Apartments, Nandidurga Cross, Crescent Road, Bangalore - 560 046, come down to Chennai for these present and camping at Chennai hereinafter called the Vendors which term and expression shall, wherever the contest so requires and permits mean and include their successors in office, administrators, legal heirs, legal representatives and assigns of the One Part.

To and in favour of

Mrs.S.Sithi Aminath Najla, Wife of Mr.M.K.A. Ahamed Raqueeb, residing at No. 8, Nawab Habibullah Avenue, II Street, Chennai - 600 006, hereinafter called the Purchaser which term and expression shall, wherever the context so requires and permits mean and include his heirs executors, administrators, legal representatives and assigns of the Other Part."

7. On a careful reading of the Sale Deed-Ex.P.3, the first defendant was duly appointed as a Power of Attorney Agent of plaintiffs, but he is not stated the fact that the Power of Attorney was a registered one or not. If the Power of Attorney was registered one, its Registration number etc., has not at all mentioned in Ex.P.3-Sale Deed. Even the second defendant, who is the purchaser of the property for a huge sum of Rs. 2,85,00,000/-, is not taking care of mentioning the Power of Attorney granted by the plaintiffs to the first defendant. There is no mentioning about the date or document number of the power of attorney in Ex.P.3- Sale Deed. The case of the plaintiffs that no power of attorney was given by the plaintiffs to the first defendant to execute the Sale Deed in favour of the second defendant is acceptable one. Hence, the Sale Deed executed by the first defendant on behalf of the second defendant as duly executed Power of attorney is not at all valid or acceptable one. Hence, the Sale Deed executed is without authority and the same is liable to be set aside. Since the first defendant is not the owner of the property, the Sale Deed-Ex.P.3 executed without authority of law has to be declared as null and void. The plaintiffs are entitled to decree as prayed for in the plaint.

8. Hence, the suit is decreed against the defendants declaring that the Deed of Sale dated 24.04.2008, registered as Document No. 592 of 2008 on the file of Sub-Registrar, Triplicane, executed by the first defendant herein in favour of the second defendant in respect of the suit schedule property is without any authority and as such null and void and not binding on the plaintiffs and granting permanent injunction restraining the defendants 1 and 2, their agents, servants,

men or any one acting on their behalf or under their instructions from in any manner encumbering or alienating the suit schedule property under the strength of Sale Deed dated 24.04.2008, registered as Document No. 592 of 2008 on the file of Sub-Registrar, Triplicane, executed by the first defendant herein in favour of the second defendant in respect of the suit schedule property. Further, the defendants are directed to pay costs of the suit. The connected Original Applications are closed.