



IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR.

PRESENT: Swarnam J. Natarajan M.L.,
Principal District Judge, Tiruppur

Tuesday, the 08th day of August, 2023

Thiruvalluvarandu 2054, Sobakiruthu year, 23rd day of Aadi month

O.S.No. 625 / 2023

CNR No.TNTI18 – 003363 -2023

1. Muniyappan
S/o. Arumuga Chettiyar

2. Eswari,
W/o.Muniyappan
Represented by their Power of Attorney Agent
Miss Pushpavalli, D/o.Murugan

...

Plaintiff

.Vs.

1. Periyasamy
S/o.Karupanna Gounder

2. V.Savitha
W/o.P.Venkatachalam

3. The Sub Registrar,
Kunnathur Sub Registration Officer,
Uthukuli Taluk, Tiruppur District.

...

Defendants

This suit was coming on 13.07.2023 for final hearing before me, no representation, the counsel for the plaintiff did not appear before the court and to explain with regard to maintainability on the point of limitation and upon perusing the evidence, documents, the case having stood over for consideration till this day, this Court deliver the following:



J U D G M E N T

The plaint was represented before this court called in the open court with respect to the maintainability of the suit on the point of jurisdiction. There were no representation from the plaintiff from 08.06.2023 in spite of the case being posted for four hearings.

2) According to the plaintiff, the plaintiffs are husband and wife and illiterates, carrying on business of retail sales of Kitchen wares at V.Vellode Village for their livelihood. The 1st defendant is the father in law of the 2nd defendant and 2nd defendant is the daughter in law of the first defendant. The property comprised in R.S.No.67/12 measuring 3278 square feet situated at Poolangulam Village, Kunnathur Municipality, Avinashi Taluk, Tiruppur District absolutely belongs to the plaintiff, which had been purchased from one Subbulakshmi, Saravanakumar and Thangamani by virtue of registered sale deed in document No.2312 of 2007, dated 12.04.2007 from that date onwards, they are an absolute persons and enjoyment of the suit schedule property till date without any hindrance.

3) In the month of November, 2007, the plaintiff are in need of money for developing their business and were searching for financier to lend money for them. The first defendant, who is a money lender came to the rescue of the plaintiff financially, with whom, the plaintiff requested to pay Rs.2,00,000/- for interest agreeing to return the same at the interest of 60 % per annum on the condition that the plaintiff should mortgage the suit property in favour of the 1st defendant. Their need for money made them to accept the proposal imposed by the 1st defendant and prepared to execute mortgage in favour of the 1st defendant. On 12.12.2007, the first plaintiff took the plaintiff to the Sub Registrar Office, Kunnathur registered some documents in his



favour and the contents of the documents are not known to the plaintiff as they are innocent and illiterate.

4) The 1st defendant made them to believe that they are executing a mortgage deed for a sum of Rs.2,00,000/- in his favour and were under the impression that the 1st defendant is registered in the mortgage deed. So they need not enquire anything to the 1st defendant. After registration of the document, the 1st defendant retained with him all the original documents in respect of the suit property, which was brought by the plaintiffs to the registrar office and the 1st defendant paid a sum of Rs.2,00,000/- to the plaintiff and moved them away from the Sub Registrar Office urgently. They were regular in payment of the monthly interest to the 1st defendant without any default till 2010. Due to sudden family commitments and loss in the business, the plaintiffs could not pay the monthly interest to the 1st defendant for few months. The 1st defendant had put immense pressure on the plaintiffs to pay the monthly interest and also recalled the loan amount. The first defendant received sum of Rs.2,00,000/- from the plaintiff and assured to cancel the mortgage deed and return all original documents in few days. Even after, several demand and request, the 1st defendant evaded to issue no objection letter and from the local land mediator that that the plaintiff known that the 1st defendant is arranging to sell the suit schedule property. Therefore, he rushed to the registrar office to verify the encumbrance and on perusal of the encumbrance certificate on 18.09.2012, he came to know that the 1st defendant had executed a registered sale deed in Document No. 6633 of 2011 in favour the second defendant, who is none other than the daughter-in-law of the 1st defendant.



5) On perusal of the sale deed, the plaintiffs came to know that the 1st defendant had executed the sale deed in favour of the 2nd defendant as power of attorney of the plaintiffs as if the plaintiffs executed a power of attorney deed in favour of the first defendant in Document No 626 of 2007, dated 12.12.2007. The 1st defendant had enter into an agreement of sale with the 2nd defendant on 14.12.2007 and the same was cancelled on 07.01.2009 and on the same day, entered into an agreement of sale with the 2nd defendant on 07.01.2009 and executed the sale deed on 14.11.2011.

6) The sale deed was executed in favour of the 2nd defendant on the basis of forged power of attorney deed dated 12.12.2007, which the plaintiff had never executed any power of attorney deed in favour of the 1st defendant and not appointed him as their power agent. Hence, the present suit.

7) The plaintiff seeking for the relief of declaration that the registered power of attorney deed dated 12.12.2007 executed by the plaintiff in favour of the 1st defendant as null and void and also to declare the registered sale deed dated 14.11.2011 executed by the first defendant in favour of the 2nd defendant as null and void and for mandatory injunction to return all the original documents.

8) The suit was admittedly instituted in April 2014 and the power of attorney sought to be set aside is of the year 2007. According to the plaintiff in the plaint averments, on 08.09.2012 itself, he verified the encumbrance certificate and came to know that the registered sale deed has been executed on 2011 in favour of the 2nd defendant and again the 1st defendant entered into agreement of sale deed the 2nd defendant 2007 and cancelling the sale agreement document was again executed in 2011. The suit was instituted in 2014, June. The power of attorney said to be cancelled is of the year 2007.



After seven years, the suit has been instituted and the plaintiffs has not justified as to the delay caused in the filing suit.

9) The point of limitation under Section 3 of the Limitation Act, the court can suo motu take up without the parties raising the said plea and the plaintiffs' counsel have not appeared before the court to justify that the case is in time. Under Article 58 of the Limitation Act, the suit has to be instituted within three years from the date of accrual of the cause of action and he doesn't specify that the knowledge of the transaction to the plaintiff would give fresh cause of action to institute the suit. Date of knowledge is a fluctuating one, which anybody would make allegations that he came to know only recently. Therefore, the date of knowledge for execution for accrual of cause of action is the date of registration of the document and it cannot be pleaded that he came to know about the same only recently. Therefore, declaration suit is not maintainable. On bare perusal of the plaint, this court finds that the suit is hopelessly barred by limitation. Hence, the suit is not maintainable and the plaint is liable to be rejected under Order VII, Rule 11 C.P.C.

In the result, the plaint in O.S.No.625/2023 is rejected. No cost.

Dictated by me to the steno-typist, transcribed and typed by her with the help of voice recorder, corrected and pronounced by me in the open court today the 08th day of August, 2023.

Principal District Judge,
Tiruppur.

LIST OF WITNESSES AND DOCUMENTS
ON BOTH THE SIDES: .Nil.

Principal District Judge,
Tiruppur.



Draft / Fair of Judgment
O.S. No. 625 / 2023
Date: 08.08.2023
P.D.J.Court, Tiruppur.