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SUNKAMMA (D) BY LRS.

v.

S. PUSHPARAJ (D) BY LRS.

(Civil Appeal No. 2225 of 2007)

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DECEMBER 14, 2017

[R. K. AGRAWAL AND R. BANUMATHI, JJ.]

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Possession – Lawful possession of property – Appellants/defendants disputed the title and possession of the plaintiff over suit property-site no.47 – Respondent/plaintiff claimed the possession over the suit property by virtue of agreement of sale with PW-2 and registered general power of attorney executed in his favour by PW-2 – Trial court dismissed the suit filed by plaintiff to restrain the defendants from interfering with plaintiff’s peaceful possession of property – However, High Court accepted the claim of plaintiff’s possession – Held: Appellants have merely averred that the documents i.e. agreement of sale and registered general power of attorney are forged and not acceptable – Nothing further has been elicited from PW-2 to show that he had no right to sell suit property-site no.47 to the plaintiff – Plaintiff only sought for permanent injunction before the Courts below in which he is only required to prove that he is in lawful possession of the suit property – The findings of the High court based upon the general power of attorney and the evidence of PW-2 favouring plaintiff that he is in possession of suit property-site no.47, cannot be said to be perverse warranting interference.

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Dismissing the appeal, the Court

HELD: 1. Though the appellants/defendants disputed the title and possession of the plaintiff over site no.47, the defendants have merely averred that the documents relied upon by the plaintiff that is agreement of sale and general power of attorney are forged and not acceptable. Nothing further has been elicited from PW2 to show that he had no right to sell site no.47 to the plaintiff. The defendants went to the extent of denying the identity of PW-2. Be it noted, the plaintiff’s suit was only for permanent injunction in which the plaintiff is only required to prove that he

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is in lawful possession of the suit property. The High Court based upon the general power of attorney and the evidence of PW2 held in favour of plaintiff that he is in possession of site no.47. These findings of fact cannot be said to be perverse warranting interference. [Para 6][491-G-H; 492-A-B] A

2. Contention of appellants/defendants is that site no.47 is not covered under sale deed dated 21.04.1975 in favour of PW-2 vide which defendant had sold land to PW-2. Further, contention of appellants is that merely on the basis of registered power of attorney, title and ownership of immovable property (site no.47) could not have been transferred to the plaintiff. The Court is refraining from going into the merits of this contention for two reasons. Firstly, since the present suit and further appeal thereon emanates from the suit pertaining to permanent injunction where the touchstone upon which the suit has to be decided is "lawful possession" and not "ownership". Secondly, appellants/defendants have filed separate suit against PW-2 and the respondents, for a declaration that appellants are the owners of 'B' Schedule property thereon (which includes site no.47) and other reliefs. It is clear from the additional documents filed, the said suit has been dismissed against which an appeal is said to have been filed and pending. Therefore, Court not to express any opinion on the question of title and ownership of respondent/plaintiff on the basis of registered general power of attorney. [Para 7][492-C-E] B C D E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2225 of 2007. F

From the final Judgment and Order dated 24.08.2006 of the High Court of Karnataka at Bangalore in R.F.A. No.1100/2003 connected with R.F.A. No.1083/2003.

P.S. Dutta, Sr. Adv., Karunakar Mahalik, B. Vishwanath Bhandarkar, Priyang Nath Shukla, V.N. Raghupathy, Advs. for the Appellant. G

Shailesh Madiyal, Mahesh Thakur, Sudhanshu, Advs. for the Respondent.

A The Judgment of the Court was delivered by

B **R. BANUMATHI, J.** 1. This appeal arises out of the common judgment of the High Court of Karnataka at Bangalore dated 24.08.2006 in and by which the High Court allowed R.F.A. No.1100 of 2003 preferred by respondent No.1/ plaintiff thereby decreeing the suit for permanent injunction in respect of site no.47 and dismissing R.F.A.No.1083 of 2003 preferred by appellants/defendants in respect of site no.53.

C 2. Appellants/defendants were owners of land measuring 3 acres 30 guntas in Sy. No. 255 of Dodda Banasawadi Village, K.R. Puram Hobli, Bangalore, South Taluk. Out of which, the defendants sold 39 guntas of land to Madhavan Pillai (PW2) under a registered sale deed dated 21.04.1975. After the purchase, Madhavan Pillai formed a layout plan (Ex.P8) of site no.47, as per which the site no.47 is on the eastern side of site no.53. The matter in dispute pertains to two sites namely site no.47 and site no.53 in Sy. No.255 of Dodda Banaswadi Village which are adjoining each other and forming part of 39 guntas of land. Plaintiff had filed a suit for permanent injunction in O.S.No.424 of 1995 restraining the defendants from interfering with plaintiff's peaceful possession of suit property - both sites no.47 and 53 and the suit was partly decreed by the trial court by judgment dated 12.06.2003 restraining the appellants/defendants from interfering with plaintiff's peaceful possession and enjoyment of site no.53. So far as site no.47, the trial court dismissed the suit. Being aggrieved by the judgment and decree of the trial court, the plaintiff filed R.F.A. No.1100 of 2003 challenging the dismissal of suit in regard to site no.47. Similarly, defendants filed R.F.A. No.1083 of 2003 challenging judgment and decree in respect of site no.53. By common judgment, the High Court allowed the appeal filed by respondent/ plaintiff in regard to site no.47 and dismissed the appeal filed by the defendants.

G 3. Case of respondent/plaintiff is that site no.53 was sold by Madhavan Pillai (PW2) to plaintiff by way of a registered sale deed dated 16.06.1975. In support of his claim of ownership and possession in site no.53, plaintiff had produced judgment and decree of the earlier suit in O. S. No.1756 of 1982 dated 26.08.1985 in his favour restraining the defendants from interfering with his peaceful possession of the suit property which was subsequently confirmed by the High Court in R.F.A. No.86 of 1986 by judgment dated 21.02.1986. Based on the evidence of respondent/plaintiff (PW1), Madhavan Pillai (PW2) and the decree in H O.S.No.1756 of 1982, the trial court held that the respondent/plaintiff is

the owner of the property in site no.53 and granted permanent injunction. A
Even though defendants challenged the judgment in favour of respondent/
plaintiff with respect to site no.53, before the High Court, it was stated
before us that there is no serious dispute between the parties with respect
to site no.53.

4. **Site No.47:** So far as site no.47 is concerned, Plaintiff had B
produced an agreement of sale dated 09.09.1986, by virtue of which
Madhavan Pillai (PW2) agreed to sell site no.47 to the plaintiff for a
consideration of Rs.48,000/- and the entire sale consideration of Rs.48,000/
- had been paid to Madhavan Pillai. But plaintiff stated that due to ban C
of registration of revenue sites, Madhavan Pillai (PW2) executed a
registered general power of attorney dated 03.05.1988 in favour of plaintiff
and that pursuant to the general power of attorney, plaintiff has been in
possession and enjoyment of site no.47. As plaintiff's case was not
supported by a registered sale deed, the trial court declined to accept the
claim of plaintiff with respect to site no.47

5. In appeal, the High Court noted that the trial court failed to take D
into consideration the testimony of Madhavan Pillai (PW2) wherein he
deposed to the effect that he agreed to sell site no.47 to plaintiff and that
he had executed a registered general power of attorney dated 03.05.1988.
PW2-Madhavan Pillai had also stated that the sale deed could not be E
executed as there was a ban of registration of revenue sites. Madhavan
Pillai stated that in 39 guntas of land which he had purchased from the
defendants, he formed a layout, 20 feet road was proposed in between
sites no.53 and 47. PW2 further stated that since Bangalore Development
Authority (BDA) formed the road in the western portion of Sy. No.255,
the road in between sites no.47 and 53 was given up and the revised
layout plan for 20 feet road was formed (Ex.P9). Madhavan Pillai stated F
that respondent/plaintiff is in possession of sites no.47 and 53. Based on
the evidence of PWs 1 and 2 and the general power of attorney (Ex.P7),
the High Court held that the plaintiff is in possession of site no.47 and
granted permanent injunction in favour of the plaintiff.

6. Though the appellants/defendants disputed the title and G
possession of the plaintiff over site no.47, the defendants have merely
averred that the documents relied upon by the plaintiff that is agreement
of sale (09.09.1986) and general power of attorney (03.05.1988) are
forged and not acceptable. Nothing further has been elicited from PW2
to show that he had no right to sell site no.47 to the plaintiff. The H

A defendants went to the extent of denying the identity of Madhavan Pillai (PW2). Be it noted, the plaintiff's suit O.S.No.424 of 1995 was only for permanent injunction in which the plaintiff is only required to prove that he is in lawful possession of the suit property. The High Court based upon the general power of attorney and the evidence of PW2 held in favour of plaintiff that he is in possession of site no.47. These findings of fact cannot be said to be perverse warranting interference.

7. Contention of appellants/defendants is that site no.47 is not covered under the sale deed in favour of Madhavan Pillai (21.04.1975). Further contention of appellants is that merely on the basis of registered power of attorney, title and ownership of immovable property (site no.47) could not have been transferred to the plaintiff. We refrain from going into the merits of this contention for two reasons. Firstly, since the present suit and further appeal thereon emanates from the suit pertaining to permanent injunction where the touchstone upon which the suit has to be decided is "lawful possession" and not "ownership". Secondly, appellants/defendants have filed separate suit in O.S.No.5327 of 1995 against Madhavan Pillai and the respondents, for a declaration that appellants are the owners of 'B' Schedule property thereon (which includes site no.47) and other reliefs. As seen from the additional documents filed before us, the said suit has been dismissed on 17.12.2016 against which an appeal is said to have been filed and pending. Therefore, we deem it appropriate, not to express any opinion on the question of title and ownership of respondent/plaintiff on the basis of registered general power of attorney.

8. The present appeal arises out of the suit filed by plaintiff/respondent for permanent injunction and the courts below rightly decided the same on the question of possession. Based on the general power of attorney and the evidence of PWs 1 and 2, the High Court rightly held that the plaintiff is in possession and we do not find any reason warranting interference.

9. In the result, the appeal is dismissed. No costs.