



Comp.A.Nos.3 & 4 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	16.09.2022
Order pronounced on	23.01.2023

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Comp. A.Nos.3 & 4 of 2022
in
Comp.A.No.297 of 2021
in
Company Petition No.57 of 1998

Mr.Sankar Raman

... Applicant
(in both applications)

vs.

1.The Official Liquidator,
High Court, Madras
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High Court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai- 600 001.
(in Provisional Liquidation)

2.M/s.Maxworth Orchards (India) Limited
No.38/1, New No.14/1, Akbarabad Second Street,
Kodambakkam, Chennai – 600 001.
(Opposite to Mannah Hall)
Rep. by its Administrator Nagasaila

... Respondents
(in both applications)



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PRAYER IN C.A.Nos.3 & 4 of 2022: This Application is filed under Order

XIV, Rule 8 of O.S. Rules 1956 r/w Sections 9, 11(b) of the Company Rules, 1959 praying to direct the Official Liquidator to exclude/delete the lands of the Applicant in S.F.No.287/4 from the list of details of the property for sale, i.e. Sl.No.99 – village Nagampatti – Project – MAX – NAGAMPATTI in Tirunelveli HUB in the sale notice dated 03.12.2021, measuring to an extent of about 3.27 acres in Nagampatti Village, Kayattar Taluk, Thoothukudi District in the sale notice dated 03.12.2021 for auction to be held at 11.01.2022 or any other subsequent date issued in pursuance to the orders of this Court in CA No.297 of 2021 in CP.No.57 of 1998.

Applicant : Mr.Silambanan, Senior Advocate,
for Mr.K.Sathish

Respondents : Mr.Pamarthi Sridhar
Official Liquidator for R1

Mr.H.Karthik Seshadri
for Mrs.Nagasaila Suresh
for Administrator for R-2



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COMMON ORDER

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These applications are presented by a person claiming title to lands ad-measuring 3.27 acres in S.No.287/4A, at Nagampatti village, Kayattar Taluk, Thoothukudi District.

2. In Company Application No.3 of 2022, an interim stay of the auction sale is prayed for. In Company Application No.4 of 2022, the applicant seeks a direction to exclude/delete the lands of the applicant in S.F.No.287/4 from the sale notice. In support of the claim for title, the applicant has placed on record the sale deed, *patta* and tax receipts.

3. Mr.Silambanan, learned senior counsel for the applicant, submitted that the applicant traces his title by way of a registered sale deed dated 22.01.2021 registered in the office of the Sub-Registrar, Kadambur, *vide* Doc.No.85/2021 in Book No.1. He submitted that Mr.Manthiram Chettiar was the original owner of the property in S.No.287/4 of an extent of 3 acres and 52 cents. It is submitted that he passed away on 20.09.2003 and that the sale deed was executed by the surviving legal heirs of Mr.Manthiram Chettiar, namely, Mrs.Muthulakshmi (daughter), Mr.M.Arunachalam (son),



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Mrs.Pushpam (daughter), Mrs.Indirani (daughter), Mr.Mariappan (son) and

Mrs.K.Parvathy (daughter-in-law and wife of Mr.Kannan (son), who passed away on 19.08.2020). He further stated that the Encumbrance Certificate dated 27.08.2014 did not reflect any encumbrance in the property of Mr.Manthiram Chettiar, except to an extent of 25 cents of land which is in the name of Mrs.B.Uma Maheswari.

4. In response to the applications, the learned Administrator filed a common counter dated 27.01.2022. In the said counter, it was asserted that the company in liquidation (the Company) acquired lands of an extent of 106.33 acres from the original owners in Nagampatti & Kuthiraikulam villages after paying full consideration under 70 registered general powers of attorney in favour of its employee, Mr. A.Pulivaganan (Pulivaganan). Pursuant thereto, the Company took possession of the entire extent of land, conducted a survey and plotted the land. It is further submitted that the GPA holder, Pulivaganan, registered sale deeds in favour of 100 customers and entered into maintenance agreements for orchard development with 149 customers.

5. As far as S.No.287/4 in Nagampatti village is concerned, it is stated that the Company acquired 3.52 acres of land, through its then



employee, Pulivaganan, from the land owners *vide* GPA Doc.No. 337 of 1995 by paying full consideration to the original land owners and that the sale receipt is available. It is further stated that both parties admit that the Company executed a sale deed in favour of one of its customers for an extent of 0.25 acres *vide* Doc.No.267/1997. The remaining lands of an extent of 3.27 acres were brought to auction sale as item 12 (Nagampatti project) *vide* order passed by this Court in C.A.No.297/2022.

6. Mr. Karthik Seshadri, learned counsel for the learned Administrator, relied on the particulars of the 70 registered general powers of attorney in favour of Pulivaganan under which a total extent of 106.33 acres of land constituting the Max-Nagampatti Project was acquired. The documents available with the Company in respect of individual survey numbers were also referred to. As regards Survey No.287/4, a copy of GPA No.337/95 dated 16.08.1995 (the GPA) and copies of the sale receipt and employment related documents of Pulivaganan were relied on. In addition, the Encumbrance Certificate from 01.01.1995 to 31.12.2021 for Survey No.287/4 was referred to and relied on to establish that a registered sale deed was executed by the Company through the GPA in favour of a customer. The



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orders of this Court dated 24.04.2003 and 18.11.2003, which restrained the GPA holder, Pulivaganan, from using the GPA for any purpose, including executing any sale transactions, were cited.

7. In the Memo filed by the Official Liquidator, the survey numbers and extents therein of lands pertaining to the Max-Nagampatti Project were enclosed as Annexure-A. In the Memo filed by the successful bidder, as regards Sl.No.12 of the sale notice, the purchaser submitted that he paid the full sale consideration of Rs.1,38,00,000/- for 58.58 acres of land and that the sale certificate for the extent of 55.31 acres (excluding the disputed 3.27 acres) was executed in his favour.

8. Upon considering the contentions of the contesting parties, the primary question that warrants examination is whether the disposition in favour of the applicant is a disposition of the property of the Company. If the answer is in the affirmative, the conveyance in favour of the applicant would be void unless validated by the Court because such conveyance is after commencement of winding up. If the answer is that no clear conclusion can be drawn in summary proceedings, parties should be called upon to go



through a trial process. If the answer is in the negative, the applicant succeeds.

9. On perusal of the GPA, it is evident that Pulivaganan was constituted as the agent of the owners thereunder. It was executed by Mr.Manthiram Chettiar, Mr.M.Kannan, Mr.M.Mariappan, and Mr.Mr.M.Arunachalam. The relevant portion of the GPA is reproduced below:

"தபசில் சொத்து எங்களுக்குப் பூர்வீகமாய்ப் பாத்தியப்பட்டு எங்கள் ஐயண்டு அனுபவத்திலுள்ளது. தபசில் சொத்தை விற்பனை செய்ய வேண்டியதிருக்கிறது. மேல்படி விற்பனை செய்ய வேண்டிய காரியங்களை எங்களுக்கு கவனிக்க தோது இல்லை. தாங்கள் எங்களுக்கு வேண்டியவராகவும், நம்பிக்கையுள்ளவராகவும் இருப்பதால், தபசில் சொத்தை எங்களுக்காக தாங்கள் கிரையம் பேசவும், அட்வான்ஸ் வாங்கவும், கிரைய பத்திரங்கள் எழுதி எங்களுக்காக தாங்கள் கையெழுத்துச் செய்து அக்கிரையப் பத்திரங்களை சம்பந்தப்பட்ட பதிவு அலுவலகத்தில் தாக்கல் செய்து பதிவு அலுவலர் அவர்கள் கேட்கும் கேள்விகளுக்கு வாய் மொழியாகவும், எழுத்து மூலமாகவும் பதில் சொல்லவும், எண்டார்க்மெண்டிலும் புள்ளி மனுக்களிலும் எங்களுக்காக தாங்கள் கையெழுத்துச் செய்து அக்கிரையப்பத்திரங்களை பதிவு செய்து கொடுத்து கிரைய தொகைகளை தாங்கள் பெற்றுக் கொள்ளவும் இதன் மூலம் நாங்கள் தங்களுக்கு அதிகாரம் கொடுக்கிறோம். மேற்கண்ட காரியங்களை



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எங்களுக்காக தாங்கள் செய்யும் சகல
நடவடிக்கைகளையும் தாங்களே நேரில்(சுதாவல்)
செய்ததாக ஒப்புக் கொள்வதாகவும், தபசில் சொத்தின்
விற்பனை சம்மந்தமான வரவு செலவுகளை தாங்கள்
எங்களிடம் ஒப்படைக்க வேண்டியது,"

The document does not refer to or deal with consideration, if any, received by the land owners (principals).

10. Given the language of the GPA, a significant question that should be examined is whether there are any other documents evidencing that the GPA is coupled with interest. Before examining such documents, Section 202 of the Indian Contract Act, 1872, which deals with agency coupled with interest, is extracted below:

“Termination of agency, where agent has an interest in subject matter. - Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations:

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton,



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and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.”

Learned Administrator placed on record a receipt evidencing receipt of consideration of Rs.1,49,500/- by the land owners. The sale receipt, in relevant part, is reproduced below:

“Received Rupees One Lakh Forty Nine Thousand Five Hundred (Rs.1,49,500/-) only towards the well cost situated at S.No.287/4 with 3 H.P. Motor from Sri.A.Pulivaganan.”

11. The applicant disputed the above receipt as it does not bear any date and he also denied the signatures of the landowners thereon. The details of and signatures of land owners and witnesses in the GPA and receipt *prima facie* tally. The receipt refers to the “well cost situated at S.No.287/4 with 3 H.P.Motor”. Therefore, there is some basis to conclude that the receipt was issued as consideration for the execution of the GPA in favour of Pulivaganan. In light of this evidence, can the GPA be construed as coupled with interest?

12. The interest of the agent in the subject-matter of the agency may be inferred from the language of the document creating the agency, or from the course of dealings between the parties. The GPA does not expressly indicate interest; however, the agent is empowered to maintain and look after



the property, execute conveyances, receive consideration therefor and issue

receipts. In *Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (Suraj Lamps)(2012) 1 SCC 656*, which was decided on 11.10.2011, the Supreme Court concluded that a sale should ordinarily be in the form of a registered conveyance, but carved out an exception for *bona fide* transactions, involving the execution of a GPA in favour of a developer. In relevant part, it was held as under in paragraphs 26 and 27:

“26....The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered into before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they not be disturbed merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may



give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.”

Whether this case falls within such exception remains to be seen. For such purpose, the link between Pulivaganan and the Company should be examined.

13. The appointment letter dated 15.04.1995 and joining report dated 19.04.1995 signed by Pulivaganan are on record, and these documents evidence that Pulivaganan was an employee of the Company. The GPA was executed in favour of the agent a few months later in August 1995. Particulars



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of the registered sale deed executed by Pulivaganan in favour of a customer of the Company by using the GPA are also on record. Particulars of the GPA and the other 69 registered general powers of attorney in favour of Pulivaganan in respect of the entire 106.33 acres constituting the Max-Nagampatti Project have been placed for consideration. By orders dated 24.04.2003 and 18.11.2003, this Court restrained Pulivaganan and other GPA holders from alienating the lands purchased with the funds of the Company. Thus, the evidence leads to the conclusion that the GPA holder was an employee of and represented a Company which not only plotted the larger extent of property but also sold portions of it to its customers under sale deeds executed by Pulivaganan. Consequently, the execution of the GPA is for *bona fide* purposes and falls within the exception carved out in ***Suraj Lamps***.

14. The learned Administrator asserts in the counter that Pulivaganan executed and registered sale deeds, in the Max-Nagampatti Project, in favour of 100 customers and that maintenance agreements for orchard development were entered into with 149 customers. As far as Survey No.287/4 is concerned, the Company executed a sale deed in favour of one of its customers, namely, Mrs.B.Uma Maheswari, for an extent of 0.25 acre vide



Doc.No.267/1997. This transaction has been acknowledged by the applicant

in paragraph 6 of his affidavit. When the GPA and the sale receipt are looked at in the following larger context: the execution of 70 registered powers of attorney in favour of Pulivaganan for the entire extent of 106.33 acres in the Max-Nagampatti Project; and the execution of registered sale deeds in favour of about 100 customers, the conclusion that follows is that the GPA was coupled with interest. As per Section 202 of the Contract Act, a contract of agency coupled with interest cannot be revoked by the principal(s) without the consent of the agent. The applicant does not contend that the contract of agency was revoked. Besides, in this case, the agent, Pulivaganan, was restrained from dealing with the property purchased with the funds of the Company by express orders of this Court, which continue to operate as on date. Therefore, the agent could not have consented to revocation of the agency. In light of the creation of a contract of agency coupled with interest in favour of Pulivaganan, acting for and on behalf of the Company, by the owners of the property, the question that arises for consideration is whether the conveyance of 3.27 acres (from and out of 3.52 acres) in favour of the applicant is valid.



15. The applicant relied on the sale deed dated 22.01.2021, the *patta* transfer order of the Tahsildar dated 22.01.2021, the *patta* dated 30.07.2021 in the name of the applicant, and various tax receipts to claim title to the property. The sale deed dated 22.01.2021 was executed by the sons and daughters of Manthiram Chettiar and the wife of the late Mr.Kannan, the deceased son of Manthiram Chettiar. The GPA was executed by Manthiram Chettiar and his three sons, M.Kannan, M.Arunachalam and M. Mariappan. Hence, both M.Arunachalam and M. Mariappan have executed both documents and cannot plead ignorance of the GPA. There is no reference to the GPA in the sale deed. The GPA is in respect of 3.52 acres of land, whereas the sale deed is in respect of 3.27 acres and expressly excludes the 25 cents of land conveyed under a sale deed executed by the agent under the GPA. Both the parties have submitted the Encumbrance Certificate of the disputed property. The applicant has relied on it to contend that there was no encumbrance over the disputed property when he purchased the same from the original owners and, on the other hand, the Administrator has used it to prove knowledge of sale by the Company of 0.25 acres in the same survey number to one customer of the Company through the GPA holder.



16. Section 536(2) of the Companies Act, 1956 (CA 1956) deals with the disposition of the property, including actionable claims, of a company after the commencement of winding up. The said provision is set out below:

“536(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the Company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.”

In this case, the winding up petition was presented by a creditor of the Company on or about 24.02.1998. An Administrator was appointed on 12.02.2001 and was vested with all powers of the Official Liquidator by order dated 06.02.2006. By order dated 17.09.2010, the Official Liquidator was appointed as Provisional Liquidator. Consequently, by virtue of the legal fiction incorporated in Section 441(2) of CA 1956, the winding up was deemed to commence on or about 24.02.1998. As a corollary, Section 536(2) of CA 1956 became applicable and all dispositions of property, including actionable claims, of the Company and transfers of shares or alteration in the



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status of members in the Company, if effected after 14.02.1998, would be

void unless validated by the Court.

17. The sale deed dated 22.01.2021 was unquestionably executed after 24.02.1998. The only question on which there is scope for debate is whether the 3.27 acres of land may be construed as the property of the Company. From the text of Section 536(2), it is evident that Parliament intended that the expression 'property of the company' should be construed widely. This is abundantly clear from the use of the expression “property (including actionable claims) of the company”. The object and purpose of Section 536(2) is to ensure that the assets of a company are preserved for the general body of creditors upon commencement of winding up. Thus, the above expression is intended to embrace not only immovable and movable property but also intangible property in the form of actionable claims or *choses in action*, which are property rights that can be exercised only by initiating action to enforce those rights as opposed to measures to take physical possession of tangible property. The expression “actionable claims” is defined in Section 3 of the Transfer of Property Act, 1882 (the TP Act) as: “means a claim to a debt, other than a debt secured by mortgage of



immovable property or by hypothecation or pledge over moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent”. Section 137 of the TP Act expressly excludes stocks, shares, debentures, negotiable instruments and the like from the scope of Chapter VIII of the enactment. From the above, it is evident that the definition of “actionable claims” in Section 3 of the TP Act is not exhaustive and, in my view, does not whittle down the ambit of the expression “actionable claims” in Section 536(2) of CA 1956. Given the object and purpose, the said expression should be construed, in the unfettered common law sense, as taking within its fold rights or causes of action, debts, rights under a contract, securities, documentary intangibles such as negotiable instruments, intellectual property and leases.

18. I concluded earlier that the GPA was coupled with interest and, therefore, could not have been revoked by the principals. The material on record leads to the conclusion that 70 registered powers of attorney were executed in favour of Pulivaganan in respect of the entire 106.33 acres of land



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constituting the Max-Nagampatti Project. This included the GPA in respect of 3.57 acres in S.F.No.287/4. When a contract of agency (in relation to 3.57 acres of land of which 0.25 acres was conveyed thereunder) coupled with interest remains in force and such agency is for the benefit of the Company, even if the Company has not perfected title through a registered conveyance, at a minimum, the Company has the right to enforce its property rights under the contract of agency. A disposition of the rights under such contract of agency would be a disposition of actionable claims. The disposition of the entire remaining extent of 3.27 acres of land forming the subject of the contract of agency has the effect of robbing the agency of all value and content and, in the facts and circumstances, is not *bona fide*. Such disposition has taken place about 23 years after the commencement of winding up. *A fortiori*, it is a disposition of the property of the Company within the meaning of Section 536(2) of CA 1956. Therefore, such disposition is void unless validated. In order to validate a transaction, it should be established that such transaction was for the benefit of the Company. This disposition was inimical to the interest of the Company. Therefore, there is no reason to validate the same. Hence, the sale deed dated 22.01.2021 is void and, consequently, the patta issued on that basis is also void. Since the disposition is void, the matter



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is capable of summary disposal. As a corollary, the applicant fails. The Official Liquidator may take necessary consequential action to mutate the title and revenue records, execute a sale certificate in favour of the auction purchaser and take all necessary action in respect of the remaining 3.27 acres of land. It is, however, open to the applicant to proceed against and claim relief against his vendors.

19. For reasons set out above, Company Application Nos.3 & 4 of 2022 are dismissed without any order as to costs.

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