



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	28.06.2023
Order pronounced on	08.11.2023

CORAM

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

Comp. A.Nos.281 & 282 of 2022
in
Comp.A.No.148 of 2022
in
Company Petition No.57 of 1998

K.L.Mibin Antony Raj

... 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. Maxworth Orchards (India) Ltd,
No.1A, Akbarabad First Street,
Kodambakkam, Chennai – 600 024.
Represented by its Administrator,
Ms.D.Nagasila Suresh

... Respondents
(in both applications)



Prayer in Comp.A.No. 281 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying that the court may be pleased to stay all further proceedings pursuant to the auction sale held on 16.06.2022 in respect of the properties bearing S.No.s 289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8 (Clubbed as 289/7A), 288/5 and 288/6 in all measuring an extent of 3.93 acres together with well and 3HP motor service connection in SC No. 877 (Now SC No.126) in Vallipuram Village, Chengalpattu Taluk, Chengalpattu District, pending disposal of the above company application.

Prayer in Comp.A.No. 282 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying to set aside the auction sale held on 16.06.2022 in respect of the properties bearing S.Nos.289/1, 289/2, 29/3, 289/4, 289/5, 289/6, 289/7, 289/8 (Clubbed as 289/7A), 288/5 and 288/6 belonging to the applicant.

Applicant : Mr. C.Jagadish
Mr. N.C.Ashok Kumar

Respondents : Mr.N.Keerthi Thej,
Deputy Official Liquidator for R1

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



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COMMON ORDER

These applications are presented by a person claiming title to the land ad-measuring 3.93 acres in S.Nos.289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8 (clubbed as 289/7A), 288/5 and 288/6, together with well and 3HP motor service connection in S.C.No.877 (Now S.C.No.126), at Vallipuram village, Chengalpattu Taluk, Chengalpattu District. In Company Application No.281 of 2022, the applicant seeks to stay all further proceedings pursuant to the auction sale held on 16.06.2022 in respect of the aforesaid properties and in Company Application No.282 of 2022, the applicant prays to set aside the auction sale in respect of the aforesaid properties.

2. As regards S.No.288/5, 289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8 (clubbed as 289/7A), the applicant traces his title from a Settlement Deed dated 05.04.1973 executed by



V.N.Subbarayan in favor of three minors, namely, N.P.Meena, N.P.Chithra & N.P.Vanitha. One of the beneficiaries, Vanitha, executed a sale deed dated 29.07.2016 in favor of N.Reddappa Reddy. N.Reddappa Reddy died on 13.03.2019 and his legal heirs executed a sale deed dated 02.12.2019 for a sale consideration of Rs.6,91,440/- in favor of K.Madhubala.

3. With regard to S.No.288/6, the legal heirs of the original owner, S.Ramakrishnan, executed a sale deed dated 06.05.2016 in favor of K.Elamvazhuthi, who, in turn, executed a sale deed dated 29.07.2016 in favour of N.Reddappa Reddy. N.Reddappa Reddy's legal heirs executed another sale deed dated 02.12.2019 for a sale consideration of Rs.14,77,050/- in favor of K.Madhubala.

4. Thereafter, the applicant claims title over all the aforesaid survey numbers (the disputed property) under a sale deed dated 28.04.2022 executed by K.Madhubala, vide Doc.No.2227 of 2022.



5. In response to the applications, learned Administrator filed a common counter on behalf of the Official Liquidator. In the counter, it was asserted that Maxworth Orchards (India) Ltd (the Company) had acquired 94.96 acres of land in Vallipuram Village (the Max-Chengleput project), and had paid sale consideration from the funds of the Company to the original landowners. The possession of the entire 94.96 acres was claimed to have been taken over by the Company in 1995. The Company had since then sold 75.50 acres of land to its customers.

6. Mr.Karthik Seshadri, learned counsel appearing for the learned Administrator, contended that the disputed property had been acquired by the Company through 59 powers of attorney (PoAs) executed by the original land owners in favour of S. Premkumar, the Company's employee, empowering the agent to deal with the property on their behalf. He referred to PoA dated 28.07.1995 bearing Doc.No.117/1995, which was executed by one



Mr. S. Ramakrishnan in favour of S. Premkumar, in respect of an extent of 6.62 acres in Vallipuram village, including 1.62 acres in S.No.288/6. He also pointed out that Mr.S.Ramakrishnan was the witness for multiple PoAs executed in relation to the Max-Chengalput project. Similarly, he further referred to another PoA dated 24.07.1995 bearing Doc.No.99/1995 executed by one S.Vanitha in favour of S.Premkumar for an extent of 0.73 acres in S.No.288/5, and 1.72 acres in S.No.289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8, 289/9.

7. Learned counsel further submitted that two sale receipts were issued by the aforementioned land owners, S.Ramakrishnan and S.Vanitha, acknowledging receipt of full and final payment for the lands in the Max-Chengleput project. In order to prove that the PoA holder, S. Premkumar, was an employee of the Company, learned counsel relied on the appointment letter dated November 1993 designating him as the land purchase executive and another



letter dated May 1994 re-designating him as the legal executive of the Company.

8. Learned counsel for the Administrator further contended that the sale deeds alleged to have executed by the land owners and the third parties from the year 2016 onwards are fraudulent and void against the Company. Learned counsel made reference to the order of injunction passed by this Court against the agent in Comp.A.No.740 of 2003. He emphasized that the applicant, being a third party purchaser, ought to have undertaken due diligence before purchasing the land in question.

9. By way of rejoinder, learned counsel for the applicant referred to the PoA cancellation deed dated 29.07.2016 (cancellation deed) executed by Vanitha, and contended that the cancellation of the PoA was before the execution of the sale deed by S.Vanitha. He further contended that the evidence is insufficient to prove that the



agent is an employee of the Company and emphasized that the PoA did not indicate that the agent acted on behalf of the Company. He further contended that the PoA is not an instrument of transfer as per Section 5 of the Transfer of Property Act, 1882 (the TP Act). He relied on the judgments of the Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and another I & II* (Suraj Lamps I & II), (2009) 7 SCC 363 and (2012) 1 SCC 656 , respectively, to contend that even an irrevocable power of attorney does not have the effect of transferring title to the grantee. He also cited the recent judgment of the Supreme Court in *Ghanshyam v. Yogendra Rathi* (Ghanshyam), 2023 SCC Online SC 725 , particularly paragraphs 12 & 14 therein, to contend that non-execution of a transfer document by the general power of attorney holder renders the said general power of attorney useless. He also claimed that the order of injunction against the agent was not communicated to the Sub-Registrar's Office.



10. Without prejudice to the above contentions, learned counsel for the applicant submitted that the applicant is willing to pay the amount specified in the sale receipts produced by the Administrator. In response to this submission, learned counsel for the Administrator pointed out that the first respondent, Official Liquidator, had brought an extent of 18.50 acres for auction sale on 16.06.2022 after obtaining due permission on 29.04.2022 from this Court and the highest bid of Rs.1,63,00,000/- was received from the auction purchaser, S.Abinaya.

11. Upon considering the contentions of both parties, the primary questions that warrant examination are the validity of the PoAs in view of the cancellation by Vanitha and the death of Ramakrishnan, i.e. the respective principals, and whether the alleged sales from 2016 onwards are dispositions of the properties of the Company and, if so, whether they are void under Section 536(2) of the Companies Act, 1956 (the Companies Act).



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12. On the one hand, learned counsel for the Administrator contended that the Company acquired the disputed lands from the original landowners, S. Ramakrishnan and S. Vanitha, after paying full consideration from the funds of the Company. Apart from the receipts, reliance is placed on the PoA executed by the original landowner, S. Ramakrishnan, bearing Document No. 117/95, in respect of Survey no. 288/6, and the PoA executed by S. Vanitha, bearing Document No. 99/95, both in favour of S. Premkumar, an ex-employee of the Company. On the other hand, the counsel for the applicant asserts that title over the disputed lands is established by the settlement and sale deeds.

13. The first step in deciding the rival claims is to examine the PoAs executed in favour of Mr.S.Premkumar. The PoA dated 24.07.1995, Doc.No.99 of 1995, was executed by S.Vanitha, wife of V.R.Senguttuvan, in favour of S.Premkumar, son of A.K.Seshaiyya,



in respect of the disputed property in Survey No.288/5 for an extent of 0.73 acres and Survey Nos.289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8, 289/9 for an extent of 1.72 acres. The PoA dated 28.07.1995, Doc.No.117 of 1995, was executed by S.Ramakrishnan, son of Somasundaram, in favour of S.Premkumar, son of A.K.Seshaiyya, in respect of the disputed property in Survey No.288/6.

14. The appointment letter dated November 1993 of S.Premkumar evidences his designation as the land purchase executive. It proves the connection between the agent and the Company, and also indicates that the PoAs were executed after he became an employee of the Company. The agent, S.Premkumar, was authorised to do the following acts, deed and things, by both the PoAs:

- 1. To sign and execute Sale Deeds on behalf of the Principal in favour of the Prospective Purchaser or Purchasers in one or more Sale Deeds or in a lot in respect of the Schedule*



Property.

2. *To admit execution and to present on my behalf of document or documents so executed to the concerned registering officers/authorities having jurisdiction to register the same and to get the same registered and to receive them back from the registering officers/authorities and duly giving proper acknowledgment.*
3. (a) *And to sign other documents such a Patta Transfer Forms and all other papers/forms need thereof and to do all such acts, deeds and things whatsoever as may be necessary reasonably required for effectively conducting and concluding the registration of the document or documents.*
(b) *To sign transfer forms of Electricity Board in favour of prospective purchaser on my behalf.*
4. *All the acts, deeds and things done by my Attorney with regard to the Schedule mentioned property will be binding on me.*

15. Two sale receipts are on record. The receipt dated 23.07.1995 is for a sum of Rs.2,49,795/- and was signed by S. Ramakrishnan acknowledging receipt of full and final payment for the lands in several survey numbers, including Survey No.288/6 of



an extent of 1.62 acres. As discussed earlier, the PoA dated 28.07.1995, Doc.No.117 of 1995, was executed by S.Ramakrishnan and pertains to the same survey number and extent. The receipt dated 24.07.1995 is for a sum of Rs.1,11,475/- and was signed by S. Vanitha acknowledging receipt of full and final payment for the lands in Survey Nos.288/5 of an extent of 0.73 acres and 289/1-9 of an extent of 1.72 acres (aggregating to 2.45 acres) in Vallipuram village. The PoA dated 24.07.1995, Doc.No.99 of 1995, was executed by S.Vanitha and pertains to the same survey numbers and extents. Thus, these two receipts correspond to the two PoAs, cover all the relevant survey numbers and the entire disputed land.

16. From the above documents, the reasonable inference that follows is that the powers of attorney were coupled with interest and executed with the intent of allowing the Company to acquire control over the disputed lands for the purpose of selling them to its customers. This inference is strengthened on the following grounds:



firstly, on appreciation of the Company's overall business model, which involved execution of powers of attorney in favour of the Company's employees, all of whom were impleaded in C.A.No.740 of 2003 and restrained from disposing of the properties by using the PoAs. Secondly, for reasons set out in the preceding paragraph, on examining the receipts. Thirdly, on examining the cancellation deed executed by S. Vanitha, bearing Document no. 3806 of 2016, in respect of the PoA Doc.No. 99/1995.

The following clause thereof is relevant:-

....என்னுடைய சொத்தை பாதுகாக்கவும், பராமரிக்கவும், விற்பனை செய்யவும் வேண்டி கடந்த 24.07.1995-ம் தேதியன்று ஒரு பொது அதிகார ஆவணம் எழுதிக்கொடுத்து அப்பத்திரம் திருக்கழுக்குன்றம் சார்பதிவகத்தில் தாக்கல் செய்து 4-புத்தகம், 19 தொகுதி, 113 முதல் 115 வரையுள்ள பக்கங்களில் 1995-ம் வருடத்திய 99-ம் நெம்பர் பத்திரமாக பதிவு செய்து கொடுக்கப்பட்டுள்ள பவர் பத்திர ஊர்த்துப்படி மேற்படி பிரேம்குமார் அவர்களின் பாதுகாப்பில் இருந்துவரும் சொத்துக்களின் சர்வே எண்.289/9 - 0.19 செண்ட் நிலத்தை அவர் விற்பனை செய்தது போக மீதமுள்ள நிலங்களை நான் வேறு ஏற்பாடு செய்ய



விரும்புவதால் இந்த பொது அதிகார ஆவண ரத்துப்பத்திர முன்னிலையில் மேற்படி பொது அதிகார ஆவணத்தை (Document No.99/1995) ரத்து செய்கின்றேன். இனி இந்த பொது அதிகார பத்திரம் ஊரத்துக்கள் யாவும் ஆச்சாரத்திற்கும் அமுலுக்கும் வராது என்று இதன் மூலம் உறுதி கூறுகின்றேன். இந்தப்படிக்கு நான் சம்மதித்து எழுதி கொடுத்த பொது அதிகார ரத்துப்பத்திரம்.

It is clear from the above extract that the agent had sold 0.19 cents in S.No.289/9 pursuant to the above PoA to the Company's customers. Based on the above, it is concluded that the PoAs are coupled with interest and, therefore, unilateral termination of the contract of agency is not valid as per Section 202 of the Indian Contract Act, 1872.

17. 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



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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.”

18. Upon examining the GPA, the receipts and the business arrangement, I conclude that this transaction falls within the exceptions carved out in *Suraj Lamps*. In this connection, it is also pertinent to refer to the judgment of the Division Bench of this Court in *Maxworth Orchards India Ltd. v. B. Ravi Babu and others (Maxworth DB)*, 2023-4-L.W.205, where, in paragraph 27, the Division Bench extracted paragraph 27 of *Suraj Lamps*, held in paragraph 28 that



Suraj Lamps is prospective and further held, in paragraph 29 as under:

“29. In the case before us, the powers of attorney were executed in the last decade of the previous millennium and therefore, the argument based on Suraj Lamps necessarily, has to fail.”

The above conclusion is squarely applicable to this case because the PoAs were executed in 1995.

19. The implications of the cancellation deed and the death of one of the principals are considered next. The principal in the first PoA, S.Vanitha, cancelled the PoA in 2016, and the other principal, S.Ramakrishnan, died on 02.04.2014. According to Section 202 of the Contract Act, a contract of agency coupled with interest is neither unilaterally irrevocable nor terminated upon the death of the principal. Based on the conclusion that the PoAs are coupled with interest, the cancellation deed executed by S. Vanitha and the demise of S. Ramkarishnan, the respective principals, does not have an



impact on the validity of the PoAs in favour of the agent.

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20. In deciding on the validity of the documents that were relied on by the rival claimant, reference should be made to Section 536(2) of the Companies Act, which 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.”

21. In this case, the winding up petition C.P.No.57/98 was presented by a creditor of the Company on 24.02.1998, and an Administrator was appointed on 12.02.1998. Due to the legal fiction in Section 441(2) of the Companies Act, winding up of the Company is deemed to have commenced on 24.02.1998 and Section 536(2) of the Act is triggered on the same date, ensuring that all subsequent dispositions of the Company's property (including actionable



claims), transfers of shares or any alterations in the status of members would be void, unless validated by this Court.

22. The dispositions after commencement of winding up should be examined in light of the above conclusion. As regards S.No.288/5, 289/1, 289/2, 289/3, 289/4, 289/5, 289/6, 289/7, 289/8 (clubbed as 289/7A), the applicant traces his title from a Settlement Deed dated 05.04.1973 executed by V.N.Subbarayan in favor of three minors, namely, N.P.Meena, N.P.Chithra & N.P.Vanitha. One of the beneficiaries, Vanitha, executed a sale deed dated 29.07.2016 in favour of N.Reddappa Reddy. The purchaser, N.Reddappa Reddy, died on 13.03.2019 and his legal heirs executed a sale deed dated 02.12.2019 for a sale consideration of Rs.6,91,440/- in favor of K.Madhubala. With regard to S.No.288/6, the legal heirs of the original owner, S.Ramakrishnan, executed a sale deed dated 06.05.2016 in favour of K.Elamvazhuthi, who, in turn, executed a sale deed dated 29.07.2016 in favour of N.Reddappa Reddy. N.Reddappa



Reddy's legal heirs executed another sale deed dated 02.12.2019 for a sale consideration of Rs.14,77,050/- in favor of K.Madhubala.

Thereafter, by a sale deed dated 28.04.2022, the applicant claims title over all the aforesaid survey numbers (the disputed property) from the erstwhile owner, K.Madhubala, vide Doc.No.2227 of 2022.

23. All the conveyances were made after 24.02.1998, including the last conveyance on 28.04.2022. In the light of the PoAs and receipts, these conveyances were undoubtedly not *bona fide*. Such sales were detrimental to the interest of the Company and, therefore, cannot be validated. Consequently, all these conveyances and, in particular, the sale deed dated 28.04.2022 is declared void and the *pattas* issued on that basis are also void. It is, however, open to the applicants to make claims against their vendor(s) as a consequence of this order.



24. For reasons set out above, Company Application Nos.281 & 282 of 2022 are dismissed without any order as to costs. As a corollary, the Official Liquidator shall take necessary action to mutate the title and revenue records to reflect the Company's ownership of the relevant immovable property and to conclude the auction sale.

08.11.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

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SENTHILKUMAR RAMAMOORTHY J.

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Pre-Delivery Order Common Order made in
in
Comp. A.Nos.281 & 282 of 2022
in
Comp.A.No.148 of 2022
in
Company Petition No.57 of 1998

08.11.2023

23/23