



A.S(MD)Nos.179 of 2010 and 104 of 2023

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Dated:27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD)No.179 of 2010

and A.S(MD) No.104 of 2023

A.S(MD)No.179 of 2010

Murugesan

..Appellant/4th Defendant

.vs.

1.Muthammal

2. Eswari@ Rajeswari

3. Kalidas(Died)

4. Kalimuthu(Died)

5. Marudayee

6. Arasammal

7. Sigamani @ Sivamani

8. Anusiya

9.Subramani

...Respondent 3 to 9/Defendant 2,3,5-9

10.Nagammal

11. Easwari

12.Rengaraj

13. Malathi

..Respondents 10 to 13/

LRs of deceased 3rd Respondent

14.Mariyayi

15. Valarmathi

16. Mahendran

*(Respondents 14 to 16 are brought on
record as LRs of deceased 4th Respondent
vide court order dated 05.04.2023
made in CMP(MD)No.4341 of 2023)*



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Prayer : This Appeal Suit has been filed under Section 96 of C.P.C as against the judgment and decree dated 24.03.2010 passed in O.S.No.65 of 2007 on the file of the Additional District Judge, Fast Track Court, Dindigul

For Appellant : Mr. M.R. Sreenivasan
For R1& R2 : Mr.S. Madhavan
For R8 : Mr. Krishnasamy
For R9 :Mr. Ajmal Khan, Senior Counsel
for J.M.Hassanul Bazari
For RR14 to 16 : Mr.P.Pethu Rajesh
For RR5,10 to 12 : No appearance

A.S(MD)No.104 of 2023

Subramani

..Appellant/9th Defendant

.vs.

- 1.Muthammal
2. Eswari@ Rajeswari
3. Kalidas(Died)
4. Kalimuthu(Died)
5. Murugesan
6. Marudayee
7. Arasammal
8. Sigamani @ Sivamani
9. Anusiya
- 9.Subramani
- 10.Mariyayi
11. Valarmathi
12. Mahendran

...Respondent 3 to 9/Defendant 2to 8

(Respondents 10 to 12 are brought on record as LRs of deceased 4th Respondent vide court order dated 28.03.2023 made in CMP(MD)Nos.389 to 391 of 2023)



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13.Nagammal

14. Easwari

15.Rengaraj

16. Malathi

..Respondents

(Respondents 13 to 16 are brought on record as LR's of deceased 3rd Respondent vide court order dated 21.06.2023 made in CMP(MD)Nos.6765 to 6768)

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C as against the judgment and decree dated 24.03.2010 passed in O.S.No.65 of 2007 on the file of the Additional District Judge, Fast Track Court, Dindigul

For Appellant : Mr. M.R. Sreenivasan

For R1& R2 : Mr.S. Madhavan

For R5,6&9 : Mr. R.Sreenivasan

For RR7,10 to 15 : No appearance

COMMON JUDGMENT

These Appeal Suits have been filed as against the judgment and decree passed in O.S.No.65 of 2007 on the file of the Additional District Judge, Fast Track Court, Dindigul, wherein the respondents 1 and 2 herein have filed a suit for partition for declaration of sale deeds and also for the suit for partition and for permanent injunction. The trial Court has decreed the suit.

2. As against the decree and judgment passed by the trial Court the fourth defendant has preferred an appeal in A.S(MD) No.



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179 of 2010 and the ninth defendant has preferred an appeal in
A.S(MD)No.104 of 2023.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

4. The averments of the plaint are as follows:

The suit property is the Hindu undivided joint family properties of the plaintiff and the defendants. Originally the properties belonged to the Rengasamy pillai and Palaniyappa Pillai by ancestrally. The said Rengasamy pillai died intestate survived by the plaintiffs and the defendants 1 to 7 in respect of his undivided $\frac{1}{2}$ share over the suit property. The Palaniyappa Pillai who was unmarried till his death had executed settlement deed in favour of the plaintiff and the defendants 5 to 7 through settlement deed with a concurrence of his brother Rengasamy and defendants 2 to 4. The plaintiffs are entitled to $\frac{2}{9}$ share over the suit properties and in the remaining shares the defendants 1 to 7 are equally entitled. The defendants 5 to 7 have been residing along with their respective husband at different places and the fourth defendant is cultivating the lands and managing the suit properties. The defendants 5 and 7



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had appointed the fourth defendant as power of attorney as per power agent under the document dated 14.12.2003 pertaining to the suit property to manage the properties. Whiles, the fourth defendant abused his status as power of attorney alienated the properties of the plaintiff and the defendants 5 to 7. On 04.08.2004 the fourth defendant executed a sale deed in favour of the ninth defendant without the concurrence of the plaintiff and the defendants 5 to 7. The fourth defendant also executed sale deed in favour of the eighth and ninth defendants actuated through dubious sham and nominal instruments dated 04.08.2004. The sale deeds in favour of eight and ninth defendants are invalid and not binding upon the plaintiff. The plaintiff revoked the power of attorney deeds dated 11.12.2003 w.e.f. 10.03.2006 through cancelled deed 10.03.2006. The plaintiff also informed the same through notice dated 20.03.2006 inspite of that the fourth defendant was alienating and encumber the property by abusing his power as power agent of the plaintiff. Hence the suit is filed by the plaintiff.

5. The gist of written statement filed by the second and third defendant are as follows:

The suit is not maintainable and the prayers A and C are note related to this defendant. The relationship between the plaintiff and



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the defendant are admitted. The plaintiff and the defendants 5 to 7 executed power deed in favour of the fourth defendant. It is false to state that the plaintiff and the defendants 4 to 7 are in joint possession and the properties belongs to joint family. The plaintiff and the defendants 5 to 7 executed power deed in favour of the fourth defendant based on that power deed the properties were sold to the eighth and ninth defendants. Hence the plaintiff cannot seek any prayer for partition. The first defendant also filed suit as against the defendants 3,4,8 and 9 and one Mayakrishnan in O.S. NO.02 of 2005 on the file of Sub Court, Palani and the same was compromised between the parties and final decree was also passed on 25.01.2008. The plaintiff also very well knowledge about the said fact. The suit is filed only to harass the defendant, thereby the suit is liable to be dismissed.

6. The gist of written statement filed by the fourth defendant are as follows:

The suit is is false, frivolous and vexatious and not maintainable either in law or on facts. The relationship between the plaintiff and the defendants 1 to 7 are admitted. The alleged settlement deed executed by the Periyasamy pillai in favour of the plaintiff and the defendants 2 to 4 without the consent of Palanisamy



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is false. Infact the said Palaniappapillai executed settlement deed in favour of the plaintiff and the defendants 5 and 6 after partition between the Palaniappal Pillai and his brother. Further the contents of the document show that it is Will. The plaintiffs and other executed power deed in favour of the favour of the fourth defendant on 11.12.2003. Though power deed was executed in his favour since there was no any pathway to reach the properties the eighth and ninth defendant decided to purchase the property, thereby the property was sold to the eighth and ninth respondent through sale deed dated 04.08.2004. Thereafter one Valarmathi filed suit in O.S. No.02 of 2005 on the file of the Sub Court,Palani as against the defendants 1 to 3,8,9 and the fourth defendant and the same was ended in compromise and the said compromise was also informed to the plaintiff. The cancellation of power deed dated 10.03.2006 is false . Infact based on power deed executed by the 5th and 7th defendant dated 11.12.2003 the 4th defendant sold the property to the eighth defendant on 04.08.2004 itself through separate sale deed. On the date of filing of suit the plaintiffs have no any right, title or interest over the suit property. Therefore the suit filed by the plaintiff is not maintainable. The plaintiff has not sought for any relief for cancellation of power deed dated 04.08.2004, therefore the suit is liable to be dismissed.



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7. The gist of written statement filed by the ninth defendant are as follows:

The suit is false, frivolous vexatious and not maintainable either in law or on facts. The relationship between the parties are admitted. It is false to stated that the settlement deed executed by the Palaniappa Pillai is not acted upon and thereby the plaintiff and the defendants are entitled to suit property. It is false to stated the the fourth defendant acted as power agent only to manage the properties through power deed dated 14.12.2003. The averments that the sale deeds dated 04.08.2004 are not binding upon the plaintiff is not correct. Infact the defendants 5 to 7 executed power of attorney in favour of the fourth defendant in respect of their property obtained through settlement and also inheritance from his father Rengasamy Pillai. Thereafter the fourth defendant being power agent of defendants 5 to 7 executed settlement deed. Based on that power deed the fourth defendant sold the property on 04.08.2004. The sixth defendant has also executed power deed on 06.02.2006 and he sold the property to one Mayakrishnan through sale deed dated 22.04.2007. Thereafter the nineth defendant purchased the property from the said Mayakrishnan on 02.08.2007. The fourth defendant sold the property to the eighth defendant as power agent of the plaintiff and the defendants 5 to 7 through sale



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deed datd 04.08.2004. Again the eighth defendant appointed the fourth defendant as power agent and he sold the property to one Valarmathi through sale deed dated 06.10.2005. The above said transactions are very well known to defendants 5 to 7 and they also issued receipts for the sale amount. The second defendant already filed a suit in O.S. No.2 of 2005 on the file of the Sub Court, Palani for the relief of partition and the same was entered with compromise and compromise decree was also passed. The said compromise decree was also very well known to the plaintiff. The said Valarmathi is not added as party to the suit, thereby the suit is bad for non joinder of necessary parties. Therefore the suit is liable to be dismissed.

8. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1)வழக்கின் 8,9 பிரதிவாக்குக்கு 4ம் பிரதிவாதி 04.08.2004 ம் தேதியிட்டு ஏற்படுத்திய கிரைய ஆவணங்கள் வாதிகளைக் கட்டுப்படுத்தக்கூடியதா?
- 2)தாவாச் சொத்துக்களில் வாதியினருக்கு பாகம் கிடைக்கத்தக்கதா?
- 3)தாவாச் சொத்துக்களைப் பொறுத்து வாதிகளுக்கு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
- 4)பாகப்பிரிவனை பரிகாரத்திற்கு வாதிகள் செலுத்தியுள்ள நீதிமன்ற முத்திரை கட்டணம் சரியானதா?



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- 5) இவ்வழக்கிற்கு வளர்மதி என்பவர் அவசியமாக தரப்பினரா?
- 6)வழக்குரையில் கோரியுள்ள விளம்புகை பரிகாரங்கள் வாதிகளுக்கு கிடைக்கதக்கதா?
- 7)10.03.2006ம் தேதியிட்ட பொது அதிகார ஆவண ரத்துப்பத்திரம் செல்லத்தக்கதா?
- 8) பழனி சார்பு நீதிமன்றத்தில் அவ.எண்.2/2005 ஏற்படுள்ள ராஜினாமா தீர்ப்பாணை வாதிகளுக்கு கட்டுப்படுத்தக் கூடியதா?
- 9) வாதிகளுக்கு என்ன பரிகாரம் கிடைக்கதக்கது?

9.Before the trial Court on the side of plaintiff, P.W.1 and P.W.2 were examined and documents Ex.A1 to A5 were marked. On the side of the defendants D.W.1 to D.W.5 were examined and documents were marked as Ex.B.1 to B.13

10. After considering the evidences adduced on both sides the trial Court decreed the suit in favour of the plaintiff. As against the decree and judgment the fourth defendant has preferred the appeal in A.S(MD)NO.179 of 2010 and the ninth defendant has preferred in A.S.NO.104 of 2023 on the following grounds.

Grounds of Appeal in A.S(MD) No. 179 of 2010

- 1) The judgment and decree of the Court below are contrary to law, weight of evidence and opposed to the probabilities of the case



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2) The learned Judge ought to have seen that on 11.12.2003 the plaintiffs, defendants 5 to 7 have executed a power of attorney in favour of the fourth defendant and the said documents have been validly executed and based on the said power of attorney the fourth defendant has sold the properties in question and they cannot be impeached except under extraordinary circumstances

3) The Court below failed to see that two different power of attorneys were executed in favour of the fourth defendant one to deal with property of Rengasamy Pillai(Plaintiff's father) and the property got from Palaniappa Pillai(Plaintiff's uncle)

4) The learned Judge failed to see that since there is no proper pathway to reach the suit property there was no prospective buyers and since the plaintiffs were in dire need of money to construct house in their place and since the second plaintiff wanted money for her daughter's marriage the fourth defendant on their behalf sold the properties to the defendants 8 and 9 on 04.08.2004 for valid consideration and the sale amount has been paid to plaintiffs and the same has been acknowledged by them.

5) The cancellation of power of attorney subsequent to the sale by the fourth defendant cannot have any retrospective effect on the purchasers and the plaintiffs have apparently cancelled the power to make unlawful gain



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6)The court below failed to see that subsequent to the sale by the 4th defendant, the properties have been sold to various persons under different sale deeds and the plaintiffs are not in possession and enjoyment of the suit property.

7) The court below ought to have seen if really the plaintiffs are aggrieved they can file a suit for rendition of accounts only and not seek the relief of partition.

8)The court below further failed to note that the properties have been transferred to different hands and they are all under valid sale deeds. The plaintiffs have not sought for the relief of cancellation of sale deeds and hence the suit as framed is not maintainable.

9)The mere non-mention of issuance of receipts regarding payment of money by the 4th defendant to the plaintiffs in the written statement cannot be held against him.

10)The evidence adduced by D.W.3 and D.W.4 would only lend support to the case of the 4th defendant in as much as they have stated about the passing of consideration under Ex.B12 and Ex.B13 and the mere non-mentioning of the year in their deposition cannot be held against the contention of 4th defendant.

11)The reasoning contained in para 24 of the judgement of



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Trial Court – regarding the binding nature of the Power of Attorney is erroneous and unsustainable.

12) The court below failed to see that the real question to be decided is whether the plaintiffs are entitled to a decree for partition after their power agent has sold the property to third parties based on the power, the subsequent cancellation of power cannot bind the purchasers and if at all the plaintiffs can only sue the 4th defendant for rendition of accounts.

13) The court below ought to have accepted the evidence adduced on the said of the defendants as cogent, convincing and rejected the evidence adduced on the side of plaintiffs as vague and contradictory

Grounds of Appeal in A.S(MD) No. 104 of 2023

1) The decree and judgement of the trial court is illegal, against law, weight of evidence and probabilities of the case.

2) The Trial Court mislead the pleadings and evidence of the parties.

3) The Trial Court failed to hold that this appellant/defendant as transactions of sale with 4th defendant is bonafide and to be protected under law.

4) The trial court ought to have held that the suit for the partition is not maintainable in view of sale of properties under



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Ex.A3 and A4

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5) The finding of the trial court that since the amount of plaintiffs share of sale consideration price amount in Ex.A3 and A4 was not given and Ex.B12 and B13 sale receipts were created and forged and not proved by the 4th defendant and Ex.A3 and A4 was liable to be declared as invalid document, is illegal and not correct.

6) The lower court failed to hold that suit for accounts only to be filed against the 4th defendants even after the averments in the plaint gave cause of action for the plaintiffs.

7) The lower court ought to have dismissed the suit on the ground that the non impleading of Valarmathi in the suit who was the subsequent purchaser on 06.10.2005 and obtained decree in O.S.No.2 of 2005 on the file of the Subordinate Judge, Dindugul.

8)The finding of the lower court that the settlement conciliation in the Lok Adalath at Palani and final Decree passed on the basis in Palani Sub Court is invalid and will not affect the plaintiffs claim in para 24 of it's judgement is not sustainable under law.

9) The trial court ought to have held that the suit is speculative in nature since after the transaction, the alienees improved the land and the value of the land becomes high.

10) The lower court passed the decree and judgement on



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presumptions and assumptions.

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11.Since these appeals are arising out of the same judgment, this Court heard both sides and passed common judgments.

12.The learned counsel appearing for the appellant would contend that the plaintiff has filed the suit for partition and separate possession and declaration of sale deed executed by the fourth defendants in favour of the eighth and ninth defendants are not binding upon the plaintiff. However the plaintiff suppressed the material facts that they already executed power deed in favour of the fourth defendant for sale of property. Based on the power deed the fourth defendant sold the properties to the defendants 8 and 9. The defendants 5 to 7 also executed power deed in favour of the fourth defendant and thereby executed sale deed to the eighth and ninth defendants. On the side of the defendants they have examined D.W.1 to D.W.5 and marked Exhibits B.1 to B.13. The trial Court failed to consider the documents marked by the defendants. The trial Court failed to consider Ex.B.2 and B13 receipts given by the plaintiff in favour of the fourth defendant for the payment received by them. The other defendants did not question the power given by



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them to the fourth defendant and the plaintiff alone question the power. The defendants 5 to 7 have not examined any witnesses any witnesses and the trial Court failed to consider the above said aspects. P.W.2 also admitted the execution of power deed for the marriage expenses of the plaintiff.

13. The learned counsel further argued that The defendants also examined attesting witness of B.12 and B.13 as D.W.4 but the said evidence has not been considered by the trial Court. The plaintiffs have also not denied the receipt of sale amount and they not even suggested to any questions to D.W.3 and A4 in respect of sale consideration. The trial Court failed to consider the admission made by P.W.1 that they executed power deed and one Chellamuthu and Kalidas attested the said power deed. The trial Court failed to consider that the power deed was cancelled and only after two years from the date of execution of sale deed in favour of the eighth and ninth defendants. The trial Court also failed to consider that the suit is bad for non joinder of necessary parties since the defendants 8 and 9 conveyed the property to several persons. The trial court failed to consider the same and erroneously decreed the suit, therefore the judgment and decree passed by the trial Court is liable to be set aside. Further the learned counsel appearing for the



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appellant relied the judgment in the case of **Radhabai .vs Arunagiri and others** reported in **2008(2)T.N.C.J.187(Mad)** and **Karuppathal and another .vs. P.Ponnusamy(deceased) and others** reported in **AIR 2021 Madras 200**.

14. The learned counsel appearing for the respondents 1 and 2/plaintiffs would contend that originally the suit properties belongs to the deceased Rengasamy Pillai and his brother Palanisamy. The said Palanisamy Pillai died without marriage and also during his life time he executed registered settlement deed dated 30.07.1996 in favour his elder brothers sons and daughters who are plaintiff and the defendants 1,2,5,6 and 7. The said settlement deed is not at all valid since there was no separate possession and enjoyment between the Palanisamy Pillai and Rengasamy Pillai. After the demise of Palanisamy Pillai the entire property belongs to the Rengasamy Pillai, thereby the plaintiff and the defendant are entitled to 1/9 share of the suit properties. On 11.12.2003 the plaintiff and the defendants 5 to 7 executed registered power deed in favour of the fourth defendant. In the power deed property of deceased Palanisamy Pillai and settlement deed was also mentioned. Since the defendants denied the settled deed the power deed by the plaintiff are not valid. The sale deed



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dated 04.08.2004 in favour of the eighth defendant is without proper consideration and the power agent failed to maintain proper accounts to his principal. The sale of property is not intimated to the plaintiff. The receipts/Exs.B.12 and B.13 are not genuine and the same have not been proved in accordance with law. Since the sale deed executed for consideration the sale itself is void.

15.The trial Court also after considering the evidence adduced on both sides correctly held that sale deeds are sham and nominal and the same are not binding upon the plaintiff. The plaintiffs are entitled to 2/9 share over the suit properties, therefore the appeal is liable to be dismissed. The learned counsel appearing for the respondents relied the judgement in the case of ***Ramathal and others .vs. K.Rajamni(dead)through Lrs and another in Civil Appeal No.8830 of 2012*** and ***Kewal Krishnan .vs. Rajesh Kumar and Ors etc in Civil Appeal Nos.2033-2036 of 2016.***

16. This Court has heard both sides and upon hearing the both sides and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:

1) Whether the plaintiff and the defendants 5 to 7 have executed power deeds in favour of the fourth defendant?



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2) Whether the sale deed executed in favour of the defendants 8 and 9 are sham and nominal?

3)Whether the plaintiff is entitled to relief of declaration in respect of the sale deed executed in favour of defendants 8 and 9?

4)Whether the plaintiffs are entitled to the relief of partition in respect of 2/5 share as alleged in the plaint?

5)Whether the suit is bad for non-joinder of necessary parties?

6) Whether the judgement and decree of the trial Court are sustainable in law and on facts?

7) Whether the appeal is liable to be allowed or not?

8) To what relief the appellants are entitled to?

Point No.1

17.The plaintiffs have filed the suit for partition and declaration of sale deeds executed by the fourth defendant in favour of the eighth and ninth defendants are not binding on them. According to the plaintiffs the suit properties are undivided joint family properties of the plaintiffs and the defendants and they are under the joint possession and enjoyment of the suit properties. According to the fourth defendant the plaintiffs and the defendants 5 to 7 have executed power of attorney deed and based on the power of attorney deed he executed sale deed in favour of the defendants 8



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and 9. The plaintiff admitted the execution of power deed and the said power deed is only to manage the properties and not for sale. In this context P.W.1 in her cross examination stated that the plaintiffs and the defendants 5 to 7 in order to manage and sell the properties they executed power deed in favour of the fourth defendant and based on the power deed the fourth defendant sold the properties to the defendants 8 and 9 and the plaintiffs have not filed any suit for rendition of accounts, therefore from the evidence of P.W.1 it reveals that they executed power deed in favour of the fourth defendant to manage and sell the suit properties.

18. Further P.W.1 admitted that 5 முதல் 7 பிரதிவாதிகள் சொத்தை பராமரிப்பதற்காகவும் விற்பனை செய்யவும் 4ம் பிரதிவாதிக்கு பவர் பத்திரம் எழுதிக் கொடுத்தார்கள். நாங்கள் கொடுத்த அதிகாரத்தின் பெயரில் 4ம் பிரதிவாதி 8,9ம் பிரதிவாதிகளுக்கு கிரயம் செய்து கொடுத்துள்ளார். நாங்கள் கொடுத்த பவர் பத்திரத்தின்படி 4ம் பிரதிவாதி விற்றுவிட்டதால் அதற்கு கணக்கு கேட்டு வழக்கு எதுவும் போடவில்லை பாகம் கேட்டுத்தான் வழக்கு போட்டுள்ளேன். நேரில் பணம் கொடுக்கும்படி கேட்டேன். கிரயம் செய்து பின்புதான் நாங்கள் கொடுத்த அதிகாரத்தை 2006ல் ரத்து செய்தோம். Therefore from the above evidence it is clear that the fourth defendant is brother of the plaintiff and she and the defendants 5 to 7 had executed power deeds/Ex.A.1 and A2. Further she admitted in



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the cross examination that Selvamuthu who is husband of one of the sister Rajeswari and husband of fifth defendant Kalidass are attesting witness in the above said power deeds and also she admitted that after execution of power deed she received a sum of Rs.1,00,000/-and put her thumb impression in the document and also obtained signature of the second plaintiff. Therefore from the evidence of P.W.1 it reveals that she and the second plaintiff executed power deed in favour of the fourth defendant to sell the properties. Moreover the said power deeds have been marked as Ex.A. 1and A2. Ex..A.1 copy of power deed executed by the first plaintiff and defendants 5 to7 in favour of the fourth defendant. Ex.A2 is the copy of the power deed executed by the first plaintiff and the defendants 5 to 7 in favour of the fourth defendant.

19.On careful perusal of the above said power deeds they revealed that there is a recital in the power deed in respect of execution of sale. However in the last line of the power deed there is mention about the fourth defendant was not authorized to present the document signed by the executors,i.e., principal . Therefore there is express power given by the plaintiff to the fourth defendant to execute sale deed but the recital revealed that they are not authorized to present the paper in which the principals signed. It



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does not mean the fourth defendant has no power to execute sale deed and only when the principals signed in any documents those documents alone cannot be produced for registration through power agent. Similarly in Ex.A2 also the same recitals recited in the documents. Therefore the plaintiffs and the defendants 5 to 7 executed power deed in favour of the fourth defendant to sell the properties.

20. The plaintiffs also executed cancellation of power deed through document dated 10.03.2006 thereby they admitted the execution of power deed dated 11.12.2003. Had the plaintiff not executed any power deed to sell the property then why they have cancelled the power deed dated 10.03.2006 has to be explained by the plaintiffs. There is no proper explanation for the same, therefore the conduct of the plaintiffs who executed the document/ Ex.A5/cancellation deed proves the execution of earlier power deed dated 11.12.2003. At this juncture the learned counsel appearing for the appellant has relied the judgment in the ***Karuppathal and another .vs. P.Ponnusamy(deceased) and others*** reported in ***AIR 2021 Madras 200***, wherein this Court has held as follows:

12. By filing the partition suit, the plaintiffs disown their own document namely the release deed Ex.A~4 duly registered and



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presumed to be an official act performed regularly. If the terms of contract reduced into writing and duly registered is sought to be excluded by oral evidence, the burden is on the plaintiffs to adduce evidence sufficient to exclude the written evidence, as per section 92 of the Evidence Act.

Section 91:~

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.:~ When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Section 92:~

92. Exclusion of evidence of oral agreement:~ When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso(1):~ Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution,



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want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law:

13. Section 91 and section 92 proviso (i) of Indian Evidence Act, clearly lay down the rule when a written evidence could be excluded by oral evidence is permissible. In this case, the due execution of release deed Ex.A~3 is proved through the document and through the attesting witness D.W~2. To disprove it, the plaintiffs have not placed sufficient evidence to establish same was executed by misleading them and the consideration mentioned in the release deed not paid to them.

21. On careful perusal of the above said judgment it is clear that if the terms of a contract reduced into writing and duly registered is sought to be excluded by oral evidence, the burden is on the plaintiffs to adduce evidence sufficient to exclude the written evidence as per section 92 of Evidence Act. In the case on hand also the plaintiffs and the defendants have executed power deeds in favour of the fourth defendant through registered deeds and the same plaintiffs filed suit for declaration in respect of the sale deeds executed by fourth defendant based on the power deed executed by the plaintiffs in favour of the defendants 8 and 9. But the plaintiffs failed to prove their case. Therefore in view of the above said discussions this Court is of the opinion that the plaintiffs and the defendants 5 to 7 had executed power deed in favour of the fourth



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defendants in respect of the suit property.

Point No.2

22. According to the plaintiffs they have not given any power to sell the property and thereby the sale deed executed by the fourth defendant in favour of the eighth and ninth defendants are not binding upon them. The fourth defendant who is the power agent of the plaintiff has already sold the property to the eighth and ninth defendant and the sale deeds have also been marked as Ex.A3 and A4. The eighth and ninth defendants have not entered into the witness box and they have not produced any documents in their favour. However the plaintiffs filed the suit for declaration of about those documents and she also filed copies of documents. There is no dispute that the fourth defendant executed the said documents in favour of the 8th and 9th defendant. The plaintiffs have also admitted the execution of document but their only contention is that those documents are not binding upon them since power was already cancelled on 10.03.2006. The alleged sale deeds were executed on 04.08.2004 but the cancellation of power deed is only on 10.03.2006.

23. Already this Court has decided in the previous point that power deeds dated 11.12.2003. Ex.A.1 and A2 were executed by the



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plaintiffs and defendants 5 to 7 in favour of the fourth defendant and thereby he executed sale deed based on the above power deed. Though the defendannts 8 and 9 have not examined any witnesses the plaintiff admitted the execution of the sale deed based on power deed, thereby the defendants proved that the sale deed in the name of the defendant 8 and 9 in their favour by the fourth defendant on behalf of the plaintiffs the defendants 5 to 7 in respect of suit property. Therefore the plaintiffs failed to prove that the sale deeds executed in favour of the defendants 8 and 9 are sham and nominal. Thus the point is answered.

Point Nos.3 and 4

24. The plaintiffs have sought for the relief of declarton in respect of sale deeds which was executed by the fourth defendants in favour of the defendants 8 and 9. Already this Court has decided that the sale deeds executed by the fourth defendant infavour of the defendant 8 and 9 are not sham and nominal. The contention of the plaintiffs is that they have not received any sale consideration and thereby the sale by the fourth defendant in favour of the defendants 8 and 9 are null and void. According to the plaintiff they have not received sale consideration and the alleged sale are not supported by any consideration, therefore the above sale deeds are void.



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According to the fourth defendant he executed sale deed and he paid the sale price to the plaintiff and to that effect they also marked Ex.B.12 and 13. Ex.Bs.12 is the discharge receipt executed by the first plaintiff and the Ex.B.13 is the discharge receipt executed by the second plaintiff. On careful perusal of the above said exhibits they revealed that on 01.10.2004 both the plaintiffs have received a sum of Rs.1,60,000/- each towards sale price and said receipts were attested by the witness and the attesting witnesses have been examined as D.W.3 and D.W.4 and they categorically deposed about the amount received by the plaintiffs.

25. In this context, P.W.1 also admitted in her evidence that பவர் பத்திரம் கொடுத்து ஒரு வருடம் கழித்து என்னிடம் பணம் வாங்கி கொண்டு போங்கள் எங்களை கூப்பிட்டு கைரேகை வாங்கினார்கள் . என்னிடம் காட்டப்படும் அந்த ரசீது தான் அந்தச் சமயத்தில் கொடுக்கப்பட்ட ரசீதா என்று தெரியாது. அந்த கையெழுத்து வாங்கப்பட்ட ரசீதுக்காக பணம் எதுவும் வாங்கவில்லை. Therefore the P.W.1 admitted that one year after execution of power deed the fourth defendant obtained her thumb impression and signature of the second defendant by saying that to receive one lakh but they have not received any money from the fourth defendant. But D.W.3 and D.W.4 who are attesting witnesses of Ex.B.12 & 13 respectively have categorically deposed about the



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receipt of amount received by the plaintiffs therefore the defendants have proved that the fourth defendant paid the sale price to the plaintiffs. The learned counsel appearing for the appellant has relied the judgment in the case of **Radhabai .vs Arunagiri and others** reported in **2008(2)T.N.C.J.187(Mad)** . On a careful perusal of the said judgment it is clear that as per Section 31 of the Specific Relief Act cancellation of registered document, Cancellation of registered document, presumption of valid execution of registered document, existence of Onus of rebuttal of the presumption, held, is on person who leads evidence to rebut the presumption under Section 144 of Evidence Act. In the case on hand also the plaintiffs filed the suit for relief of declaration of registered sale deed executed in favour of the defendants 8 and 9 by the fourth defendant as power agent of the plaintiffs and the defendants 5 to 7. Therefore there is a presumption of valid execution and onus of rebuttable presumption is on the plaintiffs but they have not adduced sufficient evidence to rebut the presumption. The learned counsel for the respondents/ plaintiffs in this context relied on the judgment in the case **Kewal Krishnan .vs. Rajesh Kumar and Ors etc in Civil Appeal Nos.6899-6992 of 2021**, wherein the Hon'ble Apex Court has held that for sale deed in respect of immovable property is executed without payment of price and it



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does not provide payment for price at a future date it is not a sale in the eye of law and it has no legal effect. Therefore the said sale will be void and it will not effect the transfer of immovable property. Further relied the judgment in ***Ramathal and others .vs. K.Rajamni(dead)through Lrs and another in Civil Appeal No. 8830 of 2012.*** On careful perusal of the said judgment it is clear that if the document was obtained by fraudulent mis representation as to character of the document it is void and the document was obtained by fraudulent misrepresentation as to the contents of the document it is voidable here it is not the case of the plaintiffs that power deed was obtained by fraudulent misrepresentation.

26. In the case on hand the sale deed was executed by the fourth defendant on behalf of his principal and he is the competent person to speak about the consideration of sale and he categorically stated that the receipt of the amount from the defendants 8 and 9 and paid the same to the plaintiffs. Even assuming that the amount was not settled to the plaintiffs the remedy to the plaintiffs is only to seek prayer for recovery of money from the fourth defendant and not who obtained the sale deed, therefore the plaintiffs failed to prove their contention. Per contra the defendants proved that the sale price was paid to the plaintiff. In this case the plaintiff has sought for



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declaration of documents as null and void on the ground that they have not received sale price but already this Court has decided in the previous point that the plaintiffs have executed power deed in favour of the fourth defendant and he also sold the property to the defendants 8 and 9, therefore the competent person to speak about the sake is fourth defendant and he himself admitted the receipt of amount from the defendants 8 and 9 and also he paid the amount to the plaintiffs. Therefore the plaintiffs are not entitled to the relief of declaration in respect of Ex.A.3 and A4 sale deeds in favour of the defendants 8 and 9.

27. The plaintiffs have sought for partition of 2/9 share over the property. Already this Court decided in the previous point that the plaintiffs have executed power of attorney in favour of the fourth defendant and the fourth defendant in turn sold the property to the defendants 8 and 9 and there is no property available for partition after the sale of the properties through sale deed dated 04.08.2004. Once the properties were sold by the plaintiffs through power agent they are not entitled to any share over the property after the sale dated 04.08.2004. The suit is filed in the year 2006 i.e., after two years from the date of sale of the suit property. Therefore the plaintiffs are not entitled to any share over the property. Thus the



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points are answered.

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Point No.5

28. The defendants have taken a plea that the property was sold to one Valarmathi and the said Valarmathi was not added as party to the proceedings. It is admitted fact that the said fourth defendant sold some portion of the property to Valarmathi and the said Valarmathi was not added as party. Further the defendants 8 and 9 after obtaining sale deed they executed so many sale deeds in favour of the third parties but those persons names were not mentioned by the parties. However the said Valarmathi is not added as party, thereby the suit is bad for non joinder of necessary parties. Thus the point is answered

Point No. 6

29. Before the trial Court the plaintiffs have sought for the relief of partition and declaration of sale deeds . The trial Court also decreed the suit . The trial court has framed proper issues and while answering the issues the trial Court held that the sale deeds are not valid and the plaintiffs are entitled to 2/9share over the suit property. The trial Court in the judgment held that the power deed were executed in favour of the fourth defendant for name shake and the power deed was executed in respect of undivided share and they are not binding upon the plaintiff. The above said finding of the



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trial Court is erroneous and there is no bar to execute power deed in respect of undivided share and particularly all the share holders have executed power deed in favour of the fourth defendant and the fourth defendant also sold the properties to the defendants 8 and 9, therefore the said finding is liable to be set aside. Further the trial Court in the judgment discussed that the plaintiffs are not entitled to 2/9 share over the suit properties since the power deed executed was not acted upon and also declared that the sale deeds in the name of the defendants 8 and 9 are sham and nominal and not binding upon the plaintiff. Further the trial Court held that the said Valarmathi has filed suit for partition and the same was not binding upon the plaintiff and thereby she is not a proper and necessary party to the suit. The above said findings are erroneous findings and the trial Court failed to consider that the plaintiffs themselves admitted the execution of power deed in favour of the 4th defendants and the fourth defendant also sold the properties to the defendants 8 and 9, thereby they sought for the relief of declaration in respect of those sale deeds and once the fourth defendant sold the property as power agent of the plaintiff to one Valarmathi she is also proper and necessary party to the suit. The above said aspects have not been considered by the trial Court, thereby the decree and judgment of the trial Court are unsustainable. In view of the above said



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discussions this Court is of the opinion that the judgment and decree of the trial Court are liable to be set aside.

30. In the result, this appeal suit is allowed and the judgment and decree passed in O.S.No.65 of 2007 on the file of the Additional District Judge, Fast Track Court, Dindigul dated 24.03.2010 are set aside and the suit is dismissed. No cost.

27.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Additional District Judge, Fast Track Court, Dindigul
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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27.03.2024