



A.S.(MD)No.71 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 26.02.2024

Delivered On : **21.05.2024**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)No.71 of 2023

and

C.M.P.(MD)Nos.4113 and 4115 of 2023

A.M.S.Syed Aameena Beevi (Died)

- 1.ThaiKa Syed Mohaideen Jaffar Ribai
- 2.ThaiKa Syed Mohaideen Sathak Jalal
- 3.Ayisha Niyas
- 4.Sabinathu Sulaiha
- 5.Kabir Aribu
- 6.Hathijathu Sinas

... Appellants

*(Cause title is accepted vide Court
order dated 28.11.2022 made in
C.M.P.(MD)No.11412 of 2022 in
A.S.(MD)No.SR65106 of 2022 in KMSJ)*

Vs.

- 1.M.Hameed Manzoor (Died)
- 2.S.Innocent Raj

Represented through his Power Agent ... Respondents
*(Memo dated 20.03.2023, filed on 20.03.2023
in USR No.9949 is recorded to the effect that R1
died and there is no necessity to implead his Lrs on
record, as the 2nd respondent/LR of the deceased R1
stepped into the shoes of the deceased R1 vide
Court order dated 21.08.2023 made in
A.S.(MD)No.71 of 2023 by KMSJ)*



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PRAYER : Appeal Suit is filed under Section 96 of Civil Procedure code, to set aside the decree and judgment dated 23.12.2021 passed in the suit in O.S.no.35 of 2018 on the file of the Additional District Court, Ramanathapuram and decreeing the suit as prayed for.

For Appellants : Mr.J.Bharathan
For Respondents : Mr.A.Arumugam

JUDGMENT

This Appeal Suit has been preferred as against the judgment and decree passed in suit in O.S.No.35 of 2018 on the file of the learned Additional District Judge, Ramanathapuram, dated 23.12.2021.

Plaint averments:-

2.The plaint schedule consists of two items of properties and the same originally belonged to one Thiru.K.T.M.Abdul Qadar Sahib. The said ThiruK.T.M. Abdul Qadar Sahib executed a sale deed bearing document No. 125 of 1989 of Keelakarai Sub-Registry dated 27.01.1989 in favour of the plaintiff, namely, Tmt.A.M.S.Syed Ameena Beevi and handed over the possession and enjoyment of the plaint schedule properties. From the date of sale, that is, from 27.01.1989, the first plaintiff, namely, Tmt.A.M.S.Syed Ameena Beevi had been exclusively in possession, enjoyment and title over the plaint schedule properties to the knowledge of everyone. The first plaintiff has put up a construction of a two storeyed building in the plaint schedule



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properties and had rented the said building to various tenants. The first defendant is one of the distant relative of the first plaintiff. The first defendant, namely, Thiru.M.Hameed Manzoor, had fraudulently created and forged the General Power of Attorney dated 22.09.2014 registered at Keelakarai Sub-Registry bearing document No.2618 of 2014. With the sole intention of grabbing the plaint schedule properties illegally, the first respondent has created the said power of attorney. Making use of the said fraudulently created and forged power of attorney bearing document No.2618 of 2014, the first defendant had executed a sale deed in favour of the second defendant vide sale deed bearing document No.2640 of 2014 of Keelakarai Sub-Registry on 26.09.2014. Since the said general power of attorney bearing document No. 2618 of 2014 of Keelakarai Sub-Registry has been fraudulently created and forged by the first defendant, as if it had been executed by the first plaintiff, the sale deed executed in favour of the second defendant is neither legally sustainable nor would bind upon the first plaintiff's right over the plaint schedule properties. Knowing that the said power of attorney has been fraudulently created, the second respondent had deliberately and wantonly connived with the first defendant for the purpose of executing the sale deed in his favour. The first plaintiff's son, namely, one Thiru.ThaiKa Syed Mohaideen Sathak Jalal, had lodged a complaint before the Anti Land Grabbing Special



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Cell, Ramanathapuram, with respect to the fraudulent power of attorney created by the first defendant. A crime in FIR No.49 of 2014 came to be registered as against the first and second defendants and the attesting witnesses of the fraudulent power of attorney dated 22.09.2014 under Sections 419, 420, 423, 465, 468, 471, 294(b) and 504(i) of IPC.

3.The first plaintiff had availed an information under the Right to Information Act, 2005 and had received a report of the District Registrar, Ramanathapuram District, submitted before the Inspector General of Registration, Chennai, with respect to the execution of the alleged fraudulent and concocted power of attorney bearing document No.2618 of 2014 dated 22.09.2014. The said report would reveal that the first plaintiff had never ever turned to the Sub-Registration Office, Keelakarai, for the purpose of registering the aforesaid fraudulent power of attorney, instead her passport size photo with the consent and assistance of the Sub-Registrar, Keelakarai, has been captured in the web camera and also the first plaintiff's thumb impression has been forged in the aforesaid power of attorney. During the pendency of the said criminal case which was registered as against the first and second defendant, the Anti Land Grabbing Special Police has issued a notice dated 12.03.2018 requiring the first plaintiff to get an order from the Madras High Court for the

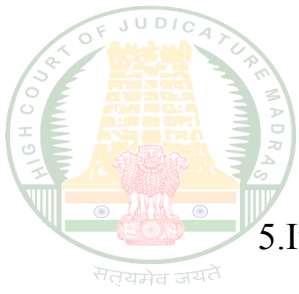


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purpose of filing final report as against the defendants. While so, on 01.04.2018, the second defendant had demanded rent from the tenants who occupied the premises in the plaint schedule properties, thereby, disturbing the peaceful possession and enjoyment of the first plaintiff over the plaint schedule property. That apart, from 01.06.2018, the defendants have been taking efforts to alienate the plaint schedule properties to third parties. During the pendency of this suit, the plaintiff Tmt.A.M.S.Syed Ameena Beevi died on 27.12.2018. Her husband Thiru.T.M.S.Mohaideen Abdul Khadar pre-deceased the first plaintiff. Thereafter, the children born to the first plaintiff Tmt.A.M.S.Syed Ameena Beevi have been impleaded as plaintiffs 2 to 7 as the legal heirs of the first plaintiff. Hence, this suit for relief of declaration of title of the plaintiffs over the plaint schedule properties, consequential injunction, permanent injunction against the defendants not to alienate the plaint schedule properties and to declare that the sale deed dated 26.09.2014 executed by the first defendant in favor of the second defendant as null and void.

4.The first defendant has been set exparte by the learned Trial Court.

Brief contention of the written statement filed by the second defendant:-



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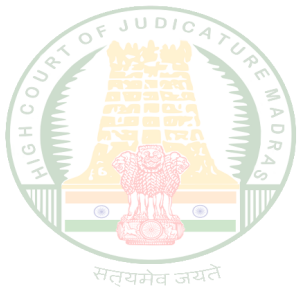
5.It is admitted that the first plaintiff is the original owner in possession and title over the plaint schedule properties. However, it is denied that the first plaintiff had been in exclusive possession and enjoyment over the same from 27.01.1989. The second defendant is absolutely in possession and enjoyment over the plaint schedule properties from the date of sale, that is, from 26.09.2014. It is incorrect to state that the plaintiffs have constructed houses in the plaint schedule properties and have rented the same to various tenants. Neither the first plaintiff nor the other plaintiffs have ever given any rent to the second defendant at any point of time.

6.The contention of the first plaintiff that the first defendant had fraudulently created and has forged a power of attorney dated 22.09.2014 with respect to the plaint schedule properties is denied. It is also denied that the first defendant had created a fraudulent power of attorney as if the same has been executed by the first plaintiff. The first defendant is the power holder of general power of attorney which has been legally executed by the first plaintiff in favor of the first defendant and only in the capacity of an authorized power holder, the first defendant had executed a sale deed with respect to the plaint schedule properties in favor of the second defendant. From the date of sale deed, the second defendant has been exclusively in possession enjoyment and title over



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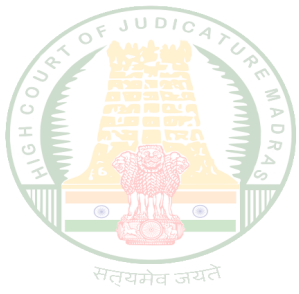
the plaintiff schedule properties and the second defendant has given the buildings situated in the plaintiff schedule properties for rent to various persons from whom the second defendant is receiving the rent from the various tenants and also the second defendant has been properly paying the electricity charges of the buildings situated in the plaintiff schedule properties. The allegation that the second defendant has purchased the plaintiff schedule properties from the first defendant by the strength of fraudulent and concocted power of attorney is strictly denied. Admitting the pendency of Crime No.49 of 2014 on the file of Anti Land Grabbing Special Cell, Ramanathapuram, it is further submitted that the first plaintiff had never lodged any complaint as against the alleged creation of the fraudulent power of attorney or the execution of the sale deed in favor of the second defendant dated 26.09.2014. In fact, the first plaintiff has given a complaint through her son, that is, the third plaintiff as against the defendants. Having known that the sale deed has been executed by the first defendant in favor of the second defendant as early as on 26.09.2014, after a lapse of more than 3 years, the first plaintiff has filed this suit belatedly and the same is hit by limitation. The second defendant do not have any direct or indirect connection with respect to the execution of the power of attorney in favor of the first defendant. To the knowledge of the second defendant, the first plaintiff had voluntarily executed a power of attorney in favor of the first defendant.



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7.The contention of the first plaintiff that the second defendant had threatened the tenants on 01.04.2018 who are residing in the premises at the plaint schedule property is denied as false. In fact, it is only those tenants who are let in the aforesaid premises on rent by the second defendant are occupying the plaint schedule premises as on date and hence, the question of threatening the tenants there at on 01.10.2014 will not arise. It is only the second respondent who has been receiving the rent from the date of sale deed in his favor. No power of attorney has been executed by the first plaintiff to one Thiru.Haja Aneez to file this suit. The said power of attorney has been fraudulently created in the name of Thiru.Haja Aneez, as if it has been executed by the first plaintiff and in fact, the first plaintiff was not in a conscious state of mind at the time of execution of the aforesaid power of attorney. The second defendant is exclusively in possession enjoyment and title over the plaint schedule properties and the contention of the first plaintiff that she has been in exclusive possession of the plaint schedule property is fully denied as false. The plaintiffs have no right over the plaint schedule properties by all means. The relief sought for is not maintainable and the suit is barred by limitation and the same is liable to be dismissed.



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8. On the basis of the pleadings of the plaintiffs and the defendants, the learned Trial Court framed seven issues on 07.07.2021 and one additional issue on 16.12.2021 and the same is extracted as follows:-

“1. Whether the plaintiff is the absolute owner in possession and enjoyment of suit properties?

2. Whether the plaintiff is entitled to get the relief of declaration and consequential injunction as prayed for?

3. Whether the sale deed dated 26.09.2014 executed by the first defendant in favour of 2nd defendant is liable to be declared as null and void?

4. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

5. Whether the plaintiff is entitled to get the relief of declaration of sale deed dated 26.09.2014 as null and void?

6. Whether this suit is barred by limitation as contended by the 2nd defendant?

7. To what other relief and cost, the plaintiff is entitled?”

Additional issue - *“1. Whether the power deed dated 22.09.2014 was not executed by the 1st plaintiff in favour of the 1st defendant and whether it was fraudulently created by the 1st defendant as alleged by the plaintiffs?”*

9. The learned Trial Court proceeded to decide issues Nos.1, 2 and 6 and additional issue one together. Six witnesses were examined on the side of the



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plaintiffs and 10 documents were marked as Exs.A1 to A10 through the plaintiffs. One witness was examined on the side of the defendants and 26 documents were marked as Exs.B1 to B26. The original power of attorney was marked as Court document as Ex.C1. Further another set of 19 documents were marked on the side of the plaintiffs as Exs.X1 to X19.

Decision of the learned trial court:-

Issues Nos.1,2,6 and additional issue No.1 as decided together by the learned Trial Court:-

10.Based on the pleadings of the rival parties, the arguments put forth by the respective parties, the evidence deposed on either side the various documents and the various judgments relied upon by either parties, the learned Trial Court dismissed the Suit filed by the plaintiffs as not maintainable on the basis of the following conclusions:-

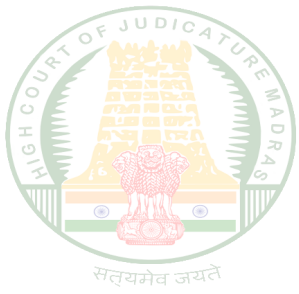
10.1.The learned Trial Court viewed that the first plaintiff must have specifically pleaded about the fraud and forgery committed in execution and registration of power deed in her absence at the Sub Registrar's office, Keelakarai. It is further observed that without any pleadings about fraud and forgery, no amount of evidence can be permitted. It was further concluded by the learned Trial Court that it is a well settled law that, no amount of evidence



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can be permitted without any pleadings and hence, the learned Trial Court

concluded that the evidence adduced by the plaintiffs in respect of fraud and forgery cannot be entertained and the same is not permissible in the facts and circumstances of this case. The learned Trial Court categorically observed that the first plaintiff never pleaded that she did not sign in the power deed and that she did not put her thumb impression in the power deed. It was further viewed by the learned Trial Court that if at all the first plaintiff had never executed the power deed, in that case, the plaintiffs would have taken steps before the commencement of the trial to compare the signatures and the thumb impressions found in the disputed power deed along with the signatures and thumb impressions in the admitted document by the handwriting expert and fingerprint expert to prove the fact that the signatures and the thumb impressions found in the disputed power deed does not belong to the first plaintiff Tmt.A.M.S.Syed Ameena Beevi. It is further categorically recorded by the learned Trial Court that the plaintiff's failure to take any steps for comparison of signatures and thumb impressions found in the power deed would clearly establish that, the power deed dated 22.09.2014 was executed by the first plaintiff Tmt.A.M.S.Syed Ameena Beevi in favor of the first defendant. It is further observed that it is a well settled law that the allegation of fraud and forgery must be proved by the person who raised the plea of fraud and forgery.



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10.2.The failure of the plaintiffs to seek any relief in this suit in respect of the power deed dated 22.09.2014 would take away their right to seek declaration relief to declare the sale deed dated 26.09.2014 executed by the first defendant on the basis of the power deed marked as Ex.A4 in favour of the second defendant as null and void. The plaintiffs ought to have filed a suit for cancellation of sale deed instead of filing the suit for declaration that the impugned sale deed as null and void and they ought to have paid the Court fees under Section 40 of Tamil Nadu Court Fee and Suit Valuation Act and not under Section 25A of the said Act.

10.3.The learned Trial Court categorically observed that the entire burden of proof rests upon the plaintiffs to prove the plea of fraud and forgery in execution of power deed dated 22.09.2014 by the first plaintiff Tmt.A.M.S.Syed Ameena Beevi through unassailable and impeccable oral and documentary evidence. The power deed marked as Ex.A4 dated 22.09.2014 was executed and registered at the Sub-Registrar Office, Keelakarai on the very same day on 22.09.2014. The first plaintiff Tmt.A.M.S.Syed Ameena Beevi did not take any legal action as against the registration of power deed dated



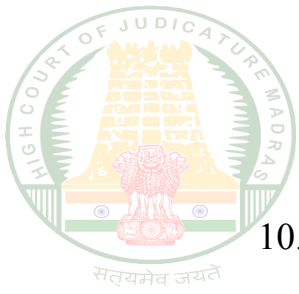
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22.09.2014 till date and she filed the suit after a lapse of 4 years on 22.11.2018.

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10.4.The learned Trial Court observed that, from the evidence of P.W.1, it is very clear that the date of knowledge of the power deed dated 22.09.2014 and the sale deed dated 26.09.2014 to the plaintiff was on 03.11.2014. Hence, the learned Trial Court viewed that the suit should have filed within the period of 3 years that is on or before 02.11.2017. But the suit was filed by the first plaintiff on 22.11.2018, which is beyond the period of 4 years and thereafter, held that the suit is barred by limitation.

10.5.The disciplinary proceedings initiated against the Sub-Registrar, Thiru.S.Pullani and the findings of the inquiry officer/the District Registrar (Audit), Madurai (North) and the Inspector General of Registration does not bind upon Civil Court. That apart, the said findings cannot be taken into consideration in this suit in respect of the allegation against the first defendant for the alleged fraudulent creation of power deed dated 22.09.2014. The plaintiffs must prove the allegation of involvement of fraud and forgery in execution and registration of power deed dated 22.09.2014 through oral and documentary evidence in this case.



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10.6. On perusal of Ex.A6 FIR, it can be found that the criminal case was registered against the Sub-Registrar, Thiru.S.Pullani in Crime No.49 of 2014 under Sections 149, 420, 423, 465, 468, 471, 294(b) and 506(ii) IPC on the file of Anti Land Grabbing Special Cell, Ramanathapuram. The learned Trial Court viewed that the registration of FIR as per Ex.A6 as against the said Sub-Registrar, Thiru.S.Pullani and the disciplinary proceeding initiated by the Inspector General of Registration against the Sub-Registrar Thiru.S.Pullani cannot be taken into consideration as a clinching, unassailable and impeccable evidence on the side of the plaintiffs in respect of non-execution and non-registration of power deed dated 22.09.2014 by the first plaintiff Tmt.A.M.S.Syed Ameena Beevi. Assailing the judgment and decree passed in O.S.No.35 of 2018 by the learned Additional District Judge, Ramanathapuram on 23.12.2021, this Appeal Suit came to be filed before this Court.

11. Submissions made by the learned counsel for the appellants/plaintiffs :-

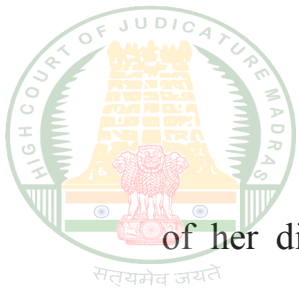
11.1. The learned counsel appearing for the appellant submitted that the plaintiffs are appellants in this case. The suit in O.S.No.35 of 2018 was one for declaration and consequential injunction. The relief sought for in the original suit was to declare the first plaintiff's title over the plaint schedule property and



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for grant of consequential injunction restraining the defendants or their men from interfering with the enjoyment of the plaint schedule properties by the plaintiffs. The third relief sought for in the original suit was for grant of permanent injunction to restrain the defendants and their men from creating any encumbrance over the plaint schedule property. The fourth relief sought for is that to declare the fraudulent sale deed bearing document No.2660 Keelakarai Sub Registration dated 26.09.2014 executed by the first defendant in favour of the second defendant as null and void.

11.2.Ex.A2 is the sale deed bearing document no.125/1989 of Keelakarai Sub Registrar dated 27.01.1989 in favour of the first plaintiff executed by Thiru.K.T.M.Abdul Kadar Sahib. By the strength of the said sale deed, the first plaintiff had been exclusively in title and possession over the plaint schedule properties. During the pendency of O.S.No.35 of 2018, the first plaintiff died on 27.12.2018, her husband Thiru.T.M.S.Abdul Mohideen Kathar pre-deceased the first plaintiff and she was survived by the plaintiffs 2 to 7, who were impleaded as per the order in I.A.No.65 of 2019 dated 07.11 2019. The first plaintiff had built two storeyed houses in the plaint schedule properties and had given the same for rent to various persons. While the first plaintiff was exclusively in possession and enjoyment of the plaint schedule properties, one



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of her distant relative, i.e., the first defendant, created a power of attorney fraudulently, as if the same has been executed by the first plaintiff on 22.09.2014 and has registered the same fraudulently before the Keelakarai Sub Registrar Office vide Power of Attorney bearing document No.2618/2014 with the sole intention of defrauding the first plaintiff and swindle the plaintiff schedule properties with the strength of the fraudulent power of attorney. The said fraudulent power of attorney created by the first defendant as allegedly executed by the mother i.e., first plaintiff was registered at 07.00 p.m., on 22.09.2014 and the same has been marked as Ex.A4.

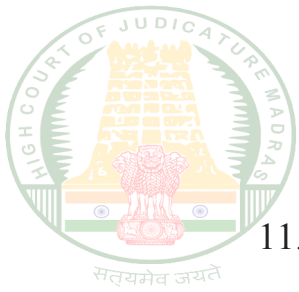
11.3. Thereafter, within four days from the date of execution of the forged/fraudulently created power of attorney, the first defendant created a sale deed bearing document No.2640/2014 in Keelakarai Sub Registrar Office in favour the second defendant on 26.09.2014 with respect to the plaintiff schedule properties and the same has been marked as Ex.A5. During the course of the original suit, the first defendant was set exparte by the learned Trial Court. The second respondent had appeared before the learned Trial Court through his power of attorney namely, Thiru.Ramesh. Neither the first defendant nor the second defendant deposed their evidences as defendants side witnesses. On the other hand, the power of attorney of the second defendant one Thiru.Ramesh



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deposed his evidence as D.W.1. No evidence in terms of Sections 102 and 104 of Evidence Act was given by the defendants. The learned Trial Court dismissed the suit on three grounds, mainly that, there is no specific pleadings with respect to the alleged fraudulent execution of power of attorney by the first defendant as executed by the first plaintiff. The second ground as observed by the learned trial Court is that non execution of forged power of attorney was not proved and the third is that the suit is bared by limitation. However, the learned trial Court fatally erred by observing that there were no pleadings as to the fraud committed by the first defendant when there are specific pleadings as to the same in paragraph nos.3 and 4 of the plaint.

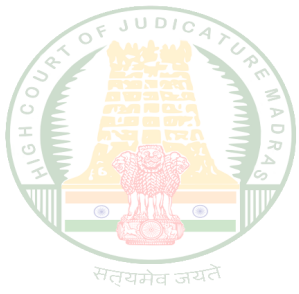
11.4.As soon as the factum of creation of fraudulent power of attorney as allegedly executed by the first plaintiff, came to the knowledge of the first plaintiff's son Thiru.ThaiKa Syed Mohaideen Sathak Jalal i.e., the third plaintiff, he lodged a complaint against the defendants 1 and 2 on 20.11.2020 before the Anti Land Grabbing Section of Police at Ramanathapuram District. On the basis of which, on 20.11.2014, Crime No.49 of 2014 was registered as against the defendants under Sections 419, 420, 423, 465, 468, 471, 294(b) and 504(i) of IPC and the said certified copy of the said FIR was marked as Ex.A6.



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11.5. That apart, a complaint has been lodged before the Inspector General of Registration Department, on the basis of which, a departmental enquiry was also initiated as against the said Sub Registrar, who facilitated the first defendant in executing the fraudulent power of attorney dated 22.09.2014 with respect to the plaint schedule properties as allegedly executed in his favour by the first plaintiff by capturing a passport size photo of the first plaintiff before the web camera of the Registration office. The details of the enquiry report as received under RTI Act is marked as Ex.A7.

11.6. That apart, the learned Trial Court had observed in the impugned judgment that no steps have been taken to compare the thumb impression of the first plaintiff in the disputed document despite the plaintiffs having filed 1.A.Nos.209 of 2021 and 210 of 2021 in O.S.No.35 of 2018 to compare the thumb impression, which was dismissed on merits by the learned Trial Court. He further submitted that it is pertinent to mention that by the order of the Inspector General of Registration, disciplinary action has been initiated as against the District Registrar namely Thiru.S.Pullani against whom an order of dismissal has been issued by the department as the consequence to the disciplinary proceedings in relation to the subject matter and the said order has been marked as Ex.X18 by the learned Trial Court.



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11.7.The defendants by all means never took any steps to prove the fraudulent power of attorney before the learned Trial Court. It is obvious that fraud vitiates everything and in view of the same, the point of limitation will not loom large against the plaintiffs, when the plaintiffs have diligently initiated action as against the fraudulent activities of the first defendant for having created a forged power of attorney as allegedly executed by the first plaintiff in favour of the first defendant, by lodging a criminal complaint before the Anti Land Grabbing Special Cell and also initiating a complaint seeking to initiate disciplinary action as against the erring District Registrar who had facilitated in execution of a fraudulent power of attorney by the first defendant. In view of the same, the ground of limitation invoked by the learned Trial Court has no legs to stand and that apart, the mode of framing a negative additional issue by the learned Trial Court is patently erroneous and the findings of the Trial Court on such a negative issue could not be sustained.

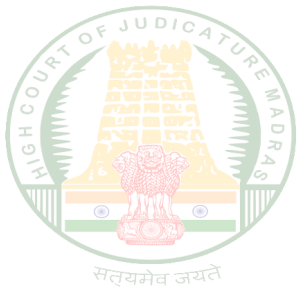
11.8.That apart, the learned Trial Court after summarising the contentions of both the parties in paragraph no.11 of its judgment has erroneously observed that the enquiry report of the District Registrar to the Inspector General of Registration dated 28.11.2016, which is marked as Ex.A7,



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regarding registration of the deed of power of attorney dated 22.09.2014 i.e.,

Ex.A4 in a fraudulent manner is not a sufficient proof and the fraud must be independently proved and that the deceased first plaintiff did not file any complaint to the Registration Department and that the disciplinary proceedings and enquiry against the Sub Registrar was not initiated on the basis of any complaint by the deceased first plaintiff. Obviously the lower Court omitted to note that the enquiry proceedings in respect of registration of deed of power of attorney dated 22.09.2014 came to be held in furtherance of the request of police in furtherance of the First Information Report Ex.A6 as given by the son of the deceased first plaintiff. Having dismissed the I.A.Nos.209 of 2021 and 210 of 2021, which were filed by the plaintiffs for the purpose of comparison of the forged signature of the first plaintiff in the fraudulent power of attorney Ex.A4 by forensic experts, the Trial Court ought not to have held that the plaintiffs had failed to diligently take steps to prove that the alleged signature of the first plaintiff in the alleged fraudulent Ex.A4 is not the signature of the first plaintiff scientifically. The learned Trial Court thus committed a serious error by preventing the alleged left thumb impressions of the deceased first plaintiff from being compared by the forensic expert, thereby blocking a material piece of evidence for proving the case of the plaintiffs.



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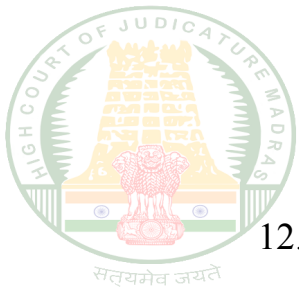
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11.9. The learned Trial Court has erred by assuming that the Court fees paid under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, is incorrect, since cancellation or setting aside the sale deed will arise only if executant had been a co-nominate party to the sale deed. However, in the case in hand, the deceased first plaintiff cannot be deemed to be an executant as the deed of power of attorney Ex.A4 dated 22.09.2014 itself is void and is under dispute. Hence, the observation of the Trial Court that the suit is not maintainable due to the absence of a prayer for challenging the deed of power of attorney Ex.A4 and for setting aside the sale deed dated 26.09.2014 i.e., Ex.A5 is absolutely perverse and unsustainable. The Trial Court fatally failed to observe that the deceased first plaintiff neither appeared nor attended the execution or registration of the deed of power of attorney Ex.A4 dated 22.09.2014, which has been substantiated by oral and documentary evidence namely enquiry report of the District Registrar based on the scientific investigation, the oral evidences of P.W.1 and P.W.3, oral evidence of attester P.W.2, that he did not see the deceased first plaintiff at the time of execution of registration of the document. Having discarded all such material evidence as not acceptable without assigning any reasons, the learned Trial Court has dismissed the suit with biased approach. The Trial Court has failed to



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appreciate and consider the oral evidence of the attesor but picked up a stray mistaken sentence that the deceased first plaintiff and the first defendant signed in his presence and concluded that the first plaintiff was present and that the first plaintiff participated in the execution and registration of the deed of power of attorney on 22.09.2014. The learned Trial Court failed to note that the Superintendent of Police addressed to the District Registrar for particulars regarding the execution and registration i.e., Ex.A4 without the participation of the executant,i.e., deceased first plaintiff and only there upon, enquiry was conducted to decide whether the Principal had come to Sub Registrar office for registration of power of attorney. It is unfortunate that the learned Trial Court failed to note that the enquiry was held in a scientific manner by comparing biometric record of the finger prints, etc., and then the report of the Deputy Registrar in Ex.A7 gave a finding that the deed of the power of attorney Ex.A4 has been registered in the absence of the deceased first plaintiff. The learned Trial Court had erroneously rejected the enquiry report of the District Registrar Ex.A7 as a material piece of evidence with respect to the forged and impersonated registration of deed of power of attorney Ex.A4 without the presence of the executant i.e., the first plaintiff.



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12.Submissions made by the learned counsel for the respondents/defendants:-

12.1.The learned counsel for the respondent submitted that the plaintiff and the first defendant, that is, the appellant and the first respondent are close relatives. The second respondent is a third party and he should not be saddled with a burden of proof of a document which was executed by the appellant in favor of the first respondent. He further submitted that, in terms of Sections 101, 102 and 103 of the Indian Evidence Act, the burden of proof that the power of attorney dated 22.09.2014 was not executed by the first plaintiff in favor of the first defendant is on the appellants/plaintiffs. He contended that, the first plaintiff is the mother of the first defendant in terms of the plaintiff's cause title. Based on the preliminary report of the District Registrar, Ramanathapuram, a disciplinary proceeding has been initiated as against the Sub Registrar, Keelakarai. What was collected during the preliminary inquiry by the District Registrar cannot be evidenced. The opinion of the District Registrar, Ramanathapuram, was a wild imagination and he was not inquired in the disciplinary proceedings. The entire disciplinary proceedings has been built up on false information. The District Registrar was not examined, but a few persons were examined behind the back of Thiru.S.Pullani without giving him an opportunity of cross examining the witnesses. The examination of the



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witnesses in the disciplinary proceedings ought to have been done in the presence of the delinquent Thiru.S.Pullani. The factum of having given with an opportunity should be explicit and should be borne out of the records. The entire procedure adopted by the Inspector General of Registration that is the disciplinary authority is not in accordance with law. The disciplinary authority ought to have conducted the same with all fairness as against the delinquent Sub Registrar of Keelakarai, Thiru.S.Pullani.

12.2.A careful perusal of the disciplinary proceedings would reveal that there is no evidence as against Thiru.S.Pullani for having deleted the records from the computer of the Sub Registrar office at Keelakarai. No evidence as to the date of examination of the Computer Officer nor the details and dates of removal of information is revealed in the inquiry report. Though the delinquent Thiru.S.Pullani was held guilty in the disciplinary proceeding for which he was inflicted with the punishment of removal from service, it is pertinent to mention that in appeal, the order of the disciplinary authority imposing punishment of removal from service, that is, the order of the Inspector General of Registration was set aside and the Secretary to the Government observed that the delinquent Thiru.S.Pullani is flawless. The Additional Secretary to the Government vide G.O.D.No.430, Commercial Tax and Registration Department dated 24.11.2016



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has set aside the order of punishment imposed on the delinquent Thiru.S.Pullani by the Inspector General of Police. Though the second defendant is not claiming under Thiru.S.Pullani, the plaintiffs have miserably failed to prove beyond reasonable doubt that the aforesaid power of attorney was not executed by the first plaintiff in favour of the first defendant. That apart, the suit is completely barred by limitation. The date of knowledge of the alleged fraud was on November 2014. However, the suit came to be filed only in the year 2018 and obviously, the same would be hit by Article 56 of the Limitation Act, 1963. Lastly, the learned counsel for the respondents submitted that Section 114 of the Indian Evidence Act, especially in Clause (e) and (f) would protect the delinquent Thiru.S.Pullani by presuming that the official acts have been regularly performed. Unless and until the same has been specifically reverted by the plaintiffs, the case of the plaintiffs cannot be sustained. In view of the said submissions, the learned counsel for the respondents/defendants pressed for dismissal of the Appeal.

Analysis:-

13.The first plaintiff Tmt.A.M.S.Syed Ameena Beevi purchased the plaint schedule properties by a registered sale deed dated 27.11.1989 from the original owner namely Thiru.K.T.M.Abdul Khadar Sahib. The original owner



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delivered the possession of the suit properties to the first plaintiff

Tmt.A.M.S.Syed Ameena Beevi with effect from the date of sale, that is, from 27.11.1989 and she had been in possession and enjoyment over the plaint schedule properties and the Sub Registrar Office copy of the said sale deed dated 27.11.1999 is marked as Ex.A2. During the pendency of the original suit, Tmt.A.M.S.Syed Ameena Beevi passed away on 27.12.2018. Her husband Thiru.T.M.S.Mohamed Abdul Khadar pre-deceased the first plaintiff. Pursuant to her death, her legal heirs were impleaded as the plaintiffs 2 to 7 in the suit. The fulcrum of the plaintiff's case is that their mother, that is, the first plaintiff Tmt.A.M.S.Syed Ameena Beevi did not execute the power of attorney dated 22.09.2014 in favour of the first defendant. According to the plaintiffs, the same had been fraudulently created by the first defendant as if it has been executed in his favour by the first plaintiff.

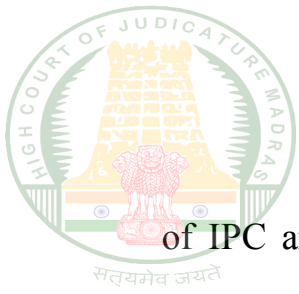
14.The plaintiff's claim is that, the first plaintiff had never visited the Sub-Registrar office at Keelakarai and she was not present before the Sub-Registrar, Keelakarai on 22.09.2014 at the time of the alleged registration of the power of attorney dated 22.09.2014 in favour of the first defendant. Since the said power of attorney has been fraudulently created by the first defendant, the same is not a valid document. The copy of the aforesaid power deed dated



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22.09.2014 has been marked as Ex.A4. By the strength of the aforesaid fraudulently created power of attorney dated 22.09.2014, the first defendant executed a registered sale deed dated 26.09.2014 in favour of the second defendant and the same is marked as Ex.A5. The plaintiffs' claim that the power of attorney is invalid and hence, the sale deed which has been executed by the first defendant making use of the fraudulent power of attorney in favour of the second defendant will not bind upon the plaintiffs.

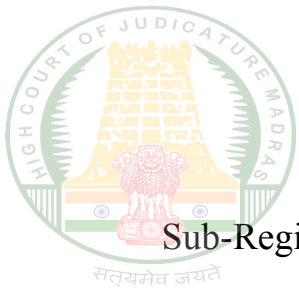
15.It is the categorical case of the plaintiffs that, at the time of registration of the alleged power of attorney by the Sub-Registrar of Keelakarai, Sub-Registrar Office on 22.09.2014, the first plaintiff never ever visited the said Sub-Registry and only her passport size photo as obtained from her with a fraudulent notion by the first defendant was shown before the web camera as if the first plaintiff had personally appeared before the Sub Registrar, Keelakarai, and thus the said power deed was executed in collusion and connivance with the Sub-Registrar by the first defendant. In respect of the said fraudulent registration of power of attorney, the third plaintiff had duly given a complaint before the Anti Land Grabbing Special Cell, Ramanathapuram, on the basis of which, Crime No.49 of 2014 came to be registered as against the first and second defendants under Sections 419, 420, 423, 465, 468, 471, 294(b), 504(i)



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of IPC and the said FIR is marked as Ex.A6. In the meanwhile, the District Registrar, Ramanathapuram, had sent a detailed report to the Inspector General of Registration, Chennai, elaborating that Thiru.S.Pullani, the Sub-Registrar of Keelakarai, Sub Registrar Office had registered the power of attorney dated 22.09.2014 in the absence of the first plaintiff, Tmt.A.M.S.Syed Ameena Beevi by showing a passport size photo of the first plaintiff before the web camera thereby forging her signatures and thumb impressions in the aforesaid deed. The said report is marked as Ex.A7. On the basis of the report of the District Registrar, Ramanathapuram, the District Registrar (Audit), Madurai (North), was appointed as the inquiry officer to inquire into the fraud. On the basis of the inquiry report filed by the said inquiry officer, by the proceedings of the Inspector General of Registration, Thiru.S.Pullani, Sub-Registrar, Keelakarai Sub-Registrar Office was dismissed from service. The entire file pertaining to the disciplinary proceedings initiated against Thiru.S.Pullani is marked as Ex.X18.

16.The first reasoning given by the learned Trial Court for dismissing the plaintiff's suit is that the first plaintiff had failed to specifically plead about the fraud and forgery committed in the execution and registration of the power of attorney, especially that the same was allegedly executed in her absence at the



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Sub-Registrar office at Keelakarai. The learned Trial Court categorically observed that without any pleadings about fraud and forgery, no amount of evidence could be permitted. Further, it was observed by the learned Trial Court that no amount of evidence can be permitted without any pleadings and hence, concluded that the evidence adduced by the plaintiffs in respect of fraud and forgery cannot be entertained and the same is not permissible in the absence of pleadings. The Code of Civil Procedure provides for the particulars to be given in case of fraud in Order VI Rule 4 of CPC and the same is extracted as follows:-

"In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful de-fault, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

17. In view of the same, it is needless to state that when a party pleads any fraud or breach of trust, in such case particulars elaborating dates and items and other details has to be pleaded at the time of filing the suit. For the sake of clarity, in the instant case, since the entire case of the plaintiffs have been built upon their claim that the first plaintiff had never ever executed any power of attorney in favor of the first defendant and that the first defendant had caused the power of attorney fraudulently on 22.09.2014 by creating the same illegally.



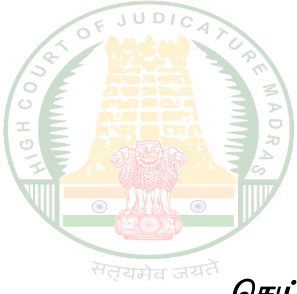
The relevant portion of the pleadings in the plaint is extracted as follows:-

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“3.தாவா சொத்தினை இந்த வாதி அமைதியான முறையில் அனுபவம் செய்து வந்த நிலையில் 1ம் பிரதிவாதி ஹமீது மன்கூர் இந்த வாதி அவருக்கு பவர் ஆவணம் எழுதிக் கொடுத்தது போல் 22.09.2014-ம் தேதி ஒரு பொது அதிகார பத்திரம் கீழ்க்கரை சார்பதிவாளர் அலுவலகத்தில் ஆவண எண்.2618/2014-ல் போலியாக பதிவு செய்துள்ளார். தாவா சொத்தினை திட்டமிட்டு அபகரிக்க வேண்டும் என்ற கெட்ட எண்ணத்தில் 1ம் பிரதிவாதி இந்த வாதி எழுதிக் கொடுத்தது போல் மேற்படி பவர் ஆவணத்தினை உற்பத்தி செய்துள்ளார்.

4.அவ்வாறு பொய்யாக உற்பத்தி செய்யப்பட்ட பொது அதிகார ஆவணத்தினை பயன்படுத்தி 1ம் பிரதிவாதி, 2ம் பிரதிவாதி பெயருக்கு 26.09.2014ம் தேதி ஒரு கிரையப்பத்திரம் கீழ்க்கரை சார்பதிவாளர் அலுவலகத்தில் ஆவண எண்.2640/2014-ல் பதிவு செய்து கொடுத்துள்ளார், மேற்படி பொது அதிகார ஆவணம் இந்த வாதியால் எழுதிக் கொடுக்காமல் 1ம் பிரதிவாதியால் உற்பத்தி செய்யப்பட்ட நிலையில் 2ம் பிரதிவாதி பெற்றுக்கொண்ட மேற்படி கிரைய ஆவணம் சட்டப்படி செல்லக்கூடியதில்லை இந்த வாதியை கட்டுப்படுத்தக் கூடியதுமில்லை. மேற்படி பொது அதிகார ஆவணம் உற்பத்தி செய்யப்பட்ட விபரம் 2ம் பிரதிவாதிக்கு நன்கு தெரியும்.

5.ஆகவே மேற்படி போலி பவர் ஆவணம் தயார் செய்து கிரைய ஆவணம் பதிவு செய்தது சம்பந்தமாக வாதியின் மகனான சதக் ஜலால் என்பவர் இராமநாதபுரம் மாவட்ட நில மோசடி தடுப்புப் பிரிவில் புகார் மனு அளித்ததின் பேரில் 1, 2 பிரதிவாதிகள் மற்றும் மேற்படி ஆவணத்தில் சாட்சி கையெழுத்திட்ட நபர்கள் மீது கையெழுத்திட்ட நபர்கள் மீது குற்ற எண்.49/2014-ல் இ.த.ச. பிரிவு 419, 420, 423, 465, 468, 471, 294(b), 504(1)ன் படி முதல் தகவல் அறிக்கை பதிவு செய்யப்பட்டுள்ளது.



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6.மேற்படி பொது அதிகார ஆவணம் போலியாக உற்பத்தி

செய்யப்பட்டது என்பது குறித்து மாவட்ட பதிவாளர்
அலுவலகத்தில் இருந்து சென்னையில் உள்ள பதிவுத்துறை
தலைவருக்கு கொடுத்த விரிவான அறிக்கை தகவல் அறியும் உரிமைச்
சட்டத்தின் மூலம் பெறப்பட்ட நகல் பிராது ஆவணம் 6 ஆக தாக்கல்
செய்யப்படுகிறது.

7.மேற்படி பிராது ஆவணம் 6-ல் 1ம் பிரதிவாதி, வாதியின்
புகைப்படத்தை கீழ்க்கரை சார்பதிவாளர் உதவியுடன் மேராவில் பதிவு
செய்து போலி கைரேகை செய்து மேற்படி ஆவணத்தை பதிவு
செய்துள்ளார்கள் என்றும் மேற்படி ஆவண பதிவிற்று வாதி
சார்பதிவாளர் அலுவலத்தில் வரவில்லை என்றும் வாதியில்லாமலே
அவரின் புகைப்படத்தை Bio Metric Web Camera முன்பு மிக
நெருக்கமான நிலையில் வைத்து புகைப்படம் எடுக்கப்பட்டு மேற்படி
ஆவணம் பதிவு செய்யப்பட்டுள்ளது என அறிக்கை கொடுத்துள்ளார்."

18.A careful reading of the portions of the plaint extracted supra would reveal that the first plaintiff has duly pleaded the nature of fraud played upon by the first defendant in creating a fraudulent power of attorney in the nature as if the same has been executed in his favor by the first plaintiff on 22.09.2014. That apart, it is also specifically pleaded that the second defendant also had the knowledge of the said fraudulent act of the first defendant. It is ridiculous as to how the learned Trial Court came to a conclusion that the plaintiffs have not pleaded any of the details elaborating the fraud and forgery as put forth by the plaintiffs despite the first plaintiff having pleaded the same in her plaint as



mandated by the Code of Civil Procedure. Having regard to the pleadings, evidence and the submissions made by the learned counsels appearing on either side, the following points arise for consideration in this appeal :-

“1. Whether the plaintiff is the absolute owner in possession and enjoyment of the properties?

2. Whether the plaintiff is entitled to get the relief of declaration and consequential injunction as prayed for?

3. Whether the first plaintiff has failed to plead that the power of attorney deed dated 22.09.2014 was fraudulently created by the first defendant forging the signature and thumb impression of the first plaintiff in favor of him as if it had been allegedly executed by the first plaintiff?

4. Whether the plaintiffs' failure to seek any relief in respect of the power of attorney dated 22.09.2014 would vitiate this suit?

5. Whether the plaintiffs ought to have filed a suit for cancellation of sale deed and ought to have paid court fee under Section 40 of the Tamil Nadu Court Fee and Suit Valuation Act and instead of filing a suit for declaration of sale deed dated 26.09.2014 as null and void?

6. Whether the suit is barred by limitation?

7. Whether the judgment and decree passed by the learned Trial Court in O.S.No.35 of 2018 is liable to be set aside?”

19. A careful reading of paragraphs 3, 4, 5, 6 and 7 of the plaint would reveal that the first plaintiff has duly pleaded that the power deed dated



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22.09.2014 was not executed by her in favor of the first defendant and that the same has been fraudulently created by the first defendant as executed by the first defendant with clear particulars of date and items of properties as required by the provisions of Order VI Rule 4 of the Code of Civil Procedure, 1906. That apart the fourth plaintiff Tmt.Ayisha Niyas was examined as P.W.1 on the side of the plaintiffs. The relevant portion of her cross examination necessary for deciding this appeal is extracted as follows:-

“இந்த பிரிச்சனை 01.04.2018 அன்று ஏற்பட்ட பிறகுதான் என் தாயார் ஹாஜா அனீஸை அதிகார முகவராக நியமித்து வழக்கு தாக்கல் செய்தார் என்றால் சரிதான். அதற்கு முன்பு வரை ஹாஜா அனீஸைக்கு இந்த வழக்கு விபரங்கள் எதுவும் தெரியாது என்று சொன்னால் சரிதான். அதற்கு முன்புவரை ஹாஜா அனீஸைக்கு என் தாயார் எந்தவித ஆவணத்தையும் ஏற்படுத்திக் கொடுக்கவில்லை என்று சொன்னால் சரிதான். 06.01.2018 தேதியிட்ட பவர் பத்திரம் நீ.சா.ஆ.1. நான் முன் விசாரணை வாக்குமூலம் தாக்கல் செய்த அன்றும் இன்றும் ஹாஜா அனீஸ் என்னுடன் நீதிமன்றத்திற்கு வந்துள்ளார் என்று சொன்னால் சரிதான்.”

“1-ம் வாதி நம்முடைய உறவினர் தானே என்று எண்ணி தாவா சொத்திற்கான வாடகையை 1ம் பிரதிவாதியை வசூல் செய்ய சொன்னார். 1ம் பிரதிவாதி என்னுடைய உறவினரா என்றால் அவர் எனக்கு தூரத்து உறவினர் ஆவார். கணக்கு சொத்தில் உள்ள வீடுகளில் இருந்து வரும் வாடகையை வசூலிப்பதற்கு 1ம் பிரதிவாதியை என் அம்மாவான 1ம் வாதி நியமனம் செய்ததாக வ.சா.ஆ.6 புகாரில் சொல்லப்பட்டுள்ளது என்றால் சரிதான்”



20.The first attester of the power of attorney dated 22.09.2014, namely,

Thiru.Thamimul Ansari was examined as P.W.2 and the relevant portion of his

deposition is extracted as follows:-

“நான் கையெழுத்து போட்ட பத்திரத்தில் யார் யார் கையெழுத்து போட்டார்கள் என்ற விபரம் தெரியுமா என்றால் ஹமீது மன்கூர் பத்திரத்தில் கையெழுத்து போட்ட பின்பு நான் அதில் கையெழுத்து போட்டேன். ஹமீது மன்கூர் என்னை கையெழுத்து போடச் சொன்னதால் நான் கையெழுத்து போட்டேன். நான் கையெழுத்து போட்ட பின்பு வேறு யார் கையெழுத்து போட்டார்கள் என்று எனக்கு தெரியாது. தினகரன் எனக்கு முன்பாக கையெழுத்து போட்டாரா அல்லது எனக்கு பின்பு கையெழுத்து போட்டாரா என்றால் தினகரன் எனக்கு பின்புதான் கையெழுத்து போட்டார். முதல் விசாரணையில் நான் சொல்லியுள்ள ஆவண நம்பரை பத்திர அலுவலத்தில் நான் சாட்சி கையெழுத்து போடும் போதே சார்பதிவாளர் புல்லாணியும், ஹமீது மன்கூரும் என்னிடம் சொன்னார்கள்.

பத்திர அலுவலம் சென்று புல்லாணியும், ஹமீது மன்கூரும் என்னை கையெழுத்து போடச்சொன்ன நேரம் காலை சுமார் 10 முதல் 12 மணி இருக்கும். நான் கையெழுத்து போடும்போது பத்திர அலுவலகத்திற்குள் உள்ளே வைத்துத்தான் கையெழுத்து போட்டேன். என்னை இராமநாதபுரம் காவல் துறை கண்காணிப்பாளர் அலுவலகத்தில் நடந்த விசாரணையில் விசாரணை செய்தார்கள். அப்போது இந்த விபரத்தை சொன்னேன். அடித்து ஒப்புக்கொள்ள சொன்னதால் நான் ஒப்புக்கொண்டேன்.”



21.The second attesting witness namely Thiru.Dhinakaran, who attested in the power of attorney dated 22.09.2014, deposed his evidence as P.W.3 and the relevant portion of the same is extracted as follows:-

“தெருவில் பேசிக்கொண்டதை வைத்து வழக்கறிஞர் சுந்தர்ராஜனை போய் பார்த்தேன். நான் சொன்ன விபரங்களை வைத்துத்தான் வழக்கறிஞர் சுந்தர்ராஜன் அபிடவிட் தயார் செய்தார். நான் என்றைக்கும் 2014 பத்திரத்தை பார்த்து கிடையாது. வா.சா.ஆ. 4 பத்திரத்தில் உள்ள ரேசன் காட்டு என்னுடைய ரேசன் காட்டுதான் என்றால் சரிதான். அதில் உள்ள போட்டோ என்னுடைய போட்டோ என்றால் சரிதான். வா.சா.ஆ.4ல் தினகரன் என்று சாட்சி கையெழுத்து போட்டிருப்பது நான்தான் என்றால் சரிதான். நான் கையெழுத்து போட்டிருப்பது நான்தான் என்றால் சரிதான். நான் கையெழுத்து போடுவதற்கு முன்னால் மற்ற நபர்களின் கையெழுத்துக்கள் அதில் போடப்பட்டிருந்தது என்று சொன்னால் சரிதான். ஹமீது மன்கூரும், ஆமினா பீவியும் என் முன்னிலையில்தான் வா.சா.ஆ.4ல் கையெழுத்து செய்தார்கள் என்றால் சரிதான்.”

22.One Thiru.L.Srinivasan, son of Lakshmikanth, Administrative Sub-Registrar, District Sub-Registrar, Ramanathapuram, was examined as P.W.6 and the relevant portion of his evidence is extracted as follows:-

“இராமநாதபுரம் நிலஅபகரிப்பு தடுப்பு பிரிவில் கொடுக்கப்பட்ட புகாரின் நகல் Ex.X19. அந்த புகாரில் சார்பதிவாளர் மீது நடவடிக்கை எடுக்கச்சொல்லவில்லை என்றும், ஆவணங்களின் நகல்களை ஒப்படைக்கக்கோரித்தான் சொல்லப்பட்டுள்ளது என்றும்



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சொன்னால் சரிதான். முதல் விசாரணையில் நான் சொல்லியுள்ளது போல் நில மோசடி தடுப்பு பிரிவு ஆய்வாளர் எவ்விதமான நடவடிக்கையும் எடுக்கச்சொல்லி புகார் மனுவை கொடுக்கவில்லை என்று சொன்னால் சரிதான். செய்யது ஆமினா பீவி மாவட்ட பதிவாளரிடம் துறைவாரியான நடவடிக்கைக்கோரி எந்தவித புகாரையும் கொடுக்கவில்லை என்று சொன்னால் சரிதான்.

Ex.X19 நடவடிக்கையில் செய்யது ஆமினா பீவி மாவட்ட பதிவாளரிடம் ஆஜராகி எவ்வித வாக்குமூலமும் கொடுக்கவில்லை என்று சொன்னால் சரிதான். யார் பெயருக்கு அதிகார பத்திரம் பதிவு Ex.X17 செய்யப்பட்டதோ அந்த முகவரை மாவட்ட பதிவாளர் விசாரித்து வாக்குமூலம் பதிவு செய்யவில்லை என்றால் சரிதான். பவர் பத்திரம் கொடுத்த செய்யது ஆமினா பீவி மற்றும் பவர் பத்திரம் பெற்ற ஹமீது மன்கூர் ஆகியோர்களையும் பவர் பத்திரத்தில் உள்ள சாட்சிகளையும் விசாரிப்பதற்கு மாவட்ட பதிவாளர் நோட்டீஸ் எதுவும் அனுப்பவில்லை என்றால் சரிதான்.“

23.The pleadings in the plaint and the evidence deposed by P.W.1, P.W.2 and P.W.3 would clearly elicit the case of the first plaintiff that the power of attorney dated 22.09.2014 was not executed by the first plaintiff in favor of the first defendant, a distant relative of the first plaintiff at any point of time, by all means. Having put forth the case that the power of attorney dated 22.09.2014 was not executed by the first plaintiff in favor of the first defendant but the same has been fraudulently created by forging the signature and thumb impression of the first plaintiff, the plaintiffs have not proceeded to challenge



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the validity of the aforesaid power of attorney dated 22.09.2014. On the other

hand, having filed this suit seeking to declare the sale deed dated 26.09.2014

executed by the first defendant in favor of the second defendant at Keelakarai

Sub-Registrar as null and void, the learned Trial Court has held that the

plaintiffs cannot directly challenge the validity of sale deed dated 26.09.2014

executed by the first defendant without challenging the validity of the earlier

power of attorney deed dated 22.09.2014. In addition to that, the learned Trial

Court held that, the plaintiffs ought to have sought the relief to cancel the

power deed dated 22.09.2014 and should have paid Court fee under Section 40

of the Tamil Nadu Court Fee and Suit and Valuation Act, since the plaintiffs

have raised the plea that the first defendant has fraudulently created the said

power of attorney. Finally, the learned Trial Court concluded that the suit filed

by the first plaintiff without seeking any relief against the power deed dated

22.09.2014 is not maintainable. The said conclusion has been arrived at by the

learned Trial Court relying upon the judgment passed by this Court in the case

of ***K. Kalidas (deceased) and others v. P. Munusami and another*** reported in

2019 4 L.W. 166. However, the said case is not applicable to the facts and

circumstances of this case. In the said case, the sale deed in question was

admittedly executed by the power of attorney of the plaintiff. The plaintiff

himself in the cross-examination admitted that the power of attorney was duly

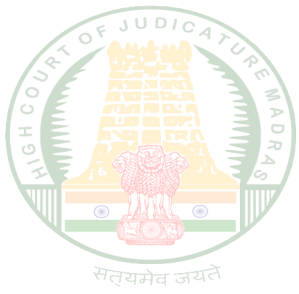


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executed by him in favor of the first defendant. Hence, this Court held in that

case that the sale deed in question having been admittedly executed by the power of attorney of the plaintiff and in such a case, the plaintiff having been in his very name, so to say, *eo nomine* party as vendor, cannot wriggle himself out of his liability to seek for cancellation of sale deed by contending that the power of attorney defrauded him and further, it has been held in the said case that if at all the power of attorney of the plaintiff is proved to have committed any fraud, even then the plaintiff should pray for setting aside the sale deed and cannot simply pray for declaring the sale deed as null and void.

24.However, in the instant case, either in the pleadings in the plaint or the evidence deposed by the witnesses on behalf of the plaintiffs, nowhere it has been admitted that the power of attorney dated 22.09.2014 was executed by the first plaintiff in favor of the first defendant. In fact, it has been categorically pleaded that the said power of attorney was created/concocted fraudulently by the first defendant by forging the signature and thumb impression of the first plaintiff. A copy of inquiry report by the District registrar office, Ramanathapuram, to the first plaintiff regarding forgery of the general power deed in the name of the first defendant dated 28.11.2016 has been marked as Ex.A7 on the side of the plaintiffs.



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25.A careful reading of the same would reveal that on 21.11.2014, the entire video footage with respect to the registration of the power of attorney dated 22.09.2014 had been deleted. The true copy of the disciplinary proceedings of Thiru.S.Pullani, Sub-Registrar Office, Keelakarai Sub-Registrar, has been marked as Ex.X18. The said report would reveal that, the background of the photographs of the first plaintiff, attesting witness, namely, Thiru.Thamimul Ansari, who was examined as P.W.2 and the other attesting witness, namely, Thiru.Dinaharan who was examined as P.W.3 would make it clear that the background of P.W.2 and P.W.3 remaining the same, the background of the first plaintiff was definitely different. The same itself would establish that at the time of registration of document by Sub-Registrar Keelakkarai on 22.09.2014, only the passport size photo of the first plaintiff Tmt.A.M.S.Syed Ameena Beevi was shown before the biometric web camera as if the first plaintiff had personally appeared before the Sub-Registrar, Keelakkarai and registered the power deed in collusion and connivance with the Sub Registrar. That apart, the evidence deposed by the attesting witnesses P.W.2 and P.W.3 when read conjointly would reveal that the first plaintiff had never visited the Sub-Registrar office on 22.09.2014 and an young aged Muslim woman wearing Burqa was the one who actually made appearance



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before the Sub-Registrar on the said date. That apart, though the Government

vide G.O.(D).No.430 dated 24.11.2016, Commercial Tax and Registration

Department passed an order in the Appeals preferred as against the disciplinary

proceedings by the said Thiru.S.Pullani, Sub-Registrar, Keelakkarai Sub-

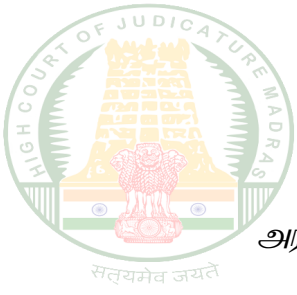
Registrar, modifying the punishment of dismissal from service as compulsory

retirement, in the said Government Order, it has been categorically concluded

that both the charges as against the said Thiru.S.Pullani has been proved

undoubtedly. The relevant portion of the same is extracted as follows:-

“பதிவுத்துறைத் தலைவரால் வழங்கப்பட்ட “பணியறவு” எனும் தண்டனையை எதிர்த்து திரு.செ.புல்லாணி, முன்னாள் சார்பதிவாளர், அளித்துள்ள மேல்முறையீட்டினை தொடர்புடைய ஆவணங்களுடனும், தமிழ்நாடு அரசுப் பணியாளர் தேர்வாணையத்தின் கருத்துகளுடனும் அரசு சுயமாகவும், கவனமாகவும் ஆய்வு செய்தது. ஆய்வுக்குப்பின், மேல்முறையீட்டாளர்மீதான இரண்டு குற்றச்சாட்டுகளும் நிரூபணமாகின்றன என்றாலும், அவர் 32 ஆண்டுகள் நல்லமுறையில் வேறு குற்றச்சாட்டுகளுக்கு உட்பாாமல் வேலை செய்துள்ளதைக் கவனத்தில் கொண்டும், இவர் நிகழ்வில் அரசுக்கு எந்தவிதமான நிதி இழப்பு அல்லது கையுட்டு பெற்றுக் கொண்டு பொது அதிகார பத்திரம் பதிவு செய்தார் என்ற நிலைபாடு இல்லை என்பதைக் கவனத்தில் கொண்டும், அன்னாரின் மேல்முறையீட்டினை பகுதியாக அனுமதித்து அன்னாருக்கு பதிவுத் துறைத் தலைவரால் வழங்கப்பட்ட “பணியறவு (Dismissal from service)” எனும் தண்டனையை “கட்டாய ஓய்வு” (Compulsory Retirement) எனும் தண்டனையாக மாற்றி வழங்கலாமென முடிவு செய்து, அவ்வாறே



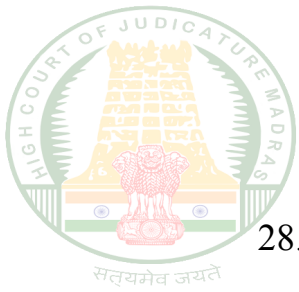
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அரசு ஆணையிடுகிறது.“

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26.The said Government Order itself would be a conclusive proof as to the fraudulent attorney created, forged and concocted by the first defendant as if the same has been executed in his favor by the first plaintiff. Obviously, in this case, there is no prayer for cancellation of sale deed.

27.On the other hand, the fourth relief sought for by the first plaintiff is to declare the sale deed executed by the first defendant in favor of the second defendant on 26.09.2014 bearing sale deed No.2660 of 2014 of Keelakkarai Sub-Registrar as null and void. The claim of the second defendant is that, the plaintiffs ought to have sought for the relief to cancel the power deed dated 22.09.2014 and should have paid Court fees under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act instead of Section 25D of the Court Fee and Suit Valuations Act. However, such an argument is not sustainable. Only when an executant of a deed wants it to be annulled he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid or non-est or illegal or that it is not binding on him.



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28.Though the second defendant relying upon the case in ***K.Kalidas***

(deceased) and others v. P. Munusami and another reported in **2019 4 L.W.**

166, has propounded that the first plaintiff being the executant of the power of attorney in favor of the first defendant, the first plaintiff automatically becomes the *eo nomine* party as vendor and hence, she cannot wriggle herself out of her liability seeking for cancellation of sale deed by contending that the power of attorney defrauded her. However, such an argument will not hold good for the sole reason that, in this case in hand, the first plaintiff has categorically denied the execution of the power of attorney in favor of the first defendant in her pleadings and she has also duly corroborated her pleadings with suitable evidence by letting in the evidence of the two attesting witnesses of the said power of attorney as P.W.2 and P.W.3. That apart, the Administrative Sub-Registrar of the District Registrar Ramanathapuram, has also been examined as P.W.6 through whom the entire disciplinary proceedings initiated as against the Sub-Registrar one Thiru.S.Pullani who served at Sub-Registrar, Keelakarai, at the time of registering the said power of attorney came to be marked as Ex.X18. Hence, the first plaintiff can never be contended as the *eo nomine* party as vender who had executed a sale deed, which has been challenged in the suit in favor of the second defendant through the first defendant. It is only the first defendant who had defrauded by creating/concocting, forging the power of



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attorney in his name and thereafter, within 4 days of the execution of the said power of attorney had executed yet another sale deed in favor of the second defendant. Since the first plaintiff in the suit was neither the executant of the power of attorney dated 22.09.2014 nor the executant of the sale deed dated 26.09.2014, I am of the considered view that the prayer seeking to declare the sale deed dated 26.09.2014 as null and void is legally sustainable and it is not necessary for the first plaintiff to seek cancellation of the aforesaid sale deed as concluded by the learned Trial Court.

29.The Hon'ble Apex Court in the case of ***Suhrid Singh @ Sardul Singh v. Randhir Singh and others*** by its judgment dated 29.03.2010 reported in ***AIR 2010 Supreme Court Case 2807*** has dealt with a similar case and the relevant portion of the same is extracted as follows:-

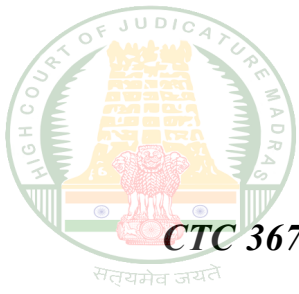
“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void



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and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\) of Second Schedule of the Act.](#)”

30. Fully fortified by the mandates of the aforesaid judgment of the Hon'ble Apex Court, observing that the first plaintiff has duly proved that the power of attorney dated 22.09.2014 was not at all executed by her in favor of the first defendant, the question of paying Court fees under Section 40 of the Tamil Nadu Court Fee and Suit Valuation Act seeking cancellation of the sale deed would not arise, since the plaintiff has sought for declaration of his title over the plaint schedule properties and for the said relief, she has duly paid Court fee under Section 25(b) of the Court Fee and Suit Valuation Act. That apart, for the relief seeking to declare the sale deed dated 26.09.2014 as null and void, the plaintiff being non-executant of the aforesaid sale deed as well as the power of attorney dated 22.09.2014 has duly paid Court fee under Section 25(b) of the Court Fee and Suit Valuation Act and the same is appropriately paid. The learned Trial Court relying upon the judgment reported in **2007 (1)**



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CTC 367 observing the entire evidence should be taken into account and stray

admission in the evidence could not be taken into account, failed to take entire admissions made by the plaintiff's side witnesses P.W.2 and P.W.3, that is, the attesting witnesses of the power of attorney dated 22.09.2014, in which they have categorically deposed that, instead of the first plaintiff, an young Muslim woman clad in Burqa was brought to the Sub-Registry, Keelakarai, for the purpose of executing the said power of attorney. That apart, the learned Trial Court has also proceeded to conclude that the disciplinary proceedings initiated by the Inspector General of Registration against the Sub-Registrar, Thiru.S.Pullani cannot be taken into consideration as a clinching, unassailable and impeccable evidence on the side of the plaintiffs in respect of the non-execution and non-registration of power deed dated 22.09.2014 by the first plaintiff Tmt.A.M.S.Syed Ameena Beevi.

31.However, this Court is of the considered view that a careful perusal of the power of attorney dated 22.09.2014 marked as Ex.A4 in page number 4 would clearly throw light on the fact that the background of the photographs of the attesting witness Thiru.Thamimul Ansari and Thiru.Dinaharan were one and the same and that of the first plaintiff Tmt.A.M.S.Syed Ameena Beevi had been different. This fact has been duly considered in the disciplinary proceedings



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initiated as against the erring Sub-Registrar of Keelakarai Sub-Registry, namely, Thiru.S.Pullani, on the basis of which a punishment of removal from service has been inflicted as against him by the Inspector General of Registration, Chennai. However, only in an Appeal preferred by him to the Government, the Government vide G.O.DNo.430 dated 24.11.2006 though modified the punishment inflicted as against the said Thiru.S.Pullani from dismissal from service to compulsory retirement had categorically concluded that both the charges as against the said Thiru.S.Pullani initiated by the Department remains proved.

32.Having dismissed I.A.No.209 of 2021 filed by the plaintiffs seeking to appoint an Advocate Commissioner to take over the thumb impression register for the settlement deed dated 16.09.2002 executed by Thiru.Sabinath Sulaikha in favor of her sister, the first plaintiff Tmt.A.M.Syed Ameena Beevi of Sub Registrar Office, Thousand Lights, Chennai, and the thumb impression register for the power deed dated 22.09.2014 of Sub Registrar Office, Keelakarai, for the comparison of thumb impressions of the first plaintiff by the fingerprint expert and to get expert opinion and another interim application in I.A.No.210 of 2021 seeking to send the thumb impression registers from Sub Registrar Office, Thousand Lights, Chennai, in respect of settlement deed dated



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16.09.2002 and from the Sub Registrar Office, Keelakarai, for the power deed dated 22.09.2014 for the purpose of comparison of thumb impressions affixed in the disputed power of attorney dated 22.09.2014 and in the admitted settlement deed dated 16.09.2002 by the fingerprint expert and to get the expert opinion, the learned Trial Court concluded that the plaintiffs have failed to take appropriate steps for comparison of signatures and thumb impressions found in the power of attorney. The learned Trial Court based on the evidence of P.W.1 has contended that the third plaintiff came to know of the power of attorney dated 22.09.2014 as early as in the month of November 2014 itself. It is the third plaintiff, that is, the son of the first plaintiff, namely, Thiru.ThaiKa Syed Mohaideen Sathak Jalal who had given a police complaint on 03.11.2014 before the Anti Land Grabbing Cell, Ramanathapuram in respect of the power deed dated 22.09.2014 and sale deed dated 26.09.2014. Based on the said complaint, an FIR came to be registered by the Anti Land Grabbing Cell on 20.11.2014. This fact has been clearly admitted by P.W.1 who is the fourth plaintiff namely Tmt.Ayisha Niyas in her cross-examination.

33.In view of the same, the learned Trial Court proceeded to conclude that the suit should have been filed within a period of 3 years, that is, on or before 02.11.2014, but the suit was filed by the first plaintiff on 22.11.2018



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which is beyond a period of 4 years and hence, the suit is barred by limitation.

During 2014, the first plaintiff was 61 years old and at the time of filing O.S.No.35 of 2018 on the file of learned Additional District Judge at Ramanathapuram. The learned Trial Court has observed that the fourth and third plaintiffs came to know of the alleged power of attorney dated 22.01.2014 created/concocted/fabricated by the first defendant as early as in the month of November 2014, the same has also been admitted by P.W.1 in her cross-examination. However, only on 01.04.2018, the second respondent had interfered with the peaceful possession and enjoyment of the plaint schedule properties by compelling the tenants to pay the monthly rent of the premises to the second defendant. Only in view of the same, the cause of action for the suit arose on 01.04.2018.

34.The pertinent question to be decided is that since the knowledge of the power of attorney dated 22.09.2014 by the third plaintiff was admitted to be as on 03.11.2014 itself, whether this suit is barred by limitation since the same came to be filed in the year 2018?

35.When the execution of a document is disputed, then the evidence of the attester of the said document would testify the genuinity of the same. In the



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instant lis in hand, the execution of the power of attorney dated 22.09.2014 has been categorically refuted by the first plaintiff as well as the other plaintiffs.

The facts and circumstances put forth by the first plaintiff in her plaint has been duly corroborated by the evidence of P.W.2 and P.W.3, that is, the attesting witnesses who had signed in the said power of attorney dated 22.09.2014. It is significant to underline that the attesting witnesses were examined as plaintiffs side witnesses and not on the side of the defendants. That apart the first defendant has been set ex parte by the learned Trial Court in view of his non-appearance. Hence, it is the second defendant who wishes that the Court should believe in the existence of the power of attorney dated 22.09.2014 and that the same was executed by the first plaintiff. Hence, under such circumstances, the second defendant who wishes the Court to believe that the power of attorney has been executed by the first plaintiff has to prove the same before the Court of Law in terms of Section 103 of the Indian Evidence Act. However, on the defendants side except the power of attorney of the second defendant, none other were examined to strengthen their case. The legal position can thus be explained as that, if a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for the persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for



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their right as if it did not exist.

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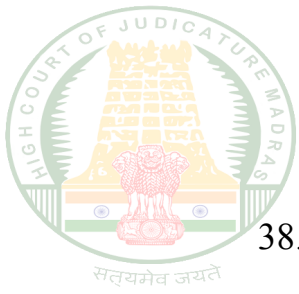
36. Even in this case, the same deed dated 26.09.2014 was executed by the first defendant who had no authority to execute the same. However, assuming such authority under the fabricated, concocted and created power of attorney dated 22.09.2014, in that case it is not necessary for the first plaintiff or the other plaintiffs who are the legal heirs of the first plaintiff to be bound by it and to set it aside, since the same cannot be used against them. Since the same has been fraudulently created and concocted, fabricating the first plaintiff's signature/thumb impressions, the plaintiffs can very well treat the power of attorney/sale deed dated 22.09.2014 and 26.09.2014 respectively as non-existent. In fact, it is logically impossible for the first plaintiff who is not a party to the sale deed dated 26.09.2014 to seek a decree for its cancellation.

37. The word “fraud” is meant “an intention to deceive;” whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression “fraud” involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money and it will include any harm whatever cause to any person in body, mind,



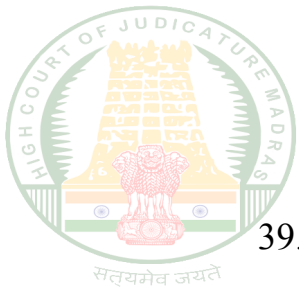
reputation or such others. Thus, a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Thus fraud as is well known vitiates every solemn act. Fraud and justice can never dwell together. Fraud vitiates all transactions known to the law of however, high a degree of solemnity. The Hon'ble Apex Court in the case of **Bhaurao Dagdu Paralkar v. State of Maharashtra and others** reported in **2005 (7) SCC 605** has dealt with the case of fraud and the relevant portion is extracted as follows:-

“Fraud” in relation to statute must be a colourable transaction to evade the provisions of a statute. “If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised.”



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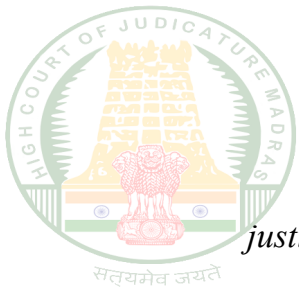
38.The first plaintiff is the absolute owner in possession and title over the plaintiff schedule properties by the strength of registered sale deed in her favor dated 27.11.1999 executed in her favor by one Thiru.K.T.M. Abdul Khadar Sahib. The first defendant played fraud upon her by creating, concocting, forged and fabricated document, that is, power of attorney dated 22.09.2014, as if the first plaintiff had executed the same in his favor. Thereafter, misusing the said fraudulently created power of attorney dated 22.09.2014 the first defendant had sold the suit property to the second defendant with a sale deed dated 26.09.2014. When a plea of fraud and forgery is specifically raised by the plaintiffs, the question of application of limitation does not arise. Even otherwise the plaintiffs have duly initiated criminal action as against the defendants for their fraudulent deeds and acts by lodging proper police complaint before the Anti Land Grabbing Cell as early as in the month of November 2014 and the same is pending. That apart, on the report and on the communication of the Anti Land Grabbing Cell to the Sub Registration Department, disciplinary action has been initiated as against one Thiru.S.Pullani the Sub-Registrar Keelakarai, Sub-Registrar, who colluded and connived with the first defendant in registering the fraudulently created power of attorney dated 22.09.2014 in the absence of the first plaintiff.



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39. In the facts and circumstances of this case, the cause of action need to be culled out from reading the entire plaint. Since the transactions in power of attorney dated 22.09.2014 and sale deed dated 26.09.2014 were made by the first defendant in favor of the second defendant, the entire transaction would be illegal, fabricated and fraudulent. Thus, both the documents are void and the same cannot bind upon the plaintiffs. The defendants are land grabbers, who actually indulged in fraudulently creating the power of attorney dated 22.09.2014. Hence, the entire sequence of events as stated in the plaint commencing from the transfer of title to the suit property in favor of the first plaintiff till the date of filing of the suit have to be considered as a whole to find out as to whether the plaint as presented is barred by limitation. This Court in the case of **K.Chandralekha v. S.Ravikumar and others** has dealt with the case of fraudulent transaction and the same is reported in **2016-4-L.W.789** and the relevant portion of the same is extracted as follows:-

“19. It is well settled that the plea of fraud, forgery, impersonation in respect of certain transactions which are put in question, will go to the root of the matter and if such plea is proved, any transaction made however long ago, becomes void abinitio and the person claiming under such fraudulent transaction cannot be permitted to hold such fraudulent title continuously merely because a technical plea of limitation would come to his rescue. Needless to say that the technical objections if any raised should be encouraged, considered and decided by the Courts only when such objection, if allowed, would result in rendering the substantial



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justice between the parties and not subverting the justice.”

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40.The Hon'ble Apex Court in yet another case of ***Santosh v. Jagat Ram*** ***and another*** has dealt with a fraudulent transaction reported in ***2010 3 SCC 251*** and the relevant portion is extracted as follows:-

“A fraud puts an end to everything. It is a settled position in law that such a decree is nothing, but a nullity. It has come in the evidence that when the respondents hearing started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect.”

41.Even in the instant case, the pleadings and the evidence of the plaintiffs side witnesses would clearly bring to light the fact that, though the plaintiffs have diligently initiated criminal action for the fraudulent deeds and acts of the defendants by duly lodging a criminal complaint as early as in the month of November 2014 before the Anti Land Grabbing Cell, Ramanathapuram, the possession of the plaintiffs came to be disturbed by the second defendant only on 01.04.2018, when they indulge in disturbing the tenants who were rented in the premises of the plaint schedule properties by



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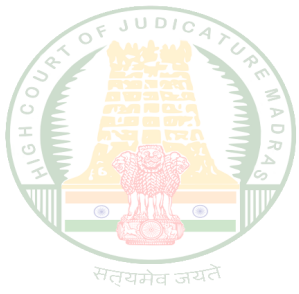
compelling to pay the rent to the defendants.

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42.In view of the same, it is only when the defendants on the strength of a sale deed in favor of the second defendant had indulged in disturbing the possession of the plaintiffs over the plaint schedule property, the necessity for filing this suit arose after 01.04.2018. Since the fraud vitiates the entire transaction and once the plaintiff is able to prove fraud, the entire transaction becomes void and the same goes to the root of the case of the defendants. Therefore, when allegations of fraud are made out, the transaction becomes void and to declare a void transaction, there is no period of limitation. Hence, the conclusion of the learned Trial Court that this suit is barred by limitation is not legally sustainable and the same is liable to be set aside.

43.Moreover, in terms of Section 111 of the Indian Evidence Act, the burden of proving the good faith on any transaction is on the part of the person who is in active confidence. Section 111 of the Indian Evidence Act reads as under:-

“Section 111:- proof of good faith in transactions where one party is in relation of active confidence: where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.”



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44. In this case, the first and second defendants who are in active confidence by the strength of the registered power of attorney dated 22.09.2014 and registered sale deed dated 26.09.2014, ought to have proved that the entire transaction had been done in good faith and that the first plaintiff had diligently and willfully and voluntarily executed the same in the favor of the first defendant. However, having not done the same, the defendants are not entitled to challenge the plaintiffs title over the plaint schedule properties. This Court in the case of *S. Sangeetha and another v. R. Krishnamurthy and others* reported in **2021 SCC online Madras 6024** has dealt with a similar case and the relevant portion of which is extracted as follows:-

“ In all the above cases, it has been clearly held by this Court and the Honourable Supreme Court that in an allegation of fraud, the law of limitation will not come in the way of granting relief to the parties in the event of the fraud being established by them. Therefore, the contention raised on behalf of the respondents 1 to 3, about the limitation, is contrary to the established legal principles and such contention is absolutely without any merit and substance. So also is the decisions cited in regard to the concept of good faith. The burden of proving the transaction done in good faith is on the person in a position to dominate the will of another.”

45. In view of the elaborate discussions supra, I am of the considered view that the suit is not barred by limitation. Since the fraudulent transaction



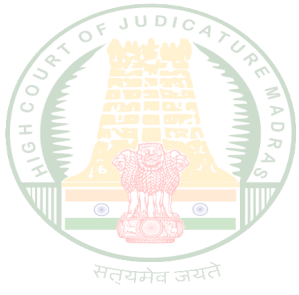
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established by the first plaintiff/plaintiffs has gone to the very root of the case of the first and second defendants the entire transaction that is both the power of attorney dated 22.09.2014 and sale deed dated 26.09.2014 becomes void. In view of the same, I have no hesitation to hold that the plaintiffs have absolute title and possession over the plaint schedule property.

46. Accordingly, the judgment and decree passed by the learned Trial Court dated 23.12.2021 in O.S.No.35 of 2018 is hereby set aside declaring that the plaintiffs are the absolute owner in title over the plaint schedule properties and that the sale deed dated 26.09.2014 executed by the first defendant in favour of the second defendant is null and void. In fine, this Appeal Suit is **allowed**. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

21.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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L.VICTORIA GOWRI, J.

Mrn

To

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

Order made in
A.S.(MD)No.71 of 2023

21.05.2024