

S.A.No.102 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 10 / 2024

JUDGMENT PRONOUNCED ON : 04 / 06 / 2025

**CORAM:
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**S.A.NO.102 OF 2020
AND
CMP NO.2144 OF 2020**

1.Devi
2.Sivashanmugham ... Appellants / Appellants /
Defendants

Vs.

1.Tamilarasi
2.Rajamanickam
3.Sakthivel
4.Hari Prasad
5.Vijayalakshmi ... Respondents / Respondents /
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated April 16, 2019 made in A.S.No.64 of 2018 on the file of the Subordinate Court, Ulundurpet, confirming the Judgment and Decree dated July 20, 2015 made in O.S.No.35 of 2010 on the file of the Principal District Munsif, Ulundurpet.

For Appellants : Mr.R.Rajarajan



S.A.No.102 of 2020

For Respondents : Mr.E.K.Kumaresan

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J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated April 16, 2019 passed in A.S.No.64 of 2018 by the 'Subordinate Court, Ulundurpet' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated July 20, 2015 passed in O.S.No.35 of 2010 by the 'Principal District Munsif, Ulundurpet' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The Suit Properties are ancestral properties in which the plaintiffs hold joint ownership rights. Due to family circumstances, the plaintiffs were unable to personally manage the properties. Hence, on July 29, 2002 they executed a registered 'General Power of Attorney' ('G.P.A.' for brevity) in favour of the second defendant, authorizing him to manage the Suit Properties on their behalf. Acting as their agent under the said G.P.A., the second defendant administered the properties. However, the



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second defendant fraudulently executed Sale Deeds dated July 30, 2003

and June 19, 2007 in favour of the first defendant in respect of Item Nos.1

and 2 of the Suit Properties respectively, that too without consideration,

behind the back of the plaintiffs, only with a view to defeat and defraud

the legitimate rights of the plaintiffs. This came to the knowledge of the

plaintiffs only on November 1, 2009. Upon learning the same, the

plaintiffs revoked the G.P.A. on November 10, 2009. Thereafter, the

plaintiffs approached the defendants and attempted to reclaim the

properties through mediation by community elders, but the defendants

refused. Consequently, the plaintiffs issued a legal notice on December

14, 2009, demanding return of the Suit Properties. The defendants, upon

receiving the notice on January 2, 2010, responded with a reply notice

denying the plaintiffs' claims. Therefore, the plaintiffs filed the Original

Suit praying for a decree of declaration of title and recovery of possession.

DEFENDANTS' CASE

4. The first defendant filed a written statement, which was adopted by the second defendant. In the written statement, it is averred



S.A.No.102 of 2020

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that the Suit filed by the plaintiffs is legally unsustainable and liable to be dismissed. It is averred that, the Suit Properties originally belonged to Muthulingam and others, which were later allocated to Muthulingam through a Family Partition as his share. Upon Muthulingam's demise, the plaintiffs, as his legal heirs, took possession of the Suit Properties and executed the registered G.P.A. in favour of the second defendant. At the time of executing the G.P.A., the plaintiffs received consideration from the second defendant in the presence of witnesses. Pursuant to the authority granted under the G.P.A., the second defendant took possession of the Suit Properties and subsequently sold them to the first defendant through valid Sale Deeds for consideration. From then on, the first defendant is enjoying the absolute ownership of the Suit Properties and the plaintiffs no longer have ownership rights over the properties following these transactions. Furthermore, the plaintiffs cannot unilaterally revoke / cancel the G.P.A., without prior notice to the second defendant. Alleged Revocation / Cancellation Deed is invalid and has no legal validity. The plaintiffs have filed the present Suit with the ulterior motive of gaining unjust enrichment and unlawful possession of the Suit Properties. The first defendant, after purchasing the properties, mortgaged



them to third parties and invested significant sums for their development.

The plaintiffs, with an intention to harass the defendants, have instituted the Suit. Hence, the defendants prayed for dismissal of the Suit.

TRIAL COURT

5. At trial, M.Sakthivel / third plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiffs. The second defendant was examined as D.W.1 and one Ramachandran was examined as D.W.2 and Ex-B.1 to Ex-B.6 were marked on the side of the defendants.

5.1. After full-fledged trial, the Trial Court held that the Ex-A.1 – G.P.A. is a true and valid document; that the second defendant / power agent, with a view to usurp the Suit Properties, acted against the interest and rights of the plaintiffs and executed Ex-A.2 and Ex-A.3 - Sale Deeds without any consideration and without the plaintiffs' knowledge and consent; and that, hence, Ex-A.2 and Ex-A.3 – Sale Deeds as well as pursuant Ex-B.4 and Ex-B.5 – Pattas would not confer any right to the defendants in the Suit Properties. Upon these findings, it concluded that the plaintiffs are entitled to the relief of declaration and recovery of



possession. Accordingly, decreed the Suit as prayed for.

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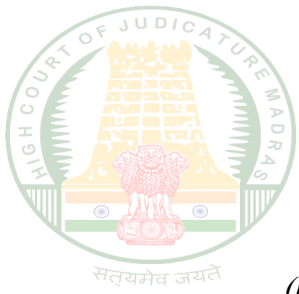
FIRST APPELLATE COURT

6. Feeling aggrieved, the defendants 1 and 2 preferred an appeal before the First Appellate Court, which after hearing both sides, concurred with the findings of the Trial Court, in addition held that the plaintiffs are entitled to repudiate the Sale Deeds as per Section 215 of the 'Indian Contract Act, 1872' ['Contract Act' for short], and went on to dismiss the appeal by confirming the Judgment and Decree of the Trial Court.

SECOND APPEAL

7. Feeling aggrieved, both the defendants have preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on August 28, 2024 on the following substantial questions of law:

"(a) Whether the Courts below are right in holding that the revocation of G.P.A. Deed on 10.11.2009 by the Principal is valid especially after the exercise of the power by the agent by execution of two Sale Deeds dated 30.07.2003 and 19.06.2007 in favour of the 1st appellant / 1st defendant?"



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S.A.No.102 of 2020

- (b) *Whether the Courts below had not failed to appreciate that the remedy of the vendors / plaintiffs to seek for either cancellation of the Sale Deeds or for redemption of accounts from their power agent and not for suit for declaration and recovery of possession?*
- (c) *Whether the Courts below have properly understood the application of Chapter X of the Indian Contract Act, especially Section 215 of the Contract Act which is in respect of the business of the agency?"*

ARGUMENTS

8. Mr.R.Rajarajan, learned Counsel for the appellants / defendants submitted that the Trial Court as well as the First Appellate Court wrongly concluded that no consideration was passed under Ex-A.2 and Ex-A.3 - Sale Deeds. He further submitted that the plaintiffs did not deny or challenge the execution of Ex-A.1 – G.P.A. Hence, the plaintiffs are precluded from denying a part thereof. The Trial Court as well as First Appellate Court concurrently held that Ex-A.1 – G.P.A. is true and valid. Pursuant to Ex-A.1, Ex-A.2 and Ex-A.3 - Sale Deeds were executed in favour of first defendant. Sale price was fixed and consideration was passed on from the purchaser to the Power Agent *i.e.*, from the first defendant to the second defendant. There is no legal bar to execute a Sale

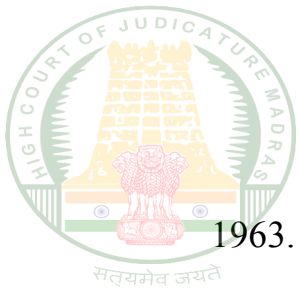


Deed in favour of first defendant, who is the wife of second defendant / power holder.

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8.1. He further submitted that in this case, Sale Price was paid to the plaintiffs at the time of execution of G.P.A. Deed itself. The said aspect has been proved by the defendants by examining D.W.2, who is the witness to Ex-A.1. He further submitted that the plaintiffs did not challenge Ex-A.1 - G.P.A. as well as Ex-A.2 and Ex-A.3 - Sale Deeds. In the absence of prayer for setting aside the Sale Deeds, the declaration sought for by the plaintiffs is not maintainable. Further submitted that, assuming a moment that the power agent / second defendant did not pay the sale price to the Principal / plaintiffs, the remedy available to the plaintiffs as per the terms of Ex-A.1 - G.P.A., is to seek rendition of accounts; merely because sale consideration was not passed on to Principal (assumption), Sale Deed cannot be termed as invalid.

8.2. Further that, Ex-A.2 - Sale Deed was executed on July 30, 2003 and Ex-A.3 - Sale Deed was executed on June 19, 2007. The Suit was filed on February 8, 2010. Hence, the Suit is barred by limitation *qua* Ex-A.2 - Sale Deed as per Article 58 and 59 of the Limitation Act,



1963. The Trial Court as well as the First Appellate Court did not consider the above aspects and erred in decreeing the Suit. Their Judgment and Decree are liable to be set aside. He relied on the following Judgments in support of his submissions:

- (i) Judgment of the Hon'ble Supreme Court in ***Vishwambhar Vs. Laxminarayan (Dead) through LRs*** reported in ***(2001) 6 SCC 163***;
- (ii) Judgment of the Hon'ble Supreme Court in ***Murugan Vs. Kesava Gounder (Dead) thr LRs*** reported in ***(2019) 20 SCC 633***;
- (iii) Judgment of the Hon'ble Supreme Court in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) thr LRs*** reported in ***(2020) 7 SCC 366***.

9. In response to the above arguments, Mr.E.K.Kumaresan, learned Counsel for the respondents / plaintiffs contended that Ex-A.1 - G.P.A. was executed only for the purpose of maintaining the Suit Properties and not for selling out the same. He drew attention of this Court to the evidence of P.W.1 and D.W.1 to contend that the plaintiffs



S.A.No.102 of 2020

and the defendants are close relatives; second defendant is the brother of the first plaintiff as well as maternal uncle of Plaintiff Nos.2 to 5. The first plaintiff's husband passed away. Hence, out of good faith and trust, plaintiffs executed Ex-A.1 - G.P.A. in favour of the second defendant only for the purpose of managing the property. However, in Ex-A.1, routine recitals have been written, which do not reflect the true intention of the parties. Further, no consideration was given by the second defendant at the time of execution of Ex-A.1 to the plaintiffs. Further he argued that the burden of proof that consideration was passed on to the Principal lies upon the defendants. Further, the Sale Deeds were executed in favour of the first defendant, who is none other than the wife of the second defendant, collusively only with a view to defeat and defraud the rights of the Principal and no consideration was passed under Ex-A.2 and Ex-A.3 - Sale Deeds. The second defendant acted on his own account without the knowledge of the Principal / plaintiffs and executed the Sale Deed in favour his wife. There are sufficient pleadings and evidence in this regard. Since there was no consideration, Ex-A.2 and Ex-A.3 - Sale Deeds are void. Hence, the Suit for declaration and recovery of possession is maintainable. The Trial Court and the First Appellate Court rightly



decreed the Suit in favour of plaintiffs. There is no reason to interfere with the same. In support of his contention, he relied on the following

Judgments:

- (i) Judgment of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Private Limited Vs. State of Haryana***, reported in ***(2012) 1 SCC 656***;
- (ii) Judgment of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Basant Nahata***, reported in ***(2005) 12 SCC 77***;
- (iii) Judgment of the Hon'ble Supreme Court in ***Bhatori (Smt) Vs. Ram Piari (Smt)***, reported in ***(1996) 11 SCC 655***; and
- (iv) Judgment of the Hon'ble Supreme Court in ***Kewal Krishan Vs. Rajesh Kumar***, reported in ***2021 SCC OnLine SC 1097***;
- (v) Judgment of the Hon'ble Supreme Court in ***Suhrid Singh Alias Sardool Singh Vs. Randhir Singh***, reported in ***(2010) 12 SCC 112***;
- (vi) Judgment of Karnataka High Court in ***Sri U.Vijaya Kumar Vs. Smt. Malini V. Rao***, reported in ***2016 SCC OnLine Kar 2128***.



DISCUSSION

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10. Heard on either side and perused the entire evidence available on record.

Substantial Question of Law (a)

11. The plaintiffs admitted the execution of Ex-A.1 - G.P.A. P.W.1 / third plaintiff has categorically admitted the execution of Ex-A.1 in his chief as well as cross examination. The case of the plaintiffs is that Ex-A.1 - G.P.A. was intended only for the purpose of maintaining the Suit Properties and not for selling the same. This Court has perused Ex-A.1. Ex-A.1 was stamped and registered duly in accordance with the Indian Stamp Act, 1899 as well as the Registration Act, 1908. In Ex-A.1, it has been specifically and clearly recited that under Ex-A.1, the Principal confers power to the Agent to execute the Sale Deed in favour of any third person and further recited that the Agent shall maintain accounts and hand over the same whenever the Principal demands. The relevant extract is hereunder:

“ . . . சொத்து விபரத்தில் கண்ட சொத்துக்களை
நாங்கள் விற்பனை செய்ய முடிவு
செய்திருக்கிறோம். நாங்கள் இருந்து விற்பனை
செய்ய எங்களுக்கு சாத்தியம் இல்லாத



காரணத்தால் நாங்கள் தங்களை எங்களது பொது அதிகார முகவராக நியமனம் செய்து தங்களுக்கு இந்த பொது அதிகார பத்திரத்தை எழுதிக்கொடுத்திருக்கிறோம். இதன்படி சொத்து விபரத்தில் கண்ட சொத்துக்களை ஒருவருக்கோ பலருக்கோ மொத்தமாகவோ தனித்தனி மனைப்பிரிவுகளாகவோ கிரயம் பேசி கிரயத்தொகை நிர்ணயம் செய்து கொள்ளவும் முன்பணம் பெற்றுக் கொள்ளவும் கீழ்க்கண்ட அதிகாரத்தின்படி எங்களது பொது அதிகார முகவராக தங்களை நியமித்துள்ளோம்.

1.சொத்து விபரத்தில் கண்ட சொத்துக்களை ஒருவருக்கோ பலருக்கோ மொத்தமாகவோ தனித்தனி மனை பிரிவுகளாகவோ கிரயம் பேசி கிரயத்தொகை நிர்ணயம் செய்து கொள்ளவும் முன்பணம் பெற்றுக் கொள்ளவும் தங்களுக்கு இதன் மூலம் அதிகாரமளிக்கிறோம்.

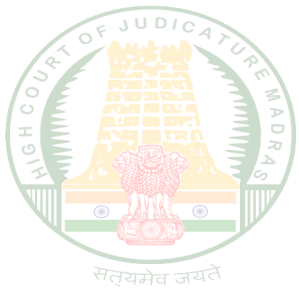
2.கிரயம் பெறுபவர்களிடம் கிரயப்பத்திரம் எழுதிவரச்செய்து அது சம்பந்தப்பட்ட பத்திரபதிவு அலுவலகங்களில் எங்களது பொது அதிகார முகவர் என்ற முறையில் கையொப்பம் செய்து பத்திரத்தை சார் பதிவாளர் அலுவலகத்திலோ மாவட்ட பதிவாளர் அலுவலகத்திலோ சென்று தாக்கல் செய்து



கிரயத் தொகையினை நேரிலோ அல்லது சார்பதிவாளர் முன்னிலையிலோ ரொக்கம் பெற்றுக்கொள்ளவும். பதிவு சம்மந்தமான கொடுக்க வேண்டிய நமுனாக்களில் எங்களது பொது அதிகார முகவர் என்ற முறையில் தாங்களே கையொப்பம் செய்து அது சம்மந்தமாக அனைத்து நடவடிக்கைகளை செய்து கொடுக்க தங்களுக்கு இதன் மூலம் அதிகாரமளிக்கிறோம்.

3.கீழ்கண்ட சொத்துகள் சம்மந்தமான பதிவு வகையிலும் மற்றும் சிவில் கிரிமினல் வழக்குகளை நடத்தவும் அது சம்மந்தமாக அனைத்து காரியங்களை செய்யவும் இதன் மூலம் தங்களுக்கு அதிகாரமளிக்கிறோம்.

4.மேலும் பொது காரியத்திற்காக தான செட்டில்மெண்டு பத்திரங்கள் எழுதி கையொப்பமிட்டு பதிவு செய்து சம்மந்தப்பட்ட கிராம பஞ்சாயத்து அலுவலகத்தில் ஒப்படைக்கவும் இதன்மூலம் தங்களுக்கு அதிகாரம் அளிக்கிறோம். சொத்து விற்பனை சம்மந்தப்பட்ட ஆவணங்களில் கையொப்பம் செய்யவும் மற்றும் இதர அரசு அலுவலகங்களில் இந்த சொத்து சம்மந்தமாக தாங்கள் செய்யும் விற்பனை மற்றும் அனைத்து காரியங்களையும் நாங்களே நேரில் இருந்து செய்ததாக



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S.A.No.102 of 2020

ஒப்புக்கொள்கிறோம். இதன் வரவு செலவு
கணக்குகளை தாங்கள் பராமரித்து வந்து
நாங்கள் கோரும்போது உரிய தொகையுடன்
எங்களிடம் ஒப்படைக்க வேண்டியது. இதன்படி
நாங்கள் சம்மதித்து எழுதிக்கொடுத்த பொது
அதிகாரபத்திரம். . . . ”

11.1.The above recitals, in an unequivocal manner, express the intention of the parties to sell the Suit Properties. The G.P.A. was executed to sell the Suit Properties. Moreover, the plaintiffs did not challenge the execution of Ex-A.1. In these circumstances, no doubt that the plaintiffs are precluded from denying a portion of Ex-A.1 alone as well as from taking a stand contrary to the recitals contained in Ex-A.1.

12. Pursuant to the execution of Ex-A.1 - G.P.A., the second defendant, who is the Power Agent, executed two Sale Deeds dated July 30, 2003 and dated June 19, 2007; former in respect of Item No.1 of Suit Properties and latter in respect of second item of Suit Properties, both in favour of the first defendant who is none other than the wife of second defendant. Thereafter, the plaintiffs cancelled Ex-A.1 – G.P.A., vide Ex-A.4 - Cancellation Deed dated November 10, 2009. Since the Sale Deeds were executed on July 30, 2003 and June 19, 2007 in pursuance of Ex-

Page No.15 of 34



A.1, revocation thereafter has no effect in law, in the absence of challenge to Ex-A.1. The Trial Court as well as the First Appellate Court were not right in holding that revocation of GPA was valid. ***Substantial Question of Law (a) is answered accordingly in favour of the defendants and against the plaintiffs.***

Substantial Questions of Law (b) & (c)

13. As already stated, the execution of Ex-A.1 - G.P.A. is admitted. The case of the defendants is that on the date of execution of G.P.A. itself, a sum of Rs.5,25,000/- was paid to the plaintiffs. But the said fact has not been proved by the defendants. Both the Courts concurrently held that no consideration was passed on under Ex-A.1 to the plaintiffs. If really the entire consideration was passed on the date of execution of Ex-A.1 itself as contended by the defendants, they could have obtained a Sale Deed in respect of the Suit Properties straight away from the plaintiffs. There would have been no necessity to obtain Ex-A.1 - G.P.A. Further, Ex-A.1 contains no recital supporting the defendants' contention regarding passing of consideration under Ex-A.1. Further, the defendants have not adduced any receipts or other evidence in support of



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their contentions in this regard. Moreover, as per the Indian Stamp Act, 1899, when a G.P.A. is executed for consideration, it shall be stamped as per Article 48 (e) of the said Act. However, Ex-A.1 - G.P.A. is stamped for Rs.100/- i.e., it is not stamped in accordance with the Article 48(e). It could only mean that there was no consideration under Ex-A.1 and it is nothing more than a G.P.A., especially in the absence of recitals or receipts in this regard. Hence, the argument that Rs.5,25,000/- was paid to the plaintiffs on the date of execution of Ex-A.1 itself does not hold up under scrutiny.

14. Be that as it may, pursuant to the execution of Ex-A.1 - G.P.A., Ex-A.2 and Ex-A.3 - Sale Deeds were executed in favour of the first defendant by the second defendant. First defendant is none other than the wife of second defendant. Case of the plaintiffs is that the Sale Deeds were executed collusively without any consideration behind the plaintiffs' back only with a view to defeat and defraud their legitimate rights over the Suit Properties. If it is so, the burden is upon the plaintiffs to plead and prove the same. In this case, there is no evidence available on record to support the contention of the plaintiffs that the Sale Deeds were executed collusively without any consideration. On the other hand, on



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perusal of Ex-A.2 and Ex-A.3 – Sale Deeds, it is seen that both the Sale Deeds record that sale consideration thereunder were paid by the first defendant to the second defendant in cash. Even while assuming that the sale consideration is inadequate, that alone is not sufficient to render the Sale Deeds invalid. At this juncture, the learned Counsel for the respondents / plaintiffs would contend that the first defendant / vendee, who is the competent witness, has not been examined on the side of the defendants to prove the passing of consideration under Ex-A.2 and Ex-A.3 - Sale Deeds. Since the plaintiffs failed to challenge the Sale Deeds and seek relief to set aside / cancel them in the plaint prayer, as well as in view of the positive recitals contained in the Sale Deeds regarding passing of consideration, this Court is of the view that the contention of the learned Counsel for the plaintiffs loses its significance. Hence, this Court is of the view that consideration was passed to the Power Agent / second defendant under Ex-A.2 and Ex-A.3 – Sale Deeds.

15. The First Appellate Court citing Section 215 of the Contract Act, held that if the Agent / second defendant executed Sale Deeds on his own account without prior notice or knowledge of the Principal / plaintiffs, the plaintiffs have every right to repudiate the same.



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There is no quarrel with the legal position. In this case, the Sale Deeds were executed duly under the power given under Ex-A.1. It is to be noted that the transaction under the Sale Deeds are voidable ones and there is no prayer for setting aside the Sale Deeds. The transactions being voidable ones, the Sale Deeds, which are still in the books of records, hold good, unless they are set aside. No doubt that, as far as Indian Law is concerned, in general, spouses are separate legal persons and there is no legal barrier against a power agent executing Sale Deed in favour of his/her spouse. As elaborated above, Ex-A.4 – Cancellation Deed has no effect on the execution of Ex-A.2 and Ex-A.3 - Sale Deeds. In these circumstances, this Court is of the considered view that, Ex-A.2 and Ex-A.3 – Sale Deeds are valid documents executed for consideration and confer rights upon the first defendant over the Suit Properties. Thus, in the absence of prayer for setting aside / cancelling Ex-A.2 and Ex-A.3 - Sale Deeds, the Suit for declaration and recovery of possession is not maintainable. In case, the Agent / second defendant did not pass on the Sale Consideration to the Principal / plaintiffs, the remedy available to them is to file a Suit for rendition of accounts and for recovery of money.

16. The Judgment relied on by the learned Counsel for the

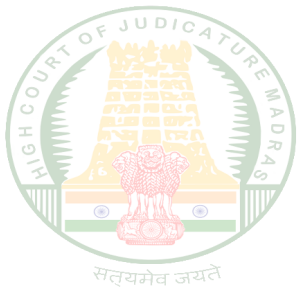


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respondents in ***Sri U.Vijaya Kumar's Case*** (cited *supra*) is not applicable to the facts and circumstances of present case for the reason that in that case, the plaintiff therein challenged the Sale Deed dated February 17, 2009 in respect of 'B' Schedule Property thereof executed by the first defendant therein as G.P.A. holder of plaintiff therein. In this case, as already stated, the plaintiffs did not challenge Ex-A.2 and Ex-A.3 Sale Deeds. Thus, the said Judgment is distinguishable and not applicable to the facts and circumstances of the case on hand.

17. In the Judgment in ***Suhrid Singh's Case*** (cited *supra*) relied on by the learned Counsel for the respondents, it has been observed by the Hon'ble Supreme Court, while explaining Section 7(iv)(c), (v) and Schedule II Article 17(iii) of the Court Fees Act, 1870 (As amended in State of Punjab), as follows:

'7.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



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S.A.No.102 of 2020

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 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, has 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 the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.'

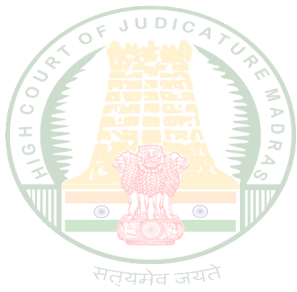
17.1. Acts of the Power Agent are deemed to be that of the Principal. In this case, Ex-A.2 and Ex-A.3 – Sale Deeds were executed under the power given by Ex-A.1 before it was revoked. Hence, the Sale Deeds are deemed to be executed by the plaintiffs and hence, they cannot be termed as non-executants. The plaintiffs being executants, as per the legal position put forth in ***Suhrid Singh's Case***, ought to have sought for setting aside / cancellation of the Sale Deeds by paying necessary Court Fee, as per Tamil Nadu Court Fees and Suits Valuation Act, 1955. But



they have failed to do so. Hence, ***Suhrid Singh's Case*** does not come to the aid of the plaintiffs.

18. In ***Suraj Lamp's Case*** (cited *supra*) relied on by the learned Counsel for the respondents, the Hon'ble Supreme Court held that Sale Agreement / General Power of Attorney / Living Will transaction does not convey any title nor create any interest in an immovable property. There is no dispute with regard to the legal position stated in the said Judgment, but it does not aid the plaintiffs' case.

19. In so far as the Judgment relied on by the learned Counsel for the respondents in ***Basant Nahata's Case*** (cited *supra*) is concerned, constitutionality of Section 22-A of the Registration Act, 1908 as amended by the State of Rajasthan as well as the Notification issued in terms thereof was challenged. This Court is of the view that the case law is not applicable to the facts and circumstances of the case on hand. Further, in ***Bhatori's Case*** relied on by him, fraud was established and the Supreme Court held that fraud unravels the contract rendering it void. In the case on hand, the plaintiffs have failed to establish a case of fraud and hence, that case is not applicable to the case on hand.



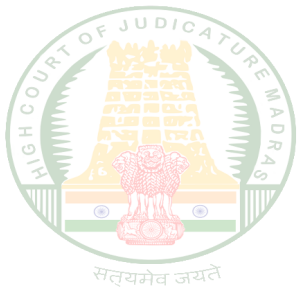
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20. In the Judgment relied on by the learned Counsel for the respondents in **Kewal Krishan's Case** (cited *supra*), the Hon'ble Supreme Court has held that sale of immovable property has to be for sale price. The facts of the case have been captured in Paragraph Nos.2 to 4 and reads as follows:

“2.The appellant Kewal Krishan and his elder brother (one of the respondents) Sudarshan Kumar acquired the properties which are the subject matter of these appeals (for short “the suit properties”) under the sale deeds dated 12th August 1976 and 19th October 1976.

3.The appellant Kewal Krishan executed a power of attorney in favour of Sudarshan Kumar on 28th March 1980. Acting on the basis of the said power of attorney, two sale deeds were executed by Sudarshan Kumar on 10th April 1981. The first sale deed was executed by him by which he purported to sell a part of the suit properties to his minor sons. The sale consideration was shown as Rs.5,500/-. The other sale deed was executed by Sudarshan Kumar in favour of his wife in respect of remaining part of the suit properties. The consideration shown in the sale deed was of Rs.6,875/-. The respondents are Sudarshan Kumar, his wife and his sons.

4.Two separate suits were instituted by the appellant on 10th May 1983. One was against Sudarshan Kumar and his two sons and the other one was against Sudarshan Kumar and his wife. Both the suits, as originally filed, were for injunction restraining the defendants from interfering with the possession



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S.A.No.102 of 2020

of the appellant and from alienating the share of the appellant in the suit properties. In the alternative, a prayer was made for passing a decree for possession. On 23rd November, 1985, the plaint in both the suits was amended by incorporating the relief of declaration that the power of attorney and sale deeds were null and void. A prayer was also incorporated for a money decree for the share of the appellant in the compensation awarded in respect of a tube well on the suit properties.”

20.1. While dealing with the above facts, the Hon'ble Supreme Court, in Paragraph Nos.16 and 17 of the Judgment, held as follows:

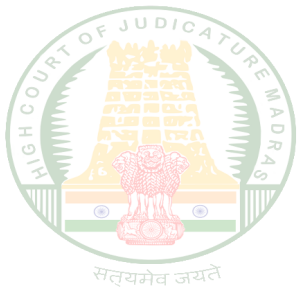
“16. Section 54 of the Transfer of Property Act, 1882 (for short “the TP Act”) reads thus:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

***Sale how made.**—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes



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S.A.No.102 of 2020

place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”

17.Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.”

20.2.In the aforesaid case law, the plaintiff therein challenged the G.P.A. and the pursuant Sale Deeds. Coming to the case on hand, as stated *supra*, the plaintiffs failed to pray for cancellation of / setting aside Ex-A.2 and Ex-A.3 – Sale Deeds. Unless they are set aside / cancelled, law presumes that they are executed for valid consideration. Hence, the above Judgment is distinguishable on facts and not applicable to the



present case.

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21. Therefore, as stated *supra*, Ex-A.2 and Ex-A.3 - Sale Deeds are valid unless set aside / cancelled, and in these circumstances, the remedy available to the plaintiffs is to seek rendition of accounts and for recovery of money, and not for declaration and recovery of possession. The Trial Court as well as the First Appellate Court failed to appreciate the said aspect in the right manner. ***Substantial Question of Law (b) is answered accordingly, in favour of the defendants and against the plaintiffs.***

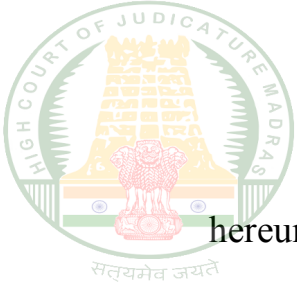
22. Further, the First Appellate Court having properly appreciated Chapter X of the Contract Act, failed to consider the facts and circumstances of the case in the right perspective and wrongly applied the provisions of the Contract Act. It did not consider the fact that the plaintiffs ought to have challenged Ex-A.2 and Ex-A.3 – Sale Deeds to repudiate the transactions thereunder. The findings of the First Appellate Court that as per Section 215 of the Contract Act, Ex-A.2 and Ex-A.3 are void is not justifiable, for they are only voidable at the instance of the plaintiffs, and the plaintiffs have not sought for cancellation of Ex-A.2



and Ex-A.3 or declaration to that effect by paying necessary Court Fees.

Substantial Question of Law (c) is answered accordingly, in favour of the defendants and against the plaintiffs.

23. As already stated, the remedy available to the plaintiffs is rendition of accounts. In this case, the Suit Item No.1 was alienated in the year 2003 under Ex-A.2 – Sale Deed and Suit Item No.2 was alienated in the year 2007 under Ex-A.3 – Sale Deed. There is no evidence available on record to show that the Power Agent / second defendant made any improvements or developments to the Suit Properties. Further, the defendants did not furnish any accounts in the Suit also. From the evidence available on records, it could only be said that he transferred the Suit Properties as such to the first defendant without making any improvement or development. In these circumstances, with a view to avoid multiplicity of proceedings and in the interest of justice, this Court is of the view that it is not necessary to file a fresh Suit for rendition of accounts. D.W.1 in his evidence has stated that a sum of Rs.5,000/- per Cent was agreed as Sale Price for Item No.1 of Suit Properties and a sum of Rs.60/- per Square Feet was agreed as sale price for Item No.2 of Suit Properties. It is relevant to extract the cross examination of D.W.1

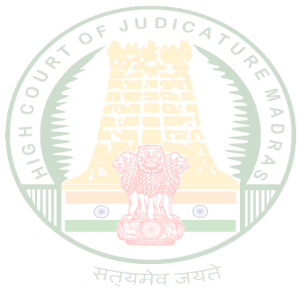


S.A.No.102 of 2020

hereunder:

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‘ . . . கிரையம் பேசிய காலத்தில் வழக்கு
சொத்துக்களுக்கு வழக்கு 2வது அயிட்ட சொத்திற்கு
சதுரடி ரூ.60/-ம், 1வது அயிட்டம் நிலமாக உள்ளதால்.
மொத்தமாக சந்தை மதிப்பாக ரூ.5000/-ம் கணக்கிட்டு
கிரையத்தொகை பேசப்பட்டது. பொதுவாக கிரையம்
பெறுபவர்கள் தான் பத்திர செலவை
ஏற்றுக்கொள்வார்கள் என்றால் சரிதான். வழக்கு 1வது
அயிட்ட சொத்து நிலமாக உள்ளதால் அதன் சந்தை
மதிப்பான ரூ.5000/-ம் என்னை பொறுத்த வரை பெரிய
செலவு கிடையாது என்றால் சரிதான். நான்
கூறியுள்ளபடி 1வது அயிட்ட சொத்திற்கு கிரையமே
பேசி கிரையப்பத்திரம் பதிவு செய்திருக்கலாம்
என்றால் சரிதான். என்னுடைய எதிர் வழக்குரையிலோ
முதல் விசாரணை வாக்குமூலத்திலோ வழக்கு
சொத்துக்கள் கிரையமாக பேசிமுடிக்கப்பட்டு இரண்டு
தவணைகளாக ரூ.525000/-ம் செலுத்தினேன் என்றும்,
பத்திர செலவை குறைப்பதற்காக பொது அதிகார
பத்திரம் எழுதிக்கொண்டோம் என்ற விவரத்தை
கூறவில்லை என்றால் சரிதான். வழக்கு 2வது சொத்து
சர்வே எண்ணில் 51 சென்ட் போக மீதியுள்ள
நிலத்தில் வாதிகள் மனை பிரிவுகளாக பிரித்து
கிரையம் செய்து கொடுத்திருக்கிறார்கள் என்றால்
சரிதான். 2002-ம் ஆண்டு வழக்கின் இரண்டு அயிட்ட
சொத்திற்கு அருகில் உள்ள மனைபிரிவு ஒன்று
சராசரியாக ரூ.20000/-ம் என்று மதிப்பிட்டு வேறு
நபர்களுக்கு கிரையம் செய்து கொடுத்திருக்கிறார்கள். .
. . ?



(emphasis supplied by this Court)

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23.1. D.W.1 / second defendant has admitted that, at the time of sale negotiation, the market value of Item No.1 of the Suit Properties is Rs.5,000/- per Cent and that of the Item No.2 is Rs.60 per sq. ft. Needless to mention that it is the duty of the Power Agent / second defendant to sell the Suit Properties not less than the market value and in a manner advantageous to the Principal.

23.2. If this Court calculates the Sale Price based on the candid admission made by D.W.1, the sale consideration for Item No.1 of the Suit Properties (Ex-A.2 – Sale Deed) would be:

$$\begin{array}{r} \text{Rs.5,000/- [per Cent]} \\ \text{(X) 107 Cents} \\ \hline \text{Rs.5,35,000/-} \end{array}$$

23.3. And the sale consideration for Item No.2 of the Suit Properties (Ex-A.3 – Sale Deed) would be:

$$\begin{array}{r} \text{Rs.60/- [per Sq. ft.]} \\ \text{(X) 22236 sq. ft. (51 Cents)} \\ \hline \text{Rs.13,34,160/-} \end{array}$$

23.4. Hence, the defendants are liable to pay a total sum of



Rs.18,69,160/- to the plaintiffs. Needless to mention that the said amount

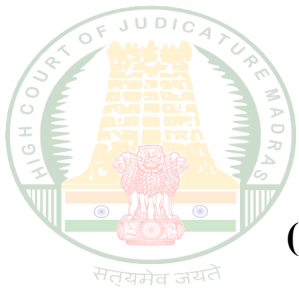
is a statutory charge under Section 55 (4) (b) of the Transfer of Property Act, 1882. With a view to avoid multiplicity of proceedings and in the interest of justice, by invoking the Plaint prayer (d) *i.e.*, residuary item of the prayer, this Court directs the appellants / defendants to pay the aforesaid amount as sale considerations along with simple interest at the rate of 9% per annum from the date of execution of Ex-A.2 and Ex-A.3 - Sale Deeds respectively till the date of realisation.

24. No quarrel with the case laws relied on by the learned Counsel for the appellants / defendants.

RESULT

25. Resultantly, the Second Appeal is partly allowed and a Money Decree is passed in the following terms:

- (a) The plaintiffs are not entitled to the relief of declaration, recovery of possession and mesne profits. Accordingly, prayers (a) and (b) of the plaint are dismissed;

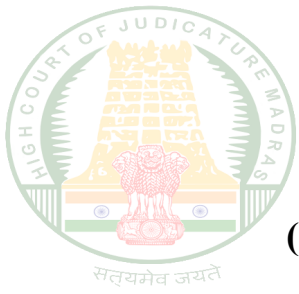


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S.A.No.102 of 2020

- (b) The defendants shall pay the sale considerations of Rs.5,35,000/- and Rs.13,34,160/- along with simple interest at the rate of 9% per annum from the date of execution of Ex-A.2 and Ex-A.3 - Sale Deeds respectively till the date of realisation to the plaintiffs;
- (c) The defendants shall pay the aforesaid amounts of Rs.5,35,000/- and Rs.13,34,160/- along with interest as stated *supra* within a period of three months from the date of receipt of a copy of this Judgment;
- (d) Charge is created over the Suit Properties under Section 55(4)(b) of the Transfer of Property Act, 1882 enabling the plaintiff to realise the aforesaid amounts of Rs.5,35,000/- and Rs.13,34,160/- along with respective interests;
- (e) The plaintiffs are directed to pay the necessary Court Fee of Rs.1,52,291/- under Section 35 read with Article 1 of Schedule 1 of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955, within 30 days from the date of receipt of a copy of this Judgment;



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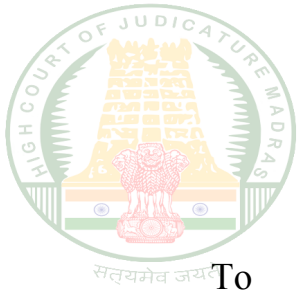


S.A.No.102 of 2020

- (f) Considering the facts and circumstances of the case, the parties shall bear their own costs throughout the proceedings;
- (g) Registry is to draw the Decree in the above terms;
- (h) Consequently, connected Civil Miscellaneous Petition is closed.

04 / 06 / 2025

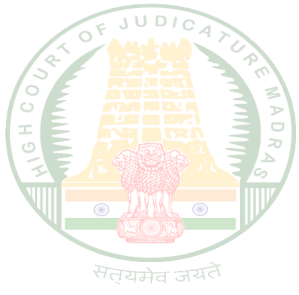
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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S.A.No.102 of 2020

To
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- 1.The Subordinate Judge
Subordinate Court
Ulundurpet.
- 2.The Principal District Munsif
Ulundurpet.
- 3.The V.R. Section
Madras High Court
Madras.



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S.A.No.102 of 2020

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.102 OF 2020

04 / 06 / 2025

Page No.34 of 34