



S.A.NO.80 OF 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26 / 03 / 2026

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CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.80 OF 2006

1.C.Arumugam (Deceased)
S/o.Late Chittarai,
Nerkunapattu Colony and Village,
Cheyyur Taluk.

... Appellant/Appellant/
Plaintiff

2.Rani,
W/o.Arumugam,

3.Thiyagarajan,
S/o.Arumugam

4.Vadivelu,
S/o.Arumugam

5.Ramesh,
S/o.Arumugam

6.Jayachandran
S/o.Arumugam

7.Jagadesh
S/o.Arumugam

Appellants 2 to 7 are residing at
Nerkunapattu Colony and Village,
Cheyyur Taluk.

... Appellants 2 to 7 /
Legal Representatives
of the deceased Sole
Appellant



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Sole Appellant died. Appellants 2 to 7 are brought on record as Legal Representatives of the deceased Sole Appellant vide Order of this Court dated December 02, 2014 made in C.M.P. Nos.1078 & 1079 of 2012

-versus-

1.Kandaswamy Chettiar (Died)
S/o.Parasurama Chettiar,
Kadalur Village, Maduranthakam Taluk,
Chinglepet District.

2.Radhaammal,
W/o.Natesan,
Nerkunapattu Colony and Village,
Maduranthakam Taluk,
Chinglepet District.

3.Latha,
W/o.Sridharan,
Kodur Village and Post,
Cheyyur Taluk, Chinglepet District.

... Respondents 1 to 3 /
Respondents /
Defendants

4.Sridharan (Died)
S/o.Kandaswamy Chettiar

... 4th Respondent /
Legal Representative of
the deceased 1st
Respondent

Respondent No.1 Died. Respondent No.4 is brought on record as Legal Representative of the deceased Respondent No.1 vide Order of this Court dated November 08, 2022 made in C.M.P. Nos.514 to 516 of 2014 in S.A. No.80 of 2006



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Respondent No.4 Died. Respondent No.3 is the Legal Representative of the deceased Respondent No.4 already on record, as per Memo dated November 27, 2022 recorded vide Order of this Court dated November 28, 2022 in S.A. No.80 of 2006

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated November 11, 2005 made in A.S. No.19 of 2005 on the file of the Sub Court, Madhuranthagam confirming the Judgment and Decree dated January 27, 1995 passed in O.S. No.366 of 1995 on the file of the District Munsif Court, Madhuranthagam.

For Appellants	:	Ms.V.Srimathi
For Respondent-1	:	Died
For Respondent-2	:	Served – No appearance
For Respondent-3	:	Mr.V.Chandrakanthan
For Respondent-4	:	Died, memo recorded

* * *

JUDGMENT

Feeling aggrieved by the Judgment and Decree dated November 11, 2005 made in A.S. No.19 of 2005 by 'the Sub Court, Madhuranthagam' ['First Appellate Court' for brevity], wherein and whereby the Judgment and Decree dated January 27, 1995 passed in O.S. No.366 of 1995 by 'the District Munsif Court, Madhuranthagam' ['Trial Court' for brevity] was confirmed, the Appellant in the Appeal Suit who is the plaintiff in the Original Suit, has preferred this Second Appeal.



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

PLAINTIFF'S CASE IN BRIEF:

3. Case of the plaintiff is that the plaintiff and one Natesan are brothers, and they both were entitled to 1/2 share each in common in total extent of 2 Acre 94 ½ Cents in Survey Nos.344/1, 344/4, 344/5, 344/6 and 413/1. The second defendant is the wife of said Natesan. The plaintiff and Natesan (for themselves and on behalf of their respective minor sons) executed a Usufructuary Mortgage Deed on July 24, 1977 in favour of first defendant - Kandasamy Chettiar mortgaging the aforesaid properties and received mortgage money of Rs.10,000/- each (total mortgage money is Rs.20,000/-). The plaintiff's brother - Natesan passed away intestate on March 21, 1995 leaving his wife (second defendant) and children as his legal heirs. The second defendant paid Rs.10,000/- to the first defendant as repayment of mortgage payable by the deceased Natesan and obtained possession of undivided ½ share; she redeemed Natesan's share from the mortgagee. To that effect, the first defendant made an endorsement in the registered Mortgage Deed. In the last week of March 1995, the plaintiff approached the first defendant to pay his share of mortgage money viz.,



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Rs.10,000/- and requested the first defendant to receive and discharge the Mortgage Deed and deliver the possession of the remaining undivided $\frac{1}{2}$ share of the aforesaid properties which is the suit properties herein. The first defendant was evasive in receiving the money. Hence, the plaintiff issued a notice on April 13, 1995 to the first defendant. Despite notice, the first defendant did not reply to the plaintiff. Hence, the plaintiff filed the Suit for redemption of mortgage.

FIRST DEFENDANT'S CASE IN BRIEF:

4. The first defendant filed a written statement denying the allegations made by the plaintiff in the plaint. The first defendant admitted the execution of the Usufructuary Mortgage Deed as well as the pursuant handover of possession to him. But according to the first defendant, when the mortgage was in subsistence, the plaintiff and his sons agreed to sell their $\frac{1}{2}$ common share in the aforesaid total extent of 2 Acre 94 $\frac{1}{2}$ Cents viz., suit properties to the first defendant for Rs.41,812/- and an agreement was entered into on March 21, 1990 in this regard. Upon receiving the entire sale consideration, the plaintiff and his sons executed a registered Power of Attorney Deed dated June 13, 1990 in favour of the third defendant who is the first defendant's daughter-in-law / power agent.



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Thereafter, on March 19, 1995, the third defendant as power agent executed a Sale Deed in favour of the first defendant. The plaintiff's share in the mortgage amount was adjusted in the sale consideration. Since then, the plaintiff has no right over the suit properties; thus, the mortgage got extinguished. Hence, the first defendant is the absolute owner of the suit properties. Since the second defendant attempted to interfere with the first defendant's possession of the suit properties, the Suit in O.S. No.242 of 1995 was also filed by the first defendant for partition before the Additional Sub Judge, Chengalpattu and in that Suit, an application for temporary injunction against the present second defendant's family is pending. Stating so, he prayed for dismissal of the present Suit.

DEFENDANTS 2 AND 3

5. Defendants 2 and 3 were called absent and set *ex-parte* before the Trial Court. No written statement was filed on their side.

TRIAL COURT:

6. Based on the above pleadings, the Trial Court framed the following issues:

- “1. *Whether the plaintiff is entitled for a preliminary decree for redemption?*



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2. *Whether the plaintiff is entitled for recovery of possession of the suit property?*
3. *Whether the sale deed dated 19.3.95 is true valid and binding on the plaintiff?*
4. *To what other relief?"*

7. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 was marked on the side of the plaintiff. On the side of the defendants, the first defendant was examined as D.W.1 and Ex-B.1 to Ex-B.12 were marked.

8. After full-fledged trial, the Trial Court held that upon execution of Ex-B.2 - Sale Agreement and Ex-B.3 - Sale Deed, the mortgage transaction ceased to exist; there was no mortgagor and mortgagee relationship between the plaintiff and the first defendant. Hence, the plaintiff has no right to redeem the suit properties and the Redemption Suit is not maintainable. The plaintiff has not approached the Court with clean hands. Holding so, the Trial Court dismissed the Suit.

FIRST APPELLATE COURT:

9. Feeling aggrieved by the Judgment and Decree of the Trial Court, the plaintiff approached the First Appellate Court by way of First Appeal in A.S. No.19 of 2005.



10. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal confirming the Judgment and Decree of the Trial Court.

SECOND APPEAL:

11. Feeling aggrieved by the Decree and Judgment of the Courts below, the plaintiff therein has preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908, which was admitted on February 06, 2006 on the following substantial questions of law:

- "1. *Whether the Courts below are justified in upholding Ex.B4, when it had been executed by a person who had lost authority to act as the plaintiff's agent?*
2. *Whether the Courts below are right in not having drawn adverse inference on the non-examination of the third defendant?*
3. *When no consideration had been paid towards the sale, whether the courts below are justified in concluding Ex.B4 as valid document, especially even prior to Ex.B4, the authority of the executant stood terminated under Ex.A1?*
4. *Whether the courts below are right in invoking Section 73 of the Evidence Act, when the case projected by the first defendant suffers from apparent incongruity and inconsistency?"*



ARGUMENTS:

12. Ms.V.Srimathi, learned Counsel for the appellant / appellant / plaintiff submits that the power of attorney in favour of third defendant has been cancelled on April 4, 1995 *vide* Ex-A.1 - Power Cancellation Deed. Knowing fully well about the power cancellation, Ex-B.4 - Sale Deed was created as if it was executed on March 19, 1995 by the third defendant / power agent in favour of first defendant and registered on April 6, 1995. No consideration was passed to plaintiff under Ex-B.4 - Sale Deed. Hence, Ex-B.4 is *void ab initio*. Ex-B.4 was created only with a view to defeat and defraud the plaintiff's rights and title over the suit properties. Ex-B.4 does not confer any right over the suit properties to the first defendant. The plaintiff's right to redeem the mortgage remains valid. The Trial Court as well as the First Appellate Court failed to appreciate the facts and evidence in proper manner and dismissed the Suit. Accordingly, she prays to allow the Second Appeal, set aside Judgment and Decree of the First Appellate Court as well as that of the Trial Court, and decree the Suit as prayed for.

13. Per contra, Mr.V.Chandrakanthan, learned Counsel for the third respondent / third respondent / third defendant argues that the plaintiff along with his sons and the first defendant entered into Ex-B.2 - Sale Agreement dated March 21, 1990, whereby the plaintiff and his sons



agreed to sell the suit properties in favour of the first defendant.

Subsequently, they executed Ex-B.3 - Un-registered Sale Deed dated June 13, 1990 in favour of the first defendant. At the time of executing Ex-B.3, full consideration was paid. Hence, on the date of Ex-B.3 itself viz., June 13, 1990, the plaintiff executed Ex-B.1 - Registered General Power of Attorney Deed in favour of third defendant who is the first defendant's daughter-in-law. He further submits that the plaintiff in Ex-A.1 - Power Cancellation Deed, admitted the execution of Registered General Power of Attorney Deed dated June 13, 1990 in favour of third defendant. Further, P.W.1 / plaintiff in his evidence categorically admitted the execution of Ex-A.2 - Registered General Power of Attorney Deed. Further he admitted the execution of Ex-B.4 - Sale Deed on the date of March 19, 1995 in favour of the first defendant by the power agent / third defendant. Further he admitted that no notice was issued by him before cancelling the Power Deed under Ex-A.1. Further, the learned Counsel draws attention of this Court to Ex-B.8 and Ex-B.9 which are notices dated July 25, 1990 and July 29, 1990 respectively issued by the plaintiff's Counsel to the first defendant, wherein it has been admitted by the plaintiff that he conveyed his $\frac{1}{2}$ common share in the suit properties in favour of the first defendant. Hence, he would argue that the mortgage got extinguished and the first



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defendant is the absolute owner of the suit properties. The plaintiff or his sons have no right whatsoever over the suit properties. Accordingly, he prays to dismiss the Second Appeal and confirm the Judgment and Decree of the First Appellate Court and the Trial Court.

DISCUSSION:

14. Heard on either side. Perused the evidence available on record.

15. It is not in dispute that an extent of 2 Acre 94 ½ Cents was purchased jointly by the plaintiff and his brother - Natesan *vide* Sale Deed dated January 25, 1962. Thereafter, plaintiff and his brother - Natesan jointly mortgaged the aforesaid extent with the first defendant under Usufructuary Mortgage Deed dated April 24, 1977 for Rs.20,000/- which mortgage amount was equally apportioned between them. Plaintiff's brother - Natesan passed away on March 21, 1995 leaving behind his wife / second defendant and his children as legal heirs. Subsequently, the second defendant redeemed Natesan's undivided half share in the aforesaid extent by paying the mortgage amount of Rs.10,000/- to the first defendant and obtained possession of the same. The remaining undivided half share in the aforesaid extent is the suit properties herein. There is no dispute with the facts stated so far.



16. According to the plaintiff, while he was ready to redeem his undivided half share viz., suit properties, the first defendant remained evasive and hence, he has come up with the Suit at hand for redemption of mortgage.

17. Case of the first defendant is that during the subsistence of the usufructuary mortgage, the plaintiff along with his sons agreed to sell the suit properties in favour of first defendant for Rs.41,812.50. For that purpose, the plaintiff along with his sons entered into Ex-B.2 - Sale Agreement dated March 21, 1990 with the first defendant. Under Ex-B.2, after adjusting Rs.10,000/- towards the mortgage money payable to the first defendant, a sum of Rs.10,340/- was paid as advance to the plaintiff and his sons; the remaining sale consideration out of the total sale consideration of Rs.41,812/- was Rs.20,000/-, which had to be paid within 2 months as per the terms of Ex-B.2. Subsequently, on June 13, 1990, the parties entered into a document named as an un-registered Sale Deed (Ex-B.3) which reads that the entire sale consideration of Rs.41,813/- has been duly paid to the plaintiff and his sons by the first defendant. It further recites that as the first defendant did not possess sufficient money to register the Sale Deed, the un-registered Sale Deed has been executed; as and when the first defendant is ready with the sufficient money for



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registration of Sale Deed, the plaintiff and his sons shall execute Sale Deed in favour of first defendant. To be noted, Ex-B.3 does not have any reference about Ex-B.2 - Sale Agreement as well as about the Usufructuary Mortgage.

18. The plaintiff denied the execution, signatures and passing of consideration under Ex-B.2 and Ex-B.3. Ex-B.2 and Ex-B.3 have attesting witnesses. However, despite denial by the plaintiff, no one was examined by the first defendant. Hence, this Court is of the view that Ex-B.2 and Ex-B.3 are not proved by adducing satisfactory evidence by the first defendant. The first defendant filed Ex-A.1 - Power Cancellation Deed dated April 4, 1995. As per the recitals found in Ex-A.1, the plaintiff and his sons have admitted the execution of Ex-B.1 - Registered General Power of Attorney Deed dated June 13, 1990 in respect of the suit properties in favour of the third defendant - Latha, and since she is not properly managing the suit properties and since they have decided to take up the management themselves, they are cancelling Ex-B.1. For ready reference, relevant extract from Ex-A.1 reads thus:

'பொது அதிகாரப்பத்திரத்தின் ரத்துப்பத்திரம் 1995 ஆம் வருடம் ஏப்ரல் மாதம் 4ந் தேதி நான்காம் தேதி செங்கற்பட்டு எம்.ஜி.ஆர் மாவட்டம் மதுராந்தகம் வட்டம் நெற்குணப்பட்டு கிராமத்தில் வசிக்கும் சித்தரை குமாரர் சி.ஆறுமுகம் 1.மேற்படி



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ஆறுமுகம் குமாரர் வடிவேல் 2.ஆகிய நாங்கள் இருவரும் எழுதி வைத்த பொது அதிகாரப் பத்திரத்தின் ரத்துப்பத்திரம் என்னவென்றால் செங்கல்பட்டு எம்.ஜி.ஆர் மாவட்டம் செய்யூர் வட்டம் பரமேஸ்வரிமங்கலம் கிராமத்தில் உள்ள எங்கள் சொத்துக்களை மேலாண்மை செய்யும் பொருட்டு செய்யூர் வட்டம் அடையாளச்சேரி கிராமத்தில் வசிக்கும் ஸ்ரீதர் பாரியாள் ஸ்ரீலதா என்பவர் பெயருக்கு 13.6.90 தேதியன்று ஒரு பொது அதிகாரப்பத்திரம் எழுதிக்கொடுத்து மேற்படி பத்திரம் செய்யூர் சார்பதிவாளர் அலுவலகத்தில் 4 புத்தகம் 14 தொகுதி 69 முதல் 71 வரைப்பக்கங்களில் 1990 ஆம் வருடத்திய 8 எண்ணாகப்பதிவு செய்யப்பட்டுள்ளது. -மேற்படி பொது அதிகாரப் பத்திரத்தில் நாங்கள் குறிப்பிட்டுள்ளபடி விவரப்படி மேற்படி லதா சரிவர மேலாண்மை செய்யாததாலும் நாங்கள் மேற்படி சொத்துக்களை நேரில் மேலாண்மை செய்து கொள்ள முடிவு செய்துள்ளதாலும் மேற்படி சார்பதிவாளர் அலுவலகத்தில் பதிவு செய்யப்பட்டுள்ள பொது அதிகாரப்பத்திரத்தை இந்த பொது அதிகாரப்பத்திர ரத்துப்பத்திரம் மூலம் ரத்து செய்துவிட்டோம் . . . '

19. Thus, execution of Ex-B.1 - Registered General Power of Attorney Deed in respect of the suit properties in favour of the third defendant by the plaintiff and his sons, is clearly admitted. Third defendant is none other than the daughter-in-law of the first defendant. Bare perusal of Ex-B.1 - Power Deed would show that it was not just executed for management of suit properties, but the power agent / third defendant had powers to lease out and even sell the suit properties by executing Sale Deed. Relevant extract from Ex-B.1 is as follows:

' . . . இன்று முதல் ஷெடியூலில் கண்ட சொத்துகளை நீங்களே பராமரிக்கும் உரிமையும் குத்தகைக்கு விடும் உரிமையும்



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மற்றும் விற்பனை செய்யும் உரிமையும் இந்த பொது அதிகார பத்திரம் முன்னிலைக்கு கொடுக்கிறோம். எங்களுக்காக நீங்கள் அடியிற்கண்டுள்ள சொத்துகளை விற்பனை செய்வதற்காக விக்கிரையப் பத்திரம் எழுதி நீங்களே கையெழுத்து செய்யவும் கிரையம் பெறும் நபரிடமிருந்து கிரைய பணத்தை நீங்களே எங்களுக்காக பெற்று கொள்ளவும், சார்பதிவாளர் முன்னிலையில் எங்களுக்காக கிரையப் பணத்தை பெற ஏற்பட்டால் பெற்றுக் கொள்ளவும் ஷை கிரைய பத்திரங்களை பதிவு அலுவலகத்தில் தாக்கல் செய்யவும் பத்திரங்கள் பதிவு சிலவுகள் செய்யவும் கிரையம் பதிவுக்காக மற்றும் சகலவித முறைகளில் கையெழுத்து செய்யவும், பதிவுச்செய்யப்பட்டுள்ள பத்திரங்களை திரும்ப பெறவும், பட்டா மாறுதல், மின் இணைப்பு மாறுதல் செய்யவும், கீழ்க்கண்ட சொத்துக்களை பற்றி நீதிமன்றங்கள் செல்லவும் விவசாய வருமான வரி, அரசுக்குரிய நிலவரி செலுத்தவும் உச்சவரம்பு அலுவலகங்களில் காரியங்கள் செய்யவும் வருவாய் துறை அலுவலக வேலைகள் மற்றும் எல்லா காரியங்களும் எங்களுக்காக நீங்களே ஆஜராகி நடவடிக்கைகள் மேற்கொள்ளவும் தங்களுக்கு இந்த பொது அதிகார பத்திரம் முழுமையாக எழுதிக்கொடுக்கிறோம். நீங்கள் செய்யும் எல்லா காரியங்களையும் நாங்கள் செய்யும் காரியங்களாக பாவிக்கிறேன். நாங்கள் வருடம் பிரதி வருடம் கணக்குகளை சரிபார்த்து கொள்கிறோம். இந்தப்படி நாங்கள் சம்மதித்து எழுதிக் கொடுத்த பொது அதிகார பத்திரம். '

20. Pursuant to Ex-B.1 - Power Deed, third defendant / power agent executed Ex-B.4 - Sale Deed dated March 19, 1995 in favour of the first defendant which was presented for registration on April 5, 1995 and was duly registered on April 6, 1995. In Ex-B.4, it has been recited that the first defendant had in the past paid the entire sale consideration in the presence



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of the power agent / third defendant to the vendors viz., plaintiff and his sons.

21. P.W.1 / plaintiff during his cross-examination has admitted that he did not give any notice before terminating the agency / contract *vide* Ex-A.1 - Power Cancellation. He further admitted that he did not state about the cancellation *vide* Ex-A.1 in the plaint. He deposed that he orally conveyed the cancellation to the first defendant three days before executing Ex-A.1, *i.e.*, on April 1, 1995, but there is no evidence to prove the same. There is no whisper about the execution of Ex-B.1 - Power Deed, its subsequent cancellation Ex-A.1 - Cancellation Deed in the plaint in the present Suit. Thus, the plaintiff has suppressed material facts and have not approached the Court with clean hands.

22. Further in his cross-examination, the plaintiff has admitted that Ex-B.4 - Sale Deed was executed on March 19, 1995. As discussed *supra*, the cancellation of Ex-B.1 - Power Deed was not duly conveyed to the first defendant by the plaintiff's side. In other words, Ex-B.1 was not duly cancelled / terminated as per the Indian Contract Act, 1872. Ex-B.4 - Sale Deed admittedly executed by the power agent / third defendant on March



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19, 1995 was presented for registration on April 5, 1995 and was duly registered on April 6, 1995.

23. Once a document is registered, it relates back to the date of execution unless the contrary is proved, but in this case the plaintiff / P.W.1 himself has admitted that Ex-B.4 - Sale Deed was executed on March 19, 1995. Further, there is no proper notice for cancellation of Ex-B.1 - Power Deed. Further, in Ex-B.4, it has been recited that entire consideration has been passed and even otherwise, the remedy available to the plaintiff is to file a Suit for rendition of accounts. In these circumstances, this Court is of the view that Ex-B.4 - Sale Deed being executed by the power agent / third defendant in favour of first defendant for a valid consideration, is valid in the eyes of law. The First Appellate Court as well as the Trial Court are justifiable in arriving at the said conclusion. The mortgagor and mortgagee relationship ceased to exist upon execution of Ex-B.4 - Sale Deed. The plaintiff did not assail or question Ex-B.1 - Power Deed or Ex-B.4 - Sale Deed in this Suit. The present Suit being one for mere redemption of mortgage is not maintainable as there exist no mortgagor and mortgagee relationship. Further, for the same reason, the non-examination of the third defendant is not fatal to the case of the first defendant. If the plaintiff wants to examine the third defendant to prove his case, he could have very well



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done so by invoking Order XVI of the Code of Civil Procedure, 1908.

Substantial Questions of Law Nos.1 to 3 are answered accordingly.

24. The Trial Court has rendered a finding that the power under Ex-B.1 - Power Deed is power coupled with interest. This Court is not in consensus with the same, as while the agreement holder is the first defendant, the power agent was his daughter-in-law / third defendant. The agreement holder and the power agent are different persons. Moreover, Ex-B.2 - Sale Agreement and Ex-B.3 - Un-registered Sale Deed were not proved by the first defendant as per law.

25. As regards the contention that the plaintiff admitted the execution of Ex-B.2 - Sale Agreement and Ex-B.3 - Un-registered Sale Deed in his legal notices dated July 25, 1990 and July 29, 1990 in Ex-B.8 and Ex-B.9 respectively, Ex-B.8 and Ex-B.9 were denied by the plaintiff. They were allegedly issued by one Advocate named Kumar Chidambaram to the first defendant under instructions of the plaintiff. But Ex-B.8 and Ex-B.9 does not contain the plaintiff's signature. Further, the Advocate was not examined and the reason assigned for his non-examination is that he passed away. If it is so, the first defendant ought to have at least proved the advocate's signature found in Ex-B.8 and Ex-B.9 and proved the same as



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per law, but he failed to do so. Further, Ex-B.8 and Ex-B.9 seems to have been sent *via* registered post with acknowledgment. The first defendant failed to produce any postal cover with postal seal to support his version. In these circumstances, this Court has no hesitation to hold that Ex-B.8 and Ex-B.9 are not proved as per law and hence, the question of 'estoppel' would not arise in this case.

26. That apart, this Court finds no incongruity in the case of the defendants. Merely because some portion of the defence is not proved, it does not mean the entire defence is invalid. It is the plaintiff who has suppressed many material facts and approached the Court with unclean hands. While appreciating the evidence, in appropriate cases, Courts can very well invoke their powers under Section 73 of the Indian Evidence Act, 1872 and compare signatures. At the same time, when there are serious disputes *qua* the signature, the Court must be very cautious, careful and hesitant to compare the signature since it requires some expertise and the Court is not an expert in the same. In this case, considering the facts and circumstances, this Court is of the view that the First Appellate Court as well as the Trial Court are not justifiable in invoking their power under Section 73 of the Indian Evidence Act, 1872 to compare the signatures



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found in Ex-B.2 and Ex-B.3. ***Substantial Questions of Law No.4 is answered accordingly.***

CONCLUSION:

27. In conclusion, Ex-B.4 - Sale Deed is valid and upon execution of the same, the mortgagor-mortgagee relationship ceased to exist. There is no challenge to Ex-B.1 - Registered General Power of Attorney Deed and Ex-B.4 - Sale Deed in the present Suit. Hence, the Suit of redemption is not maintainable and must fail.

28. Resultantly, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
pam/TK



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To

- 1.The Sub Court, Madhuranthagam.
- 2.The District Munsif Court, Madhuranthagam.



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R. SAKTHIVEL, J.

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