

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27-07-2026

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THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

WA(MD) No. 1087 of 2026

and

C.M.P.(MD)No.9711 of 2026

The Sub Registrar
(In the cadre of District Registrar), Woraiyur ,
Trichy 620 003

..Petitioner(s)

Vs

M. Noor Mohamed

..Respondent(s)

Writ Appeal filed under Clause 15 of Letters Patent, praying to
prefer this Memorandum of Grounds of Writ Appeal against the order passed in
W.P.(MD)No. 5877 of 2017 dated 16.12.2024.

For Petitioner(s):

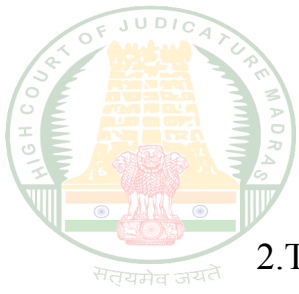
Mr.M.P.Senthil
Counsel for State

For Respondent(s):

Mr.T.Pradeep
for M/s.B.Saravanan Associates

JUDGMENT**(Judgment of the Court was delivered by C.V.Karthikeyan J.)**

The respondent in W.P.(MD)No.5877 of 2017, aggrieved by the order of
the learned Single Judge dated 16.12.2024 is the appellant herein.

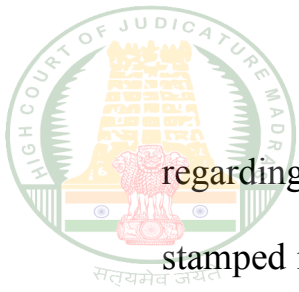


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2.The said writ petition had been filed by the respondent herein in the nature of certiorari seeking records relating to an order of the proceedings in Doc.No.8052/2013, dated 27.03.2017 and to quash the same. It is stated that, the respondent, who was the writ petitioner, had been granted power of attorney to deal with the properties belonging to one T.G.Ponurathinam,. The said power of attorney had been registered as Doc.No.8052 of 2013 in the office of the Sub Registrar/cadre of the District Registrar at Woraiyur, Trichy/appellant herein.

3.It is claimed that after registration, the impugned order came to be passed purportedly under Section 33A of the of the Stamp Act, 1899 claiming that the said power of attorney was one with consideration and therefore, ought to be treated as a conveyance. Therefore, it was claimed that the difference in stamp duty as between a power of attorney and a conveyance, should be paid by the writ petitioner /respondent herein.

4.This communication or this demand by the appellant was resisted on several grounds by the respondents herein. He first raised the question of jurisdiction of the appellant to issue such notice. It is contended that under Section 33A of the Stamp Act, after the registration of a document, it will be the Registrar not the Sub Registrar, who had registered the document. The Registrar, who is officially holding a superior post alone could issue a notice



regarding deficit stamp duty or raise a ground that the document should be stamped in accordance with the conveyance and not as a power of attorney. The second challenge to the said notice was that under the second proviso to Section 33-A of the Stamp Act, any action initiated should be within a period of 3 years from the date of registration of the said document.

5.A perusal of the dates in this case would show that the Power of Attorney had been registered as Document No.8052 of 2013 on 29.11.2013, whereas the impugned notice had been issued on 27.03.2017 which is by any calculation beyond the period of 3 years. It is also to be noted on a perusal of the power of attorney that the agent had been granted the following authority:

*“17.The Developer has been duly permitted to put up construction in the said property for construction of **40 flats in Block A** and another **48 flats in Block B**, totaling to 88 flats in both the blocks of which the Power Agent is empowered to alienate on behalf of the Developer **22 flats in Block A** and another **34 flats in Block B** along with proportionate undivided interest over the land detailed in Schedule at the instance and direction of the Developer and the remaining **18 flats in Block A** and **14 flats in Block B** will be allotted to the Principal which is inalienable by the Power Agent.”*

6.It is contended that the appellant had interpreted that the power had been granted with consideration and therefore, it is contented that by the very power, conveyance has been effected to the respondent herein. We hold that the said interpretation does not stand scrutiny, since the agent /the respondent will



thereafter, on the authority granted under the power, will have to convey each one of the plots which he had been authorised to convey to the individual purchasers and on those documents, the appellant has a right to charge stamp duty and registration charges as a document of conveyance. If this power of attorney is permitted to be charged as a document of conveyance, then for the very same property there would be collection of stamp duty and registration charges twice over, which are impermissible since there is no two conveyances of the property. The power of attorney is only an authority granted to convey the property. The sale deed is the document which actually conveys the property.

7. Section 54 of the Transfer of Property Act defines sale, which is as follows:

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

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8.Sale takes place only when possession is handed over, only when consideration for the value of the property is paid. Immediately on execution of the document, it becomes an executed document, not an executory document. Therefore, the reasoning of the District Registrar on the ground that the power of attorney should be charged as a conveyance has to be set aside.

9.With respect to the provisions under Section 33A of the Stamp Act, we would only go by the wordings in the provision which are very clear, lucid and there cannot be any separate interpretation or alternate interpretation to the wordings. The second proviso to Section 33A of the Stamp Act is very clear that any notice issued should be within a period of 3 years from the date of registration. In the instant case, it had been issued, as pointed out, after the period of 3 years. The first proviso to Section 33A states that the Registrar can issue such a notice. Even though the appellant holds the post of Sub Registrar in the cadre of Registrar, upon registration of the document, he becomes *functus officio* and no longer has any authority to sit over the act done by him officially and executed by him officially. If at all he has any doubt, he has to forward the papers to the District Registrar, who has to necessarily take further action. But in this case, once the issue is beyond the period of limitation, then any action



taken, would become void and they can never be sustained.

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10.Learned Counsel for the respondent placed reliance on the judgment of the Principal Bench in W.A.No.1999 of 2023 etc., batch, dated 05.02.2024, wherein, it had been held as follows:

“12. The authority and power to conduct an enquiry under Section 33-A is circumscribed by two provisos. Second proviso to Section 33-A provides that no such enquiry shall be commenced after the expiry of three years from the date of registration of the instrument. Second proviso is couched in negative language, thereby, putting an embargo on the right of the authority to proceed under Sub-section (1) of Section 33A, after the expiry of three years from the date of registration of the instrument.

13. A mode of showing a clear intention that the provision enacted is mandatory is by clothing the command in a negative form. Prohibitive or negative words can never be directory. The negative words are prohibitory and are ordinarily used as a legislative device to make a provision imperative.

14. The provision having been circumscribed by proviso, thereby putting limitations on the right of the authority to proceed after a period of three years, the authority certainly cannot reopen the proceedings after the expiry of three years.”

11.The findings and the observations therein is applicable to the facts of the present case.



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12.The writ appeal stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(C.V.K.,J.) (R.S.V.,J.)
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Neutral Citation: Yes

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**C.V.KARTHIKEYAN, J.
AND
R.SAKTHIVEL, J.**

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