IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24-08-2016
PRONOUNCED ON : 14-09-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.415 of 2008

1. Sri Krishnasamy Educational Trust, Rep. by its Managing Trustee Dr. K. Rajendran

2. R. Anandan(deceased) ..Appellants/Defendants 2&3

(First appellant recorded as L.R. of the 2nd appellant vide order of the Court dated 24-08-2016 made in C.M.P.No.52 of 2016 in A.S.No.415 of 2008)

Vs

1. Mr. Jabely Edourad

2. Mr. Jabely Saravanane

3. Mr. Jabely Velayoudam

4. Mrs. Jabely Fathima

5. Mrs. Jabely Yamouthabaye
(R2 to R5 rep. by power agent Parasuraman)

6. Mrs. Jabely Gnanamani (Deceased)

7. P. Sundararajan

8. Mrs. S. Anjali Devi

9. P.Tamil Vani
D/o. Jabely Gnanamani

10. R. Pandiyan
S/o. Jabely Gnanamani

11. A. Thenmozhi
D/o. Jabely Gnanamani

12. R. Valarmathi
D/o. Jabely Gnanamani

13. R. Karunakaran
S/o. Jabely Gnanamani

14. S. Vanitha
D/o. Jabely Gnanamani .. Respondents/Plaintiffs
Defendants 1&4

(RR9 to 14 brought on record as LRs of deceased. R6 vide order of Court dated 21-09-2012 made in M.P.Nos.1 to 3 of 2012 made in M.P.Nos.1 to 3 of 2012 in A.S.No.415 of 2008)

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 31-01-2008, passed in O.S.No.4 of 2004 on the file of the learned Additional District Judge(Fast Track Court-II), Cuddalore.

For Appellants :Mr. R. Subramanian

For Respondents :Mrs. Chithra Sampath, Senior Counsel for Mr. T.S. Baskaran for RR2 to 5 and for RR9 to 14

RR7 and 8 - Set Ex parte in lower court

No Appearance for R1

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit is directed against the judgment and decree dated 31-01-2008, passed in O.S.No.4 of 2004 by the Additional District Court (Fast Track Court-II), Cuddalore.

2. The respondent Nos.1 to 6, as plaintiffs, have instituted O.S.No.4 of 2004 on the file of the Trial Court praying to declare that the sale deeds registered in Registration Nos.478/98, 762/99, 764/99 and 766/99 are void and also for the reliefs of recovery of possession and mesne profits or alternatively for directing the first respondent to pay a sum of Rs.17,00,000/-(Rupees Seventeen lakhs only) to the plaintiffs wherein the present appellants have been arrayed as defendant Nos.2 and 3.

3. The material averments made in the plaint are that the suit property is originally belong to one Govindaraju and he purchased the same by virtue of the sale deed, dated 06-09-1962 and subsequently, a suit has been filed wherein a final decree has been passed in C.M.P.No.1700 of 1980. After the final decree proceedings, the suit property has been allotted to the share of legal heirs of Govindaraju. The first defendant is the husband of the fourth defendant. The plaintiffs and fourth defendant are the children of the said

Govindaraju. The first plaintiff is residing at Pondicherry and plaintiff Nos.2 to 5 are residing in France and the sixth plaintiff is permanently residing at Chennai. The first defendant has served as an employee of Tamil Nadu Government Secretariat at Chennai and he is having wide contact with various persons. The plaintiffs have relied upon him and asked him to look after their family affairs. The first defendant has helped his mother-in-law by name Visalakshi. The first defendant has represented to the plaintiffs that the suit property is going to be acquired by Housing Board. Further, he represented that the suit property can be sold for valuable consideration before acquisition proceedings. By believing the words of the first defendant, the plaintiff Nos.1 to 3 and 6 have executed a Power of Attorney Deed in favour of the first defendant and the same has been registered. The original Power of Attorney Deed has been under the custody of the first plaintiff. It is agreed that the suit property cannot be sold by the first defendant without prior approval of the plaintiff Nos.1 to 3 and 6. In June 1998, the first defendant has informed his inability to stop acquisition proceedings and got a Power of Attorney Deed from the first plaintiff with assurance to get compensation. The second plaintiff has come down to India in the year 1998. The first defendant has given a sum of Rs.2,00,000/-(Rupees Two lakhs only) and informed that the said amount has been received as compensation from the Government of Tamil Nadu. During July 1999, the first defendant has received Original Power of Attorney, under the guise of instituting some proceedings for getting higher compensation. The plaintiff Nos.4 and 5 have never given any Power of Attorney to the first defendant. After some time, the plaintiffs have come to know that the defendant Nos.2 and 3 have purchased the suit property. The plaintiffs have issued a legal notice dated 09-02-2000 to the first defendant. The first defendant has not given any reply notice. Under the said circumstances, the present suit has been instituted for the reliefs sought in the plaint.

4. In the written statement filed on the side of the defendant Nos.2 and 3, it is averred that it is true that the first defendant is the husband of the fourth defendant. The defendant Nos.2 and 3 have not known the internal arrangements alleged to have been made between the plaintiffs and first defendant. The plaintiff Nos.1 to 3 and 6, fourth defendant on 27-02-1996 have jointly executed a Power of Attorney Deed in favour of the first defendant. The fourth defendant has also duly appointed the first defendant as Power of Attorney. As a General Power Agent of the plaintiffs and fourth defendant, the first defendant has sold the suit properties under Registered Sale Deed dated 09-03-1998, 13-04-1999, 14-04-1999 and 15-04-1999 and also deliver vacant possession of the same. The plaintiffs are not entitled to get the reliefs sought in the plaint, and therefore, the present suit deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, the present appeal suit has been preferred at the instance of the defendant Nos.2 and 3, as appellants.

6. During the pendency of the present appeal suit, the third defendant/second appellant has passed away and on the side of the first appellant, a memo has been filed stating that the second appellant has already sold the property purchased by him in favour of the first appellant and therefore, the first appellant has become the legal representative of the deceased second appellant.

7. The sum and substance of the case of the plaintiff is that the plaintiffs and the fourth defendant are the children of one Govindaraju and by virtue of a final decree, the suit property has been allotted to the legal heirs of the said Govindaraju and they are none other than his wife Visalakshi, the present plaintiffs and fourth defendant. The first defendant is the husband of the fourth defendant and he has done his Government Service in Tamil Nadu Government Secretariat and even during life time of the said Visalakshi, the said defendant has looked after the family affairs of the plaintiff. The first defendant has represented that the Tamil Nadu Housing Board has decided to acquire the suit property. Further, he represented that if private sale is effected, the plaintiff and other sharers can get attractive consideration and on the basis of the representation made by him, the plaintiff Nos.1 to 3, 6 and fourth defendant have jointly executed a registered Power of Attorney Deed in favour of the first defendant and the same has been kept under the custody of the first plaintiff. After some time, the first defendant has represented that he has not been able to avoid land acquisition proceedings and for getting better compensation, he received the Power of Attorney Deed from the first plaintiff and of late, the plaintiff Nos.1 to 3 and 6 have come to know that the first defendant without prior approval of the plaintiffs has sold the suit property in favour of the defendant Nos.2 and 3 by virtue of the sale deeds dated 09-03-1998, 13-04-1999, 14-04-1999 and 15-04-1999 and the sale deeds executed by the first defendant are nothing but void. Under the said circumstances, the present suit has been instituted for the reliefs sought in the plaint.

8. The defence put forth on the side of the defendant Nos.2 and 3 is that the plaintiff Nos.1 to 3,6 and fourth defendant have jointly executed a General Power of Attorney Deed in favour of the first defendant and the fifth plaintiff has also executed a separate Power of Attorney Deed in favour of the first defendant and on the strength of Power of Attorney Deeds, the first defendant has sold the suit property

in favour of defendant Nos.2 and 3 and since the first defendant has sold the suit property in favour of the defendant Nos.2 and 3, the plaintiffs and fourth defendant are not having any right, title or interest over the same and therefore, the present suit is liable to be dismissed.

9. As adverted to earlier, the Trial Court after considering the rival submissions made on either side, has decreed the suit in respect of the main reliefs sought in the plaint.

10. Before poring the divergent submissions made on either side it would be apposite to look into the legal position involved in the present case. Section 32 of the Registration Act, 1908 reads as follows:

> "32. Persons to present documents for registration.- Except in the cases mentioned in [sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-
>
> (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
> (b) by the representative or assignee of such a person, or
> (c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned."

Likewise, Sections 33 and 34 of the said Act read thus:

> "33. Power-of-attorney recognisable for purposes of section 32. - (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognised, namely:-
> (a) if the principal at the time of executing the power-of-attorney resides in any part of 18[India] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
> (b) if the principal at the time aforesaid 25[resides in any part of India in which this Act is not in force], a power-of-attorney executed before and authenticated by any Magistrate;
> (c) if the principal at the time aforesaid does not reside in 18[India], a power-of-attorney executed before and authenticated by Notary Public, or any court, Judge, Magistrate, 26[Indian] Consul or vice-consul, or representative 27[***] of the Central Government:
> PROVIDED that the following persons shall not be required to attend at any registration-office or court

for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely-

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court.

5[Explanation: In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.]

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.

34. Enquiry before registration by registering officer

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders."

From a conjoint reading of Sections 32,33 and 34 of the said Act, the Court can easily come to a conclusion that Section 32 deals with persons who are entitled to present documents for registration. Similarly, Section 33 deals with Power of Attorney recognisable for purposes of Section 32. Section 34 empowers the Registering Officer before registering a document to make proper enquiry from proper person(s).

11. In the instant case, it is an admitted fact that the suit property is the absolute property of the plaintiffs and fourth defendant. The plaintiff Nos.1 to 3, 6 and fourth defendant have executed a General Power of Attorney Deed in favour of the first defendant. Likewise, it is contended on the side of the defendant Nos.2 and 3 that the fifth plaintiff has also authorised the first defendant through a deed to deal with the suit property. Only on the strength of the Power Deeds mentioned supra, the defendant Nos.2 and 3 have purchased the suit property by virtue of the sale deeds and its registration copies have been marked as Exs-A4 to A7.

12. For better adjudication of the issue involved in the present case, it is appropos to look into Rule 46 of the Registration Rules and the same reads as follows:

"46(i) If a document is presented for registration under a special power of attorney, the power shall be retained and filed in the office with the following endorsement..........No........of 19......

Present in connection with document No............of 19.... of Book....., Vol........

Date:

Signature of Registering Officer

(ii) If a document is presented for registration under a general power of attorney, the power shall be returned with the following endorsement:

Presented in connection with document No.... of 19.... of Book .....,Vol. ......

Date:

Signature of Registering Officer."

A mere cursory look of Rule 46 of the Registration Rules would show that if a document wants to be registered either in pursuance of a special power or general power, the Registering

Authority should make mandatory endorsements in respect of details of Power of Attorney Deed.

13. The learned counsel appearing for the appellant(s) has contended with great vehemence that the suit property is the absolute property of the plaintiffs and fourth defendant. The first defendant is the husband of fourth defendant and since most of the plaintiffs are away from India, the plaintiff Nos.1 to 3, 6 and fourth defendant have jointly executed a General Power of Attorney Deed in favour of the first defendant on 27-02-1996. The fifth plaintiff has also executed similar Power of Attorney and in pursuance of the same, the first defendant has sold the suit property in favour of defendant Nos.2 and 3 by virtue of Exs-A4 to A7 and since the first defendant has acted in accordance with proper Power Deeds, the sales effected in favour defendant Nos.2 and 3 are perfectly valid and the Trial Court without considering execution of Power Deeds in favour of the first defendant has erroneously decreed the suit in respect of the main reliefs sought therein and therefore, the judgment and decree passed by the Trial Court are liable to be interfered with.

14. In support of the argument put forth on the side of the appellant(s), the following decisions are relied upon:

(1) In AIR 1971 SC 761 (Jugraj Singh Vs. Jaswant Singh), the Honourable Supreme Court has held that endorsement of notary public to the effect that it had been subscribed and shown before him is valid in law.

(2) In 2007 (8) MLJ Supp 57(R.B.K. Rajeswari Nachiar Vs. N.N.S.A. Mohamed Kasim) it is held that if a Power of Attorney Deed has been executed on Indian stamps, the same need not be placed before the concerned District Collector.

(3) In 2009 (4) CTC 788 (Rajni Tandon Vs. Dulal Ranjan Ghosh Dastidar) at Paragraph No.29, the Honourable Supreme Court has held as follows:

> “29.Where a deed is executed by an agent for a principal and the same agent signs, appears and presents the deed or admits execution before the Registering Officer, that is not a case of presentation under Section 32 (c) of the Act. As mentioned earlier the provisions of Section 33 will come into play only in cases where presentation is in terms of Section 32 (c) of the Act. In other words, only in cases where the person(s) signing the document cannot present the document before the registering officer and gives a power of attorney to another to present the document that the provisions of Section 33 get attracted. It is only in such a case, that the said power of attorney has to be necessarily executed and authenticated in the manner provided under Section 33(1) (a) of the Act.”

15. From a close reading of the decisions referred to supra, it is made clear that if an endorsement has been made by a notary public and the same is valid; further, if a power

of Attorney Deed has been executed on Indian stamps, the same need not be placed before the concerned District Collector; further, as per the decision reported in 2009 (4) CTC 788 (cited supra) the Honourable Supreme Court has distinguished the circumstances under which Section 32(c) and 33 of the Registration Rules, 1908 can be attracted.

16. As a repartee to the contentions put forth on the side of the appellant(s), the learned Senior Counsel appearing for respondent Nos.2 to 5, 9 to 14 has contended to the effect that the registration copy of sale deeds alleged to have been executed by the first defendant in favour of defendant Nos.2 and 3 are marked as Exs-A4 to A7 wherein no mention has been made in respect of details of Power of Attorney Deeds and further, as contemplated under Rule 46 of the Registration Rules, no endorsements have been by the Registering Officer and the specific case of the plaintiffs is that by virtue of a forged Power of Attorney Deed, the first defendant has executed Exs-A4 to A7 and therefore, Exs-A4 to A7 are nothing but void documents and the Trial Court after considering the available evidence on record has rightly decreed the suit in respect of the main reliefs and therefore, the judgment and decree passed by the Trial Court do not require interference.

17. For considering the rival submissions made on either side, the Court has to look into Exs-A4 to A7. In Exs-A4 to A7, it has been simply stated that the first defendant is the General Power agent of the vendors. It is not an exaggeration to say that no endorsements have been made in respect of details of Power of Attorney Deeds executed in favour of the first defendant. It has already been pointed out that as per Rule 46 of the Registration Rules, if a document wants to be registered either through aidance of a special power or a general power, the Registering Officer should make necessary endorsements on Power Deeds and return the same. In fact, with regard to endorsements to be made by Registering Officer, a format has also been given in Rule 46 of the Registration Rules.

18. The specific pleadings made in the plaint is that after execution of a General Power of Attorney Deed by plaintiff Nos.1 to 3, 6 and fourth defendant, the original of the same has been kept by the first plaintiff and after some time, the first defendant under the guise of getting some more compensation through court proceedings has received the same. Further, it has been specifically averred in the plaint that by using a forged Power of Attorney Deed, the first defendant has executed the sale deeds in question, in favour of defendant Nos.2 and 3. Since in the sale deeds executed by the first defendant in favour of defendant Nos.2 and 3, mandatory endorsements as contemplated under Rule 46 of the Registration Rules have not been made by the Registering Officer, it is easily discernible that the Registering Officer has not done proper registration and further, there is no

evidence for the purpose of coming to a conclusion that the Registering Officer has even verified the concerned Power of Attorney Deeds.

19. The specific case of defendant Nos.2 and 3 is that the first defendant in pursuance of his capacity as Power Agent of the plaintiffs and fourth defendant has executed the sale deeds in their favour. But the first defendant has not been examined on the side of the defendant Nos.2 and 3.

20. At this juncture, the Court has to look into the evidence given by D.W.1. One K. Rajendran, has been examined as D.W.1. During the course of examination, he admitted to the effect that as per Exs-B1 to B3, he purchased the suit property, through the first defendant. Further, he has admitted to the effect that the details of power deeds have not been mentioned in the sale deeds.

21. As objurgated earlier, the best witness to prove the sale deeds in question is the first defendant. Even though he has been arrayed as first defendant, he has not deposed evidence in favour of defendant Nos.2 and 3. If really, the first defendant has acted in accordance with Exs-B1 to B3, definitely he would have been examined on the side of the defendant Nos.2 and 3. But the defendant Nos. 2 and 3 have not chosen to examine him.

22. The main averments made in the plaint are that the defendant Nos.1 to 3 have colluded together and created the sale deeds in question. Since the Registering Officer has not complied with the statutory requirements as contemplated under

Rule 46 of Registration Rules and since no mention has been made in respect of Exs-B1 to B3 in the sale deeds in question, the Court can very well accept the contentions put forth on the side of the plaintiffs. Therefore, it is clear that the first defendant and the defendant Nos.2 and 3 have fraudulently created the sale deeds, in question. Since the first defendant has not sold the suit property in accordance with law, the sale deeds effected in favour of defendant Nos.2 and 3 are nothing but void.

23. The learned counsel appearing for the appellant(s) has also made an abortive attempt to the effect that as per Section 87 of the Registration Act, 1908, if anything has been done under the said Act, the same cannot be treated as invalid. Section 87 of Registration Act reads as follows:

> 87. Nothing so done invalidated by defect in appointment or procedure.-- Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by

reason of any defect in his appointment or procedure.

Even from a cursory look of the said provision, it is clear that if there is any defect in appointment or procedure, the same cannot be treated as invalid. In fact, Section 87 is not at all applicable to the present case.

24. In the light of the discussions made earlier, this Court is of the view that the entire argument put forth on the side of the appellant(s) is not having subsisting force whereas the argument advanced on the side of the respondent Nos. 2 to 5, 9 to 14 is really having acceptable force. The Trial Court after considering the available evidence on record has rightly decreed the suit in respect of the main reliefs sought therein. In view of the discussions made earlier, this Court has not found any error nor illegality in the judgment and decree passed by the Trial Court and consequently the present Appeal Suit deserves to be dismissed.

In fine, Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.4 of 2004, dated 31-01-2008 by the Additional District Court (Fast Track Court-II), Cuddalore are confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

glp
To

The Additional District Judge(Fast Track Court-II),
Cuddalore.

+1cc to Mr.R. Subramanian, Advocate, S.R.No.52172
+2ccs to Mr.T.S. Baskaran, Advocate, S.R.No.51966

UG(CO)
EU(25/10/2016)