

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.392 of 2015

and

M.P.No.1 of 2015

B.Raghumaran

... Appellant

(Rep. by his Power Agent,
R.Bharathidasan)

Vs.

1.Pushpabai

2.M.Thangaraj

... Respondents

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.09.2014 and made in the appeal in A.S.No.30 of 2012 on the file of the Additional Subordinate Judge, Mayiladuthurai, reversing the judgment and decree dated 03.02.2012 and made in the suit in O.S.No.174 of 2010 on the file of the Additional District Munsif at Mayiladuthurai.

For Appellant : Mr.V.Raghavachari, for
Mr.Avinash Wadwani

For Respondents: Mr.R.Subramanian for
Mr.G.N.Sridharan

J U D G M E N T

This memorandum of second appeal has been directed against the judgment and decree dated 22.09.2014 and made in the appeal in A.S.No.30 of 2012 on the file of the Additional Subordinate Judge, Mayiladuthurai.

2. The appellant herein is the plaintiff in the suit in O.S.No.174 of 2010, whereas the respondents are the defendants.

3. For the sake of convenience and for easy reference, the appellant may hereinafter be referred to as the plaintiff, whereas, the respondents be referred to as the defendants, where ever, the context so require, as it is the character of the parties to the suit.

4. Originally the suit was filed by the plaintiffs to declare the Sale Deed dated 21.03.2007, which is said to have been executed in favour of the first defendant by the second defendant as null and void, not binding upon him and consequently to restrain the defendants from making further encumbrance of the suit properties by any means.

5. The defendants had contested the suit by filing their written statement. On scrutinization and appreciation of the evidences both oral and documentary, the learned trial Judge viz., Principal District Munsif, Mayiladuthurai had proceeded to decree the suit as prayed for.

6. The appeal filed by the defendants in A.S.No.30 of 2012, on the file of the Additional Subordinate Judge, Mayiladuthurai was allowed reversing the judgment and decree of the trial Court. Being aggrieved by the judgment of the first Appellate Court, the plaintiff stands before this Court with this appeal.

7. Heard Mr.V.Raghavachari, learned counsel appearing for Mr.Avinash Wadhvani, learned counsel, who is on record for the appellant and Mr.R.Subramanian, learned counsel appearing for Mr.G.N.Sreedharan, learned counsel, who is on record for the respondents 1 & 2.

8. This Second Appeal came to be admitted based on the following three substantial questions of law:

(a) Whether the lower Appellate Court erred in law in holding that the second defendant had no knowledge about the Cancellation of Power Deed, when his evidence and that of the first defendant prove other wise?

(b) When the conduct of the defendants show that the Sale Deed under Ex.B2, was executed without any consideration, whether the lower Appellate Court erred in law in holding that the defendants had no knowledge about Ex.A5?

(c) When the second defendant had admittedly not handed over the entire sale consideration and there is no proof for paying a sum of Rs.5,50,000/- by him to his principal, whether the lower Appellate Court erred in law in not drawing proper inference to it?

Apart from the substantial questions of law formulated above, this Court finds that the following three additional substantial questions of law are also involved in this case and therefore, they are being formulated as contemplated under the proviso (2), Sub- Section 5 of Section 100 of Code of Civil Procedure.

(i) Whether the power agent Mr.R.Bharathidasan is having competency to verify and sign the plaint on behalf of the plaintiff Mr.B.Ragumaran?

(ii) Whether the Additional District Munsif Court, Mayiladuthurai was not having pecuniary jurisdiction to entertain the suit?

(iii) Whether the suit in O.S.No.174 of 2010 is barred by limitation?

The arguments advanced by Mr.V.Raghavachari, learned counsel appearing for the plaintiff have been mainly revolving around the first substantial question of law only. He has invited the attention of this Court to the documents under Ex.A6 & A7 viz., the letter from one A.Kannan, to the second defendant, Thangaraj(A6) and the returned envelope(A7) respectively. Ex.A6, is in vernacular language. The translated version in English is given as under:

"you were appointed as my power agent under a registered Power of Attorney Deed dated 15.12.2006, in respect of my properties (vacant house sites) comprised in T.S.No.372/10-B measuring 2,625 sq.feet and T.S.No.372/10, measuring 2400 sq. feet. Due to some reasons I am cancelling the said Power of Attorney executed in your favour from 09.03.2007 onwards. You are instructed not to act as my Power Agent hereinafter. If there is any violation or any transaction is made in respect of the property that would not bind upon me and such act is not valid in accordance with law".

9. Ex.A7 is the returned envelope. On the face of the envelope, it is endorsed by the postal employee "as returned to sendor". On the reverse of the envelop, it is endorsed as under:

10.03: "door locked"
11.03: "door locked"
12.03: "door locked"

10. According to Mr.V.Raghavachari, the second defendant Mr.Thangaraj had been evading the receipt of the letter addressed by Mr.A.Kannan, who is the Principal. He has proceeded to argue further that the deliberate act of avoiding the receipt of the letter or the act of evasion of the second defendant would lead to presume that having known pretty well about the cancellation of the Power Deed dated 15.12.2006, the second defendant had evaded wantonly to receive the letter, and hence it might be presumed that Ex.A6, letter was duly served on the second defendant.

11. What it transpires from the averments of the plaint as well as the written statement is:

"Mr. A.Kannan, who was the absolute owner of the property had executed a registered Power of Attorney Deed (Ex.B1), dated 15.12.2006, authorizing the second defendant Mr.M.Thangaraj, as his Power Agent to deal with the suit properties. On account of some personal reasons, the Principal Mr.A.Kannan, had cancelled the above said Power of Attorney Deed dated 15.12.2006 by a registered cancellation

Deed dated 09.03.2007 and the act of cancellation of Power Deed was also duly communicated to the second defendant through post on the very same date i.e., on 09.03.2007. Simultaneously, the said A.Kannan had executed a registered General Power of Attorney Deed on the very same date viz., 09.03.2007, authorizing one Barathidasan as his Power Agent. After coming to know about the cancellation of Power Deed, the second defendant had illegally executed a registered Sale Deed dated 21.03.2007 in favour of the first defendant with dishonest intention. According to the plaintiff, the said Sale Deed was executed when there was no authorisation in favour of the second defendant and equally it was not executed for any valid consideration''.

12. It is also the case of the plaintiff that though he had purchased the suit properties under a registered Sale Deed dated 26.03.2007 from Mr.A.Kannan, through his Power Agent Bharathidasan, as the Power Deed executed by Mr.A.Kannan in favour of Bharathidasan was in force and valid on the date of execution of the Sale Deed dated 26.03.2007 in favour of plaintiff, the plaintiff's Sale Deed is genuine and valid.

13. It is also manifested that since a dispute was arisen in respect of the plaintiff's enjoyment and possession of the suit properties, proceedings were initiated before the Divisional Magistrate, in No.26 of 2007 at B-1, Mayiladuthurai. The Executive Magistrate by his order dated 31.07.2008, had restrained both parties not to have access to the suit properties.

14. The defendants had contended that the original owner of the properties Mr.A.Kannan, had executed the Power of Attorney Deed dated 15.12.2006 in favour of the second defendant, and as per the terms of the Power of Attorney Deed, the second defendant was empowered to manage and sell the suit property.

15. Accordingly, the second defendant had originally entered into an Agreement of Sale on 08.02.2007 with one Velusamy in respect of the suit property. Subsequently, as the Power Agent of Mr.A.Kannan, he had sold the suit property to the first defendant on 21.03.2007 and the possession of the property was also handed over to her.

16. It is also the case of the defendants that the sale by the second defendant in favour of the first defendant was duly informed to Mr.A.Kannan, through phone as he was in Singapore at that time and a fax message was also sent to him. The defendants had ascertained the fact that the sale in favour of the first defendant by the second defendant was made known to Mr.A.Kannan.

17. They would further contend that after five days of the sale by the second defendant in favour of the first

defendant, the plaintiff had purchased the suit property on 26.03.2007, fraudulently from the so-called Power Agent Bharathidasan, and that the suit was not properly valued for the purpose of court fee as well as the jurisdiction of the court.

18. Based on the pleadings of the plaintiff as well as the defendants, the trial Court had formulated the following four issues:

(i) Whether the valuation of the suit and the court fee paid is not correct?

(ii) Whether the Sale deed dated 21.03.2007 in favour the first defendant is valid or not?

(iii) Whether the cause of action is false?

(iv) To what relief is the plaintiff entitled?

19. As it is revealed from the averments of the plaint, subsequent to the cancellation of the Power Deed dated 15.12.2006, executed in favour of the second defendant, the Principal Mr.A.Kannan, had executed a registered Power of Attorney Deed dated 09.03.2007 in favour of one Bharathidasan in respect of the suit properties. The plaintiff Mr.B.Raghumaran, seems to have filed the present suit through the very same General Power Agent of Mr.A.Kannan viz., Mr.R.Bharathidasan.

20. It is thus made clear that Mr.Bharathidasan had been acting as the General Power Agent of Mr.A.Kannan as well as of Mr.B.Raghumaran. Admittedly, the plaintiff Mr.B.Raghumaran had not entered into the witness box to examine himself as a witness to substantiate his case.

21. The Power Agent Bharathidasan alone had entered into the witness box and examined himself as PW1. As afore stated, PW1, Bharathidasan had acted as the General Power of Attorney of the original owner of the property Mr.A.Kannan and he himself had sold the property in favour of the plaintiff B.Raghumaran on behalf of the Principal Mr.A.Kannan. Since Mr.Bharathidasan, who is said to be the Power Agent of the original owner of the property Mr.A.Kannan, as well as the Power Agent of the plaintiff Mr.B.Raghumaran, has been examined as PW1, his oral evidence has to be thoroughly examined as the trustworthiness of his evidence is suspected.

22. Order 3 of the Civil Procedure Code provides the procedure regarding the appearance of a party in a Court either himself or through an advocate, recognized Agent of party or a person holding Power of attorney. Rule 1 of Order 3 of the Code of Civil Procedure (herein after referred to as 'the Code') envisages that the appearance, application or Act cannot be made or done by any person other than the party himself or by his recognized Agent or Pleader. It further deals with the made of appearance of a party and the Court can

direct a party to appear in person. Such Power of the Court is not in violation of the Article 21 of the Constitution.

23. As observed by Rajasthan High Court in Smt. Shantha Mani Vs. Smt. Kulshree and Another, reported in AIR2011, Rajasthan 99,

''if the interpretation of Order 3, Rule 1 & 2 of Civil Procedure Code is to mean that appearance of a recognized Agent or Pleader is permissible for all purposes including deposition of statement in place of plaintiff then it would mean that the Pleader can also depose the statement for Principal.

24. In "Shambhu Dutt Shastri versus State of Rajasthan", reported in (1986) 2 WLN 713, it is held in para 23 as under:

23: '' a General Power of Attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness Box is altogether a different act. A General Power of Attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff, in the capacity of the plaintiff''.

25. No doubt Order 3, Rule 1 & 2 empower the holder of the Power of Attorney ''to act'' on behalf of the Principal. The word ''act'' empowers in order 3, Rule 1& 2 confines only in respect of the acts done by the Power of Attorney holder in exercise of power granted by the instrument. The term ''act'' would not include deposing in place and instead of the Principal. If the Power of Attorney Holder has preferred any ''acts'' in pursuance of the Power of Attorney, he may depose for the Principal in respect of such acts but he cannot depose for the Principal for the acts done by the Principal and not by him. Similarly, he cannot depose for the Principal in respect of the matter, as regards which, only the Principal can have personal knowledge and in respect of which the Principal is entitled to be cross-examined.

26. Section 85 of the Indian Evidence act 1872, deals with the presumptions as to the Powers of Attorney. It contemplates that the Court shall presume that every document purporting to be a Power of Attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, (Indian) Consul, Vice-Consul, or representative of the (Central Government) was so executed and authenticated. But to attract Section 85 of the Indian Evidence Act, the authentication by the Authority must be free of doubt.

27. When an Act purporting to be done under a Power of Attorney is challenged, it is necessary to show that on a fair construction of the whole document, the Authority in question is to be found within the four corners of the instrument either in express terms or by necessary implication(see)Bank of Bengal Vs. Ramanathan: AIR 1915 PC 121.

28. On coming to the instant case on hand, it is explicit that the General Power of Attorney, which is said to have been executed by the plaintiff Mr.B.Raghumaran, in favour of Mr.R.Bharathidasan, through whom, the suit has been instituted has not been marked as an Exhibit.

29. The above said General Power of Attorney seems to have been executed on 27.12.2007, before the Consulate General of India for Dubai. The second portion of the General Power of Attorney reads as under:

'as it is intended to sell/alienate the said properties, I hereby nominate, constitute and appoint Mr.R.Bharathidasan, S/o.Ramalingam, residing at No.15, Kasi Koil Kuppam, Thiruvottriyur, Chennai - 600 019, intended to be my true and lawfully Attorney for me and in my name and on my behalf to represent me and sale/alienate the properties on my behalf and for that purpose to sign agreements, sale deeds, supplementary deeds and other instruments, and to present the same before the Competent Registering Officers and admit the execution thereof for registration and also to do all the necessary acts and deeds for the above said purpose. The Executor viz., the Principal has not either expressly or impliedly authorized Mr.R.Bharathidasan to file a suit. Mr.R.Bharathidasan has been nominated, constituted and appointed to be the Principal's(B.Raghumaran's) true and lawful Attorney for him and in his name and on his behalf to represent him and sell the properties described therein on his behalf and with the purpose to sign Agreements, Sale Deeds Supplementary Deeds and other instruments and to present the same before the Competent Registering Officers and also to do all the necessary Acts and Deeds for the above said purpose.'

30. Since the Act purporting to be done under the above said Power of Attorney is challenged, it is necessary for the plaintiff to show that on a fair construction of the whole document, the Authority in question is found within the four corners of the above said General Power of Attorney Deed either in an express term or by necessary implications. This

Principle has been laid down in Bank of Bengal Vs. Ramanathan Shetty and Others AIR 1915 PC 121, while speaking on behalf of the four Judges Bench of Privy Counsel, Mr.Amir Ali.J., has observed as under:

''Where an Act purporting to be done under a Power of Attorney is challenged as being excess of the Authority conferred by the power, it is necessary to show that on a fair construction of the instrument, the Authority in question is to be found within the four corners of the instrument whether in express terms or by necessary implications.''

31. Insofar as the present Second Appeal is concerned, the above said Power of Attorney, seems to have been executed by Mr.B.Raghumaran, who is the plaintiff, in favour of Mr.R.Bharathidasan, only for the purpose of selling the property on his behalf and to sign Agreements, Sale Deeds, Supplement Deeds and other instruments and to present the same before the concerned Registering Officers and admit the execution thereof for registration and also to do all the necessary Acts and Deeds for the above said purposes. When such being the case, it appears that the act of Mr.R.Bharathidasan, the so-called Power of Attorney, seems to be in excess of the Authority conferred by the power..

32. The first portion of the General Power of Attorney Deed dated 27.12.2007, executed in favour of R.Bharathidasan by the plaintiff Mr.B.Raghumaran is extracted as under:

''Know all men by these presents that I, Mr.B.Raghumaran, S/o.P.BalaKrishnan, residing at Safety Department, Drydocks World Dubai, Post Box.No.8988, Dubai, U.A.E. do hereby declare that I am the owner of the properties (Item No.1) situate at Nagapattinam District, Mayiladuthurai Joint No.1, Sub-Registration Office Jurisdiction, Mayiladuthurai Taluk, Muthu Vakil Salai, comprised in ward No.3, Block No.10, T.S.No.372/10B, (Sub-Division) 372/10B4, ad-measuring 2,645 sq.feet acquired by virtue of Sale Deed Document No.532 of 2007 of Book- 1, dated 26.03.2007 of the Office of the District Registrar, Mayiladuthurai, India''.

33. It is understood from the above context that the plaintiff B.Raghumaran had acquired the properties, Item No.1, situate at Mayiladuthurai Taluk, Muthuvakil Salai measuring to an extent of 2,645 sq. feet, comprised in Ward No.3, Block No.10, T.S.No.372/10B, (Sub Division) 372/10B4 by virtue of a Sale Deed bearing Document No.532 of 2007 of Book No.1 dated 26.03.2007.

34. Since the Sale Deed dated 26.03.2007, bearing Document No.532 of 2007, itself is questioned by the defendants 1 & 2, it is for the plaintiff to enter into the witness box to dispel the doubt or clouds shrouded over the above said Sale Deed. Because, his right, title and ownership of the property have been questioned by the defendants. However, admittedly, he has not entered into the witness box to give evidence, so as to prove his right, title and interest over the suit property as well as regarding the genuineness and validity of the Sale Deed dated 26.03.2007.

35. It is significant to note here that in the above said General Power of Attorney Deed dated 27.12.2007, the plaintiff Mr.B.Raghumaran, has stated as if he is the owner of the property in respect of Item No.1. From the above point of view it could be safely construed that the General Power of Attorney Deed could have been executed in respect of Item No.1 of the properties described in the Sale Deed dated 26.03.2007 bearing Document No.532 of 2007 in favour of the Power Agent Mr.R.Bharathidasan, authorising him to sell or alienate the same.

36. Ex.A10 is the Sale Deed dated 26.03.2007, alleged to have been executed by the original owner of the property Mr.A.Kannan, through his General Power of Attorney Mr.R.Bharathidasan in favour of the plaintiff.

37. On perusal of this Sale Deed, this Court finds that two items of properties have been described in the schedule:

Item No.1:

Nagapattinam District, Mayiladuthurai Registration District, Mayiladuthurai District Registrar Office, Mayiladuthurai Joint No.1, Sub-Registrar Office Jurisdiction, Mayiladuthurai Taluk, Mayiladuthurai Town, Ward No.3, Block No.10, Muthu Vakil Salai, T.S.No.372/10B(sub division) 372/10B4 measuring to an extent of 2400 sq. feet.

Bounded on the
North by land belonging to Vidya,
East by land belonging to Vijayakumar,
South by item II property, and on the
West by Muthu Vakil Salai.,

Measurement:

East to West on the North 75ft.,
East to West on the south 75 ft.,
North to south on the East 32 ft.,
North to South on the West 32 ft.,
Item No.2:

Nagapattinam District, Mayiladuthurai Registration District, Mayiladuthurai District Registrar Office, Mayiladuthurai Joint No.1, Sub-Registrar Office Jurisdiction, Mayiladuthurai Taluk, Mayiladuthurai Town, Ward No.3, Block

No.10, Muthu Vakil Salai, T.S.No.372/10B(sub-division) 372/10B4 measuring to an extent of 2625 sq. feet.

Bounded on the
North by land belonging to Domeswara,
East by land belonging to Vijayakumar,
South by land belonging to Rajendran @ Ravindranraj and
West by Muthu Vakil Salai

Measurement:

East to West on the North 75 ft.,
East to West on the South 75 ft.,
North to South on the East 35 ft.,
North to South on the West 35 ft.,

Total 5025 Sq. ft.

38. This Court is taking the risk of repetition and reiterates to shed more light on the following points.

(a) Ex.A8 is the General Power of Attorney dated 09.03.2007 executed by Mr.A.Kannan in favour of Mr.R.Bharathidasan in respect of two items of properties for the purpose of alienation and other purpose, which is described in the said Power of Attorney(Ex.A8).

(b) Ex.A10 is the Sale Deed dated 26.03.2007 executed by the Power Agent R.Bharthidasan on behalf of his Principal A.Kannan in favour of the plaintiff B.Raghumaran in respect of two items of properties described therein. From the covenants of Ex.A10, it is generally understood that Mr.Raghumaran had purchased two items of properties under this document.

(c) After purchase of the properties described under Ex.A10, the plaintiff B.Raghumaran, seems to have executed a General Power of Attorney Deed in favour of Mr.R.Bharathidasan(Power agent of Mr.A.Kannan) authorising him to sell item No.1 of the properties, which should be understood in respect of Item No.1 of the properties specified under Ex.A10, Sale Deed dated 26.03.2007, that is what stated in the first portion of the General Power of Attorney Deed dated 27.12.2007. It is also to be precisely stated that the General Power of Attorney Deed dated 27.12.2007 appears to have been executed in favour of R.Bharathidasan by the plaintiff B.Raghumaran, only for the purpose of sale, to sign Agreements, Sale Deeds, Supplementary Deeds and other instruments which may be presented before the Registering Officers and not for filing the suit. But the present suit in O.S.No.174 of 2010, is filed as against the defendants 1 & 2 in respect of item NO.1 & 2 of the properties specified under Ex.A10 Sale Deed.

39. It is explicit that the General Power of Attorney Deed dated 27.12.2007, is not executed by the plaintiff Mr.B.Raghumaran, in respect of item No.1 of the properties described under Ex.A10, Sale Deed dated 26.03.2007. As it is seen from Ex.A10, Sale Deed dated 26.03.2007, the extent of first item of the schedule is 2400 sq.feet, whereas, the

extent of the second item is 2625 sq.feet. Therefore, the description of the property as well as the measurement as it appear from the first portion of the General Power of Attorney Deed dated 27.12.2007 are tallied only with the second item of the property described in the above said Sale Deed dated 26.03.2007. If really the plaintiff was intending to sell the second item of property it would have been, in clear terms, specified in the General Power of Attorney dated 27.12.2007. It is therefore, clear that the General Power of Attorney dated 27.12.2007 is shrouded with suspicion.

40. In order to clarify these facts, the evidence of the plaintiff viz., Mr.B.Raghumaran is very much essential. Probably, Mr.R.Bharathiasan alone would have known the reason as to why the prime evidence i.e., the evidence of the plaintiff viz., Mr.B.Raghumaran, who claims to be the owner of the property is withheld.

41. In this connection, this Court would like to make reference to the decision of Jaipur Bench of Rajasthan High Court judgment made in Ram Prasad Vs. Hari Narayan and Others AIR 1998 Rajasthan 185. In this case, it is held that the Power of Attorney holder is not entitled to appear as witness for the party appointed him as the Power of Attorney holder or 'Acts' in Rule 2 does not include Act of Power of Attorney holder to appear as a witness on behalf of a party. In the above cited decision a core question was sprung for consideration as to whether, the Power of Attorney holder of a party is entitled to appear as a witness on behalf of the said party. This question arose in the following two circumstances:

(i) The plaintiff/petitioner had instituted a suit for injunction and possession of the property against the defendants. The defendants filed their written statements and issues were also framed by the Trial Court. The case therefore, was posted for recording of the evidence of the plaintiff.

(ii) The plaintiff, in the meanwhile, had moved an application praying that his son Satyanarayanan, being his General Power of Attorney holder may be allowed to appear as a witness on his behalf. The defendant contested the said application. The Trial Court vide its order dated.....November 6, had dismissed the said application and therefore, a revision was preferred before the Jaipur Bench of Rajasthan High Court. The learned Single Judge of Jaipur Bench of Rajasthan High Court has made reference to Rule 2 of Order 3 of Civil Procedure Code. The learned Judge has also made reference to Section 118 of the Indian Evidence Act 1872, which provides as under:

'All persons shall be competent to testify unless the Court considers that they are prevented from the understanding the questions put to them or from giving

rational answers to those questions by tender years, extreme old age, disease, whether of-body or mind or any other cause of the same kind.

42. The learned counsel appearing for the defendants, who advanced his arguments before the learned Trial Judge had placed reliance upon the decision of Shambhu Dutt Shashri Vs. State of Rajasthan 1986 (2) WLN 713, wherein, it is observed as under:

'A General Power of Attorney holder can appear, plead and act on behalf of the party, but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. The General Power of Attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff'.

43. After giving anxious consideration to the rival averments, the learned Single Judge of Jaipur Bench of Rajasthan High Court has observed in paragraph No.9 of his judgment as under:

"9.'I am of the considered view that the word 'acts' used in Rule 2 of Order 3, Code of Civil Procedure, does not include the act of Power of Attorney holder to appear as a witness on behalf of the party. Power of Attorney holder of the party can appear only as a witness in his personal capacity and what ever he has knowledge about the case, he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the Court, a commission for recording his evidence may be issued, under the relevant provision of Civil Procedure Code and if the plaintiff is suffering from the decease of deafness, in the event also he may be examined with the help of provisions contained in Section 119 of the Indian Evidence Act 1872, which are applicable for the purpose of recording the evidence of dumb witness. I am of the view that the deaf witness may also be examined in the same manner, provisions contained in Article 119 of the Indian Evidence Act may be invoked in the instant case."

44. Keeping in view of the above fact, this Court is of considered view that Mr.R.Bharathidasan, who claims himself to be the General Power of Attorney holder of the plaintiff Mr.B.Raghumaran, does not have competency, either to verify or sign the plaint and to file the suit, seeking the relief of declaration.

45. Secondly, Mr.V.Raghavachari, learned counsel appearing for the appellant has denied the relationship of the Principal and Power Agent between the original owner of the property Mr.A.Kannan and the second defendant Mr.Thangaraj. While advancing his argument, he has drawn the attention of this Court, to the averments of paragraph No.5 of the plaint. In paragraph No.5, the plaintiff has admitted that his vendor Mr.A.Kannan had executed a registered Power of Attorney Deed dated 15.12.2006(Ex.B.1), authorizing the second defendant as his Power Agent.

46. It is stated that due his personal reasons, the vendor Mr.A.Kannan had cancelled the said Power of Attorney Deed dated 15.12.2006.(Ex.B1) by a registered Cancellation Deed dated 09.03.2007(Ex.A5). It also stated that the act of Cancellation of the Power of Attorney Deed was also communicated to the second defendant by post on the very same day i.e., on 09.03.2007. But it was returned with an endorsement as ''no such addressee''. With regard to this portion of argument Mr.V.Raghavachari, learned counsel, as observed in the earlier paragraphs, has drawn the attention of this Court to Ex.A6 and Ex.A7. Ex.A6 is the letter dated 09.03.2007, addressed to the second defendant, Mr.Thangaraj, by the Principal Mr.A.Kannan. Ex.A7 is the returned envelope. However, it is palpable that Ex.A6, letter was not served on the defendants in the manner known to law. In Ex.A7, (returned envelope), it is merely endorsed as ''Door locked''.

47. Mr.V.Raghavachari, learned counsel, with reference to the ''To'' address written in the returned envelope i.e., Ex.A7, has made reference to paragraph No.2 of the plaint, wherein the address of Mr.N.Thangaraj, who is the second defendant was the same as it was seen in Ex.A7. He has also made reference to the proof affidavit of the second defendant, wherein, the second defendant has stated that the address given in the plaint was not the correct address. In his cross examination, DW2, has fairly admitted that the address stated in Ex.A7, the returned envelope was that of him. Referring to the admission made by the second defendant in his cross examination, Mr.Raghavachari, learned counsel has contended that when the second defendant himself had admitted his address mentioned in the returned envelope was correct, how the letter Ex.A6, could have been returned with an endorsement as ''door locked''.

48. It is to be noted that the returned envelope(Ex.A7) was merely returned with an enforcement as ''Door locked''.

But it is not returned with an endorsement as '' Address is not correct''.

49. Mr.V.Raghavachari, has also invited the attention of this Court to paragraph No.6, of the judgment of the Trial Court. While answering the issue Nos.1 & 2, the learned Trial Judge viz., the Additional District Munsiff, Mayiladuthurai has observed as under:

''In this case, the critical question is whether the notice of revocation is served on the second defendant and whether the second defendant without knowledge of the revocation executed the Sale Deed is a material question to be answered. The learned trial Judge has also found in the same paragraph that the address of the second defendant given in Tamil in Ex.A7, RPAD cover is as follows:

''Thiru.N.Thangaraj, S/o.Muthusamy, No.47/3, Thirumangalam Road, Post Office Street, Villivakkam, Chennai- 7.''

50. In Ex.B1, the General Power of Attorney Deed, executed by Mr.A.Kannan, in favour of the second defendant, the address of the second defendant is given in page No.2, as follows:

''Thiru.N.Thangaraj, S/o.Muthusamy, No.47/3, Thirumangalam Road, Post Office Street, Villivakkam, Chennai-600 049''.

51. Admittedly, the address given in the Power of Attorney Deed, Ex.B1 is the address of the second defendant. The difference is with respect to PIN Number and postal index number. In Ex.A7, it is stated as Chennai-39, however, in Ex.B1, the General Power of Attorney Deed, it is stated as Chennai-600 049. Further, the letter of revocation is sent by an ordinary post.

52. In this connection, the learned trial Judge has also raised another question as under:

''Why Mr.A.Kannan, had sent an ordinary post while he was residing nearby at Tiruvottrivur and Villivakkam, which is situate within the Chennai Metropolitan Area...''

53. This question has not been properly answered. The learned trial Judge has observed that Mr.A.Kannan could have informed the revocation in person or over phone and in case if he felt the issue as delicate, he should have sent the letter of revocation by RPAD so as to use it as a proof. Ultimately, the learned trial Judge has found that sending of notice

creates some doubt. However, it is not adequate to conclude as a failure to give notice of revocation.

54. It is pertinent to note here that no such endorsement is available on the returned envelope i.e., Ex.A7, as the addressee is ''refused'' or the addressee is ''unclaimed''. But it is merely stated as ''Door Locked''. However, it is for the plaintiff to prove that the letter of revocation under Ex.A6 was duly communicated on the second defendant. In the absence of adequate proof, with regard to the service of letter of revocation on the second defendant, no presumption could be raised that the letter of revocation under Ex.A6 was duly served on the second defendant.

55. Mr.V.Raghavachari, learned counsel has argued that insofar as the endorsement on Ex.A7 was concerned, it was for the defendants to prove and not for the plaintiff. He has also made reference to the judgment of the first Appellate Court saying that the burden of proof was on the defendants and not on the plaintiff, to prove the contention of wrong address as observed by the first Appellate Court.

56. This portion of argument advanced by Mr.V.Raghavachari, is not able to be countenanced because in paragraph No.12 of the judgment of the first Appellate Court, in the last portion, it is observed that it is for the plaintiff to prove that an endorsement made by the postman on the envelope(Ex.A7) was improper. The first Appellate Court has also found that the letter of revocation dated 09.03.2007, which was addressed to the second defendant was returned on 12.03.2007 and therefore, it was not served on the second defendant. The first Appellate Court has also observed in paragraph No.13, about the procedure and method of service of the communication in respect of revocation of the General Power of Attorney Deed.

57. In this connection, Mr.V.Raghavachari, regarding the service of communication, has placed reliance upon the decision of this Court in Madura Coats Limited(Represented by the Industrial Relations, Manager), Tuticorin Vs. Presiding Officer, Labour Court, Tirunelveli and Others, 2001 (2) L.L.N.1132. In this case, E. Padmanabhan.J., Judge of this Court as he then was, has observed in paragraph No.31 as under:

''Para.31. ''The Labour Court below ignoring the said admitted facts, yet proceeded as if there is justification for the workmen to absent themselves or abscond themselves or they could report themselves at any time or date of their choice. The Labour Court also proceeded as if there is no valid service of notice. This approach of the Labour Court cannot be sustained. The

management had sent a notice and also published a notice in the Tamil daily besides affixing the notice on the office notice board. Merely because the letters have been returned with the postal endorsement "Door closed", it cannot be stated that the service is not sufficient or insufficient or there is no service at all in the eye of law. It is not as if affixture is a must. When the workmen abscond themselves and do not intimate their present address the management is not expected to search for them or go in search of them and serve notice. It would be sufficient if the management serve notice at the usual place of residence of the workmen. The letters have been returned as the workmen were not available and there was a publication in the Tamil daily also with respect to the chargememo and calling upon the workmen to appear for the domestic enquiry. The approach of the Labour Court that the management should have waited till the service of notice cannot be sustained as even according to the workmen they were away from their place for more than three months and they have not intimated their address to which communication had to be sent by the management during the said period. It is not as if the management should wait indefinitely.

58. With reference to service of notice, Mr.V.Raghavachari, has also made reference to the decision of the Apex Court in C.C.Alavi Haji Vs. Palapetti Muhammed and Another 2007(6) SCC 555, Hon'ble Mr.Justice D.K.Jain has penned down the judgment on behalf of the three Judges Bench. Paragraph Nos.10 to 14 are very much relevant. His Lordship has mainly referred to the provisions of Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act. The above cited decision is relating to the provisions of Section 138 as well as the provisos (b) and © of the Negotiable Instruments Act 1881. His Lordship has observed that there is no need to make such averments in the complaint for raising presumption as to service of notice in the said situation as in view of Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act, once the notice is sent by registered post by correctly addressing the drawer of the cheque, the service of notice is deemed to have been effected. But the complaint must contain the basic facts regarding the mode and manner of issuance of notice on the drawer.

Para:10. It is, thus, trite to say that where the payee dispatches the notice by

registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the GC Act would be attracted; the requirement of Clause

(b) of proviso to Section 138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address.

Para.11. However, the Referring Bench was of the view that this Court in Vinod Shivappas case (supra) did not take note of Section 114 of Evidence Act in its proper perspective. It felt that the presumption under Section 114 of the Evidence Act being a rebuttable presumption, the complaint should contain necessary averments to raise the presumption of service of notice; that it was not sufficient for a complainant to state that a notice was sent by registered post and that the notice was returned with the endorsement out of station; and that there should be a further averment that the addressee-drawer had deliberately avoided receiving the notice or that the addressee had knowledge of the notice, for raising a presumption under Section 114 of Evidence Act.

Para.12. Therefore, the moot question requiring consideration is in regard to the implication of Section 114 of the Indian Evidence Act, 1872 insofar as the service of notice under the said proviso is concerned. Section 114 of the Indian Evidence Act, 1872 reads as follows:

'Section 114 - Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened. regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.'

Illustrations:

The Court may presume -

(f) That the common course of business has been followed in particular cases;

Para.13. According to Section 114 of the Act, read with illustration-

(f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of GC Act is extracted below:

27. Meaning of service by post. -

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions 'give or send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Para.14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite

of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh ; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

59. In an another case in Indo Automobiles Vs. Jai Durga Enterprises and Others (2008) 8 SCC 529, in paragraph 8, the Hon'ble Division Bench of the Apex Court has observed as under:

Para8:''Admittedly, notice under Section 138(b) of the Negotiable Instruments Act was sent to the respondents through registered post and under a certificate of posting to the correct address of the respondents. The High Court had quashed proceedings on the ground that although notice through registered post and also under certificate of posting were sent by the appellant complainant to the respondents but because of the endorsement of the postal peon, the service could not be said to have been effected. In our view, the High court was not justified in holding that service of notice could not be found to be valid.''

60. In Samittri Devi and Another Vs. Sampuran Singh and Another (2011) 3 SCC 556, the Hon'ble Justice H.L. Gokhale, while speaking on behalf of the Devision Bench of Apex Court has observed in paragraph No.26 as under:

Para 26:Secondly, we may refer to the judgment of a Full Bench of the Allahabad High Court in the case of Ganga Ram Vs. Smt. Phulwati [AIR 1970 Allahabad 446], wherein the Court observed in paragraphs 12 and 13 as follows:

"12. When a registered article or a registered letter is handed over to an accepting or receiving post office, it is the official duty of the postal authorities to make delivery of it to the addressee. Human experience shows that except in a few exceptional cases letters or articles received by the post office are duly, regularly and properly taken to the addressee. Consequently as a proposition it cannot be disputed that when a letter is delivered to an accepting or receiving post office it is reasonably expected that in the normal course it would be delivered to the addressee. That is the official and the normal function of the post office.

13. Help can also be taken from Section 16 of the Indian Evidence Act which reads as follows:-

'16.Existence of course of business when relevant.-"When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations:

(a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant."

61. Admittedly, Ex.A7, the returned envelope was not sent either by registered post or by Certificate of posting to the addressee viz., the second defendant. It may be relevant to note here even though the address is correct and when the addressee is not found in the given address or when the envelope is returned as "Door Locked", it cannot be in an ordinary course presumed that the letter was duly served. Secondly, it is also an admitted fact that no such endorsement is available on Ex.A7 to say that addressee had refused to receive the envelope or refused to claim the envelope. It is equally an admitted fact that no such endorsement is available on Ex.A7 to show that intimation with regard to Ex.A7 was given to the addressee. Only under this circumstance, it

cannot be presumed that the letter of revocation of Power of Attorney Deed dated 15.06.2006 was duly served on the second defendant.

62. Section 27 of the General Clauses Act 1897 contemplates the meaning of service by post. It envisages that'' where any (Central Act) or Regulation made after the commencement of this Act, authorizes or requires any document to be served by post, whether the expression '' serve'' or either of the expressions ' give' or 'send' or any other expression is used, then, unless, a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document and unless, the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

63. Insofar as Section 27 of the General Clauses Act is concerned, the letter of revocation which is supposed to be served on the addressee shall have to be sent by registered post. The above Section makes it clear that unless a different intention appears, service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document and unless the contrary is proved, to have been effected at the time on which the letter would be delivered in the ordinary course of post.

64. Mr.V.Raghavachari, learned counsel has maintained that according to the second defendant, the address given in the envelope(Ex.A7) was wrong. In this connection, he would further maintain that insofar as the wrong address was concerned, it was for the defendant to prove and not for the plaintiff.

65. This portion of argument is not discernible. The first Appellate Court has rightly observed that it is for the plaintiff to prove that the endorsement made on the envelope (Ex.A7) by the Postman was improper. But the plaintiff has miserably failed to substantiate this fact.

66. With reference to the presumption as contemplated under Section 114 of the Indian evidence Act, in paragraph No.11 of C.C.ALAVIHAJI's case cited supra, the Apex Court has observed that, it felt that the presumption under Section 114 of the Indian Evidence Act being a rebuttable presumption, the complaint should contain necessary averments to raise the presumption of service of notice, that it was not sufficient for a complainant to state that a notice was sent by registered post and that the notice was returned with an endorsement ''out of station'', and there should be a further averment that the addressee drawer had deliberately avoided receiving the notice or that the addressee had knowledge of

the notice, for raising a presumption under Section 114 of the Indian Evidence Act.

67. In the present case also, the plaintiff had miserably failed to substantiate his contention saying that the second defendant had been deliberately avoided receiving the notice or that he was having prior knowledge or prior notice with regard to the cancellation of Power of Attorney dated 15.12.2006(Ex.B1).

68. Keeping in view of the above fact, the provisions of Section 27 of the General Clauses act and Sections 114 & 16 of the Indian Evidence Act, cannot be taken umbrage by the plaintiff. It is obvious to note here that it is an admitted fact that on 15.12.2006, the original owner of the property Mr.A.Kannan had executed a registered General Power of Attorney Deed, authorizing the second defendant Thangaraj, as his Power Agent.

69. According to the defendants, D2 was under impression that Ex.B1 was in force and hence in pursuant to Ex.B1, the General Power of Attorney Deed dated 15.12.2006, the second defendant had entered into an Agreement of sale with one Velusamy on 08.02.2007. This fact was already intimated to Mr.A.Kannan, the original owner of the property and the copy of the Agreement of Sale dated 08.02.2007 was also handed over to Mr.A.Kannan. It is also the case of the defendants that in the said Sale Agreement dated 08.02.2007, (Ex.B3), it is stipulated that the suit property shall have to be sold either in favour of Velusamy, agreement holder or in favour of his assignee. Only on the basis of Ex.B3, Sale Agreement, the second defendant, being the Power Agent of A.Kannan had sold the suit properties to the first defendant on 21.03.2007 under a registered Sale Deed. The possession of the property was also handed over to the first defendant, following the registration of the above said Sale Deed in her favour.

70. According to the defendants, Mr.A.Kannan, who was then residing at Singapore was informed about the sale transaction in favour of the first defendant through telephone as well as by fax message. Therefore, according to the defendants Ex.B2, Sale Deed was executed in favour of the first defendant for proper sale consideration. This fact was known to Mr.A.Kannan. But as stated in the fore going paragraphs Mr.A.Kannan was not at all examined. As per the case of the plaintiffs due to his personal reasons, A.Kannan had cancelled the Power of Attorney Deed dated 15.12.2006 (Ex.B1), which was executed in favour of the second defendant Thangaraj by a registered Cancellation Deed dated 09.03.2007. The act of cancellation was also communicated to the second defendant by post on the very same day. As discussed above, the cancellation of Power of Attorney Deed dated 15.12.2006 by Mr.A.Kannan was proved to be 'not intimated' to Mr. Thangaraj. The letter of revocation dated 09.03.2007 was

not at all sent through the registered post and in the absence of sufficient proof with regard to the service of letter of cancellation of Power of Attorney Deed dated 15.12.2006, it cannot be heard to say that the letter of revocation dated 09.03.2007 was duly communicated or duly served on the second defendant.

71. As it is revealed from the records, the second defendant had executed the Sale Deed under Ex.B2(Ex.A9) in favour of the first defendant, which is a registered document. On 09.03.2007, Mr.A.Kannan had executed a registered Power of Attorney Deed in favour of Mr.R.Bharathidasan under Ex.A8, to sell the properties i.e., on the very same day, on which the General Power of Attorney Deed dated 15.12.2006(Ex.B1) was said to have been cancelled by Mr.A.Kannan. It is to be noted that by virtue of Ex.A8, General Power of Attorney Deed, Mr.R.Bharathidasan, being the Power Agent of Mr.A.Kannan had sold the properties in favour of the plaintiff B.Raghumaran on 26.03.2007 under Ex.A10, registered Sale Deed.

72. It is obvious to note here that the second defendant had sold the property by virtue of Ex.B1, Power of Attorney Deed in favour of D1 on 21.03.2007. After five days of execution of this Sale Deed, Mr.R.Bharathidasan, Power Agent of Mr.A.Kannan in respect of the very same property, by virtue of Ex.A8, Power of Attorney Deed dated 09.03.2007 had executed the sale deed in favour of Mr.B.Raghumaran on 26.03.2007. As afore stated it is the firm contention of the defendants that the second defendant was not known about the cancellation of Power of Attorney Deed dated 15.12.2006, under which he was authorised by the original owner of the property Mr.A.Kannan to sell the properties.

73. According to the defendants since the second defendant was not duly informed about the cancellation of Power of Attorney Deed dated 15.12.2006, the sale in favour of the first defendant in respect of other properties, which was effected on 21.03.2007, is perfectly within the bounds of law, genuine and valid.

74. In this connection, the arguments advanced by Mr.Raghavachari, justifying the cancellation of Power of Attorney deed dated 15.12.2006 by Mr.A.Kannan under Ex.A5 and the execution of Sale Deed by Mr.R.Bharathidasan on behalf of Mr.A.Kannan in favour of B.Raghumaran on 26.03.2007 is not sustainable and liable to be discarded. Hence, the decisions viz., Tenax Steamship Co. Ltd. Vs., The Brimnes(Owners) 1974 (3) WLR 613 and Maya Devi Vs. Lalta Prasad (2015) 5 SCC 588 are not made applicable to the instant case on hand.

75. On the other hand Mr.R.Subramanian, learned counsel appearing for Mr.G.N.Sreedharan, learned counsel, who is on

record for the defendants has projected his arguments on the following five grounds.

(i) the plaintiff had not entered into witness box

(ii) Notice of revocation was not served on the second defendant in the manner known to law.

(iii) the suit has to be filed for setting aside the sale deed and not for declaration to declare the Sale Deed dated 21.03.2007 as null and void.

(iv) The original owner of Mr.A.Kannan, who is the Principal of Mr.R.Bharathidasan, was not at all examined on behalf of the plaintiff.

(v) General Power of Attorney Deed must be cancelled in accordance with the provisions of Sections 203 & 207 of the Indian Evidence Act 1872.

(vi) The suit is squarely barred by Limitation.

76. Insofar as ground Nos.1, 2 & 4 are concerned, they have been already discussed in the earlier paragraphs. Insofar as point No.3 is concerned, the first Appellate Court, though decided the appeal in favour of the defendants, has failed to carve out necessary point on this line.

77. Ex.B2 is the document in question. This document is executed for the total sale consideration of Rs.12,56,250/-. Under this document, the ownership over the suit properties was transferred to the first defendant. In the above sale deed, it is stated that in consideration of the amount of Rs.12,56,250/- paid by the Purchaser to the Vendor the receipt of which sum of the vendor doth hereby admit acknowledge and acquit the purchaser from further payment of the said sum, the vendor herein doth hereby sell, grant, convey transfer and assign unto and to the use of the purchaser the property morefully described in schedule hereunder being lands measuring a total extent of 5025 sq. ft., in T.S.No.372/10B, Ward No.3 of Mayiladuthurai located at Muthuvakil Street, Mayiladuthurai.....

78. DW2 has also deposed that in pursuance to the sale deed, the possession of the properties was also handed over to the first defendant. According to this sale deed and as per the case of the defendants, the first defendant had asserted title, right and interest over the suit properties. The plaint prayer portion A, is extracted as under:

(a).....by declaring that the sale deed dated 21.03.2007 in favour of the first defendant is null and void not binding on the plaintiff and consequently restraining the defendants from further encumbrance of the suit properties by any means.'

79. It is pertinent to note here that Ex.B2, Sale Deed seems to have been executed on 21.03.2007. After five days i.e., on 26.03.2007, Ex.A10, Sale Deed was executed by Mr.R.Bharathidasan in favour of Mr.B.Raghumaran.

80. In general when a sale deed happens to be registered in respect of a landed property, a prudent purchaser would naturally verify with the Registrar concerned as to whether any encumbrance is reflected in respect of the property, which is proposed to be purchased by him. But here, the impugned Sale Deed dated 21.03.2007(Ex.B2) was registered five days prior to the registration of the plaintiff's Sale Deed dated 26.03.2007. The normal presumption is that the plaintiff should have understood that a Sale Deed was already registered in respect of the very same property i.e., five days prior to the execution of their Sale Deed. Therefore, it could be easily understood that with sufficient knowledge about the registration of Sale Deed under Ex.B2, the plaintiff had proceeded to register Ex.A10, Sale Deed in respect of the very same property.

81. Insofar as this suit is concerned, it is the case of the plaintiff that he had purchased the suit properties by a registered Sale Deed dated 26.03.2007 from Mr.A.Kannan, the vendor through his Power Agent R.Bharathidasan as the Power Deed in his favour was in force and valid on the date of execution of the Sale Deed in his favour. From this context, it is thus made clear that under the guise of filing the suit to declare the Sale Deed dated 21.03.2007 as null and void and not binding upon him, the plaintiff had indirectly filed this suit to declare that he is the absolute owner of the suit property.

82. In this connection, this Court would like to place it on record that unless and until the impugned Sale Deed dated 21.03.2007 is set aside, the plaintiff cannot be declared as the absolute owner of the property or the plaintiff cannot assert his title, right and interest over the suit property.

83. Generally, there exists a conception that where a sale deed is sought to be declared as null and void, fee shall be computed in accordance with Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act 1955, provided he is not a party to the document impugned. Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act envisages that in a suit for cancellation of a decree for money or other property having a money value or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or value of the property, for which the decree was passed or other document was executed if a part of the decree or other document is sought to be cancelled, such part of the document or value of the property.

84. On coming to the instant case on hand though the plaintiff is not a party to the Sale Deed, Ex.B2 dated 21.03.2007, he indirectly wants to assert his title as well as to declare that he is the absolute owner of the suit properties by virtue of his sale deed dated 26.03.2007 (Ex.A.10) and therefore he is bound by the decree which may be passed in the suit.

85. Since the document under Ex.B2 is valued at Rs.12,56,250/-, the plaintiff ought to have valued the suit and computed the Court fee under Section 40(1) of the Tamil Nadu Court -fees and Suits Valuation Act, 1955 and not under Section 25(d) of the Act.

86. Clause (d) of Sec.25 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 does not per se make any distinction between the person who is a party and the person who is not a party to the document (sale deed) which is sought to be declared as null and void. Even a person, who is a party to a sale deed or any document can seek a decree for declaration either to declare the same as null and void or to declare that it will not bind upon him, or for cancellation.

87. The phrase "Null and Void" as per Black's Law Dictionary (10th Edition) Page 1235, is a common redundancy. The word "Null" connotes the meaning - having no legal effect; without binding force as it is defined in Black's Law Dictionary in the very page. As it is defined at page 1580 the meaning of the phrase "set aside" is "annul or vacate".

88. The meaning of the phrase "cancellation" as per Black's Law Dictionary (10th Edition) is

1. the act of defacing or obliterating a writing (as by marking lines across it) with the intention of rendering it void;
2. an annulment or termination of a promise or an obligation; specified ; the purposeful ending of a contract because the other party has breached one or more of its terms.

89. The concept of cancellation is generally the same as that of termination except that the cancelling party retains remedies for the breach of whole contract or any unperformed balance. As discussed in the foregoing paragraphs, Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 deals with suits for cancellation of decrees etc.,

90. Insofar as the present case on hand is concerned, the plaintiff, by his conduct exposed that he had, purposely, in order to avoid or evade the revenue to the Government, brought the suit within the pecuniary jurisdiction of the District Munsif Court by computing the Court fee under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which in fact, out of it's pecuniary jurisdiction.

91. Obviously, the document under Ex.P2, which is sought to be declared as null and void, is valued at Rs.12,56,250/- and as such, it exceeds the pecuniary jurisdiction of the District Munsif Court. Virtually the suit ought to have been filed before the District Court, which alone is having jurisdiction to entertain the suit. The plaintiff has however managed to camouflage and brought the suit before the District Munsif Court. In this connection, this Court would like to place reliance upon the decision of this Court in K.A.Alagiah Vs. A.A.Chinnazhagu and Ors. reported in (1996) 2 MLJ 4.

92. In the said case, the the plaintiff therein had filed the suit in O.S.No.244 of 1995 on the file of the District Munsif, Madurai Taluk seeking a decree and judgment that any encumbrance done by the first respondent with the second defendant or his men to sell away the properties in any manner, including half share of the property of the plaintiff is null and void and consequently restraining the defendants by way of permanent injunction from in any way alienating or selling away the properties to third parties.

93. M.Srinivasan.J., a learned Judge of this Court as he then was, in paragraph No.2 has observed that "a perusal of the plaint clearly shows that the plaintiff has adopted a camouflage and instead of directly praying for a declaration of her half share in the properties or directly asserting that she has got one half share in the suit property and preventing the defendants from alienating the properties, has prayed for a declaration that the alienation affected by the defendants is null and void, which is only on the basis that the plaintiff is entitled to one half share in the properties."

94. The plaintiff therein had filed an interlocutory application in I.A.No.508 of 1995 for interim injunction during the pendency of the suit. The defendant had contested the application stating that the Court had no jurisdiction to entertain the suit.

95. The defendant had also contended that the value of the suit properties was such that the Court of the District Munsif would have no jurisdiction to deal with the claim as the sale proceeds amounted approximately to Rs.8 lakhs. The learned Judge in Paragraph 5 has observed that the plaint has been valued under Sections 25(d) and 27 (c) of the Tamil Nadu Court-Fees and Suits Valuation Act. Under Section 25(d) if the matter does not fall under Clauses (a), (b) and (c), whether the subject matter of suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher. Under Section 27(c), in a suit for injunction, whether the subject matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is

valued in the plaint or on rupees four hundred, whichever is higher.”

“.....According to the plaintiff, she is entitled to one half share in the said properties and the defendants have unlawfully alienated her half share also denying thereby her title. That is why the plaintiff has sought for a declaration that the alienation effected by the defendants is null and void and not binding on her.”

96. According to the learned Judge, the case would fall squarely under Section 25 (a) as well as Section 27(a). Just because the plaintiff has chosen to couch the prayer in such a language as would apparently take it out of Sections 25(a) and 27(a), the plaintiff cannot escape the question of jurisdiction and file the suit in a court which has no jurisdiction to deal with the matter. A perusal of the plaint as well as the order passed by the learned District Munsif is sufficient to show that the suit falls outside the pecuniary jurisdiction of the District Munsif.”

In the present case also, on a perusal of the plaint, this Court finds that the suit falls outside the pecuniary jurisdiction of the District Munsif Court.

97. In the present case, the subject matter of the suit is the Sale Deed under Ex.B2, which is sought to be declared as null and void. The property which is described under this document is valued at Rs.12,56,250/-.

98. It is significant to note here that to declare Ex.B2, Sale Deed, which is valued @ Rs.12,56,250/-, the suit cannot be brought under the jurisdiction of the District Munsif Court. Since the valuation of this document exceeds Rs.10,00,000/-, the District Court alone is having pecuniary jurisdiction to entertain the suit.

99. Secondly, without adjudication of the issue as to whether the plaintiff is the absolute owner of the property in question, the impugned document under Ex.B2, dated 21.03.2007 cannot be declared as null and void. Since the assertion of the title by the plaintiff is depending upon the cancellation of the impugned Sale Deed dated 21.03.2007, the plaintiff ought to have paid court fee under Section 40(1) of the Tamil Nadu Court- fees and Suits Valuation Act, 1955 and the suit, which is valued under Section 25(d) is not proper and is liable to be dismissed on this ground.

100. In this connection, this Court would like to place reliance upon the decision of Minor Divya Vs. Sengamalai, 2011 (3) CTC 26:2011(4) MLJ 803.

In this case, it is observed that Legislature in their wisdom used only the expression "value" for the purpose of

payment of Court-fees under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act. The Legislature could have very well expressed the word 'market value'. In fact, there are other provisions in the said Act dealing with assessment of market value for the purpose of computing the proper Court-fee. A specific distinction was drawn by the Legislature between value and market value for the purpose of computation of Court-fees. The language of Section 40 is very clear. It does not call for a different interpretation than the one suggested expressly.

101. In S.K.Kumaraswami & Others Vs. S.R.Somasundaram & Others, (1995) 1 MLJ 322., the plaintiff had filed the suit to pass a decree:

(a) declaring that the decree passed in O.S.No.37 of 84 on the file of Sub Court, Coimbatore is sham and nominal, ultra vires, collusive unsustainable, invalid, unenforceable and not binding on the plaintiffs:

(b) granting a decree for division of the entire schedule mentioned properties by dividing into three equal shares, and allotting one such share to the plaintiff.

(c) directing the 1st defendant or such of those defendants who are found liable to furnish true and proper accounts to the plaintiffs with regard to the income from the joint family properties and ascertain the amount payable to the plaintiffs.

(d) directing the defendants to pay the plaintiffs the costs, and

(e) granting the plaintiffs such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

102. The defendants 1 to 3, in their written statement as well as in their additional written statement had contended that the suit is not maintainable without a prayer for setting aside the compromise decree in O.S.No.37 of 84 and the suit should be valued under Section 37(1) read with Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act.

103. Based on the written statement filed by the defendants 1 to 3, the plaintiffs had filed an application in I.A.No.452 of 1993 for amending paragraph No.21 of the plaint pertaining to valuation only. The amendment prayed was to delete 'Section 40' and substitute 'Section 25(d)' therefor. While disposing the said application, alongwith the other applications, the learned trial Judge had concluded among other findings that the payment of Court fee under section 25(d) and Section 37(2) of the Court fees Act is correct.

104. Insofar as Interlocutory Application in I.A.No.452 of 1993 is concerned, the learned Subordinate Judge had held that the proper Section is only 25(d) of the Court fees Act and the plaintiff is entitled to amend paragraph No.21 of the plaint by substituting "Section 25(d)" in the place of "Section 40".

105. While penning down the judgment, Srinivasan.J, as he then was after referring Catena of cases had at first held that " the learned Subordinate Judge had exceeded his jurisdiction in rendering findings on the merits of the main case while dealing with the issue relating to the valuation of the plaint and Court fee payable preliminarily. Placing reliance upon the decision of Sathappa Chettiar Vs.Ramanathan Chettiar, Selvahimar Rice and Oil Mills, Salem Vs. Tamil Nadu Electricity Board, 99 L.W.740, Ramu Udayar Vs. Tamil Nadu Electricity Board, 1990 T.L.N.J. 107 and Santhana Kesari Vs.Kathija Bai(1994) 2 MLJ 413., the learned Judge has observed that the question of court fees must be considered in the light of the allegations made in the plaint and the decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits. He has also held that, however, Courts have always taken care to point out repeatedly that mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substances of the relief asked for and the Court should look into the allegations in the plaint to see what is the substance of the relief asked for and the Court should look into the allegations in the plaint to see what is the substantive relief that is asked for.

106. Srinivasan.J, in paragraph No.18 of the above decision has made reference to the decision of Shamsher Singh Vs. Rajinder Prashad(AIR 1973 SC 2384).

In this case, the plaintiffs prayed for a relief on the basis that the property in dispute was a joint Hindu family property and there was no legal necessity to execute a mortgage. They sued for a declaration that the decree obtained by the appellant before Supreme Court against their father was not binding on them. The Court held that they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree holder from executing the decree against the mortgaged property as he was entitled to do.

107. In the above cited case, the decision of the Full Bench of the Lahore High Court in Mr.Zeb-ul-nisa Vs. Din Mohamed AIR 1941 Lahore, 97 was referred to and Srinivasan J., has quoted the following passage from the above cited decision:-

(i)" the mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed

is a declaration pure and simple and involves no other relief, the suit would fall under Article 17(iii).

After referring to the observation of the Full Bench of the Lahore High court that in deciding whether a suit is purely declaratory, the substance and not merely the language of the form of the relief claimed should be considered, the Court quoted the following passage:

It seems to me that neither the answer to the question whether the plaintiff is or is not a party to the decree or the deed sought to be declared as null and void, nor to the question whether the declaration sought does or does not fall within the purview of section 42, Specific Relief Act, furnishes a satisfactory or conclusive test for determining the court fee payable in the suit of this description. When the plaintiff is a party to the decree or deed, the declaratory relief, if granted, necessarily relieves the plaintiff of his obligations under the decree or the deed and, hence it seems to have been held in such cases, that the declaration involves a consequential relief. In cases where the plaintiff is not a party to the decree or the deed, the declaratory relief does not ordinarily include any such consequential relief. But there are exceptional cases in which the plaintiff though not a party to the deed or the decree is nevertheless bound thereby. For instance, when a sale or mortgage of joint family property is effected by a manager of a joint Hindu family, the alienation is binding on the other members of the family (even if they are not parties to it) until and unless it is set aside. Similarly, a decree passed against the manager will be binding on the other members of the family. If therefore, a coparcener sues for a declaration that such an alienation or decree is null and void, the declaration must I think be held to include consequential relief in the same way as in those cases in which the plaintiff is himself a party to the alienation or the decree, which is sought to be declared null and void. The case dealt with in AIR 1936 Lah 166 seems to have been of this description. The case of an alienation by a mutwalli of waqf property would also appear to stand on a similar footing. In the case of waqf property, it is only the trustee or the mutwalli who can alienate the property. If he makes an alienation it is binding on all concerned, until and unless it is set aside. If therefore, a person sues to get such an alienation declared null and void, he can only do so, by getting the deed invalidated. The relief claimed in such cases also may therefore be found to include a consequential relief.

108. The learned Judge has also made reference to the decision of Vembu Ammal Vs. Swaminathan(1986) 1 MLJ, 105.

In this case, it is observed that

'no doubt in computation of the fee, the recitals in the plaint have to be taken into account. But, there are exceptions to that rule. Then(sit.) the plaintiff by a clever device tries to say that she is in possession it is the duty of the court to see whether, in the circumstances mentioned in the plaint, she could have been in possession. The plaint allegation cannot be taken into consideration on the face value itself, when the circumstances would lead to the conclusion that what is stated cannot be true.'

109. The learned Judge in paragraph No.19, has observed that:

para.19. If the allegations made in the plaint in the present case are considered, one can have no doubt whatever that in substance the suit is for setting aside the compromise decree passed in O.S. No. 37 of 1984. The plaintiff cannot get any relief in the suit without setting aside the said decree. Admittedly he was a party to the decree himself. His age at the time of the present suit is stated to be 36 years in the plaint. At the time of the decree in the earlier suit O.S. No. 37 of 1984, he must have been 33 years old. The 10th defendant, who was the first plaintiff in the present suit when it was instituted is stated to be 45 years old at the time of the plaint. He would have been 42 years old at the time of the compromise decree. Both of them were represented by counsel in that suit. The grounds on which the compromise decree is sought to be set aside are that it is vitiated by collusion, fraud, undue influence and misrepresentation. I have set out earlier in detail the summary of the plaint. A perusal thereof is sufficient to point out that though the plaintiff has chosen to pray for the relief of declaration, in substance he is praying for setting aside the decree and displacing the same, when only he can seek the relief of partition. The mere fact that the plaintiff has chosen to introduce an allegation that the compromised decree is sham and nominal, invalid, unsustainable and unenforceable, will not alter the nature of the suit or absolve the plaintiff from the necessity to have the decree set aside.

110. In Upbhokta Sahakati Bhandar Vs. Vinod Lal 1979 M.P.L.J.253., the Madhya Pradesh High Court has held that the finality declared by Section 12 of the Court fees Act is limited only to question of valuation pure and simple and does not relate to the category under which the suit falls.

111. On perusal of the averments of the plaint in the present case, this Court finds that the suit is substantive one for setting aside the impugned Sale Deed dated 21.03.2007 (Ex.B2), though the prayer is only for the declaration.

112. Srinivasan J., in the decision cited supra viz., S.K.Kumaraswami and Others Vs. S.R.Somasundaram and Others (1995) 1 MLJ 322 has made reference to Mrs.J.Kasthuri Vs. Seth Ghamhamdas Vonsimal Deva Bank....on 11 January, 1979:(1979)2 MLJ 11.

In this case, the prayer of the suit was for declaration that the three documents styled as hundies executed in favour of the first defendant in the suit were invalid, inoperative and void. The Court pointed out that the form of the prayer did not matter and the substance of the relief should be ascertained for determining the court fee payable.

The Court has observed that:

"there can be no doubt whatever that for purpose of determining the court fee payable, it is the substance of the relief that a plaintiff prays for that has to be taken into account and not the technical form of the prayer. It is to be otherwise, mere astuteness and ingenuity of the person drafting the plaint will have the effect of not only camouflaging and disguising the real relief which a plaintiff claims in a suit but also nullifying and defeating the provisions of law dealing with the payment of court fee based on the nature of the relief litigants seek in a court of law."

113. In the decision afore cited, this Court in paragraph No.10 has observed as under:

"from the above decisions, it is clear that the plaintiffs in the present case having executed the hundies, they will have to have those hundies cancelled or set aside and for that purpose they will have to pay court fee under Section 40 of the Act. By merely couching the prayer in the form of a declaratory relief, the plaintiffs cannot avoid the reality of the situation, namely, that they are challenging the hundies executed by them on the ground that they were not supported by consideration and they were obtained by misrepresentation or fraud. Under these circumstances, it will be clear that the learned IV Assistant Judge was right in directing the petitioners herein to pay court fee under Section 40 of the Act."

114. Ultimately, the learned Judge(Srinivasan.J.) in paragraph No.28 has observed that.....

"there can be no doubt whatever that the present case is governed by Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act and the plaintiff has to pay court fee under that section. The order of the lower court permitting the plaintiff to amend the plaint by substituting Section 25(d) in the place of Section 40 is wholly unsustainable."

115. In an another case in Sivagurunathan Vs. S.Shanmugaraja(2012 (6) CTC 188), a learned Judge of this Court has observed in paragraph No.12 as under:

para12. "The word "cancellation" implies that the person suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even if it is impliedly sought for in substance, the suit is one for cancellation. In the present case, since the plaintiff attacks the sale deed as having been obtained under fraud and misrepresentation for ten acres instead of one acre, he cannot seek for any further relief without setting aside the sale deed. Though the prayer is couched in the form of seeking declaration that the document is valid only in respect of one acre of land and for consequential relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff in respect of the remaining nine acres of land, the relief in substance indirectly amounts to seeking for cancellation of the sale deed. The trial court was right in ordering payment of court fee by the plaintiff under Section 40 of the Act. Therefore, this Civil Revision Petition has no merits and is bound to fail".

116. In an another case in K.Balan & Another Vs. Pushpa & Others, it is observed that the revision petitioners herein as plaintiffs have instituted the Original Suit No.271 of 2004 on the file of the District Munsif Court, Kulithalai praying to declare that the Sale Deed dated 15.05.2000 executed in favour of the first defendant is null and void and also for consequential relief of recovery of possession.

In the above said case, the learned counsel appearing for the revision petitioners /plaintiffs had contended that the plaintiffs are Keralites and they do not know Tamil and the first defendant has obtained the Sale Deed in question by

making misrepresentation to the effect that the document in question is a mortgage deed and in order to declare the alleged sale deed as null and void, the present suit has been instituted for the reliefs of declaration and recovery of possession and the revision petitioners/plaintiffs have rightly paid the Court fee under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act.

117. In an another case in P.Bakthavatchalam Vs. B.Mohanasundari & 3 Others (2009)-2-L.W.617, the husband had filed the suit in O.S.No.157 of 2004 as against his wife and three others. In addition to praying for various other reliefs, he had also prayed for the relief of declaration that to declare the Settlement Deed is null and void, the first defendant after entering appearance filed an I.A. under section 11(2) of the Pondicherry Court Fee and suit Valuation Act, 1972 praying the Court to decide on the valuation and the adequacy of court fee paid, whereupon the Court rendered its verdict on 18.10.2007 to the effect that the court fee should have been paid on the market value of the property referred to in the impugned settlement deed and not notionally in a sum of Rs.15,000/- by invoking section 25(d) of the said Act.

118. In the afore said case, the learned Judge of this Court after considering all the relating facts and circumstances has observed as under:

'A bare perusal of those excerpts including the entire judgments would no doubt clearly indicate that the normal rule is that plaintiff being the dominus litis is entitled to draft his plaint in his own way and pray for the appropriate relief and it is not for the Court to thrust upon the plaintiff certain reliefs and thereupon assess the court fees. In the meanwhile one should not lose sight of the fact that law also is well settled to the effect that when the nature of the pleadings and the prayer are such that they virtually usher in particular kind of relief which is not the one apparently asked in the plaint, certainly the Court should look into the true purport of the plaint and the prayer for valuation and payment of court fee. Here in this case, the averments coupled with the prayer in the plaint would apparently and unambiguously highlight and home in on the point that th plaintiff wants the settlement deed executed by him to be nullified/canceled. Hence in such a case, there is no other go but to apply Section 40(1) of the Act, which the trial court correctly and appropriately applied. Hence, no interference with the order in the revision is warranted. Accordingly, this Civil Revision Petition is dismissed.'

Mr.R.Subramanian, learned counsel for the defendants is concerned, this Court would like to high light the following:

'the question of court fees must be considered in the light of the allegations made in the plaint and the decision cannot be influenced either by pleas in the written statement or by the final decision of the suit on the merits.'

120. Further, this Court finds that in deciding whether the present suit is purely declaratory, the substance and not merely the language of the form of the relief claimed should be considered. As decided by the decision of the Full Bench of the Lahore High Court in Mr.Zeb-ul-nisa Vs. Din Mohamed A.I.R 1941 Lah.97, when the plaintiff is a party to the decree or deed, the declaratory relief, if granted, necessarily relieves the plaintiff of his obligations under the decree or the deed and, hence it seems to have been held in such cases, that the declaration involves a consequential relief. In cases where the plaintiff is not a party to the decree or the deed, the declaratory relief does not ordinarily include any such consequential relief. But there are exceptional cases in which the plaintiff though not a party to the deed or the decree is nevertheless bound thereby.

121. Insofar as the present suit is concerned, as discussed in the foregoing paragraphs, the plaintiffs though not a party to the impugned Sale Deed dated 21.03.2007(Ex.B2), he is indirectly wants to assert his title by way of declaration to declare the impugned Sale Deed as null and void and therefore, he is bound thereby. Hence, the Court fee has to be necessarily calculated and paid under Section 40(1) and not under section 25(d) of the Court Fees Act.

122. This Court would also like to place it on record that on perusal of the plaint, it is sufficient to point out that though the plaintiff has chosen to pray for the relief of declaration in substance he is praying for setting aside the impugned Sale Deed. Unless and until the impugned Sale Deed is set aside, the plaintiff cannot assert his title over the disputed properties under the Sale Deed dated 26.03.2007 (Ex.A10).

123. This Court also would like to point out the mere fact that the plaintiff has chosen to ask for the declaratory relief to declare the impugned Sale Deed as null and void, it will not alter the nature of the suit or absolve the plaintiff from necessity of having the impugned Sale Deed set aside.

124. With reference to the argument advanced by Mr.R.Subramanian, learned counsel, on the ground of limitation, it may be relevant to note here that the impugned Sale Deed (Ex.B2) seems to have been executed on 21.03.2007.

Admittedly, this suit is filed on 22.06.2010 i.e., after three years and three months.

125. It is therefore apparent that this suit, as contemplated under Article 58 of the Limitation Act 1963, is squarely barred by limitation. As per Article 58 of the Limitation Act 1963, to obtain any other declaration, the period of Limitation is three years. The starting point of limitation is when the right to sue first accrues. Article 59 of the Limitation Act is also relevant to be referred to.

126. According to Article 59 to cancel or set aside an instrument or decree or for the rescission of a contract, the period of limitation is three years and the starting point of limitation is when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

127. Mr.R.Subramanian, in support of his contention has placed reliance upon the decision of the Apex Court in L.C.Hanumanthappa Vs. H.B.Shivakumar, 2015(6) CTC 562.

In this case, while speaking on behalf of the Hon'ble Division Bench of the Apex Court Mr.Justice R.J.Nariman in paragraph No.13 has observed as under:

'13. We have heard learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In Khatri Hotels Private Limited & Anr. v. Union of India & Anr., (2011) 9 SCC 126, this Court while construing Article 58 of the Limitation Act held as follows:-

'Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

THE SCHEDULE

Period of Limitation

[See Section 2(j) and 3]

First Division-Suits

Description of suit	Period of Limitation	Time from which period begins to run
Part III- Suits Relating To Declarations		
58. To obtain any other declaration	Three Years	When the right to sue first accrues

Article 120 of the Schedule to the Limitation Act, 1908 (for short the 1908 Act) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

Description of suit	Period of Limitation	Time from which period begins to run
Part III- Suits Relating To Declarations		
120.Suit for which no period of limitation is provided elsewhere in this Schedule	Six years	When the right to sue first accrues

The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan* [(1929-30) 57 IA 325 : AIR 1930 PC 270] and it was held: (IA p. 331)

" There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

The same view was reiterated in *Annamalai Chettiar v. Muthukaruppan Chettiar* [ILR (1930) 8 Rang 645] and *Gobinda Narayan Singh v. Sham Lal Singh* [(1930- 31) 58 IA 125].

In *Rukhmabai v. Lala Laxminarayan* [AIR 1960 SC 335 : (1960) 2 SCR 253] , the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case* [AIR 1960 SC 335 : (1960) 2 SCR 253] , AIR p. 349, para 33)

" 33.... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word first has been used between the words sue and accrued. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.''

128. In the light of the observations made by the Apex Court in the decision afore cited, this Court is of view that since this suit is filed for seeking declaratory relief to declare the impugned Sale Deed dated 21.03.2007(Ex.B2) as null and void, it ought to have been filed within the period of three years. With the suit has not been filed within the prescribed time of three years as contemplated under Article 58 of the Limitation Act 1963, the suit itself is barred by Limitation and it is liable to be dismissed on this ground also.

129. Section 3 of the Limitation Act is also very much relevant to be referred to :

Section 3 contemplates Bar of limitation. Sub Section (1) envisages that subject to the provisions contained in Sections 4 to 24(inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

130. As argued by Mr.R.Subramanian, learned counsel, this Court finds that Ex.B1, Power of Attorney Deed dated 15.12.2006 executed in favour of the second defendant Mr.Thangaraj by the Principal Mr.A.Kannan was not properly cancelled as contemplated under Sections 203 & 207 of the Indian Contract Act. Section 203 provides when principal may revoke agent's authority. It enacts that the principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. Section 207 contemplates revocation and renunciation may be expressed or implied. It envisages that revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

131. On coming to the instant case on hand, though the plaintiff has claimed that the original owner of the property Mr.A.Kannan, on 09.03.2007 had cancelled the General Power of Attorney Deed dated 15.12.2006(Ex.A5), the letter of revocation under Ex.A6, was not communicated to the second defendant.

132. As discussed in the body of the judgment, Ex.A7, the envelope was returned with an endorsement as ''door locked''. In the absence of due service of cancellation letter on the second defendant, the presumption is that the second defendant was not at all informed about the cancellation of his Power of Attorney Deed dated 15.12.2006 before the authority given under the Power of Attorney Deed (Ex.B1). It further lead the Court to presume that the second defendant would be under the impression that the Power of Attorney Deed executed under Ex.B1, by the Principal A.Kannan was in force and therefore, he happened to execute the impugned Sale Deed under Ex.B1 dated 23.01.2007 in favour of the first defendant. But after five days, the plaintiff had purchased the property from Mr.A.Kannan through the Power Agent R.Bharathidasan, for which Mr.R.Bharathidasan was authorized by Mr.A.Kannan under Ex.A8, the registered General Power of Attorney Deed dated 09.03.2007. When the letter of revocation was not at all communicated to the second defendant, the execution of another registered Power Deed in favour of Mr.R.Bharathidasan under Ex.A8 is not valid and further the Sale Deed under Ex.A10, said to have been executed by Mr.A.Kannan, through his so-called power agent R.Bharathidasan in favour of the plaintiff cannot be construed as genuine and valid. Further, it also cannot be construed that the second defendant had not handed over the entire sale consideration to his Principal. It is absolutely wrong to say that Ex.B2 was created only to defeat the legitimate right of the second defendant's Principal.

133. Having regard to the submissions made by both the learned counsel and on perusal of the materials placed before this Court, the first substantial question of law is answered as against the appellant. The lower Appellate court is absolutely right and perfect in answering the issue and given the finding saying that the second defendant had no knowledge about the cancellation of Power Deed(Ex.B1) dated 15.12.2006.

134. There is no proof to show that the Sale Deed under Ex.B1, was executed without any consideration and hence the second substantial question of law is also answered as against the appellant/plaintiff. It is also answered that the defendants had no knowledge about Ex.A5(cancellation deed) General Power Cancellation Deed dated 09.03.2007.

135. Since the plaintiff is bound to substantiate his contention that the second defendant had not handed over the entire sale consideration to his Principal, no necessity is arisen to draw adverse inference as against the second defendant. Accordingly, the additional substantial questions of law Nos.1, 2, & 3 are also answered against the appellant/plaintiff.

136. Ex.B4 is the order dated 25.11.2010 passed by the learned District and Sessions Judge, Nagapattinam in CrI R.P.No.40 of 2008. This Criminal Revision Petition seems to have been filed by the defendants herein as against the original owner of the suit property Mr.A.Knnan, the power agent of Mr.R.Bharathidasan and the plaintiff B.Raghumaran. On perusal of the order, it reveals that the first defendant herein viz., Mrs.Pushpabai had lodged a complaint on 18.06.2007 with Mayiladuthurai Police as against the plaintiff B.Raghumaran and others, alleging that they had trespassed into her property, which is purchased by her measuring 5025 sq.feet. Based on her complaint, the Police Officer, who was placed in-charge of Mayiladuthurai Police station had registered a case under Sections 452 & 457 of IPC. Subsequently, that complaint was forwarded to the Tahsildar of Mayiladuthurai. The Tahsildar had formed an opinion that there was likelihood of breach of peace and therefore, he had sent a report to the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer alongwith the complaint for further proceedings. The Revenue Divisional Officer had passed a preliminary order under Section 145(1) of Cr P.C., on 31.07.2008 saying that ''A'' Party (Thangaraj and Pushpa Bai) were not in possession of the subject matter of the issue and held ''B'' Party(Raghumaran, who is the third person) was alone in possession. The learned District and Sessions Judge, Nagapattinam, in his order dated 25.11.2010, while disposing the Criminal Revision Petition filed by the defendants had set aside the impugned order dated 31.07.2008 and made in MC.No.26 of 2007 on the file of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Mayiladuthurai and directed both parties to maintain peace and tranquility and both of them were restrained from exercising their rights over the property till their rights are properly adjudicated in the Competent Civil Court. Now, it is to be reiterated that the suit filed by the plaintiff was dismissed by the first Appellate Court and hence the judgment and hence decree of the first appellate Court are to be confirmed.

137. Keeping in view of the above fact, this Court finds that the Second Appeal fails as there is devoid of any merit. Accordingly, the Second Appeal is dismissed and the judgment and decree dated ***22.9.2014 and made in AS.No.30 of 2012** on the file of the additional Subordinate Judge, Mayiladuthurai are confirmed leaving the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dt.26.9.16

***Corrected as per order of this
Court dt.24.1.17 made herein
Sd/-
Assistant Registrar (CO)
Dt.25.1.17**

//True Copy//

Sub Assistant Registrar

dn

To

- 1.The Additional Subordinate Judge,
Mayiladuthurai.
2. Additional District Munsif,
Mayiladuthurai

***To be substituted to the
order already despatched
on 13.10.16.**

1 cc to Mr.G.N.Sridharan, Advocate, sr.*4513

S.A.No.392 of 2015
and
M.P.No.1 of 2015

trm co
kra 27.09.2016
krd 25/1

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