



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE **R.MALA**

WEB COPY

Second Appeal (MD) Nos.425 and 426 of 2016

and

C.M.P. (MD) Nos.4564 to 4567 of 2016

1.Gnanasekaran

2.Malarvizhi

... Appellants in S.A.425/2016

1.Ingersol

represented by power of attorney

agent Mr.Gnanasekaran

2.Malarvizhi

... Appellants in S.A.426/2016

versus

S.Kannappar

... Respondent in S.A.425/2016

N.Subramania Thevar

... Respondent in S.A.426/2016

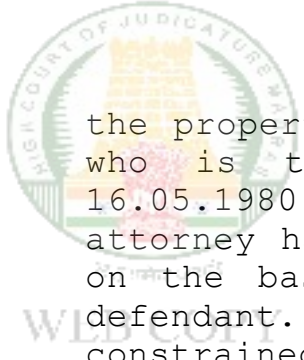
Prayer: Second Appeals are filed under Section 100 of CPC., against the judgment and decree dated 11.08.2015 made in A.S.No.57 and 58 of 2014 on the file of the 3rd Additional District Court of Thanjavur at Pattukottai confirming the judgment and decree dated 22.09.2014 made in O.S.No.186 and 179 of 2010 respectively on the file of the Principal Subordinate Judge, Thanjavur.

For Appellants in both appeals : Mr.R.Anand

JUDGMENT

The defendants in both the suits have come forward with these second appeals, challenging the judgment of the trial Court, which was confirmed by the first appellate Court for declaration of title and injunction in respect of S.A.(MD) No.425 of 2016 and for declaration that the power deed dated 16.05.1980 executed by the plaintiff in favour of the second defendant has not come into effect and also the sale deed dated 28.07.2009 executed by the second defendant in favour of the first defendant is not valid and binding on the plaintiff and also for consequential relief in respect of S.A.(MD) No.426 of 2016.

2.The respondent in S.A.(MD) No.425 of 2016 as plaintiff filed O.S.No.132 of 2009, which was later re-numbered as O.S.No.186 of 2010 for declaration stating that the properties purchased by his father Subramania Thevar on 28.10.2004 and he executed a settlement deed in favour of him on 20.01.2009 and from the date of sale onwards, the plaintiff is in possession and enjoyment of



the property. The second defendant is non other than his mother, who is the power of attorney, as per the document dated 16.05.1980. Even though divorce has been granted and the power of attorney has been revoked, the second defendant sold the property on the basis of the power of attorney in favour of the first defendant. Therefore, the plaintiff, after issuance of notice, constrained to file the suit for the above stated relief.

3.The defendants filed a detailed written statement stating that the deed of power of attorney has been acted upon and in pursuance of the deed of power of attorney, she dealt with the property and she has no knowledge of the revocation of power of attorney.

4.But, the trial Court has considered both the pleadings viz., plaint and written statement and after hearing both sides, framed necessary issues and decreed the suit, against which, the defendants have preferred an appeal in A.S.No.57 of 2014. The first appellate Court also dismissed the appeal, after considering the fact that the power deed has been cancelled as per Section 207 of Indian Contract Act and the father of the plaintiff, after returned to India, dealt with the property independently. Against which, the present second appeal in S.A.(MD) No.425 of 2016 has been filed.

5.Another suit in O.S.No.87 of 2009 has been filed by Subramania Thevar himself, which was later renumbered as O.S.No.179 of 2012 stating that the power of attorney deed executed by him was not came into effect and also the sale deed alleged to be executed by the second defendant, his wife in favour of the first defendant is null and void and not binding him and also for injunction for his peaceful possession and enjoyment for the same stating that his father purchased item Nos.1 to 3 and he is in possession and enjoyment of the same and in respect of 4th item of property, the plaintiff has purchased the same on 09.02.2004 from one Manivannan, S/o.Murugaiah Thevar and from the date of sale onwards, he is in possession and enjoyment of the same. In respect of 5th item of property, he purchased the same on 12.04.2006 and purchased item Nos.6 to 8 on 09.06.2003 from one Mahendran and his wife Santhi and he is in possession and enjoyment of the same.

6.He has further stated that the power deed has not been come into effect and after he returned to India, he alone dealt with the property . Now, with a view to defraud the plaintiff, the second defendant, who is his divorced wife, sold the property to the first defendant and hence, he constrained to file the suit.

<https://hcservices.ecourts.gov.in/hcservices/> 7.Both first and second defendants have filed a detailed written statement stating that the power of attorney has been come into effect and in pursuance of the same, the second defendant dealt



with the property. She has also stated that there is no revocation of power of attorney and prayed for the dismissal of the suit.

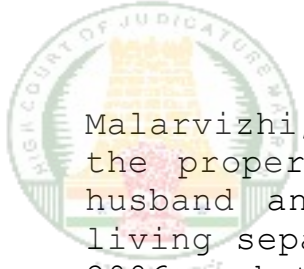
8. The trial Court, after considering the averments in both the plaint and written statement, framed necessary issues and considering the oral and documentary evidence decreed the suit in respect of declaration that the sale deed is null and void and also granted injunction restraining the defendants/appellants herein not to interfere with the peaceful possession and enjoyment of the same. Against which, the defendants filed an appeal in A.S.No.58 of 2014. The first appellate Court, after perusing the entire records, framed proper points for consideration and dismissed the appeal. Against the said judgment and decree, the appeal in S.A.(MD) No.426 of 2016 has been filed.

9. At the time of admission, the learned counsel for the appellants in both the appeals has submitted that the power of attorney has been executed in 1980 and till 1990, the Principal was at Malasia and during the said period, the second defendant in both the cases, has dealt with the properties and there is no notice about the revocation of the deed of power of attorney.

10. The second limb of argument of the learned counsel for the appellants is that the first appellate Court is erred in stating that one document was marked as Ex.A7 in O.S.No.186 of 2010, in which, the sons of Subramanian and the second appellant have executed the power of attorney in respect of the property in favour of Subramanian, their father. So it was held that Subramanian alone has dealt with the property. He has further submitted that in H.M.O.P. alone, the revocation of power of attorney has been mentioned. There is no registered document for revocation of power of attorney. Hence, he has submitted that there is substantial question of law arise in the matter in respect of Section 207 of Indian Contract Act.

11. He has further submitted that without pleading, no relief can be granted. He has relied upon a decision in **Union of India V. Ibrahim Uddin and Another** reported in **(2012) 8 Supreme Court Cases 148** and prayed for admission.

12. Considering the arguments of the learned counsel for the appellants and on perusal of the typed set of papers, this Court finds that Subramania Thevar is none other than the husband of the second defendant. He was employed at Railway department at Malasiya. He retired in the year 1985 and his service was extended till 1990. He is having properties at India and to dealt with the property, admittedly, he executed a power of attorney. Both the courts below have held that the power of attorney is valid. It is also admitted that till 1992, the wife



Malarvizhi, /second defendant has dealt with the property and sold the property that was a difference of opinion arose between the husband and wife. After, he returned back to India, they are living separately. Divorce application has been filed in the year 2006 and then only, the sale deeds in both the cases have been come into existence. In the divorce application, exparte decree has been passed. In the divorce petition, it was specifically mentioned that the power of attorney has been cancelled. The first appellate Court has rightly considered Section 207 of Indian Contract Act and come to the correct conclusion that the power of attorney can be cancelled either expressly or impliedly. However, after Subramania thevar returned to India, he dealt with the property and sold the property in the year 2004. During that period, both Subramania thevar and his wife Malarvishi lived separately and hence, the first appellate Court has rightly held that the power of attorney deed has been revoked.

13.It is pertinent to note that after the exparte divorce has been granted, second defendant filed an application to set aside the exparte decree along with the application for condonation of delay and that was set aside. Subsequently, on merit, divorce has been granted. During the pendency of divorce application, even though there was a specific averments that the power deed has been cancelled, having fully aware to the fact that she is not the power of attorney, she executed the sale. In such circumstances, I am of the view that both the Courts below have considered all the aspects in proper perspective and no substantial question of law arises in these second appeals and the second appeals deserve to be dismissed.

14.Accordingly, the second appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

- 1.The III Additional District Judge, Thanjavur at Pattukottai.
- 2.The Principal Sub Judge, Thanjavur

**Second Appeal (MD) Nos.425 and 426 of 2016
and C.M.P. (MD) Nos.4564 to 4567 of 2016**

09.06.2016

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CSL/GSV-PM/14.07.2016 : 4p/3c