

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2017

DELIVERED ON : 19.09.2017

Coram:

THE HONOURABLE MR.**JUSTICE R.SUBBIAH**

and

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

A.S.No.72 of 2015 and
M.P.No.1 of 2015

M.Masilamani

..Appellant/1st Defendant

..VS..

1.M.Veeramani

..1st Respondent/Plaintiff

2.N. Guhan

..2nd Respondent/2nd Defendant

Appeal Suit has been filed under Section 96 r/w Order XLI Rule 1 CPC, against the original Decree and Judgment dated 30.07.2014 in O.S.No.133 of 2012 on the file of the Second Additional District Judge, Thiruvallur at Poonamallee.

For Appellant : Mr.K.A. Ramachandran

For Respondents : Mr.M. Santhanaraman for
Mr.R. Sivaraman for R1

For R2 Not ready

JUDGMENT

(Judgment of the Court was delivered by P. VELMURUGAN,J.)

1. The case of the plaintiff may be summarised as follows:

1.(a) Originally, the suit property was allotted to one E. Krishnan, father of the 1st defendant on 5.9.1994. The said Krishnan executed Settlement Deed in respect of the suit property in favour of the 1st defendant under the Registered Settlement Deed dated 26.4.2004. From the date of settlement deed, the 1st defendant was in possession and enjoyment of the schedule mentioned property. He executed a General Power of Attorney dated 23.01.2009 in respect of the suit property in favour of the 2nd Defendant, permitting the power agent to sell the said property on his behalf. While the power was in force, 2nd Defendant entered into a registered Sale Agreement with the plaintiff on behalf of the 1st Defendant on 1.7.2009 in respect of the suit property for a consideration of Rs.1,05,00,000/- (Rupees one Crore and five lakhs only). On the same day, the plaintiff paid a sum of Rs.91,00,000/- (Rupees Ninety one lakhs only) by cash, as advance and original title deeds were also handed over to him on the same day, by the 2nd defendant.

1.(b) The time frame for execution of sale has been fixed as six months from the date of Sale Agreement. Even prior to the expiry of the six months, the plaintiff approached the 2nd Defendant to execute a sale deed in his favour after receiving the balance sale consideration of Rs.14,00,000/- (Rupees Fourteen lakhs only). From the date of agreement, the plaintiff was ready and willing to perform his part of contract and even after repeated demands, the defendants have not come forward to execute the sale deed as per the agreement dated 1.7.2009. The time was not meant to be the essence of the contract. Since the defendants have failed to perform their part of contract, the plaintiff sent legal notice through his Advocate on 30.12.2009 to the 2nd defendant. Further, the defendants tried to alienate the suit property, the plaintiff issued public notice through his counsel in the "Malaimalar" Tamil Daily, Chennai edition on 27.09.2012. Even after the public notice also, no response from the defendants. Hence the plaintiff has filed the suit for specific performance.

2. In the written statement of the 1st Defendant it is averred as follows:

2.(a) The 1st defendant was not aware of the sale agreement dated 1.7.2009 alleged to have been executed by the 2nd Defendant in

favour of the plaintiff till the filing of the suit. The plaintiff never made any demand for execution of the sale deed with the 1st defendant before filing of the suit at any point of time. He had no knowledge about the alleged legal notice sent by the plaintiff through his advocate on 30.12.2009 to the 2nd Defendant and also public notice by paper publication in the Malai Malar Tamil Daily, Chennai Edition on 27.9.2012. The General Power of Attorney executed by the 1st defendant in favour of 2nd defendant was duly cancelled vide Power Document No.123 of 2009 by a registered Revocation Deed No.1752 of 2009 in the month of September 2009 and sent legal notice Ex.B.3 to the 2nd Defendant and further a Reminder Advocate Notice Ex.B.5 was also sent on 7.5.2010 calling upon to hand over all the original documents. Even after serving the notice, there was no response from the 2nd Defendant.

2.(b) The plaintiff never informed to the 1st Defendant about the alleged Sale Agreement either orally or at least by sending a copy of the Advocate Notice to the 1st Defendant. He denied the Sale Agreement dated 1.7.2009 entered into between the plaintiff and 2nd defendant. It is only a hand and glove action of the 2nd Defendant and Plaintiff. The suit is barred by limitation under Article 54 of the

Limitation Act, 1983. There is no cause of action against the 1st Defendant. The Plaintiff never claimed any demand for execution of alleged sale agreement from the 1st Defendant before the expiry of the time fixed for its execution, or before filing of the suit for specific performance. Since the time is essence of the contract, he failed to perform his part of contract within the stipulated time mentioned in the alleged Sale Agreement dated 1.7.2009. Therefore, there is no cause of action against this defendant and the suit is barred by limitation and the same is liable to be dismissed.

3. After considering the pleadings, documents the trial court framed the following issues:

1. Whether the sale agreement executed by D2 as GPA of D1 dated 1.2.2009 is true, genuine and valid and could bind D1 and enforceable under law?
2. Whether the alleged cancellation of the GPA by D1 is valid, genuine and would preclude the defendant No.2 in executing the alleged sale agreement in favour of the plaintiff on 1.7.2009?
3. Whether the alleged cancellation of GPA by D1 is after the sale agreement and the plaintiff entered

the sale agreement with D2 with the knowledge of the cancellation of the GPA by D1?

4. Whether D1 has received a sum of Rs.91,00,000/- towards part sale consideration?
5. Whether the plaintiff is entitled to the decree of specific performance against D1 and D2?
6. Whether the suit is barred under the law of limitation?
7. Whether the alleged cause of action is true?
8. Whether the time is essence of the alleged sale agreement?
9. Whether the suit is bad for non-joinder of necessary party?
10. Whether this suit is barred under any other law within the meaning of Order 7 Rule (II)(d) of CPC?
11. Whether the plaintiff is a bonafide purchaser?
12. Whether the suit is filed by the plaintiff in collusion with D2?

13.To what relief?

4. Before the trial Court, in order to prove the case, the plaintiff on his side examined 2 witnesses and marked Exs.A1 to A13. On the side of the defendant, 1st defendant himself was examined as D.W.1 and Exs.B1 to B6 were marked. The 2nd defendant remained ex-party.

5. Considering the pleadings, oral and documentary evidence of the parties before the trial court, the trial court partly decreed the suit with cost and directed the defendants to execute the sale deed in favour of the plaintiff after receiving balance sale consideration of Rs.14 lakhs; the plaintiff was directed to deposit the balance sale consideration of Rs.14 lakhs within three months and the defendants were directed to execute the sale deed in favour of the plaintiff within one month from the date of such deposit. The said Judgement and Decree are challenged by the 1st defendant/Appellant herein on the grounds set out in the memorandum of grounds of Appeal. For the sake of convenience, the parties ranked in the plaint are taken in this appeal.

6. The learned counsel for the appellant/1st defendant would

submit that though he executed a General Power of Attorney in favour of 2nd Defendant under Registered Power Deed on 23.01.2009 for the reasons stated in the said Power of Attorney, he revoked the said power after coming from outstation to the local and the same was duly communicated to the 2nd Defendant. Despite knowing the fact, the 2nd Defendant and the Plaintiff colluded with each other, entered into the alleged Sale Agreement. 1st defendant did not know about the Sale Agreement. Further, the price of the land has been escalated and now the suit property is worth about more than Rs.5 Crores, in order to cheat the Appellant/1st Defendant, the plaintiff created a sale agreement after the revocation of power deed. Even though the Plaintiff knows about the correct address of the 2nd Defendant he has suppressed the same and given notice to a false address and thereby restraining the 2nd defendant to come to the Court and defeated the proceedings. Further, he would submit that even assuming the fact that the Sale Agreement is true, the Plaintiff never approached the 1st Defendant within the stipulated time mentioned in the agreement to execute the Sale Deed. Hence, he is not entitled for the relief of specific performance and the suit is barred by limitation.

7. The learned counsel for the appellant/1st defendant would

further submit that after the revocation of the power of Attorney, the 1st Defendant sent legal notice Ex.B.3 to the 2nd Defendant on 16.2.2010 and the 2nd Defendant though received the notice, did not send any reply. The Plaintiff never paid any amount either to the 1st Defendant or 2nd Defendant. The 2nd Defendant also did not receive any amount from the Plaintiff. The Sale Agreement was also not supported by consideration. The Plaintiff and 2nd defendant colluded with each other and cheated the 1st Defendant. The trial Court failed to consider the facts that the Power of Attorney given by the 1st Defendant in favour of the 2nd Defendant was revoked and the alleged Sale Agreement entered into between the 2nd Defendant and the Plaintiff was not informed to the 1st Defendant either by the Plaintiff or by the 2nd Defendant. Therefore, the Sale Agreement will not bind the 1st Defendant. There is no obligation to execute Sale Deed in favour of the plaintiff by the 1st defendant. There is no cause of action against the 1st Defendant. Hence, the suit is liable to be set aside and the appeal to be allowed.

8. In support of his contention, the learned counsel for the appellant/1st defendant referred the following decisions:

1. 2014-1-L.W.47 [I.S.Sikandar (d) by Lrs. v. K.]

Subramani & Others]

- 2. (1997) 3 SCC 1 [K.S.Vidyanandam and others v. Vairavan]***
- 3. (1996) 4 SCC 526 [His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar]***
- 4. 2017-1-L.W.972 [A.V. Ram Balaji, Proprietor Akshitha Property Developers and another v. M/s.Hotel Silver Stars Pvt.Ltd.,]***
- 5. 2015 AIR CC 2407 (MAD) [Narasimmal v. R.Santhakumari]***
- 6. (2012) 8 MLJ 551 [Badru v. A.Maruthachalam]***
- 7. 2005 (4) CTC 426 [A.Ulaganatha Reddy v. D.Nandagopal Chetti and others]***
- 8. (2000) M.L.J.(Supp.) 506 [Mani v. Batcha Sahib and others]***
- 9. 1998 (1) CTC 186 [Vasantha and others v. M.Senguttuvan]***
- 10.1996 M.L.J.(2) 199 [K. Saroja v. Valliammal and***

others]

9. Learned counsel for the 1st Respondent/Plaintiff would submit that the 1st defendant is the owner of the property. He has executed the Registered General Power of Attorney in favour of the 2nd Defendant including the power to sell the property to the third parties on his behalf. Based on the General Power of Attorney, the 2nd Defendant executed a Registered Sale Agreement dated 01-07-2009 in favour of the Plaintiff for a sum of Rs.1,05,00,000/-. On the same day the plaintiff paid a sum of Rs.91,00,000/- as advance. On receipt of the said payment, the 2nd defendant handed over original title deeds and other documents and also the possession of the schedule mentioned property to the Plaintiff. The Plaintiff when approached the 2nd Defendant, he avoided to execute the sale deed in favour of the Plaintiff. Therefore, he issued a legal notice to the 2nd Defendant, but he did not respond to it. Therefore, he filed a suit for specific performance against the defendants, as the 1st Defendant is the principal of the power deed and the 2nd Defendant is the power agent of the 1st Defendant, who executed the Sale Agreement with the Plaintiff for valuable sale consideration.

10. The learned counsel for the Plaintiff further would submit that the plaintiff was always ready and willing to perform his part of contract. Since the 2nd Defendant has failed to perform his part of contract, the Plaintiff has filed the suit against the defendants. He would further contend that the Plaintiff has also adduced oral evidence and produced documentary evidence to prove his case. The learned counsel would further submit that after considering the pleadings, oral and documentary evidence, the trial Court partly decreed the suit and there is no need to interfere the Judgment and Decree passed by the trial court in favour the Plaintiff and the same may be confirmed and the appeal may be dismissed.

11. In support of his contention the learned counsel for the 1st Respondent/Plaintiff has cited the following judgments:

1. 1983 SCC Online Mad 439 : 1983 ELT 2350 [Usha Enterprises, Madras v. Government of India and Another]

2. 1983 SCC Online Cal 39 : AIR 1983 Cal 438 [State of Orissa v. Goenka Investment and Mining Industries Pvt. Ltd., and others]

3. A.S.No.1059 of 2009 High Court Madras

[T.R.Jagadheesan and others v. M. Ramadass Naidu]

4. A.S.No.345 of 2016 Madras High Court [Thangamani and Others v. Rajkumar]

12. After a careful perusal of the pleadings filed before the trial court, the oral and documentary evidence on record, Judgment and Decree passed by the trial Court and grounds raised in the appeal by the 1st Defendant, the points that arise for determination in this appeal suit are thus:

1. Whether the sale agreement executed by the 2nd defendant in favour of the plaintiff will bind the 1st defendant?
2. Whether the revocation deed dated 14.09.2009 executed by the first defendant will bind the plaintiff?
3. Whether the judgment and decree passed by the lower court is liable to be set aside and appeal to be allowed?
4. To what relief?

Point No.1

13. It is admitted fact that the suit properties originally allotted

to the father of the 1st defendant under Ex.A.1 Allotment Order dated 4.9.1994. He was enjoying the possession of the property and he obtained Patta Ex.A.2 for the same. He mortgaged the suit property for a sum of Rs.15,00,000/- (Rupees Fifteen lakhs only) with Bank of India on 8.3.2004. Mortgage deed is Ex.A.3. On 26.04.2004 1st defendant's father executed a Settlement Deed Ex.A.4 in favour of 1st Defendant. The other heirs of Krishnan (father of 1st defendant) had no objection to settle the property to the 1st defendant. The No objection certificate is Ex.A.5. As the suit property has been mortgaged by the 1st Defendant's father in favour of the Bank of India, the 1st defendant after getting Settlement Deed in his favour, has validly discharged the mortgage debt under Ex.A.6 Release Deed. Therefore, the 1st Defendant is the owner of the suit property. There is no dispute with reference to the ownership of the suit property. It is also admitted fact that the 1st Defendant executed registered General Power of Attorney Ex.B.1 in favour of the 2nd defendant and also handed over the title deeds.

WEB COPY

14. The disputed facts are that according to the Plaintiff based on the General Power of Attorney Ex.B1, 2nd defendant entered into a Sale Agreement with the plaintiff under Ex.A.11 for a sum of

Rs.1,05,00,000/- and on the same day the Plaintiff paid a sum of Rs.91,00,000/- as advance and the 2nd Defendants had also handed over the possession and title deeds of the suit property. From the date onwards the plaintiff was ready and willing to perform his part of contract. Since the 2nd Defendant evaded to perform his part of contract on behalf of the 1st Defendant, he sent notice to 2nd Defendant. But there was no response to the legal notice. It is relevant to mention here that after receipt of suit summon, the 2nd Defendant remained *ex-parte*. He has also not come to the witness box and denied the agreement and receipt of part of sale consideration. According to the 1st defendant, the execution of General Power of Attorney in favour of the 2nd Defendant was only for a limited purpose as mentioned in the Power document, as he was to attend some other urgent work outside of the city. He came to Chennai in the month of September 2009 and he immediately intimated to the 2nd Defendant orally and cancelled the General Power of Attorney executed in favour of him. 1st defendant was not aware of the Sale Agreement between the 2nd Defendant and Plaintiff. Neither the 2nd Defendant nor the Plaintiff intimated the same to the 1st Defendant and he did not receive any amount for Sale Agreement Ex.A.11. Hence, the Sale Agreement will not bind the 1st Defendant. Therefore, now

the question is that whether the Sale Agreement executed by the 2nd defendant as Power Agent in favour of the Plaintiff will bind the 1st defendant even after the revocation of the Power of Attorney?

15. On a perusal of the pleadings and also the oral and documentary evidence, the deed of Power of Attorney Ex.B.1 dated 23.1.2009, the General Power of Attorney Deed is a registered one. The date of alleged sale agreement Ex.A.11 is 1.7.2009. The date of revocation of Power of Attorney Ex.B.2 is 14.09.2009, i.e., after two months from the date of execution of Sale Agreement. It shows cancellation of Power document is after entered into sale agreement i.e, on the date of sale agreement the Power of Attorney was in force and prior to the cancellation admittedly no notice was issued by the first defendant. It means it is unilateral cancellation that too 2nd defendant after entered into sale agreement with the plaintiff. Therefore, now the court has to consider whether the revocation of General Power of Attorney, after the Sale Agreement will bind the plaintiff?

16. There is no dispute that the 2nd Defendant and the Plaintiff have entered into the Sale Agreement before the revocation of Power

of Attorney. After the revocation of Power of Attorney, the 1st defendant issued notice Ex.B.3 to the 2nd Defendant. The 1st defendant has stated in his written statement that the reason for cancellation of power of attorney is that as he was to attend some other urgent work outside of the city he was constrained to appoint the 2nd Defendant as his power agent to do the deeds more clearly stated in the power document, but fortunately he did accomplish all his pre occupied things Thiruvannamalai before the month of August 30th 2009 itself and he came back to Chennai in the month of September 2009 and he orally informed the 2nd Defendant his availability at Chennai and immediately thereof he cancelled the said Power Document No.123 of 2009 by registering a Cancellation Deed dated 14-09-2009 under Document No.1752 of 2009 registered at the office of SRO, Anna Nagar, Chennai and the same was duly intimated to the 2nd Defendant over phone. But in spite of the above facts, the 2nd Defendant was sending some of his henchmen and brokers to the property as if he was holding the power to sell the property, as he is still keeping all the original documents with him and also further he would state that he ought to have returned all documents related to the said property.

17. So in the written statement, he has stated that he had

executed Ex.B1 General Power of Attorney, since he had to attend some urgent work outside the city. Whereas the reason stated in the power of attorney document is otherwise. Even assuming that he really intimated the 2nd Defendant in the month of September 2009, subsequently he cancelled the Power of Attorney in the same month, once he admitted execution of the Power of Attorney, before cancellation of the same he should have issued notice to the power agent regarding the cancellation of Power of Attorney and also should have verified as to whether the power given to the agent has been acted upon or not. So, without ascertaining these things, soon after he came to the city he intimated and cancelled the power deed, for which there is no evidence. Except cancellation of Power of Attorney Ex.B.2, he has not produced any other evidence. He says that it was orally intimated. But unfortunately, 2nd Defendant has not chosen to appear before the Court and given any evidence that, before the cancellation of Power of Attorney 1st Defendant intimated the same to him. Therefore, in the absence of that, after execution of sale agreement this Court cannot give any importance to the cancellation of the General Power of Attorney.

18. In this regard it is pertinent to refer Section 203 of the

Indian Contract Act, 1872. For better understanding, Section 203 of the Indian Contract Act, 1872 is extracted hereunder:-

“203. When principal may revoke agent’s authority—

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.

19. **Section 226 of the Indian Contract Act, 1872** deals with the enforcement and the legal consequences of the contracts entered into through an agent, which is as follows:-

“226. Enforcement and consequences of agent’s contracts.—

Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.
—Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been

entered into the acts done by the principal in person.”

20. Therefore, in this case, on a perusal of oral and documentary evidence, which shows that the revocation has been done after the sale agreement. The notice under Ex.B3 sent to the 2nd Defendant only on 16.02.2010 i.e., after the execution of sale agreement. In the absence of oral and documentary evidence that before the execution of the sale agreement, the Power of Attorney executed by 1st defendant in favour of the 2nd defendant was revoked and it was duly communicated either to the 2nd Defendant or the Plaintiff and there is no further evidence to show that the Plaintiff was aware of the Revocation of Power of Attorney prior to entering into the Sale Agreement. Also, there is no evidence to show that the 2nd defendant suppressed the existence of the Sale Agreement to the 1st defendant. There is no evidence to prove that the Plaintiff and the 2nd Defendant colluded each other, under valued the property, in order to cheat the 1st Defendant and there is no material to show that the suit property was worth about more than the amount which is mentioned in the sale agreement. Even there is no valuation report, at the worst, no 3rd party affidavit is filed or he has examined any third person to speak

about the value of the property or otherwise any revenue records such as guideline value or market value fixed by the Government, we could not accept the defence taken by the 1st Defendant that the property worth is more than Rs.5 crores. Further, there is no details found in the Revocation Deed for what reason the power was revoked. Likewise, the reason stated in the General Power of Attorney for nominating the 2nd Defendant as his agent is entirely contradictory to the reasons stated in the Written Statement filed by the 1st Defendant. The said Power of Attorney is registered one. He cannot give any oral evidence against the written document. As per Section 92 of the Indian Evidence Act, no evidence of any oral statements shall be admitted. Under these reasons also the revocation will not bind the plaintiff. More particularly when second defendant remained *ex-parte* and not come to the witness box. So, the Sale Agreement executed by the 2nd defendant as Power Agent, in favour of the Plaintiff will bind the 1st defendant even after he revoked the Power of Attorney, since the power of attorney is acted upon and revocation is after the Sale Agreement. The Point No.1 is answered as indicated above.

Point No.2

21. As already stated that the 1st Defendant is owner of the property; he executed registered General Power of Attorney Ex.B.1 on

23.01.2009 in favour of the 2nd Defendant. When the Power of Attorney was in force, 2nd Defendant entered into a Sale Agreement Ex.A.11 with the plaintiff on 1.7.2009 for a total sale consideration of Rs.1,05,00,000/-; out of which Rs.91,00,000/- was paid by the Plaintiff on the same date and the 2nd Defendant handed over the title deeds and possession of the suit property to the Plaintiff. The written statement and evidence of the 1st Defendant clearly shows that the title deeds were handed over to the Plaintiff. As already stated that, before the revocation of power, 1st defendant has not issued notice either to the Power Agent/2nd Defendant or the Plaintiff/ proposed purchaser of the property. In the absence of such notice, the revocation of Power of Attorney is not legally valid and the same will not bind either the 2nd defendant or the plaintiff. The General Power of Attorney Ex.B.1 is registered one, which reflected in the encumbrance certificate. The sale agreement Ex.A.11 is also registered one. The 1st defendant has also admitted the same. But, the entry of the revocation of Power of Attorney document was not reflected in the Encumbrance Certificate. Further, after issuing notice Ex.A.12 to the 2nd Defendant, since there was no response, the plaintiff has issued Public Notice (Paper Publication) Ex.A.13 in the Tamil daily Malaimalar dated 27.09.2012. For that also neither the 2nd Defendant nor the 1st

Defendant have given any reply. 1st defendant would say that he was not aware of that notice. When the 1st Defendant cancelled the Power of Attorney executed in favour of the 2nd defendant, neither he issued prior notice to the 2nd Defendant nor made any Public Notice with regard to the revocation of Power deed. The 1st defendant has not proved his stand that he orally informed to the 2nd defendant.

22. The learned counsel for the first defendant would say that plaintiff did not issue legal notice and he has not produced any postal receipt and acknowledgment card for proof of service. For which the counsel for the plaintiff would reply that the advocate who sent the notice on behalf of the plaintiff to the 2nd defendant misplaced the postal receipt and acknowledgment card, therefore, he himself prepared to come to witness box and depose before the Court. The relevant portion of the proof affidavit for chief examination of P.W.2 is extracted hereunder:-

“02.I submit that the plaintiff had appointed me to send the legal notice to the 2nd Defendant during the month of December 2009 with the original sale agreement dt:01/07/2009 executed by 1st defendant represented by 2nd defendant in favour of the plaintiff which marked as Exhibit No.A11.

03. Under the plaintiff's instruction I had given the legal notice to the 2nd defendant who is the power of attorney holder and the person who had received the entire money.

04. I submit that I am of the opinion by perusing the agreement dt:01/07/2009 that the 2nd Defendant alone is responsible for the entire action and the notice was issued only to the 2nd Defendant.

05. The legal notice was sent by registered post with acknowledgment due. However, the acknowledgment card and the proof of service were not readily available in my office by oversight or inadvertence was cast."

From the above evidence, the issuance of notice to the 2nd defendant by the plaintiff is proved. Further, the 2nd defendant remained ex-parte and he has not come to the witness box and denied that he has not received the notice. Therefore, the contention raised by the learned counsel for the 1st defendant is not acceptable.

23. When the 1st defendant issued notice to the 2nd Defendant under Ex.B3 and after receipt of said notice, when the 2nd Defendant failed to return the original documents, 1st Defendant ought to have

taken steps to get back the original documents. After the receipt of notice, when the 2nd Defendant not even sent reply notice to the 1st Defendant, the 1st Defendant simply kept quiet without taking any legal action. Even now, he has not made any complaint to the police and he has not taken any legal action to get back the original documents of the property. The above conduct of the 1st Defendant would go to show that simply he issued Notice Ex.B.3 and kept quiet without taking any steps, which creates serious doubts.

24. Therefore, from the oral and documentary evidence, once the power of attorney is admitted, as stated earlier, before the revocation of Power of Attorney, the power agent/2nd Defendant entered into the sale agreement with the plaintiff and received considerable amount as advance and also handed over the original title deeds with the possession to the plaintiff. The subsequent revocation of power of attorney without issuing any prior notice and without ascertaining the fact that as to whether the power given to the agent has been acted upon or not, will not bind the plaintiff. Further, there is no evidence to show that the property worth about more than Rs.5 crores and the 2nd Defendant cheated the 1st Defendant. Therefore, it is proved that the Power of Attorney/2nd Defendant had acted upon

before the revocation of Power of Attorney and entered into the sale agreement with the plaintiff. Under these circumstances, we come to the conclusion that the Revocation/ Cancellation of Power Deed dated 14.09.2009 will not bind the plaintiff. If at all 1st defendant has got any grievance with regard to sale transaction he has to work out his remedy only against the 2nd defendant for rendering proper accounts as per the terms of the Power of Attorney and he is liable to execute sale deed in favour of the plaintiff personally or through 2nd Defendant. The Point No.2 is answered accordingly.

Point No.3

25. As already stated that based on Ex.A.10, the 2nd defendant as the power agent of principal/1st Defendant, entered into the sale agreement with the plaintiff. On the date of Sale Agreement, the Plaintiff has paid the major portion of the sale consideration and received the original documents from the 2nd Defendant. Thereafter, when the Plaintiff was ready and willing to perform his part of contract and approached the 2nd defendant to execute the sale deed, he delayed. Hence, the plaintiff issued Notice Ex.A.12 to the 2nd Defendant. Though he has not produced the acknowledgment for the service of notice, he examined the Advocate who sent the notice. He has stated that he has received the acknowledgment card but he did

not hand over the same to the plaintiff, because it was misplaced in the office and the same could not be traced out. The trial court has accepted the evidence of P.W.2 and come to the conclusion that the notice was served to the 2nd Defendant. To disprove the same, the 2nd Defendant has not chosen to come to the court and deny the service of notice, receipt of advance money of Rs.91 lakhs and handing over of original documents to the Plaintiff. He remained *ex-parte* before the trial court. Further, all the original documents were marked by the Plaintiff, which will show that the defendants intended to sell the property to the plaintiff. If they are not willing to sell the property, how the original title deeds went to the hands of the plaintiff? If the Sale Agreement is not genuine, suspicious and also forged, the 1st Defendant would have taken steps to get back the title deeds. Even assuming that the 2nd Defendant colluded with the Plaintiff and created Sale Agreement, the 1st Defendant would have taken steps to get back the original title deeds or money from the 2nd Defendant. But he has not given any complaint against the 2nd defendant and the plaintiff for cheating. It is not the case of the 1st Defendant that the original title deeds were stolen by 2nd defendant or somebody or he lost the same. Further, if the property is worth about more than Rs.5 crores and the same is undervalued, definitely, he would have taken action. The

Plaintiff entered into a sale agreement with the 2nd Defendant and the Plaintiff has proved that he is always ready and willing to perform his part of contract throughout.

26. One of the defence raised by the learned counsel for the 1st defendant is that as per clause 11 of the alleged agreement of sale itself shows that the time is the essence of the agreement. Under Section 55 of Indian Contract Act, 1872, once the time is specified in the agreement, time is the essence of the contract and the parties shall adhere to the same. No adherence of the said contract rendered the contract repudiated and therefore the 1st Respondent/Plaintiff is not entitled for a decree of specific performance. In this regard it is to be noted that the suit agreement is dated on 1.7.2009. Time for specific performance fixed in the agreement is six months. The time of six months expired on 31.12.2009. The plaintiff issued legal notice to the 2nd defendant dated on 30.12.2009. The plaintiff can file the suit on or before 1.1.2013, i.e, within 3 years from the date of expiry of the time fixed in the sale agreement Ex.A.11. The suit has been filed by the plaintiff on 17.10.2012. As per the Article 54 Part I of the Limitation Act, 1963, the suit has been filed well within time. Ordinarily, time is not essence of contract insofar as the sale

agreement pertaining to sale of immovable property is concerned. The defendants have not pleaded and proved that the time is essence of contract under sale agreement Ex.A.11. More particularly, when the plaintiff is having all original title deeds of the schedule mentioned properties and 2nd defendant who is valid Power Agent of the 1st defendant remained *ex-parte* and 1st defendant has not taken any steps to get back the original title deed and allowed to be remained with the plaintiff.

27. The power deed was said to have been cancelled only after the execution of sale agreement Ex.A.11, without issuing any notice. As per Section 208 of Indian Contract Act termination becomes effective only when it comes to the knowledge of the affected party. Even if the agent is aware of the revocation, it does not affect third parties who in good faith enter into contract with the agent and in ignorance of the revocation; they are protected; such provision is in interest of commerce. Where the principal has terminated the agency, or the agency has been terminated by happening events, the principal continues to be bound by the agent's act under the doctrine of apparent authority, until the third parties have notice of the termination. In this case no evidence to prove that the plaintiff came

to know about the revocation of Power of Attorney prior to enter into the sale agreement. Further, the sale agreement executed by the 2nd defendant and the legal notice issued by the plaintiff to the 2nd defendant bind the 1st defendant under Section 229 of the Indian Contract Act. For better understanding, it is pertinent to extract **Section 229 of the Indian Contract Act.** Section 229 of the Indian Contract Act reads as follows:

"229. Consequences of notice given to agent.—

Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal."

28. Thus, notice or intimation given to an agent, or knowledge of any fact material to such transaction acquired by the agent, binds the principal. A principal may be imputed also with knowledge ascribed into facts. Considering the above facts and circumstance of this case, the suit is not barred under the law of limitation. The time is not essence of contract and the suit has been filed well within time.

29. There is no quarrel with the proposition laid down in the citations referred to by the learned counsel for the appellant/1st defendant, but facts of the said referred cases are different from the facts of the present case on hands and same are not applicable to the present case on hands.

30. It is settled that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspects. Therefore, it is well settled that judicial precedent cannot be followed as statute and has to be applied with reference to the facts of the case involved in it. In this case ownership of property is admitted. Power of attorney executed in favour of the 2nd defendant is also admitted. The cancellation of power of attorney is only subsequent to the sale agreement is also admitted. No notice was issued to the 2nd defendant before the cancellation of the power deed is also admitted. The original title deeds handed over to the 2nd defendant is also admitted and now all the original title deeds were produced by the plaintiff into the court also admitted. From the date of agreement till the date of filing the suit, the said documents were with the plaintiff is also admitted. The 2nd defendant who alleged to have executed sale

agreement is remained ex-parte and he has not contested the suit. The 1st defendant has not taken any steps to get back the original title deeds also admitted. Further, as already stated that the plaintiff has proved the execution of sale agreement and he is also ready and willing to perform his part of contract throughout. Under said circumstances, the authorities submitted by the learned counsel for the appellant /1st Defendant are not applicable to the present case on hands.

31. Therefore, the trial Court considering all these points and rightly decreed the suit in favour of the Plaintiff. There is no reason to interfere the Judgment and Decree passed by the trial Court and the same is confirmed. The point No.3 is answered as indicated above.

Point No.4

32. The trial Court has directed the 1st and 2nd Defendants to execute the Sale Deed after receiving the balance sale consideration of Rs.14 lakhs from the plaintiff and also directed the plaintiff to deposit the balance sale consideration within two months from the date of decree and directed the defendants to execute the sale deed in favour of the Plaintiff within one month. By confirming the Judgment and

Decree passed by the trial Court, the plaintiff is directed to deposit the balance sale consideration of Rs.14 lakhs within one month from the date of receipt of copy of this Judgment and Decree if already not deposited, and the 1st and 2nd Defendants are directed to execute the Sale Deed in favour of the plaintiff within one month from the date of deposit of balance sale consideration by the plaintiff. If already deposited, within one month from the date of receipt of copy of this judgment. Failing which the trial Court is directed to execute the sale deed on behalf of the defendants to the plaintiff in accordance with law. The Point No.4 is answered accordingly.

33. In the result, the Appeal Suit is dismissed, confirming the Judgment and Decree passed by the trial Court. Consequently, M.P.No.1 of 2015 is closed. There will be no order as to cost.

सत्यमेव जयते

[R.P.S., J.] [P.V., J.]
19-09-2017

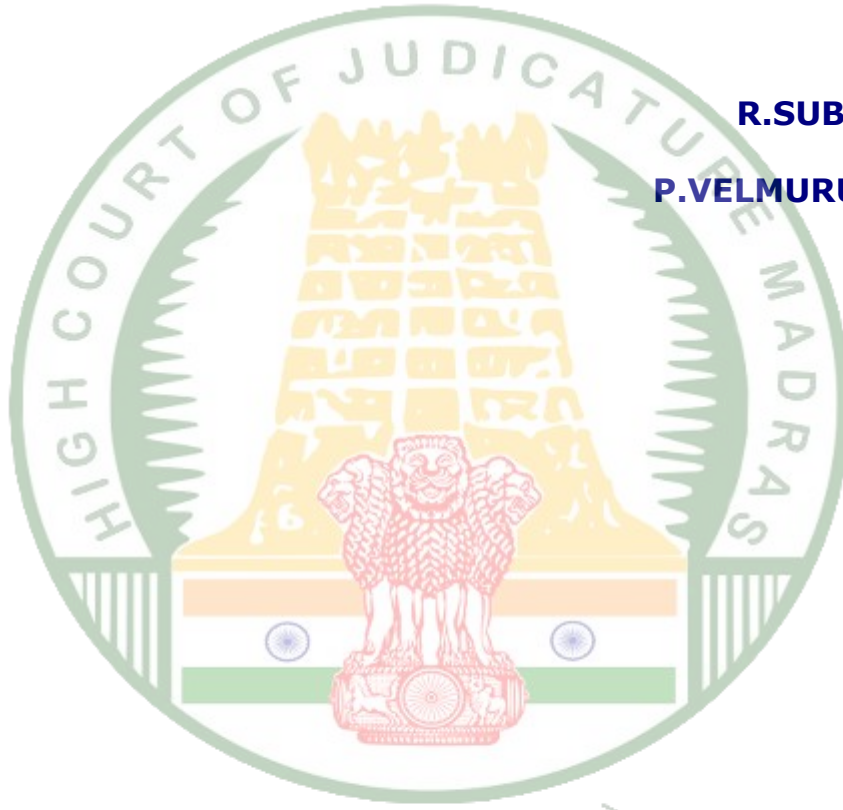
Index :Yes/No
Internet: Yes/No
ggs

Note: Issue Order Copy on 20-09-2017

To

The II Additional District Judge,
Thiruvallur at Poonamallee.

**R.SUBBIAH, J.
and
P.VELMURUGAN, J.**



सत्यमेव जयते

A.S.No.72 of 2015

WEB COPY

19.09.2017



WEB COPY