IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2017

PRONOUNCED ON: 15.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.14 of 2009

1. B.R.Srinivasa Rao
2. B.R.Padmavathy ... Plaintiffs

Vs

1. Dr.B.R.Shankar
2. B.R.Lakshmi
3. B.J.Christianasheela
4. Ushashree Bhaktava Rajaiah ... Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiffs : Mr.V.Raghupati

For Defendants : Mrs.Chitra Sampath, SC for Mr.T.S.Basakaran

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendants:-

(a) for declaration that the 1st Plaintiff is the sole, lawful and absolute owner of the suit schedule properties,

(b)for declaration that the sale deed dated 17.09.2008 registered on 18.9.2008 as Document No.7353 of 2008 before the Sub Registrar of Sembium by the 3rd Defendant P.J.Christiana Sheela to and in favour of the 4th Defendant Ushashree Bhaktava Rajaiah represented by the 1st Defendant Dr.B.R.Shanker as illegal, null and void and not binding on the Plaintiffs B.R.Srinivasa Rao and B.R.Padmavathy.

(c) for permanent injunction against the Defendants restraining them from in any manner infringing with the 1st Plaintiff's peaceful and lawful possession and enjoyment of the suit properties.

(d) directing the Defendants to pay the costs of the suit.

2. **Plaint:-** The 1st Plaintiff and the 2nd Plaintiff are husband and wife. The 1st Defendant is the elder brother of the 1st Plaintiff. The 1st Defendant and the 2nd Defendant are husband and wife. Their daughter is the 4th Defendant. The 3rd Defendant is a third party stranger to the family. It had been stated that the suit properties are vacant lands, measuring 5010 sq.ft in Plot No.93 (2499 sq.ft.) and Plot No.94 (2511 sq.ft.) in S.No.2/6 Part, New TS.No.84, in Block No.1, Jayanthi Nagar, Kolathur, Perambur Purasawalkam Taluk, Chennai and the same were originally owned by the 3rd Defendant. It had been further stated that the 3rd Defendant had executed Powers of Attorney in favour of the 2nd Plaintiff in Document Nos.1205 of 2007 and 1206 of 2007 registered in the office of the Sub Registrar, Sembium. The Powers of Attorney had been witnessed by the husband of the 3rd Defendant and Mrs.K.N.Jayashree, another daughter of the 1st and 2nd Defendants. Subsequently, the 1st Plaintiff, out of his self earnings, sale proceeds from the sale of his property in Kareem Nagar, Andhra Pradesh and other savings, had requested the 3rd Defendant to sell the suit property to him. The 3rd Defendant had orally requested the 2nd Plaintiff to execute and register necessary sale deed to and in favour of the 1st Plaintiff. Accordingly, the 2nd Plaintiff, as Power of Attorney Agent of the 3rd Defendant, had sold the suit properties and delivered vacant possession by registered sale deed dated 15.4.2008, bearing

Document No.2757 of 2008 by the Sub Registrar, Sembium for valid consideration. Since the Plaintiffs and the 1st Defendant were related, the entire sale consideration was given by the 1st Plaintiff to his elder brother the 1st Defendant and was informed that the entire amount had been paid to the 3rd Defendant.

3. It had been stated that the Plaintiffs have been in peaceful possession of the suit properties. On 13.9.2008, the Defendants and their men had attempted to trespass into the suit properties after giving a complaint to the Rajamangalam Police Station. The Plaintiffs had appeared before the police on 18.9.2008 and showed the documents relating to their title. It had been stated that the Defendants had also prepared certain documents to counter the claim and lawful rights of the Plaintiffs. It had been further stated that acting under the inducement of the 1st and 2nd Defendants, the 3rd Defendant had executed a sale deed dated 17.9.2008 registered as Document No.7353 of 2008 in the Sub Registrar Office, Sembium on 18.9.2008 to and in favour of the 4th Defendant, who is the daughter of the 1st and 2nd Defendants. It had been stated that the 1st Defendant represented the 4th Defendant as her Power of Attorney Agent. It had been stated that the 1st Defendant knew about the sale transactions covered in the registered sale deed dated 15.4.2008 in Document No.2757 of 2008. It had been, therefore, stated that the sale deed dated 17.9.2008 in Document No.7353 of 2008 is fraudulent, collusive, sham and illegal, not at all valid and not binding on the Plaintiffs. The Plaintiffs came to know about this transaction on 20.9.2008 through their father. Consequently, the suit had been filed, seeking a declaration that the 1st Plaintiff is the lawful

owner of the suit properties and for a consequential relief of declaration to declare the sale deed dated 17.9.2008 registered on 18.9.2008 as Document No.7353 of 2008 by the 3rd Defendant in favour of the 4th Defendant, who was represented by the 1st Defendant as null and void and not binding on the Plaintiffs and for further reliefs of permanent injunction and costs.

4. **Written Statement:-** The Defendants had filed a common written statement and also lodged a counter claim, seeking to set aside the sale deed dated 15.4.2008 in favour of the 1st Plaintiff as null and void. In the written statement, the Defendants had stated that the suit had not been properly valued and that there has been misjoinder of necessary parties since reliefs had not been claimed against the 1st and 2nd Defendants. It had been stated that since the 2nd Plaintiff did not act pursuant to the deeds in the Powers of Attorney dated 7.2.2007 and registered as Document No.1205 and 1206 of 2008 on the file of the Sub Registrar, Sembium, the 3rd Defendant had revoked the Powers of Attorney on 16.9.2008 by Revocation Deeds registered as Document No.4406 and 4407 of 2008 on the file of the Sub Registrar, Sembium. Subsequent to the cancellation of Powers of Attorney, the 3rd Defendant had executed a registered sale deed in favour of the 4th Defendant on 17.9.2008 registered as Document No.7353 of 2008 and consequently, the 4th Defendant had become the full owner of the suit property. It had been further stated that till the date of that sale deed, the 3rd Defendant was in possession and after the sale deed, the possession has been handed over to the 4th Defendant. It had been further stated that the claim to title by the 1st Plaintiff based on the sale deed executed by the 2nd Plaintiff who is his wife is

unsustainable and cannot be recognized in law.

5. It had been further stated in the written statement that 2nd Plaintiff as agent cannot exercise adverse interest and adverse rights to that of her Principal. In this case, the 2nd Plaintiff had violated the basic principle by executing the sale deed in favour of the 1st Plaintiff who is her own husband. It had been further stated that in the sale deed, it was shown that a consideration of Rs.35,07,500/- had been paid. This has been specifically disputed. It was stated that payment in cash by husband to wife to this huge sum is very surprising. It had been stated that the Plaintiffs have not produced any document to substantiate the payment of the sale consideration. It had been stated that the entire transaction is a bogus and fraudulent transaction and cannot be recognised in the eye of law. It had been stated that the sale deed is ab-initio void and not binding on the 3rd Defendant. It had been stated that the assertion of the Plaintiffs that they are in possession is a false statement. It had been further stated that since the sale deed dated 15.4.2008 is void ab-initio, separate relief for setting aside was not taken by the Defendants. It was in these circumstances that the written statement had been filed along with a counter claim, challenging the sale deed executed by the 2nd Plaintiff as Power of Attorney Agent of the 3rd Defendant in favour of her own husband, the 1st Plaintiff.

6. The Plaintiffs filed a reply to the written statement/counter claim of the Defendants. It had been stated that on the date of execution and registration of the sale deed dated 15.4.2008, the 3rd Defendant had not revoked her deed of Power of Attorney, appointing the 2nd Plaintiff as her Power

Agent. It had been stated that it was under the inducement of the 1st Defendant that the 3rd Defendant had executed the deeds of revocation of Powers of Attorney. It had been further stated that till the date of revocation, the activities of the power agent are valid and lawful and binding on the Principal. It had been further stated that there was no restriction clause in the Powers of Attorney through which the 2nd Plaintiff had sold the properties to the 1st Plaintiff. It had been further stated that a few days prior to the registration of the sale deed in his favour, the 1st Plaintiff had nearly Rs.50 lakhs in his bank accounts and savings kept in his residence and consequently, he was in a position to pay the sale consideration. It had been therefore stated that the suit should be dismissed.

7. On the basis of the above pleadings, by order dated 5.4.2011, this court had framed the following issues:-

1. Whether the suit is not maintainable in law?
2. Whether the relief (b) in the suit prayer is correctly valued?
3. Whether it is true and correct to plead that the 4th Defendant has been in possession and enjoyment of the suit property?
4. Whether the sale deed dated 15.4.2008 is bogus and sham as alleged by the Defendants?
5. Whether the said sale consideration dated 15.4.2008 is void ab-initio and not binding on the 2nd Defendant?
6. Whether the counter claim made by the Defendant is sustainable in law and on facts?
7. Whether there is proper cause of action for the counter claim?
8. Whether the 1st Plaintiff is entitled for declaration of title over the suit property in view of the sale deed dated 15.4.2008.

9. Whether the sale deed dated 15.4.2008 executed in favour of the 1st Plaintiff by the 2nd Plaintiff as the power agent of the 3rd Defendant is not supported by consideration?

10. Whether the sale deed dated 15.4.2008 is vitiated for the reasons that the 2nd Plaintiff, power of attorney had acted against the interest of the 3rd Defendant, the principal by acquiring the property in his wife's name?

11. Whether the sale deed executed on 15.4.2008 in favour of the 1st Plaintiff by the 3rd Defendant, represented by the Power of Attorney, the 2nd Plaintiff registered as document No.2757 of 2008 on the file of SRO Sembium is liable to be set aside on the grounds made in the counter claim of the Defendant?

12. Whether the Defendant is entitled to an exparte decree in their counter claim for want of defence to the same by the Plaintiffs?

13. Whether the Defendants are entitled for permanent injunction restraining the Plaintiffs and their men, agents from interfering with the peaceful possession and enjoyment of the suit property?

14. Whether the suit is liable to be dismissed as against the Defendants 1 and 2 as they are not necessary parties to the suit?

15. Whether the Defendants are entitled for cost as against the Plaintiffs?

16. To what other reliefs the parties are entitled to?

8. The Plaintiffs, to substantiate their case, had examined the 1st Plaintiff as PW.1. He had filed his proof affidavit practically on the lines of the Plaint. He had also filed an additional proof affidavit. The Defendants had examined the 3rd Defendant as DW.1 and the 1st Defendant as DW.2. The Plaintiffs have marked Ex.P1 to Ex.P8. Ex.P1 and Ex.P2 are the certified copies of the General Powers of Attorney in Document Nos.1205 and 1206 of

2007, both dated 7.2.2007. Ex.P3 is the original sale deed dated 15.4.2008 and Ex.P6 is the certified copy of the sale deed dated 17.9.2008 registered as Document No.7353 of 2008. Ex.P7 is the certified copy of the sale deed dated 10.8.2007 and registered as document No.3118 of 2007. Ex.P8 is the statement of income along with IT Returns. The Defendants had filed, as Ex.D1, D2 and D3, the copy of the plaints in CS.No.211 of 2009, in CS.No.238 of 2009 and in RCOP.No.2338 of 2009. The Defendants have also marked Ex.D4 and Ex.D5, the original Power of Attorney document dated 7.2.2007 and as Ex.D6 and Ex.D7, the original revocation of Power of Attorneys dated 16.9.2008. The Defendants also marked as Ex.D8 the certified copy of the sale deed dated 17.9.2008 registered as Document No.7353 of 2008 and the parent document of the suit property as Ex.D9 and also other documents as Ex.D10 to Ex.D16.

9. This court heard Mr.V.Raghupathi, the learned counsel for the Plaintiffs and Mrs.Chitra Sampath, learned senior counsel for the Defendants.

10. **<u>Issues (1) and (2):-</u>** These issues have arisen since in the written statement, the Defendants have pleaded that the suit is not maintainable on the ground of non payment of adequate court fees and that the court fees paid under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act for the relief (b) is incorrect and inappropriate. It has also been pleaded that the suit is liable to be dismissed for mis-joinder of parties. In this connection, with respect to non payment or incorrect payment of court fees, under Order 3 Rule 2 of the Original Side Rules, if it has been brought to the notice of this court by sufficient evidence, the Plaintiffs cannot be non-suited, but this court can only

refer the matter to the Taxation Officer to determine the correct court fees payable and provide opportunity to the Plaintiffs to pay necessary court fees and thereafter, pass such further orders. In this case, the Plaintiffs have valued the suit according to the value of sale deed dated 17.9.2008 in Document No.7353 of 2008 at Rs.34 lakhs. They have valued the relief for declaration and paid court fees under Section 25(d) of the Act and the relief of injunction paid court fees under Section 27(c) of the Act. Even though in the written statement, the Defendants have claimed that the court fees paid is inadequate, they have not come forward to enlighten the court with respect to the actual court fees payable. Consequently, I hold that the issue of court fees has been taken only as a formal defence and there being no infirmity, I hold that the suit is maintainable.

11. With respect to the contention in the written statement that the suit has to be dismissed for mis joinder of parties, under Order 1 Rule 9 of CPC, it had been very clearly stated that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it provided that nothing in this rule shall apply to nonjoinder of a necessary party. It is, thus, seen that mis joinder of parties will not be fatal to the case of the Plaintiffs. At any rate, the 1st and 2nd Defendants are necessary parties since 1st Defendant is the purchaser on behalf of the 4th Defendant of the suit property. Consequently, I hold that the suit is maintainable on this ground also. Accordingly, issues (1) and (2) are answered in favour of the Plaintiffs.

12. **Issue (3):-** The written statement has been verified by the 1st Defendant on behalf of the 4th Defendant in his capacity as Power of Attorney Agent. It is the consistent case of the Plaintiffs that the 4th Defendant is not a resident of India and is a non resident Indian Citizen. However, there are no pleadings to that effect. At any rate, possession and enjoyment of the suit property by the 1st Defendant, who is the Power of Attorney of the 4th Defendant would indicate possession and enjoyment of the 4th Defendant also. Consequently, the pleading of the Plaintiffs with respect to possession and enjoyment cannot be countenanced and this issue is answered accordingly.

13. **Issues (4) to (11):-** All these issues are taken up together in view of the fact that issue nos.4 to 11 require a common and detailed discussion surrounding the circumstances under which the sale deed dated 15.4.2008 had been executed by the 2nd Plaintiff in favour of the 1st Plaintiff. The Defendants have raised a contention in their written statement that the sale deed dated 15.4.2008 and registered as Document No.2757 of 2008 on the file of the Sub Registrar, Sembium, is sham and bogus and void ab-initio and not binding on the 3rd Defendant. The Defendants have filed their written statement and a counter claim and in the counter claim, they sought to set aside the sale deed dated 15.4.2008 in Document No.2757 of 2008.

14. Issue (7) relates to cause of action for claiming such counter claim. Quite apart from this, the Plaintiffs have sought for a declaration of title based on the sale deed dated 15.4.2008. Issue (8) is with respect to such declaration. There has been yet another contention by the Defendants that the sale deed is not supported by any consideration at all. They have raised this

contention since the executor in the sale deed is the 2nd Plaintiff and the transferee is the 1st Plaintiff and they being spouses, it has been contended that there could not be any possibility of consideration flowing from one spouse to another. The Defendants also challenged the sale deed on the ground that the 2nd Plaintiff, who was the Power of Attorney Agent of the 3rd Defendant, by executing this sale deed, had acted against the interest of the 3rd Defendant, who is her Principal. This is further reiterated by the statement of the Defendants that the 2nd Plaintiff, by executing a sale deed in favour of the 1st Plaintiff, namely her own husband, has acted acting against the interest of her Principal, the 3rd Defendant. Issue (11) flows out of the counter claim seeking to set aside the said sale deed. It is for these reasons that issues (4) to (11) are taken up for discussion and determination.

15. The 1st Plaintiff and the 2nd Plaintiff are her husband and wife. The 1st Plaintiff is the younger brother of the 1st Defendant. The 2nd Defendant is the wife of the 1st Defendant. The 4th Defendant is their daughter. The 3rd Defendant is a third party stranger to the family of the Plaintiffs and the other Defendants. But, she is a central figure in these discussions since she was the original owner of the suit property. The suit property is a vacant land at Plot Nos.93 and 94 in Old S.No.2/6 Part, New TS.No.84, Block No.1, Jayanthi Nagar, Kolathur, Perambur Purasawalkam, Taluk, Chennai. Plot No.93 measures 2499 sq.ft. and the Plot No.94 measures 2511 sq.ft. The entire properties consequently are adjacent to each other, since Plot No.93 is the Northern boundary of Plot No.94 and consequently, both the plots can be taken as one large piece of land, totally measuring 5010 sq.ft.

16. The owner of the said two plots was the 3rd Defendant Mrs.B.J.Christianasheela. She had appointed the 2nd Plaintiff Mrs.B.R.Padmavathy as her Power of Attorney Agent by two separate documents with respect to each plot.. These two General Power of Attorney deeds were marked as Ex.P1 and Ex.P2 and they are both dated 7.2.2007. The originals of these documents were marked as Ex.D4 and Ex.D5. They are both registered documents. Ex.P1/D4 was registered as Document No.1205 of 2007 in the Office of Sub Registrar, Sembium and relates to Plot No.94, measuring about 2511 sq.ft. Similarly, Ex.P2/D4 dated 7.2.2007 had been registered as Document No.1206 of 2007 in the very same Sub Registrar Office at Sembium and relates to Plot No.93, measuring about 2499 sq.ft. Both the documents, namely Ex.P1/D4 and Ex.P2/D5 are similarly worded. In both the documents, the 3rd Defendant had appointed, nominated, constituted the 2nd Plaintiff Mrs.B.R.Padmavathy as her General Power of Attorney in her name and on her behalf to do and execute as many as 9 acts, amongst which, acts under (ii), (v) and (vi) are, " (ii) to be in possession of the property", "(v) to sell, mortgage the property in any manner to receive consideration thereon, issue receipt and for that purpose execute necessary deed or deeds" and "(vi) to present the document or documents for registration before any Sub Registrar and to accept execution thereof and to get return of the documents."

17. In both the Powers of Attorney documents, the 3rd Defendant had also stated, she agrees to "ratify and confirm all acts, deeds and things lawfully done by her Attorney", the 2nd Plaintiff". Both the documents are registered documents and have been witnessed by the husband of the 3rd

Defendant and very interestingly also by another daughter of the 1st and 2nd Defendants. A cursory analysis of the two documents, namely, Ex.P1/D4 and Ex.P2 / D5 leads to the following inferences:-

1) The 3rd Defendant was the owner of the Plot Nos.93 and 94, which are the suit properties.

2) She appointed the 2nd Defendant as her lawful Attorney by registered Powers of Attorney documents.

3) In this appointment she was also supported by her husband who had signed as a witness to the document and also by another daughter of the 1st and 2nd Defendants.

18. The signatory as a witness of the daughter of the 1st and 2nd Defendants is very significant since it implies that the 1st and 2nd Defendants are aware and cannot disclaim that they do not have knowledge that the 2nd Plaintiff had been appointed as Power of Attorney Agent of the 3rd Defendant. I further hold that the signatory as a witness of the daughter of the 1st and 2nd Defendants further also directly implies that the 1st and 2nd Defendants knew that the terms of the Powers of Attorney granted authority not just to be as an administrator of the property, but also to sell, mortgage, receive consideration, issue receipts and execute necessary deeds and also present such deeds for registration. The further fact that the 3rd Defendant had authorised the 2nd Plaintiff "to be in possession of the property" also signifies that not just was the 2nd Plaintiff a Power of Attorney on paper, but she was also Power of Attorney with actual physical possession of the plots. The 2nd Plaintiff had acquired every right to act on behalf of the 3rd Defendant and if at all the 3rd Defendant had thought it fit to dispute any of the acts of the 2nd Plaintiff, the 3rd Defendant should act independently. However, in this case, while seeking to set aside the

sale deed executed by the 2nd Plaintiff in pursuance of the above said Power of Attorney documents marked as Ex.P1 /D4 and Ex.P2 /D5, the 3rd Defendant had not filed an independent written statement. In her proof affidavit, the 3rd Defendant had stated in paragraph 3 as follows:-

> "I had called upon the 2nd Plaintiff to hand over the original Power of Attorney dated 7.2.2007 back to me. The 2nd Plaintiff also gave back the original Power of Attorneys in the first week of April, 2008. The said original Power of Attorneys are produced by me. The 2nd Plaintiff never informed me at any point of time that she had executed and registered a sale deed in favour of the 1st Plaintiff on 15.4.2008. I was not aware of the alleged sale deed dated 15.4.2008 when I revoked the Power of Attorney and registered sale deed in favour of 4th Defendant. As we trusted and believed the 2nd Plaintiff we never suspected her credentials. So we did not check the E.C. Only later we came to know about the sale deed dated 15.4.2008."

19. It is also to be noted that the 3rd Defendant had not filed a separate written statement with respect to the above facts, which she has tendered in evidence on oath. Even in her proof affidavit, which is the chief examination of the 3rd Defendant, she has not stated the date on which she asked for return of the Power of Attorney document, the date on which she had asked for accounts and also the date on which she had realised that the properties had been sold. This assumes significance since the Powers of Attorney originally given by her gave authority to sell the properties and the 2nd Plaintiff had exercised such authority and had sold the properties. There is also no restriction or embargo in Ex.P1 /D4 and Ex.P2/D5 that the agent cannot sell to any specific individual.

20. It is very pertinent to point out that this specific assertion in the proof affidavit of the 3rd Defendant, who was examined as DW.1 had not been pleaded or stated in the written statement or in the counter claim. The specific

assertion in the proof affidavit that the 3rd Defendant/ DW.1 was not aware of the sale deed dated 15.4.2008 at the time when Ex.P1/D4 and Ex.P2 /D5 was revoked by Ex.D6 and D7 had not been pleaded in the written statement. In the written statement, the Defendants had stated as follows with respect to the necessity for revoking the Powers of Attorney marked as Ex.P1/D4 and Ex.P2 /D5:-

> "4. The 1st Plaintiff claims to have purchased the suit property from the 3rd Defendant under a deed of sale dated 15.4.2008, registered as document no. 2757 of 2008 on the file of the Sub Registrar, Sembium. The said sale deed has been executed on behalf of the 3rd Defendant by the 2nd Plaintiff as her general Power of Attorney pursuant to the deed of power dated 7.2.2007 registered as Document No.1205 and 1206 of 2008 on the file of SRO Sembium. Since the 2nd Plaintiff failed to act on the basis of the power of attorney and acted against the interest of her principal, the 3rd Defendant herein, it necessitated the 3rd Defendant to execute and register a deed of revocation of the Power of Attorney on 16.9.2008, registered as Document No.4406 and 4407 of 2008 on the file of the SRO, Sembium."

The said written statement proceeds on the ground that the 3rd Defendant was aware that the 2nd Plaintiff had actually executed the sale deed in favour of the 1st Plaintiff and since such execution of the sale deed was detrimental to her interest, the 3rd Defendant had revoked the Power of Attorney. However, a reading of the revocation deed, namely, Ex.D6 and D7 conveys a different meaning. Both Ex.D6 and D7 are dated 16.9.2008 and they are very similarly worded. The reasons given for revocation of Power of Attorney is not that the Agent had acted detrimental to the interest of the Principal as stated in the written statement. It is also not that the Agent has exceeded her right and had conveyed the properties when she had no such right to do so or to execute a sale deed. On the other hand, Ex.D6 and D7 is as follows with respect to the reasons given for revoking the earlier Powers of Attorney marked as Ex.P1/D4 and Ex.P2 /D5.

> "I have enough time to directly deal the schedule mentioned property and the Power of Attorney agent is also not willing to act as power agent who does not keep a proper account and she did not show to me and express the inability to deal the schedule mentioned property and therefore I hereby revoke all the powers given to the power agent by the above said power of attorney deed. "

21. A reading of the narrations so far reveals that in the written statement, the Defendants, particularly, the 3rd Defendant, who is the central litigant around whom the entire issue revolves, had executed the Powers of Attorney in favour of the 2nd Plaintiff, giving specific power to sell the suit property and later when served with a suit summons seeking to declare the sale deed executed by the 2nd Plaintiff exercising her power to be upheld by the court, had filed a written statement stating that the 2nd Plaintiff had failed to act on the basis of the Power of Attorney and had acted against the interest of her Principal. But in Ex.D6 and D7 the 3rd Defendant had stated a totally different reason to revoke the Powers of Attorney, namely, that the Principal, who is the 3rd Defendant had enough time to directly deal with the suit property and the Agent, namely, the 2nd Plaintiff was not willing to act as Power Agent and did not keep proper account and had expressed inability to deal with the suit property and consequently, the Power of Attorney deeds in Ex.P1/D4 and Ex.P2 /D5 are being revoked. In other words, the following are the contradictory versions of the Defendants:-

i. Powers of Attorney executed by the 3rd Defendant in favour of the 2nd Plaintiff with specific power to sell the property marked as Ex.P1/D4 and Ex.P2 /D5.

ii. Exercising such power, the 2nd Plaintiff had actually sold the property by sale deed dated 15.4.2008, registered as Document No.2757 of 2008 on the file of the Sub Registrar, Sembium.

iii. In the written statement, the Defendants claimed after narrating the above sale deed that the 2nd Plaintiff failed to act on the basis of the Power of Attorney and acted against the interest of the 3rd Defendant and consequently, the 3rd Defendant revoked the Power of Attorney on 16.9.2008 by registered documents bearing Nos.4406 and 407 of 2008 on the file of the Sub Registrar, Sembium.

iv. In the proof affidavit, the 3rd Defendant had stated that she called upon the 2nd Plaintiff to hand over the original Power of Attorney and receive them in the first week of April 2008 and the 2nd Plaintiff never informed that she had executed and registered the sale deed and consequently, the 3rd Defendant was not aware of the sale deed dated 15.4.2008.

v. In the actual deed of revocation marked as Ex.D6 and d7, the 3rd Defendant had stated that the 2nd Plaintiff is not willing to act as Power of Attorney Agent, had not kept proper account and had expressed inability to deal with the schedule mentioned property.

22. It is a well settled principle that the pleadings and evidence must go hand and hand. The evidence only includes the oral evidence, but also the documentary evidence produced at court. It is also a well established principle that under Section 92 of the Indian Evidence Act, a party cannot plead against a written document executed by him. In this case, the 3rd Defendant had not stated during her chief examination that the 2nd Plaintiff was not willing to act as Power of Attorney Agent and had actually expressed inability to deal with the schedule mentioned properties. This assumes significance since very ironically in the written statement, the deeds of revocation of Power of Attorney which were marked as Ex.D6 and D7 are pleaded only after narrating the sale by the 2nd Plaintiff in favour of the 1st Plaintiff. However, in the proof affidavit,

the 3rd Defendant, who was examined as DW.1, had stated that she did not know about the sale when she executed Ex.D6 and D7, revocation of Power of Attorney documents. These varying stands of the Defendants are to be viewed from the fact that the Defendants have also filed a counter claim for a declaration that the sale deed executed by the 2nd Plaintiff in favour of the 1st Plaintiff is null and void and a sham document. As pointed out earlier, the Power of Attorney marked as Ex.P1/D4 and Ex.P2/D5 had a specific clause authorising the Agent to sell the property. This is quite contrary to the stand of the 3rd Defendant that she had executed the Power of Attorney in favour of the 2nd Plaintiff only for protecting and looking after the suit property. The 3rd Defendant speaking on behalf of the other Defendants had pleaded contradictorily and alternatively to suit their own purpose. It is true that the Plaintiffs should stand on their own legs and not on the deficiencies in the defence raised by the Defendants. In the plaint and in the evidence, the sale deed dated 15.4.2008 have been stated to have been executed on the basis of the Power of Attorney granted by the 3rd Defendant to the 2nd Plaintiff.

23. The learned senior counsel for the Defendants relied extensively on the cross examination of PW.1, who was the 1st Plaintiff and urged the court to draw a conclusion that the sale deed is a sham and nominal document. During the cross examination, with respect to the sale deed dated 15.4.2008, the following are the questions and answers recorded:-

> "On 15.4.2008, I approached the 3rd Defendant for the sale of the suit property in my favour. Myself, my wife and1st Defendant Sankar, had approached the 3rd Defendant in regard to the sale of the suit property. I am unable to remember at what time we meet her in the morning on

15.4.2008.

Q: What was the discussion that took place between you and the 3rd Defendant?

A: We approached the 3rd Defendant to purchase the land she said 2nd Plaintiff Padmavathi to execute a sale deed to and in favour of me. Orally she requested the 2nd Plaintiff to execute a sale deed and the entire amount of Rs.35 lakhs was paid by the 2nd Plaintiff to my own elder brother who is Defendant herein and he has paid the same to 3rd Defendant. Since our relationship were cordial.

My wife has paid the amount of Rs.35 lakhs to the 1st Defendant in the presence of the 3rd Defendant on 15.4.2008 morning when we went to meet her.

Q: Has your wife taken written acknowledgement for the payment of sale consideration from the 3rd Defendant?

A: At the time when my wife asked for an acknowledgement from the 3rd Defendant she told that registered document itself an acknowledgement and no separate receipt is necessity."

24. The learned senior counsel for the Defendants stated that the sale deed dated 15.4.2008 which has been marked as Ex.P3 reveals that the stamp papers had actually been purchased on 10.4.2008 and consequently stated that the stand of PW.1 that they had decided to purchase the property only on 15.4.2008 cannot be a true statement. To prove that the 1st Plaintiff was possessed of funds, he filed Ex.P8 . Ex.P8 is the income tax returns dated 31.3.2010 for the assessment year 2009-2010. The gross total income was shown as Rs.3,57,447/-. In the balance sheet dated 31.3.2009, a loan from M/s.Usha Sree, who is actually the 4th Defendant, was shown as Rs.12 lakhs. It had also been stated that the 1st Plaintiff had land at Jayanthi Nagar, Kolathur and valued at Rs.38,23,323/- and the bank balance was Rs.13,36,023/-. He had also a current account balance in Cauvery Trust Hospital to a sum of

Rs.1,73,364/- and a cash on hand was Rs.7,38,216/-. With respect to the cash flow statement for the year 31.3.2009, it had been certified that the 1st Plaintiff had a opening cash balance as on 1.4.2008 to a sum of Rs.44,96,136/- and he had also received a salary from Cauvery Trust Hospital, income from agriculture and had also withdrawn cash from bank and consequently, the total cash available with the 1st Plaintiff was Rs.49,77,716/-. During the said year, out flows and expenses of the 1st Plaintiff as declared by the Auditor to the Income Tax Department, was, deposit by cash into the Bank to a sum of Rs.4,14,500/- and cash towards purchase of land at Jayanthi Nagar, Kolathur on 15.4.2008 to a sum of Rs.38,25,000/- and consequently, the closing cash balance as on 31.3.2009 was Rs.7,38,216/-. This document has been produced by the 1st Plaintiff whose cash inflow and outflow is recorded in the said document.

25. With respect to Ex.P8, the cross examination is as follows:-

> "Q: Can you explain the entry under the heading liabilities a sum of Rs.55,56,590/- under Capital Account in Ex.P8?
>
> A: I am unable to explain the entry at present.
>
> It is correct to state that Ex.P8 was prepared as per details furnished by me to the auditor. I did not receive any assessment order for the Ex.P8. I have mentioned all my movables and immovable properties in the Income Tax returns Ex.P8. It is correct to state that I own only the suit property and no other immovable property is owned by me as mentioned in Ex.P8.
>
> Q: Have you disclosed your bank account ING Vysya Bank in Ex.P8?
>
> A: It is not mentioned because I have opened the account only in the month of April 2009? "

The above cross examination has not challenged the crucial entry, namely, payment of Rs.38,25,000/- towards purchase of land which is the suit property on 15.4.2008. The inference urged to be drawn by the Defendants that the sale deed should be declared is null and void since stamp papers were purchased on 10.4.2008, whereas the sale deed was executed on 15.4.2008 is rejected by this court since the possession had always been conveyed by the 3rd Defendant as the Principal of the 2nd Plaintiff. On 15.4.2008, the sale deed was executed since the 2nd Plaintiff was the Power of Attorney with full authority to sell the land. She only had to give accounts to the 3rd Defendant. If the accounts are not given, it is the matter between the Principal and the Agent and the sale deed executed validly in the eyes of law cannot be declared as null and void.

26. The sale deed can be impinged only if the document had been obtained by fraud and misrepresentation. This will be between the executant and the executee. The learned senior counsel had further stated that in the sale deed, the Sub Registrar had not mentioned that he had seen and verified the Power of Attorney and consequently, stated that the sale deed is vitiated. This is a procedural irregularity and I hold that the act of a Government Official discharged in public duty under Section 114(e) is presumed to have been discharged officially and legally. The presumption is very strong in favour of the sale deed being upheld when balanced with the contentions of the Defendants that the sale deed should be declared as null and void. In the very same sale deed, which has been produced as Ex.P3, the only circumstance that can be examined is that it is a deed executed by a wife in favour of her husband. But, that in itself cannot be a ground to declare that the sale deed is null and void. The Original sale deed has not been produced into the court and a copy of the

sale deed alone had been produced. The contention of the learned senior counsel that the original Power of Attorney has not been mentioned pales into insignificance since in the sale deed itself, the execution of the Powers of Attorney had been very clearly mentioned. In the very first page itself, it had been mentioned that the executant of the deed is the Power of Attorney of Mrs.B.J.Christianasheela, who is the 3rd Defendant by registered Document Nos.1205 of 2007 and 1206 of 2007 in the Office of the Sub Registrar, Sembium. I find no reason to hold that the said document suffers from any legal infirmities. On the other hand, the contention in the counter claim that the Agent had no power to sell or had acted against the interest of the Principal, who is the 3rd Defendant, has not been substantiated by the Defendants. It is to be noted that on and from the date of the sale, namely, 15.4.2008. the 1st Plaintiff has become the absolute owner of the suit schedule property. The 2nd Plaintiff had no further right or interest. The 2nd Plaintiff had conveyed the property exercising her authority as Agent of the 3rd Defendant. In Ex.P1/D4 and Ex.P2/D5, the 3rd Defendant had further covenanted that she shall ratify the acts of the Power of Attorney agent. Consequently, it is also to be deemed that the 3rd Defendant had an obligation to ratify the sale deed in favour of the 1st Plaintiff. A perusal of the sale deed marked as Ex.D8 executed by the 3rd Defendant in favour of the 4th Defendant, who was also represented by the 1st Defendant in his capacity as Power of Attorney agent, reveals as follows:-

> "The vendor covenants with the purchaser that she has a good and subsisting title as full and absolute owner of the said property the same having been purchased from out of his elf acquired and her own funds and no person other than the vendor has got any manner of rights, title or interest over the

> schedule mentioned property and the vendor has got absolute right to sell the schedule mentioned property to the purchaser and the vendor hereby undertakes to indemnity the purchaser against any claim whatsoever either by the members of her family or of any person claiming through her in respect of the title to the schedule mentioned property hereby conveyed. ”

This clause is very significant because on the date of execution of this document, the vendor, namely, the 3rd Defendant did not convey any title over the property. On that date, the 1st Plaintiff was the lawful owner. If at all, the 1st Defendant had any grievance, he should proceed against the 3rd Defendant seeking return of the sale consideration paid by him to the 3rd Defendant. The very fact that instead of exercising such option, the Defendants have joined together also shows that there is an underlying collusion among the Defendants. The 3rd Defendant, who had no title, had sold the property and both the purchaser and the Defendants have joined together in filing a counter claim seeking to set aside the earlier sale deed, which was executed nearly four months earlier claiming ignorance and seeking indulgence from this court.

27. When the Defendants claimed that the sale deed dated 15.4.2008 should be set aside on the ground that the stamp paper was purchased on 10.4.2008 and that the 3rd Defendant was informed only on the morning of 15.4.2008, they have not taken into consideration, the very fact that the 3rd Defendant had executed the document in favour of the 4th Defendant when she had no right, title or interest. Consequently, I hold that the conveyance of the property by the 3rd Defendant to the 4th Defendant who was represented by the 1st Defendant, her Power of Attorney is non-est in law and has no significance at all. On the other hand, the document executed by the 2nd

Plaintiff to the 1st Plaintiff on the strength of the Power of Attorney deed granting specific power to sell without any restriction as to the purchaser is perfectly valid in the eyes of law. This is further supported by Ex.P8 in which there is a declaration that there has been a cash outflow towards sale consideration and which aspect was not cross examined during the trial. On all these grounds with respect to issues (4) to (11), which have been clubbed together, I hold that the sale deed dated 15.4.2008 is not bogus and not sham, is not void ab-initio and is binding on the 3rd Defendant. I further hold that the counter claim by the Defendants is not sustainable in law and on facts and there is no proper cause of action for the counter claim since the counter claim has been lodged by a person who had no title to convey and by a person who had acquired no title through the document. I further hold that the 1st Plaintiff is entitled for declaration of title over the suit properties and I further hold that the said document is supported by consideration. I further hold that the 2nd Plaintiff had not acted against the interest of the 3rd Defendant and that the Defendants have not made out any grounds to set aside the sale deed. Consequently, all the above issues are answered primarily in favour of the Plaintiffs upholding the claim of the Plaintiffs for a declaration that the sale deed dated 17.09.2008 registered on 18.9.2008 as Document No.7353 of 2008 is illegal, null and void since the executant the 3rd Defendant had no title at all over the suit properties on 17.9.2008 or on 18.9.2008 to execute and convey title. These issues (4) to (11) are answered accordingly.

28. **Issue (12):-** It is seen from the records that as against the counter claim, the Plaintiffs have actually filed a reply on 7.9.2010 under Order

5 Rule 3 of the Original Side Rules read with Order 8 Rule 1 of CPC, challenging the allegations in the counter claim and consequently, the said issue has become redundant and I hold this issue against the Defendants.

29. **Issue (13):-** The Plaintiffs have come to the court on the basis of the sale deed dated 15.4.2008. This sale deed was executed based on the Power of Attorney marked as Ex.P1/D4 and Ex.P2/D5. In the Power of Attorney, it had been specifically stated that the Principal, namely, the 3rd Defendant, had authorised the Agent, namely, the 2nd Plaintiff "to be in possession of the property". Further in the sale deed executed by the 2nd Plaintiff in favour of the 1st Plaintiff, it had been given as follows:-

> "The vendor does hereby covenant with the purchaser that the purchase, shall at all times hereafter enter upon the said property described in the schedule hereto and possess and enjoy the same as absolute owner without any let or hindrance or interruption or adverse claims whatsoever by the vendor or by any one claiming under or in trust for him.

These clauses naturally reflect that the 1st Plaintiff was in possession of the property through a valid title and document. Consequently, the Plaintiffs are entitled for a declaration of permanent injunction restraining the Defendants from interfering with their peaceful possession and enjoyment and the Defendants are not entitled for any order of injunction. Consequently, I hold with respect to issue (13) that it is the Plaintiffs who are entitled for an order of permanent injunction and that the Defendants are not entitled for any order of injunction against the Plaintiffs.

30. **Issue (14):-** The 1st Defendant and the 3rd Defendant are necessary parties to the suit since it is the claim of the Plaintiffs that the sale consideration under Ex.P3 was handed over by the 2nd Plaintiff to the 1st

Defendant to be handed over to the 3rd Defendant. Consequently, they are necessary parties. Accordingly, this issue is answered.

31. **Issue (15):-** Since the counter claim has been dismissed, I hold that the Defendants are not entitled for any costs as against the Plaintiff. Accordingly, this issue is answered.

32. **Issue (16):-** The Plaintiffs are entitled for a judgement and decree as prayed for with costs.

33. In the result, this civil suit is allowed as prayed for with costs.

15.03.2017

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To:

1. The Record Keeper, VR Section, High Court, Madras

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.14 of 2009

15.03.2017