

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.03.2017

PRONOUNCED ON: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.837 of 2010

S.Chellappa

Plaintiff

Vs

1. T.Joseph Benziger

2. P.Albert

3. Park Town Benefit Fund Limited, by its Chairman
Chennai -3

4. R.Vivekananthan

5. P.Balasubramaniam

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 and Order XXXIII Rule 1 of CPC.

For Plaintiff : Mr.S.Subbiah, SC
for Mr.Arun

For Defendant : Mr.AR.L.Sundaresan, SC for
Mr.K.P.Santhosh-D1

DD2 to 5-Set Exparte

JUDGEMENT

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

(a) permitting the Plaintiff to sue the Defendants as an indigent person.

(b) cancelling the sale deeds dated 22.11.2001, registered as

Document No.186 of 2002 on the file of Joint Sub Registrar, Chennai Central, Chennai and dated 5.12.2001 registered as Document No.187 of 2002 on the file of the Sub Registrar, Chennai Central, Chennai, executed by the 2nd Defendant in favour of the 1st Defendant with regard to the properties more fully described in the Schedules E, F and G of the plaint as null and void and not binding on the Plaintiff.

(c) alternatively directing the 2nd Defendant to render true and proper accounts to the Plaintiff for the transactions as Power Agent of the Plaintiff.

(d) for costs of the suit.

2. **Plaint:-** It had been stated in the plaint that the 1st Defendant is the purchaser under the sale deeds, which are sought to be cancelled in the plaint, with respect to E, F and G portions in the schedule. The 2nd Defendant is the Power of Attorney Agent of the Plaintiff, who had executed the sale deeds in favour of the 1st Defendant and the said sale deeds are sought to be impugned in this suit and against the 2nd Defendant, an alternative prayer seeking account has also been sought. The 3rd Defendant is the Park Town Benefit Fund Limited, who was the mortgagee of the suit property and the Defendants 4 and 5 are its Joint Managing Director and another Official of the 3rd Defendant.

3. In the suit, it has been claimed by the Plaintiff that the land in Plot No.87, RS.No.3884/1990, measuring one ground and 580 sq.ft. belonged to the Plaintiff having purchased the same from the Tamil Nadu Housing Board. Subsequently, under the Madras City Improvement Trust Act, 1950, a building was erected to an extent of 490 sq.ft and the land and building was allotted to the Plaintiff on 28.1.1960. The Tamil Nadu Housing Board had executed a sale

deed in favour of the Plaintiff on 26.4.1982, registered as Document No.826 of 1982 on the file of the Sub Registrar of Assurances, Mylapore, Chennai. The Plaintiff, thereafter, had put up a further construction in the ground floor, first floor and also in the second floor. The Plaintiff had sold a flat with a plinth area of 715 sq.ft. in the ground floor together with 1/3rd undivided share in the land to one Raghuathan, by sale deed dated 14.2.1991 and registered as Document No.152 of 1991. The remaining constructed portion in the ground floor was sold to Logeswari, wife of Raghunathan by Document No.407 of 1991. By another sale deed dated 20.9.1991, the Plaintiff had sold a portion of the built up area in the first floor to an extent of 600 sq.ft. along with an undivided 1/3rd share by Document No.544 of 1991.

4. The entire area was described as Schedule -A in the plaint and the portions sold to Raghunathan was described as Schedule -B and the portion sold in the first floor has been described as Schedule-C in the plaint. The Plaintiff was running a business in supply of granite tiles and had sustained loss. He had a debt of about Rs.4 lakhs to the City Union Bank Limited. He had approached the 3rd Defendant, Park Town Benefit Fund Limited and obtained a loan of Rs.8 lakhs by mortgaging the first floor portion of 450 sq.ft together with 1/3rd undivided share in the land. The mortgaged area has been described as Schedule-D in the plaint. The 4th Defendant who was the Joint Managing Director and the 5th Defendant, who was another Official in the 3rd Defendant Company, came to be introduced to the Plaintiff during the transaction of the mortgage deed. The wife of the Plaintiff was also a party in the mortgage deed. The amount covered under the mortgage was Rs.8 lakhs

and the rate of interest was 24% per annum. The period of repayment was 60 months. According to the Plaintiff, he had returned several amounts on various dates and had given the details in the plaint as follows:-

Date	Amount (Rs.)
09051996	25000.00
19101997	50000.00
04081998	25000.00
02111998	15000.00
13101999	10000.00
28101995	8240.00
05021996	25000.00
06031996	25000.00
14081996	30000.00
12041997	50000.00
20041998	25000.00
31051999	5000.00
Total	293240.00

5. The Plaintiff had claimed that the 3rd Defendant did not properly account the payment and in June 2000, the property was brought for auction. The Plaintiff had executed a Power of Attorney with an intention to sell the property to cover the mortgage and the Power of Attorney was executed by both the Plaintiff and his wife on 5.7.2000 in favour of the Defendants 4 and 5, which was registered as Document No.366 of 2000. A letter was also obtained from the Plaintiff and his wife by the 4th Defendant for executing the Power of Attorney. According to the Plaintiff, this Power of Attorney was executed for the purpose of preventing the property from being sold on auction. According to the Plaintiff, a portion of the property would be sufficient to wipe away the mortgage amount. However, according to him, the Defendants 4 and 5 hatched

a plan to grab the entire property. The 4th Defendant had introduced the 1st Defendant as the prospective purchaser.

6. An agreement of sale was prepared as if there was a due of Rs.17 lakhs towards the mortgage amount. In the said agreement, the property described as Schedules E, F and G in the plaint were agreed to be sold for Rs.17,00,501/- and it was recorded that the Plaintiff had received Rs.501/- as advance. Schedule-E in the plaint was first floor portion having 1600 sq.ft. together with 300 sq.ft. of undivided share in the land to an extent of 1200 sq.ft. Schedule-F was 1263 sq.ft. of land together with the entire superstructure in the suit property. Schedule-G was 117 sq.ft. of undivided share of land in 517 sq.ft. of land situated in the same property.

7. It had been stated by the Plaintiff that he was asked by the Defendants 1 and 4 to sign the agreement of sale and he was called on 13.9.2001 to the Sub Registrar Office and was asked to execute a Power of Attorney in favour of the 2nd Defendant. He had executed the Power of Attorney. The 4th Defendant had signed as an attesting witness. When the Plaintiff questioned the necessity for a second Power of Attorney, it had been stated in the plaint that the 4th Defendant told him that he would not be in a position to execute the sale deed as he would not be available in India and consequently, another Power of Attorney in favour of the 2nd Defendant was necessary. According to the Plaintiff, using the Power of Attorney, the Defendants colluded among themselves. On the date of the Power of Attorney, a receipt was executed on behalf of the 3rd Defendant by the 4th Defendant that a sum of Rs.8 lakhs was received from the Plaintiff and his wife towards the

entire mortgage amount dated 18.5.1995 and this receipt was also registered as Document No.926 of 2001. It had been stated that the 2nd Defendant had executed the sale deed in favour of the 1st Defendant utilising the Power of Attorney. This sale deed was executed on 22.11.2001 for a sum of Rs.23,25,000/- for a portion measuring 1263 sq.ft of land along with the entire superstructure in the land which is as mentioned above Schedule-E of the plaint. In the sale deed, it was stated that a sum of Rs.75,000/- was paid as advance on 1.10.2001 and another sum of Rs.22,50,000/- was paid to the 2nd Defendant by cheque No.836341, dated 20.11.2001 drawn on HDFC Bank. This document was registered on 25.2.2002.

8. According to the plaintiff, yet another sale deed was registered on 5.12.2001 by the 2nd Defendant in favour of the 1st Defendant for a sum of Rs.9,50,000/- and in this sale deed, an extent of 1600 sq.ft. in the first floor together with 300 sq.ft undivided share of land in the extent of 1200 sq.ft which is described in the Schedule-F of the plaint and another piece of 117 sq.ft. undivided share of land which is described as Schedule-G of the plaint were sold. It was mentioned that Rs.50,000/- was paid to the vendor on 26.11.2001. A sum of Rs.4,50,000/- was paid on 29.11.2001 and another sum of Rs.4,50,000/- was paid on 5.12.2001. This sale deed was registered on 25.2.2002. According to the Plaintiff, he had not paid any amount towards the discharge of the mortgage and the receipt issued by the 4th Defendant was a fraudulent act. The dates mentioned in the sale deed dated 22.11.2001 are also fictitious dates. It had been further stated that the other payments made in the sale deeds have been made only after the execution of the receipts by the

4th Defendant. The Plaintiff had claimed that the Defendants have committed a fraud and obtained the Power of Attorney in favour of the 2nd Defendant, who is an employee of the 1st Defendant. According to the Plaintiff, the Defendants had colluded and cheated the Plaintiff. He had claimed that he had no knowledge about the transaction. He had further claimed that in June 2004, the 1st Defendant had attempted to interfere with the possession of the Plaintiff. A police complaint was lodged and a case was registered in Cr.No.698 of 2004 on the file of J1, Saidapet Police Station, Chennai. The Plaintiff had claimed that the property was assessed in his name with respect to the taxes. He had further claimed that the 2nd Defendant was not his lawful agent and is actually an employee of the 1st Defendant. He further had claimed that the transactions are fraud and illegal and not binding on him. Alternatively, he had prayed for accounts to be rendered by the 2nd Defendant as his Power of Attorney. Consequently, the suit had been filed, as an indigent person, for the reliefs as stated above.

9. **Written Statement:-** In the written statement filed by the 1st Defendant, the 1st Defendant had denied all the allegations in the plaint. He had claimed that the suit to set aside the registered sale deeds executed in favour of the 1st Defendant by the 2nd Defendant in his capacity as Power of Attorney agent of the Plaintiff is not sustainable. It had also been stated that the suit had been filed on very last day of the expiry of the law of limitation. It had been stated that the Plaintiff had actually sold the portions of the property and therefore, cannot claim to be an indigent person. It had been stated that the Plaintiff had admitted in the averments in the plaint that the 2nd Defendant was

a lawfully appointed Power of Attorney agent with power to execute the sale deed. He had not chosen to cancel the said Power of Attorney, but on the other hand, he has chosen to claim an alternative relief, seeking accounts from the 2nd Defendant.

10. The 1st Defendant had further denied that the 2nd Defendant was either known to him or was his employee. The 1st Defendant had denied that he acted in collusion with the 4th and 5th Defendants to bring about the sale of the entire property in his favour. According to the 1st Defendant, he had entered into an agreement of sale and had paid an advance of Rs.501/-. The balance amount of Rs.17 lakhs was paid by cheque through the HDFC Bank to the 3rd Defendant in discharge of the Plaintiff's debt. The receipt was also executed by the Plaintiff on 13.9.2001. It had been stated that the agreement of sale dated 27.7.2001 was executed voluntarily by the Plaintiff. On the same day, the Plaintiff had executed a registered Power of Attorney in favour of the 2nd Defendant, in view of the fact that the Plaintiff had pleaded old age and stated that he may not be able to actually appear and register the sale deeds. Subsequently, when the 1st Defendant had approached the Plaintiff for executing the sale deed, the Plaintiff and the Defendants had claimed that the value of the property is more and after much negotiations and to avoid litigations, the 1st Defendant had actually paid more consideration than what was shown in the agreement of sale. The allegation in the plaint that the documents were created fraudulently and collusively had been denied by the 1st Defendant. The 1st Defendant had claimed that he had purchased the property independently with his resources. The 1st Defendant further claimed

that the Plaintiff was aware of the document that he was executing.

11. It had been stated that with respect to the sale deeds, which are sought to be cancelled by the Plaintiff in this suit, sale deed dated 22.11.2001 was for a total consideration of Rs.23,25,000/- and the consideration was paid by cheque dated 20.11.2001 drawn on HDFC Bank in favour of the Power of Attorney Agent of the Plaintiff. With respect to the 2nd sale deed dated 5.12.2001, registered on 25.2.2001, it had been claimed that the entire sale consideration of Rs.9,50,000/- was also paid to the 2nd Defendant. The 2nd Defendant had claimed that the Plaintiff has to seek accounts from the 2nd Defendant with respect to the receipt of the sale consideration. The 1st Defendant had further stated that the Plaintiff had not pleaded particular facts relating to fraud. He had only repeated his allegations. The major portion of the sale consideration had been paid by cheque and consequently, there cannot be any collusion.

12. It had been stated that the 1st Defendant had been in possession and enjoyment of the suit property pursuant to the sale deeds. It had been stated that the wife of the Plaintiff was also a party as an attesting witness in the Power of Attorney executed in favour of the 2nd Defendant and the schedules were clearly mentioned in the document. It was the very same schedules which had been conveyed through the sale deeds by the 2nd Defendant in favour of the 1st Defendant. Therefore, the 1st Defendant had stated that the suit is frivolous and vexatious and sought dismissal of the suit.

13. On consideration of the pleadings, by order dated 15.7.2013, the following issues were framed:-

1. Whether the 2nd Defendant is the lawful agent of the Plaintiff as alleged by the 1st Defendant or he is an employee of the 1st Defendant as alleged by the Plaintiff?
2. Whether the Plaintiff is entitled to maintain the suit for cancellation of the registered sale deeds in favour of the 1st Defendant validly executed by the Plaintiff Power of Attorney agent, the 2nd Defendant herein, when the Plaintiff having not mentioned in a manner known to law, the ground on which he seeks such untenable relief in the suit?
3. Whether there is a fraud played on the Plaintiff as alleged in executing the agreement dated 27.7.2001 and Power of Attorney dated 13.9.2001?
4. Whether the sale deeds dated 22.1.2001, 5.12.2001 and 25.2.2002 were obtained by playing fraud and collusion among the Defendants as alleged by the Plaintiff?
5. Whether the payments mentioned in various dates were made by the 1st Defendant in support of the sale deeds or not?
6. Whether the sale deeds are liable to be cancelled as null and void?
7. Whether the 2nd Defendant is liable to render true and proper accounts to the Plaintiff?

14. **Trial:-** The parties went on trial. The Plaintiff, in support of his claim, had examined himself, as PW.1 and another witness as PW.2 and marked Ex.P1 to P12 and Ex.X1. The Defendants 2 to 5 had been set exparte. The 1st Defendant had examined himself as DW.1 and marked Ex.D1.

15. This court heard the learned counsel on either side and also perused the materials placed on record.

16. **Issues (3) and (4):-** The Plaintiff was allotted land in Plot No.87, RS.No.3884/1990, measuring one ground and 580 sq.ft. It had been purchased from the Tamil Nadu Housing Board. Originally, the Board of Trustees constituted under under the Madras City Improvement Trust Act, 1950

had an improvement scheme for acquiring and selling plots as building sites and for erecting buildings and selling. Under the policy, the City Improvement Trust had erected an building in Plot No.87, RS.No.3884/90, measuring one ground and 580 sq.ft. to an extent of 490 sq.ft and allotted the land and building to the Plaintiff on 28.1.1960. Subsequently, the Tamil Nadu Housing Board had executed a sale deed in favour of the Plaintiff on 26.4.1982 and registered as Document No.826 of 1982 on the file of the Sub Registrar of Assurances, Mylapore, Chennai. This document had been marked as Ex.P1. According to the Plaintiff, the revenue records of the suit property stand in his name. However, the Plaintiff has not produced any revenue records to establish this fact, which has been mentioned in the plaint. It is the case of the Plaintiff that he had developed the property in the ground floor and put up constructions in 1986 in the first floor also. He had also put up construction in the 2nd floor. The Plaintiff had stated that he had sold a portion in the ground floor to Raghunathan by a sale deed dated 14.2.1991 registered as Document No.152 of 1991 and another portion to Logeswari, wife of Raghunathan by Document No.401 of 1991. The Plaintiff has not produced copies of both the documents before this court. This assumes significance since the sale consideration has not been disclosed to the court and in view of the fact that the Plaintiff has filed the suit as an indigent person, the non-disclosure is crucial. The Plaintiff had also, according to the plaint, sold another portion in the first floor on the rear side by a sale deed dated 20.9.1991 by Document No.544 of 1991. Again, a copy of this document has also not been produced before this court. Once again, the Plaintiff has not disclosed the sale consideration that he received by

such sale.

17. The Plaintiff was running a business in the supply of granite tiles to various builders. It has also come up in evidence during the cross examination of the Plaintiff that he had worked as a Tennis Coach in YMCA. He had also worked as a Tennis Coach in various places including, YMCA, Nandanam, Triangular Tennis Trust Coaching Centre and different Organisations. It has also come up in evidence during his chief cross examination that his wife was a school teacher. These facts are stated since the Plaintiff cannot be considered as a person gullible enough to sign documents without knowing the proceedings of those documents.

18. The Plaintiff had mortgaged the suit property by a registered mortgage dated 18.10.1995. This was marked as Ex.P2. This mortgage was in favour of the 3rd Defendant, which is the Park Town Benefit Fund Limited. The mortgage was executed by the Plaintiff and his wife C.Saraswathi. It had been stated that the first mortgagor, namely, the Plaintiff was the owner of the suit property and the 2nd mortgagor was added by way of abundant caution. It had been further stated that the Plaintiff was in possession and enjoyment of the property, which was mortgaged. He was also a shareholder of the 3rd Defendant mortgagee and had applied for a loan of Rs.8 lakhs on the security of the property described in the schedule. The suit mortgage was created for clearing the outstanding loans and also for improvement of business. It had also been mentioned that the total consideration had been deposited to the City Union Bank, T.Nagar, wherefrom the Plaintiff had obtained a loan in loan account no.119 of 1993 for a sum of Rs.3,62,197/- together with interest at the

rate of 18.75 per annum. A simple mortgage in favour of the 3rd Defendant was executed by Ex.P2. Ex.P2 also contains the usual clauses that the 3rd Defendant would be permitted to bring the property for sale in case there were arrears in payment. The schedule in the mortgage deed was Door No.9 and 9/3, Playground view road, Nandanam, Chennai in New Survey No.3884/90. The extent in the first floor which was retained by the mortgagor was 1450 sq.ft. with 1/3rd undivided share in the land to an extent of 1200 sq.ft. and the land area was absolutely owned by the mortgagor who are the Plaintiff and his wife in extent of 1700 sq.ft. In the plaint, the Plaintiff had stated that he had also made repayments on the dates as mentioned below:-

Date	Amount (Rs.)
09051996	25000.00
19101997	50000.00
04081998	25000.00
02111998	15000.00
13101999	10000.00
28101995	8240.00
05021996	25000.00
06031996	25000.00
14081996	30000.00
12041997	50000.00
20041998	25000.00
31051999	5000.00
Total	293240.00

19. It is very significant to point out that the Plaintiff has not filed into the court even one receipt to substantiate the above stand taken in the pleadings. At any rate, it is the admitted case of the Plaintiff that he was due and liable to the 3rd Defendant towards the mortgage amount. Consequently,

the Plaintiff had executed a general Power of Attorney filed as Ex.P3 in favour of the 4th and 5th Defendants jointly. They were both described as holding office at No.223, Mind Street, Park Town. A Power of Attorney was also executed by the wife of the Plaintiff. It was dated as mentioned as 5.7.2000. It was registered as Document No.366 of 2000. In the said Power of Attorney document, namely, Ex.P3, it had been mentioned that the Plaintiff was the owner of the property, namely, first floor and the unfinished structure in the second floor together with proportionate undivided share in the land on which the building stands at Door Nos.9 and 9/3, Playground View Road, Nandanam Extension, Chennai. It had also been stated that the Plaintiff and his wife had taken a loan from the Park Town Benefit Fund Limited for which a mortgage deed marked as Ex.P2 dated 18.10.1995 was executed. It had been stated that the Plaintiff was not in a position to pay the monthly instalments regularly. It had been further mentioned that the Park Town Benefit Fund Limited who is the 3rd Respondent, was trying to bring the property for sale. It had been further stated that it was thought that the first floor having a superstructure with a built up area of 1450 sq.ft. with proportionate undivided share in the land can be sold for discharging the mortgage debt. Further, for such purpose, due to the health condition of the Plaintiff and other problems, since it would not be possible either for the Petitioner or his wife to personally attend to all the formalities of the sale, they appointed the 4th or the 5th Defendants jointly as their Powers of Attorney, empowering them to negotiate for sale, finalize the sale consideration and the purchaser, to receive advance, to enter into an agreement of sale and to receive the balance sale consideration and to execute the sale deed in

favour of the prospective purchaser. They were also given the power to discharge the mortgage in favour of the Park Town Benefit Fund Limited. It had also been stated that the 4th and 5th Defendants also can give vacant possession to the prospective buyer. Consequently, by this document a lawful agent had been created by the Plaintiff and his wife, who is a school teacher, granting power to the 4th and 5th Defendants to identify a purchaser and sell the property to him. In the plaint, execution of this Power of Attorney had been described as “on the guise of only for stopping the auction of the property and as a security to the loan advanced by them by the Defendants 4 and 5.” However, this cannot be taken as a correct statement since the Plaintiff was very well aware that he had executed the Power of Attorney granting full power to sell the property. Pursuant to the Power of Attorney, the Plaintiff had also entered into an agreement of sale on 27.7.2001 in Ex.P4.

20. Even in the plaint, it had been mentioned that the 1st Defendant was introduced as a prospective purchaser. This agreement of sale was produced as stated above as Ex.P4 and it was entered into by the Plaintiff with the 1st Defendant. The agreement of sale very clearly stated that the Plaintiff was the owner of the properties more fully described in the schedules E, F, and G. Schedule-E in the sale agreement and Schedule-E in the plaint are one and the same and the same is given as follows:-

“Schedule-E

First floor having 1600 sq.ft. together with 300 sq.ft. of undivided share in the land to an extent of 1200 sq.ft. situate at Plot No.87, Door No.17 (Old No.9 and 9/3) play ground view street, Nandanam Extension, Chennai-35, in Block No.77, TS.No.3884/90, of Mylapore Village, bounded on the

North by Play ground new view street
 South by Plot No.66 and 65
 East by Plot NO.86,
 West by Portion of Plot No.87

situate within the office of District Registrar, Chennai Central

Schedule-F

1263 sq.ft. of land together with entire superstructure in that land situate at Plot No.87, Door No.17 (Old No.9 and 9/3) play ground view street, Nandanam Extension, Chennai-35, in Block No.77, TS.No.3884/90, of Mylapore Village, bounded on the

North by Play ground new view street
 South by Portion of the Plot No.87
 East by Portion of Plot No.87
 West by Door No.19

situate within the office of District Registrar, Chennai Central

Schedule-G

117 sq.ft. of undivided share of land in 517 sq.ft. situated in Plot No.87, door No.17 (old No.9 and 9/3) play ground view street, Nandanam Extension, Chennai-35, in Block No.77, TS.No.3884/90, of Mylapore Village, bounded on the

North by Portion of Plot No.87
 South by Plot No.66 and 65
 East by Portion of Plot No.87
 West by Door No.19

situate within the office of District Registrar, Chennai Central”

21. It is, thus, seen that the scheduled mentioned in Ex.P4 has been clearly mentioned. In Ex.P4, it had also been mentioned that the Plaintiff had also sold the property given in the Schedule-C and also the entire ground floor by different sale deeds. It had also been mentioned that the property shown in the Schedule-D had been mortgaged in favour of the Park Town Benefit Fund Limited which is the 3rd Defendant. It had also been stated that the amounts

due on the mortgage had been worked out and it was agreed that the purchaser, namely, the 1st Defendant should transfer Rs.17 lakhs within three months towards the loan amount to the 3rd Defendant. It had been further stated that the Plaintiff was the absolute owner of the Schedules E, F and G. It had been further stated that the 1st Defendant had offered to purchase the Schedules E, F and G for a total consideration of Rs.17,00,501/-, out of which, Rs.501 had been paid as advance to the Plaintiff. It had been stated that the loan should be settled with the 3rd Defendant and all the title documents would be received by them. The parent documents would be retained by the Plaintiff. It had been further stated that the Plaintiff had agreed to execute the sale deed in favour of the 1st Defendant or his nominee.

22. It is the contention of the Plaintiff that this sale agreement was vitiated by fraud. However, in his proof affidavit, which is the chief affidavit, he had stated as follows:-

“ The sale agreement was prepared by the Defendants 1 and 4 and I was asked to sign the same. At that time, a tenant was brought to the first floor portion by them and since I had to discharge the loan by selling this portion I let them induct the tenant to that portion.”

This statement is more than sufficient to draw a conclusion that the agreement of sale Ex.P4 was acted upon not only by the 1st Defendant, but also by the Plaintiff since he had permitted induction of the tenant in the portion which he wanted to sell to the 1st Defendant. The 1st Defendant had marked Ex.D1, which is a receipt dated 13.9.201. This receipt was executed pursuant to the agreement of sale Ex.P4. On the same day, that receipt was executed and the Plaintiff had also executed a Power of Attorney Ex.P5. The Power of Attorney

was registered as Document No.513 of 2001 in the Office of the Sub Registrar, Chennai Central. It was witnessed by the wife of the Plaintiff and also by the 4th Defendant. In Ex.D1, it had been stated as follows:-

“RECEIPT

Today the 13th day of September 2001, in fulfilment of the agreement entered between myself and Sri.T.Joseph Benziger on the 27th day of July 2001, Sri.T.Joseph Benziger, has transferred Rs.17,00,000/- (Rupees seventeen lakhs only) in my account in Park Town Benefit Fund Limited and relieved me from the loan burden, I was having with Park Town Benefit Fund Limited, subsequently on today, Park Town Benefit Fund Limited has released the mortgage deed. Thus, the purchaser Sri.T.Joseph Benziger has paid the entire sale consideration for the properties in Schedule-E, Schedule-F and Schedule-G as per the sale agreement dated 27th day of July 2001. So, neither myself nor anybody from my side including any legal hires will not demand any further payment from Sri.T.Joseph Benziger towards the properties in Schedule-E, Schedule-F and Schedule-G. As I have received the entire sale consideration, I promise to execute and register the sale deed in the District Registrar Office, Chennai Central, in favour of Sri.T.Joseph Benziger or his nominee(s) on any day convenient to Sri.T.Joseph Benziger without demanding any further payment, on the request of Mr.T.Joseph Benziger.

Today I have handed over the vacant possession of the entire properties in Schedule-E, Schedule-F and Schedule-G to Sri.T.Joseph Benziger. I have also executed and registered a General Power of Attorney, appointing Sri.P.Albert, as my Power Agent for selling the properties in Schedule-E, Schedule-F and Schedule-G hereunder to facilitate Sri.T.Joseph Benziger to execute and register the sale deed for the properties in Schedule-E, Schedule-F and Schedule-G in favour of Sri.T.Joseph Benziger or his nominees. I hereby promise that I will not cancel at any cost the Power of Attorney executed and registered on this 13th day of September 2001, in favour of Sri.P.Albert. Today, I have handed over all the original title deeds of the properties in Schedule-A to Sri.T.Joseph Benziger.”

On the same day, the 3rd Defendant had executed the receipt Ex.P6 which was

registered as Document No.926 of 2001 in the Office of the Sub Registrar, Chennai Central. This receipt is as follows:-

“RECEIPT

Receipt executed at Chennai on the 13th day of September 2001 by M/s.Park Town Benefit Fund Limited, represented by its Chairman Mr.R.VIVEKANANTHAN son of P.RAMALINGAM, holding office at No.223, Mint Street, Park Town, Chennai -3, hereinafter referred to as the mortgagee and received a sum of Rs.8,00,000/- (rupees eight lakhs only) to and in favour of (1) Mr.S.Chellappa, son of Mr.Swaminatha Pillai, (2) Mrs.C.Saraswathi, wife of Mr.S.Chellappa, both of them residing at No.9 and 9/3, Play Ground View Road, Nandanam Extension, Chennai-600035 hereinafter referred to as the mortgagor witnesseth that the entire mortgage monies have been received by the mortgagee from the mortgagor in full and final payment of amount payable under the registered mortgage deed dated 18.10.1995 for Rs.8,00,000/- (Rupees eight lakhs only) registered as Document No.1050/1995 in the District Registrar Office of Chennai Central executed by the mortgagor in favour of the mortgagee on the security of the property set out in the schedule hereunder:- ”

23. It is the claim of the Plaintiff that all these documents were created by fraud. However, it is very clear from the evidence from the documentary evidence that Plaintiff knew that he was executing these documents. The Plaintiff had also executed a Power of Attorney in favour of the 2nd Defendant which was registered as Document No.513 of 2001. This Power of Attorney was identified by the 4th Defendant and by the wife of the Plaintiff C.Saraswathi. In the said Power of Attorney, the Plaintiff, after tracing out the title of the property and also giving the details of the mortgage, had granted power to sell the property including to fix the sale price, to enter into an agreement of sale and to execute the sale deed and to receive the sale consideration on behalf of the Plaintiff. Very interestingly in the pleadings, the Plaintiff has actually stated that he knew that this Power of Attorney had a

clause with a specific intention to sell the property. In paragraph 20 of the plaint, it had been mentioned as follows:-

“... the 4th Defendant summoned the Plaintiff on 13.9.2001 to the Sub Registrar's Office and the Plaintiff was asked to execute a Power of Attorney in favour of the 2nd Defendant, the employee of the first Defendant. On the directions of the 4th Defendant, the Plaintiff executed a Power of Attorney in favour of the 2nd Defendant. In the Power of Attorney the 4th Defendant signed as attesting witness. When the Plaintiff questioned the necessity for executing another Power of Attorney, the 4th Defendant convinced the Plaintiff that he would not be in a position to execute the sale deed as he would not be available in India and there is nothing wrong in executing a Power of Attorney in favour of the 2nd Defendant as he is also attesting the execution of the Power of Attorney.”

24. In this connection, the averment that the Plaintiff was asked to execute the Power of Attorney had not been proved by the Plaintiff. On the other hand, it had been stated that the Plaintiff knew that the Power of Attorney was to sell the property. It is clear that the 4th Defendant has disclosed that the Power of Attorney in favour of the 2nd Defendant was with a specific purpose to sell the property. The oral evidence, in this connection, is absolutely lacking on the part of the Plaintiff.

25. It has been the contention of the learned senior counsel for the Plaintiff that the 2nd Defendant, who was the Power of Attorney was actually an employee of the 1st Defendant and the learned senior counsel pointed out the cross examination of the 1st Defendant, wherein he first denied knowledge about the 2nd Defendant and later admitted after persistent cross examination that the 2nd Defendant was actually his employee. Even otherwise, it has not been pointed out how that would disqualify the 2nd Defendant from acting as the Power of Attorney agent of the Plaintiff. It is also not the case of the plaintiff

that the said Power of Attorney document should be cancelled by the court. He has not sought any relief for the same. In fact, there is an alternative prayer in the plaint that the 2nd Defendant should render true and proper accounts. Once such a relief is to be considered by the court, then it automatically means that the court should accept the legality of the Power of Attorney document and consequently, I hold that the Agent had accounted to the Plaintiff for the acts done by him in pursuance of the power granted under the said deed. The attempts made by the Plaintiff to impress fraud are very feeble.

26. In this connection, the learned senior counsel for the 1st Defendant had relied on the decision of this court reported in **2008-1-LW-950 (Radhabai Vs. Arunagiri and another)**, wherein in paragraphs 10 and 11, it had been held as follows:-

“10. It is permissible for an executrix to claim that the document is entirely different in character than the one she actually executed and she may lead parole evidence in this regard, under Section 92 of Evidence Act, 1872 as per decision AIR 2006 P & H page 1 (Harmesh Kumar V. Maya Bai). It is pertinent to point out that Section 91 of the Indian Evidence Act deals with the exclusiveness of documentary evidence; whereas Section 92 deals with the conclusiveness as also inclusiveness of such evidence.

11. It cannot be gainsaid that where the party to a written contract alleges that he/she was induced to enter into contract because of fraud, the allegations can be proved by adducing parole evidence.”

In this case, no such evidence was let in by the Plaintiff. The learned senior counsel for the 1st Defendant had also relied on the decision of the Honourable Supreme Court reported in **AIR 2005 Kerala 83 (Division Bench) Ayanikkai Achunni and others Vs. Bhanumathi and another)**, wherein in paragraph 8, it had been held as follows:-

“8. In this connection, it has also to be noticed that the plaintiff had studied upto S.S.L.C. She had contested in the Panchayat election and acted in films and that she was also doing the work of midwife. Therefore, it cannot be assumed that she would execute a document without knowing its contents. Even if the full consideration was not received on the date of the registration, that will not invalidate the document as the remedy of the plaintiff was only to claim the balance amount. It is in this connection that the contention of the plaintiff in the earlier suit becomes relevant...”

After observing as stated above, it was stated in paragraph 12 as follows:-

“12. The trial Court has mainly relied on the difference in the version of the defendant with regard to the payment of consideration as stated in the two suits. The trial Court also pointed out the discrepancies in the evidence of D.Ws. 1 to 3. Though the trial Court stated that the burden is entirely on the plaintiff to establish that the document was executed by playing fraud, the trial Court has not referred to any pleadings or proof with regard to this aspect while setting aside the document. The minor discrepancies in the evidence of defence witnesses is not sufficient to discharge the burden of proof cast on the plaintiff. In Union of India v. C. M. Patel & Co., (AIR 1976 SC 712), the Supreme Court has stated as follows :

"It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in A. L. N. Narayanan Chettiar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are some times faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction."

In Chacko Joseph v. Varghese Markose, (1957) Ker LT 485, it is stated that the burden is undoubtedly on the plaintiff to make out the case of fraud alleged by him by adducing satisfactory and convincing evidence. He cannot rest content by merely alleging fraud on the part of the defendants and then hoping that he can succeed in case the defendants do not adduce evidence to disprove such an allegation. The defendants are not obliged to lead any evidence in that direction. In United India Insurance Co. Ltd. v. Andrew Vivera (1989 (2) Ker LT 348), a Division Bench of this Court has stated that the position admits no doubt that allegation of fraud, undue influence and

coercion must be set forth in full particulars and not vaguely. The allegation must be fully stated so that the case can be decided on the particulars pleaded. Any allegation in a sweeping manner will hardly suffice for the Court to act. Where allegations are made in a vague and sweeping manner the Court cannot act on it for lack of specific pleadings. In this case, a reading of the plaintiff shows that the pleadings are totally insufficient to make out a case of fraud in executing Ext. B1. In *Mathu v. Cherchi* (1990 (1) KLT 416), Padmanabhan, J. has held as follows :

"7. Plea of mistake of fact is peculiar to the law of written contract due to the existence of the common law defence of non-est-factum, which permits one who has signed a document, which is essentially different from what he intended to sign, to plead that, notwithstanding his signature, it is not "his deed in contemplation law". The defence of being too lazy or too busy to read is not available. The plea must be kept within narrow limits in order to avoid confusion and uncertainty in the field of contract if a man is permitted to disown his signature simply by asserting that he did not understand what he signed. He must show that the transaction which the document purports is essentially different in substance or kind from the transaction intended. In a case where the person executing the deed is not blind, infirm or otherwise incapacitated and no fraudulent misrepresentation is made to him and he had opportunity of reading the deed, the plea of non- est factum is not available. It is immaterial whether he read or not. He is bound by the deed because it operates as a conclusive bar against him not because he read or understood, but because he has chosen to execute it. That is so in equity as at law except in special case where there is an equitable ground (*Martin Cashin v. Peter J. Cashin* (AIR 1938 PC 103). The plea can rarely be established by a person of full capacity. Though it is not confined to blind or illiterate alone, any extension of the scope of the plea will have to be kept within specified limits. The plea must be proved by the person setting it up. He must show that he acted with care (*Saunders v. Angila Building Society* (1970 A.E.R. 961). The plea of non-est factum is not available in this case. When vitiating circumstances are there, the rule has no application also." "

27. The learned senior counsel for the 1st Defendant had also relied on the decision of this court reported in **2003 2 LW 490 (A.S.Rathinam Vs.**

As.Ponnammal and others, wherein in paragraph 10, it had been held as follows:-

“10. The general principle enunciated in the decision of the apex Court on which counsel placed reliance is always required to be applied in relation to the facts of the given case, having regard to the context in which the plea of non production of the best evidence is raised. When the evidence required to be produced is accessible to the plaintiff who seeks to have adverse inference drawn by reason of the non production of that evidence by the defendants, it is the duty of such plaintiff to produce the evidence and the failure to do so cannot be got over by inviting the Court to draw adverse inference from the conduct of the defendants who had produced some evidence, but not all the evidence in their possession with regard to the properties mentioned in the plaint schedule. In the context of the facts of this case, it cannot be said that there was a duty cast on the defendants to produce the title deeds even when the title deeds did not show the ownership of their father. The properties which belonged to them individually cannot become the subject matter of partition at the instance of their sister, and the mere fact that she chose to include them in the plaint does not cast a burden on the defendants.”

28. The learned senior counsel for the 1st Defendant had also relied on the decision of the Honourable Supreme Court reported in 2010 1 SCC 83 (**Grasim Industries Limited and another Vs. Agarwal Steel**), wherein in paragraph 6, it had been held as follows:-

“6. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document Ex.D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the

High Court and remand the matter to the High Court for expeditious disposal in accordance with law. ”

29. The learned senior counsel for the Plaintiff had relied on the decision of the Honourable Supreme Court reported in **AIR 1951 SC 16 (Yeshwant Deorao Vs. Walchand Ramchand)**, wherein in paragraphs 9 and 10, it had been held as follows:-

“9. There can be no question that the conduct of the respondent was fraudulent within the meaning of section 48 (2) of the Civil Procedure Code. Though benami transactions are common in this country and there is nothing per se wrong in a judgment-debtor purchasing property in another man's name, we have to take into account all the circumstances attending the purchase and his subsequent conduct for finding out whether it was part of a fraudulent scheme on his part to prevent the judgment-creditor from realizing the fruits of his decree. Fraudulent motive or design is not capable of direct proof in most cases; it can only be inferred. The facts before us here leave no room for doubt that the true object of the judgment debtor was to prevent the execution of the decree against the 'Prabhat' news- paper Which he had purchased. Other persons were shown as the printer and the publisher of the newspaper, while Abhyankar was mentioned as the proprietor, The judgement- debtor, was, however, operating on those accounts for his own benefit. In the Insolvency Court, he set up the plea that he was an agriculturist, by suppressing the truth about his ownership of the paper, and pretending that his income was mainly, if not solely, from the family lands. He kept up this show till April 1944, when probably he felt that he was sale from the reach of the judgment-creditor. Even in his answer to the execution application, out of which this appeal has arisen, he had the hardihood to assert that he was not the owner of the paper till April 1944. It should also be remembered that he did not get into the witness box to explain what other necessity there was for all this camouflage, except it be to cheat the appellants of his dues under the decree.

10. Mr. Setalvad, the learned Attorney-General, who appeared for the respondent, pointed out that there was no benami purchase and that the holding out of Abhyankar as the proprietor of the 'Prabhat' did not amount to any false representation or misrepresentation to the judgment- creditor, as the accounts on which reliance was placed were accounts opened in the banks and were not ordinarily avail- able for

inspection by third parties. This line of reasoning is hardly convincing, when we have to consider whether what is attributed to the judgment-debtor does not amount to a fraudulent scheme or device for preventing execution of the decree that had been passed against him for a very large sum of money. In the very nature of things, fraud is secret in its origin or inception and in the means adopted for its success. Each circumstance by itself may not mean much, but taking all of them together, they may reveal a fraudulent or dishonest plan."

30. The learned senior counsel for the Plaintiff had also relied on the decision of the Honourable Supreme Court reported in AIR 1987 SC 1242 (Ram Sarup Gupta (dead) by LRs Vs. Bishun Narain Inter College and others), wherein in paragraph 6, it had been held as follows:-

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in

that event it would not be open to a party to raise the question of absence of pleadings in appeal. In *Bhagwati Prasad v. Shri Chandramaul*, [1956] 1 SCR 286 a Constitution Bench of this Court considering this question observed:

"If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to reply upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another." "

31. The learned senior counsel for the Plaintiff had also relied on the decision of the Honourable Supreme Court reported in 2005 7 SCC 605 (*Bhaurao Dagdu Paralkar Vs. State of Maharashtra and others*), wherein in paragraphs 9 and 10, it had been held as follows:-

"9. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where

there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla v. Delhi Administration* (1963 Supp. 2 SCR 585) and *Indian Bank v. Satyam Febres (India) Pvt. Ltd.* (1996 (5) SCC 550).

10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chandalvaraya Naidu v. Jagannath* (1994 (1) SCC 1)."

32. The learned senior counsel for the Plaintiff had also relied on the decision of the Honourable Supreme Court reported in **1999 4 SCC 262 (Sukhdei (Smt) (Dead) By LRs Vs. Bairo (Dead) and others)**, wherein in paragraph 8, it had been held as follows:-

"8. ... There can be no quarrel with regard to the requirement of law as found in Order 6 Rule 4 which merely requires that if fraud is being pleaded, the particulars necessary for establishing the fraud should be stated in the pleadings. In our opinion, the pleading, as extracted above, comes within the requirement of Order 6 Rule 4 and there is no shortfall in the said pleading as held by the High Court."

33. In this case, the Plaintiff has not specifically pleaded fraud. It is seen that the schedules, which are now sought to be impugned, have been mentioned in the agreement of sale. They have been mentioned in the Power of Attorney. They have been mentioned in the receipt. It is those properties which are sold by the Plaintiff in the sale deeds. Moreover, pursuant to the Power of Attorney, the 1st Defendant had discharged the loan to the 3rd Defendant. Therefore, the Plaintiff had obtained a benefit under the said document by way of discharge of an existing mortgage. After such discharge, the Plaintiff has come to the court on the last day of the limitation, seeking to

set aside the entire sale deed in favour of the 1st Defendant. I hold that the documents are not vitiated by fraud and the issues (3) and (4) have to be answered against the Plaintiff.

34. On analysis of the above facts and the law, it is necessary that when the Plaintiff comes forward with the averment regarding fraud, it must be specifically pleaded and proved beyond all reasonable doubts. In this case, in the plaint itself, the Plaintiff had stated that the Power of Attorney dated 13.9.2001, under Ex.P5, had been executed by him and at that time, it had been informed to him by the 4th Defendant that since the 4th Defendant would not be available in the country and consequently, would not be in a position to discharge his duties to sell the property, the said Power of Attorney in Ex.P5 nominating the 2nd Defendant had to be executed. Consequently, the Plaintiff was very well aware that the purpose of the Power of Attorney was to sell the property mentioned in the Power of Attorney. In the said Power of Attorney, the schedules had been clearly mentioned in the body and also had been given at the end. The schedule is for the specific purpose of E, F and G properties. Subsequent to this Power of Attorney, Ex.D1, which is a receipt, again had been executed on the very same day and dated 13.9.2001, had been issued and in the same, it had been signed by the Plaintiff that he had handed over vacant possession of the Schedules E, F and G to the 1st Defendant. All these factors would indicate that there was no element of fraud which has been proved by the Plaintiff. The Plaintiff having executed the document with eyes wide open cannot now seek to set aside the same, pleading innocence and ignorance. As a matter of fact, the Plaint itself has been filed only on the last

day of limitation.

35. In the cause of action, it had been stated that notices had been sent to the Defendants. However, copies of the pre-suit notices have not been filed into the court by the Plaintiff. All these again go to show that the Plaintiff is only indulging in vexatious and frivolous litigation. Consequently, for all the reasons stated above, I hold the Issues (3) and (4) against the Plaintiff. I specifically hold that the fraud had not been played against the Plaintiff in execution of the agreement dated 27.7.2001 and the Power of Attorney dated 13.9.2001. Consequently, the sale deeds executed pursuant to the Power of Attorney are also not vitiated by fraud. Accordingly, issues (3) and (4) are answered against the Plaintiff and in favour of the 1st Defendant.

36. Issues (1) and (2):- These issues relate to whether the 2nd Defendant is the lawful agent of the Plaintiff or whether he is an employee of the 1st Defendant and consequently, on that ground, whether the suit for cancellation of the registered sale deeds has to be held in favour of the Plaintiff. Even before going into the analysis of the facts, the point raised regarding the 2nd Defendant that he is an employee of the 1st Defendant would never vitiate or debar him from acting as the agent of the Plaintiff. The Plaintiff had executed the Power of Attorney with knowledge of the intention for which, the Power of Attorney was being executed. The only object for the Power of Attorney was to sell the property.

37. The fact that the 2nd Defendant was an employee of the 1st Defendant and the further facts that the 1st Defendant initially denied the same and subsequently accepted to the same, will not in any way debar the 2nd

Defendant. The very fact that it is the Plaintiff who has knowledge that the 2nd Defendant is the employee itself shows that the Plaintiff had entered into the Power of Attorney with the knowledge that the 2nd Defendant was the employee of the 1st Defendant. Even at the time of execution of the power of attorney document, he knew that the 2nd Defendant was the employee of the 1st Defendant. He then executed the Power of Attorney and thereafter, he cannot claim that to be a liability to be held against the 2nd Defendant. Consequently, I hold that the 2nd Defendant is the lawful agent of the 1st Defendant. A conjoint reading of the above clearly shows that the Plaintiff had executed the agreement of sale, advance was paid through cheque, the mortgage in favour of the 3rd Defendant was discharged, a valid receipt was in fact registered and thereafter, the agreement of sale was also entered into for higher amount and Power of Attorney was also executed by the Plaintiff and thereafter, on the basis of the Power of Attorney, sale deeds were executed. In the first sale deed, a payment of substantial sum of about Rs.22 lakhs was made by cheque. The cheque was issued by the HDFC Bank after the 1st Defendant availed the housing loan. Moreover, in pursuance of these arrangements, the Plaintiff had also permitted the 1st Defendant to induct his tenant in the first floor portion. Consequently, the Plaintiff had acted in accordance with the agreement of sale and in accordance with the Power of Attorney and after executing all these documents, I hold that the Plaintiff is actually indulging in vexatious litigation seeking to cancel the sale deeds. In fact, the Plaintiff having sought an alternative prayer for accounts has to impliedly accept to the Power of Attorney. Once he accepts to the Power of

Attorney document, he should also further accept the acts of the Power of Attorney, namely, execution of the sale deeds. Consequently, issues (1) and (2) are answered against the Plaintiff and in favour of the 1st Defendant, holding that the 1st Defendant had validly executed the sale deeds.

38. **Issues (5) and (7):-** It is to be mentioned that the payments were made by the 1st Defendant to the 2nd Defendant in his capacity as the lawful agent of the Plaintiff. The averments in the sale deed are precise and clear that monies have been paid. If at all the monies have not been paid, then the Plaintiff can only seek accounts from the 2nd Defendant. The sale deeds cannot be held to be vitiated on this ground. In fact, as is seen from the sale deeds, cheque payments have been made and consequently I hold that the amount have actually been paid. Even much earlier the mortgage was discharged by the payment made by the 1st Defendant. The 3rd Defendant had issued a receipt which was a registered document. All these factors would go to show that the sale deeds were executed for a valid and adequate consideration. If at all the Plaintiff has any grievance, he could seek them only against the 2nd Defendant and seek for accounts. Consequently, I hold that the 1st Defendant had purchased the property in accordance with law after making full payment. With respect to the accounts and liability of the 2nd Defendant to the 1st Defendant, I hold that the Plaintiff had not issued any notice, had not protested and had actually not come to court for that primary reason. Therefore, I hold that even this prayer cannot be granted in favour of the Plaintiff. The Plaintiff has couched two mutually destructive prayers in the plaint. On the one hand, he has sought that the sale deeds must be set aside,

accepting that the Power of Attorney agent was an employee of the 1st Defendant. After that, in the same breath, he seeks accounts from the Power of Attorney Agent. Either he must seek for cancellation or for any other reliefs or he must accept the Power of Attorney and seek for accounts. The court cannot be a waiver between two different prayers and for the mere sake that the Plaintiff had sought them cannot grant the relief. Consequently, with respect to the issues (5) and (7), I hold that the consideration had passed on from the 1st Defendant to the 2nd Defendant, but since the Plaintiff had alternatively claimed that the 2nd Defendant was not his lawful agent and at the same time, had claimed accounts from the 2nd Defendant, I hold that the Plaintiff has not come to the court with clean hands and as such, he is not entitled for any relief whatsoever. Accordingly, issues (5) and (7) are answered against the Plaintiff and in favour of the 1st Defendant.

39. **Issue (6):-** In view of the above reasons, I hold that the 1st Defendant is the lawful purchaser for a valid consideration with lawful object and title has passed on to the 1st Defendant and therefore, lawfully executed documents and the sale deeds in his favour cannot be set aside. Accordingly, this issue is also answered against the Plaintiff and against the 1st Defendant.

C.V.KARTHIKEYAN, J.

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40. In this result, this civil suit is dismissed, with costs of the 1st Defendant.

28.03.2017

Index:Yes/No
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