

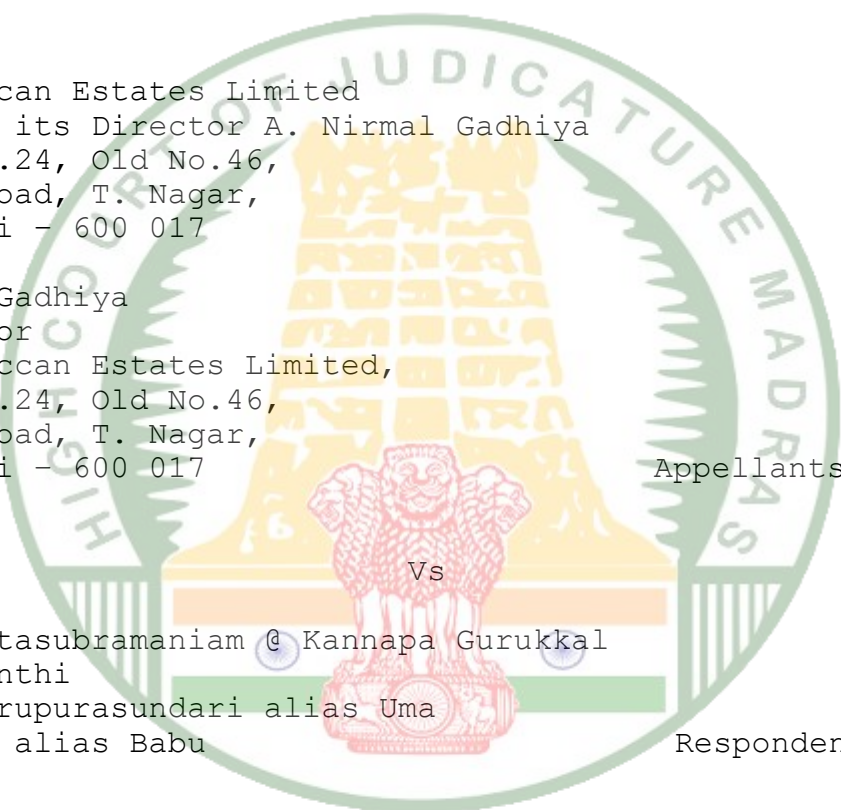
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

O.S.A.No.314 of 2013
and M.P.No.1 of 2013

- 
1. M/s Deccan Estates Limited
rep by its Director A. Nirmal Gadhiya
New No.24, Old No.46,
B.N. Road, T. Nagar,
Chennai - 600 017
2. Nirmal Gadhiya
Director
M/s Deccan Estates Limited,
New No.24, Old No.46,
B.N. Road, T. Nagar,
Chennai - 600 017
- Appellants
- Vs
- 1.T. Venkatasubramaniam @ Kannapa Gurukkal
2.T.K. Shanthi
3.T.K. Thirupurasundari alias Uma
4.Kannaian alias Babu
- Respondents

Appeal filed Under O.36 R.9 of Original Side Rules read with clause 15 of the Letters Patent against the judgment of the learned Single Judge of this Court made in Application No.3121 of 2012 dated 06.12.2012.

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For Appellants :	Mr.A.L. Somaiyaji Senior Counsel for Mr.A. Ravichandran
For R.1 :	Mr.R. Ganesh Kumar
For R.2 :	Mr.Venkata Varadhan
For R.3 & R.4 :	Private Notice served (No appearance)

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The fourth respondent herein, acting as the Power Agent of the respondents 1 to 3, entered into a sale agreement with the first appellant (the first plaintiff in the suit) on 07.08.2003, thereby agreeing to sell the suit property in favour of the first appellant. In the said sale agreement, it was also agreed upon that the sellers along with Mrs.Thirupursundari @ Uma, daughter of the first seller shall execute general power of attorney empowering the Purchaser to mortgage, sell the schedule property to third parties, to prepare a building plan, to submit the plan for approval and also undertake to incorporate such clauses as may be required by the Purchasers and such power shall be in force till the completion of the construction and the project which the purchaser may undertake. The power stipulated in this clause shall be executed at once and is irrevocable since it is coupled with interest. On execution of such power in favour of the purchaser or his nominee, the power of attorney in favour of the agent herein viz., K. Kannian alias Babu shall become inoperative and cancelled.

2. It is also admitted that on 07.08.2003, in terms of clause-11 of the sale agreement, a Power of Attorney was executed by the respondents 1 to 3 in favour of the 2nd appellant, as the Director of the first appellant. According to the appellants, the said power of attorney creates interest for the appellants in the suit property and thus, it is irrevocable in terms of Sec.202 of the Contract Act as well as as per Sec.11 of the Sale Agreement.

3. It is the further case of the appellants that in gross violation of the terms and conditions of Sec.202 of the Contract Act, the respondents revoked the power of attorney by a deed of revocation dated 28.05.2009.

4. Seeking a declaration to declare the Revocation of General Power of Attorney dated 28.05.2009 as null and void and for mandatory injunction restraining the defendants from alienating or encumbering the suit schedule property.

5. The appellants herein filed a suit in C.S.No.1173 of 2009. During the pendency of the suit, the appellants/plaintiffs filed an application in A.No.3121 of 2012 seeking amendments of the plaint so as to include the prayer for specific performance of the contract in terms of the sale agreement referred to above and for other reliefs.

6. It was opposed by the respondents, who were defendants in the suit.

7. The learned Single Judge of this Court, by order dated 06.12.2012, dismissed the said application. Challenging the same, the appellants have come up with this appeal.

8. We have heard the learned Senior Counsel, appearing for the appellants and the learned counsel for the respondents and we have also perused the records carefully.

9. A perusal of the order of the learned Single Judge would go to show that the learned Single Judge found that a major portion of the suit property has been sold and only a small portion remains. The learned Judge has further held that in the absence of any details of the remaining property, which has been unsold, it is not possible to allow the amendments for specific performance of contract. The learned Judge has additionally stated that the plaintiffs cannot take mutually destructive plea in the instant case. According to learned Judge, by means of amendment, the appellants want to take altogether different plea than the one taken in suit. For these reasons the learned single Judge observed that the amendment sought for by the petitioner could not be allowed.

10. Mr.A.L. Somayji, learned Senior counsel, appearing for the appellants would submit that the said view taken by the learned Single Judge may not be correct. According to him, the sale agreement and the general power of attorney cannot be seen as two distinct transactions. The General Power of Attorney was executed in terms of the sale agreement. Therefore, these two transactions have got close nexus with each other and therefore, they cannot be separated. The learned senior counsel further submitted that the amendment sought for does not give rise to either a separate cause of action or total destructive or different new plea. The learned counsel would also submit that to have comprehensive effect between the parties and also to avoid multiplicity of proceedings, the learned Single Judge ought to have allowed the application.

11. The learned counsel for the respondents/defendants vehemently opposed this appeal. According to them, Order 2 Rule 2 of the Civil Procedure Code bars the new plea, which is now sought to be introduced by means of amendment and would further submit that the plea for specific performance is barred by limitation as three years limitation period from the date of sale agreement expired long before. The learned counsel would further submit that in the terms of the sale agreement, power of attorney should be executed only in the name of the first

plaintiff Company and not in the name of the second plaintiff, who is an individual. The learned counsel further submitted that the plea which is sought to be introduced is totally a new plea, which cannot be allowed to be introduced. Thus, according to the learned counsel, the appeal is liable to be dismissed.

12. We have considered the above submissions and we have gone through the sale agreement as well as power of attorney. In Clause 11 of the sale agreement, it has been agreed upon between the parties that the seller shall execute a general power of attorney in the name of the first plaintiff or in the name of any nominee; the second plaintiff is none other than the Director of the first appellant. Therefore, it was in tune with the above sale agreement and general power of attorney was executed in favour of the second plaintiff.

13. Prima-facie, we are satisfied that the plaintiffs have come out with a case for the sale agreement, in question, coupling that the sale agreement creates an interest in the suit property and in terms of Sec.202 of the Indian Contract Act is applicable. Therefore, whether the revocation made is valid or not is to be exercised in the suit. For any reason, if the revocation is set aside, declared as void, then without even asking for specific performance of the contract, the appellants would be entitled to sell the property in terms of the agreement as well as in terms of the general power of attorney. Therefore, it may not be necessary for the appellants to ask for amendment of the plaint so as to include the prayer for specific performance as contended by the learned Senior Counsel to avoid multiplicity of proceedings and also in view of the subsequent development. However notwithstanding the above if the appellants want to include the prayer for specific performance also, which in our considered view, is perfectly right and would not cause any prejudice to the respondents/defendants.

14. Now turning to the objections by referring Order 2 Rule 2 of the Civil Procedure Code we have to state whether Order 2 Rule 2 is applicable or whether the same bars the plea for specific performance is a question of fact, which has to be gone into by letting evidence. If the sale agreement is independent of the General Power of Attorney, we may not have any hesitation to apply Order 2 Rule 2 of Civil Procedure Code at this stage. Since they have got close nexus and these two are inseparable, the question whether Order 2 Rule 2 of CPC be applied so as to non-suit the appellants in respect of the prayer for specific performance is to be deeply exercised by framing appropriate issues and allowing the parties to let in evidence. Therefore, at this stage, we are not prepared to accept the plea based on Order 2 Rule 2 of Civil Procedure Code. We leave it open for the defendants to raise in the suit after

the amendment is made.

15. Now, turning to the objections based on the period of limitation in respect of the plea for specific performance, we do not want to address the point at this stage. We make it clear it is always open for the respondents to raise the plea of limitation in respect of the prayer for specific performance in the suit. At the same time, we want to further clarify that the limitation for the purpose of alternative relief of specific performance is from the date of application for amendment in Application No.3121 of 2012 shall be the crucial date. Simply because we allow the amendment, that will not take the date back to the date of filing of the suit. Though we are allowing the amendment, we have not given any answer to the question as to whether this amendment shall relate back to the date of the suit or to take effect only from the date of filing the application for amendment. We leave this question also open for the parties to raise before the learned Single Judge.

16. Now turning the next objection that the power of attorney as per the terms of the sale agreement is to be executed only in the name of the first appellant Company we find no force in the argument. In Clause 11 of the sale agreement, it has been agreed upon between the parties that the seller shall execute a general power of attorney in the name of the first plaintiff or in the name of any nominee. The second appellant is none else than the Director of the first appellant. Therefore, he is entitled to have the power of attorney executed in his favour. Therefore, this objection too is rejected.

17. As we have already pointed out that the learned Single Judge has held that in the absence of the details of the remaining portion which have been unsold, it is not possible to permit amendment of plaint to include the relief of specific performance. It is again a question of fact. It is for the parties to forward appropriate plea and ask for appropriate relief. Therefore, on the ground that in the absence of details of the portion, which remains unsold, the amendment cannot be allowed, is not sustainable. Similarly, the learned Single Judge has held that altogether a new plea is taken which is contradictory to the earlier plea. We do not find any justification for this conclusion arrived at by the learned Single Judge, as we have already held that the agreement for sale and general power of attorney in question are inseparable and therefore, the plea for specific performance is not a contradictory plea. Even in the absence of decree for specific performance in the event of this court declaring revocation of power of attorney as null and void, the appellants can very well sell the property.

18. In view of the foregoing discussions, the order of the learned Single Judge is not sustainable and the same is liable to be set aside. In the result, the appeal is allowed and the impugned order passed by the learned Single Judge dated 06.12.2012 in Application No.3121 of 2012 is set aside. The application in A.No.3121 of 2012 is allowed. It is made clear that the appellants shall pay necessary additional court, if any. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

The Sub Assistant Registrar,
(Original Side),
High Court, Chennai.

+1cc to Mr.A. Ravichandran, Advocate, S.R.No.2879
+1cc to Mr.R. Ganesh Kumar, Advocate, S.R.No.3356
+1cc to Mr. R. Venkata Varathan, Advocate Sr.No.3355

ks (CO)
md(17/03/2017)

O.S.A No.314 of 2013

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