

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

O.S.A.NO.185 OF 2018

1.K.Umar Khan
2.U.Amjath Khan Appellants

versus

1.K.Akbar Ali
Zainab Beevi (Deceased)
W/o.M.S.A.Abdul Jawadhu
Rep. by her Power Agent
A.J.Zahir Ali
2.A.J.Jariena Begam
3.A.J.Zakkia Begam
A.J.Zakir Ali (Deceased)
4.A.J.Mirza Ismail
5.A.J.Sahitha Begam
6.A.J.Thanveer Jahan
7.Zeenath Munarva Respondents
(Cause title accepted as per order
dated 20.01.2017 made in CMP
No.498/2017)

PRAYER: Original Side Appeal is filed under Order XXXVI Rule 1
of the Original Side Rules against the order dated 26.07.2016
passed in A.No.3142 of 2014 in C.S.No.825 of 2010.

For Appellants : Mr.Sundar Narayan

For Respondent-1 : Mr.M.S.Krishnan
Senior Counsel
for Mr.M.Balasubramanian

For Respondents
2 and 4 to 7 : Mr.K.Chandrasekaran

J U D G M E N T

[JUDGMENT OF THE COURT WAS MADE BY M.M.SUNDRESH, J.]

The appellants are the defendants in the suit. By a registered sale deed dated 02.06.2010, they have purchased the suit property.

2. The suit was filed by the plaintiff / first respondent inter alia alleging that in view of the power of pre-emption agreement dated 05.11.1998 executed by the power of attorney of the original owner, the subsequent sale deed cannot be sustained and therefore, a decree should be passed declaring that the pre-emption agreement is valid and subsisting and consequently, the sale deed dated 02.06.2010 is sought to be declared as null and void.

3. Pending the suit, an application was filed by the appellants in A.No.3142 of 2014 seeking to reject the plaint on the premise that there is no authorisation given by the principal in favour of the agent in pursuant to the power of attorney deed dated 08.02.1979 or 02.01.1989, as the case may be. It is the specific case of the appellants that both the deeds, even assuming that they are true, do not convey such a power to enter into the deed of pre-emption agreement. It seems that the power of attorney deed dated 08.02.1979 is a registered one, as against the subsequent one dated 02.01.1989. The pre-emption agreement was also said to have been entered into on 05.11.1998, which is nearly ten years after the subsequent unregistered power of attorney deed.

4. The learned Single Judge despite giving a finding that the power of attorney deed dated 08.02.1979 does not deal with the authorisation in favour of the power agent to enter into the pre-emption agreement dated 05.11.1998, none the less was pleased to hold that it is ultimately to be decided in the trial as to whether the power of attorney deed dated 02.01.1989 conveys such right on the agent to enter into the pre-emption agreement dated 05.11.1998.

5. The learned counsel appearing for the appellants would submit that nowhere in the alleged pre-emption agreement dated 05.11.1998 and in the pleadings in the plaint any reference has been made to the unregistered power of attorney deed dated 02.01.1989. Even otherwise, the said agreement, on the face of it would clearly show that it is only meant for conducting the Court proceedings alone. Thus, the order of the learned Single

Judge requires to be interfered with and consequently, the appeal will have to be allowed.

6. The learned Senior Counsel appearing for the contesting respondent / plaintiff would submit that the tenancy agreement and the construction agreement signed by the power agent on behalf of the principal are not in dispute as the power agent is nothing but the son of the principal since deceased. Clause 6 of the subsequent power deed has to be seen contextually. Therefore, inasmuch as these facts can be culled out only during the trial, no interference is required.

7. The suit has been laid based upon the pre-emption agreement dated 05.11.1998. It is the case of the plaintiff that this agreement was entered into by the agent on behalf of the principal through the power deeds. A perusal of the pre-emption agreement as well as the averments made in the plaint before us would show that there is no specific reference to the un-registered power of attorney deed dated 02.01.1989. On the contrary, in the pleadings, a reference has been made on the registered power of attorney dated 08.02.1979, which admittedly deals with the Court proceedings alone. Even this power of attorney deed was with reference to the pending partition suit at the relevant point of time.

8. Coming to the un-registered power of attorney deed dated 02.01.1989, it clearly speaks about the purpose of the aforesaid document i.e., to conduct the Court proceedings on behalf of the principal, that too with reference to C.S.No.79 of 1979. Now, the acts have been referred in the aforesaid deed in the following manner:

"1. To evict the tenants in the schedule premises and to file Fair Rent Petitions.

2. To appoint Advocates or Advocate on my behalf to conduct any court proceedings in respect of the schedule mentioned property.

3. To evict the tenants and lease the same to New tenants on my behalf.

4. To give evidence to withdraw the petitions, applications, complaints etc., and produce documents on my behalf.

5. To appear before the Courts, Revenue Boards, Tribunals, Labour Courts, file applications and conduct the same on my behalf.

6. To do all lawful acts, as my said attorney deems fit and just on my behalf.

7. I hereby agree to ratify the acts, deeds done by me lawful attorney on my behalf in the above matters by virtue of this deed of power. "

9. The learned Senior Counsel appearing for the contesting respondent / plaintiff would want us to read Clause 6 referred above, to mean that the agent is entitled to deal with the property as he deems fit. We are afraid that such an interpretation cannot be given, considering the object behind, even assuming that it is true and genuine.

10. As discussed above, the object was only to conduct the Court proceedings and that too with reference to C.S.No.79 of 1979. Therefore, a different meaning cannot be given to clause 6 alone contrary to the object mentioned therein. Once there is no power of attorney deed in the eye of law authorising the agent to enter into an agreement of preemption, which gives a cause of action to the plaintiff to file a suit, the same is not maintainable in the eye of law. Therefore, we are of the view that the learned Single Judge has committed an error, despite giving a finding with respect to the earlier power of attorney deed, by driving the parties to go to the trial. The other agreement namely a tenancy agreement and the construction agreement coupled with the relationship between the principal and the agent would not help the case of the plaintiff as we are concerned with the construction of the document. Thus, looking from any perspective, we are of the view that the suit is not maintainable based upon alleged power of attorney deed, which does not create any right or authorisation in favour of the power agent qua a pre-emption agreement. Therefore, we do not find any cause of action to maintain the suit.

11. In such view of the matter, the order of the learned Single Judge stands set aside and the Original Side Appeal stands allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

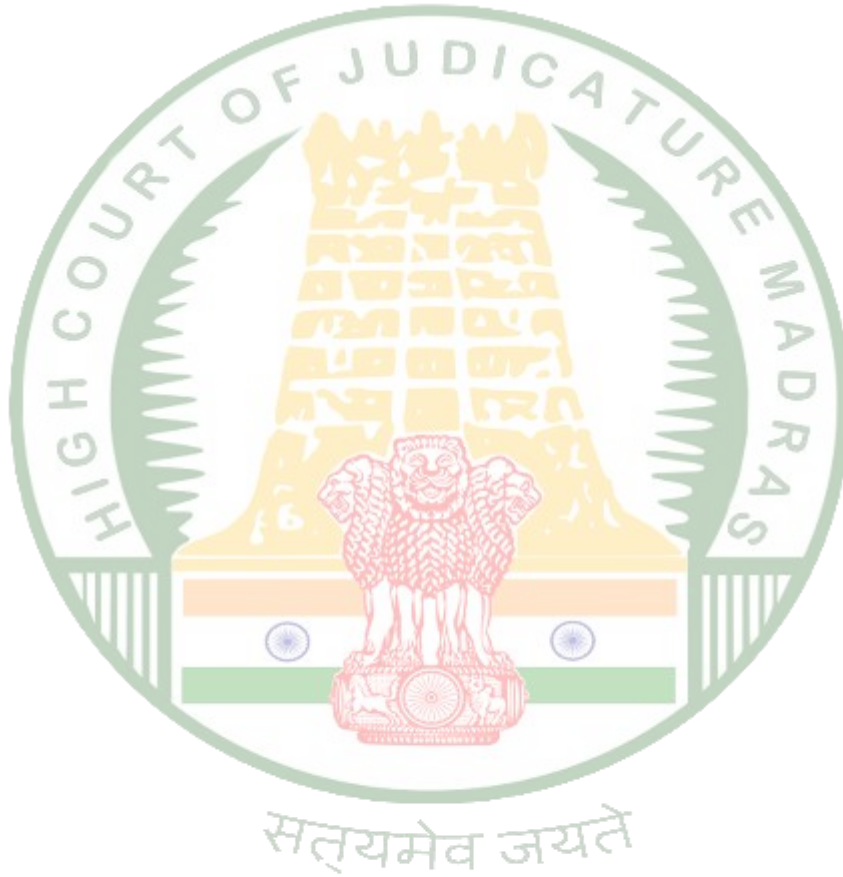
+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.47323

+1cc to Mr.Sundar Narayan, Advocate, S.R.No.46922

+1cc to Mr.M.Balasubramanian, Advocate, S.R.No.46868

OSA NO.185 OF 2018

VD (CO)
GSP (06/08/2018)



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