

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2018
PRONOUNCED ON : 11.09 .2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.348 of 2015

1. Ellammal
2. Sumathi
3. Nagarajan
4. Shanthi
5. Ravi

....Appellants/Plaintiffs

Vs.

1. Shanmugham
2. Amutha
3. Malarvizhi

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.02.2014 passed in A.S.No.16 of 2013 on the file of Subordinate court, Mettur, confirming the judgment and decree dated 11.02.2013 passed in O.S. No.108 of 2008, on the file of District Munsif Court, Mettur.

For Appellants : Mr.V.Sekar

For Respondent : Mr.R.Subramaniam
for Mr.B.Ravi

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 28.02.2014 passed in A.S.No.16 of 2013 on the file of Subordinate court, Mettur, confirming the judgment and decree dated 11.02.2013 passed in O.S. No.108 of 2008, on the file of District Munsif Court, Mettur.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the plaintiffs 2 and 4 are the daughters and Plaintiffs 3 and 5 are the sons of the first plaintiff. The suit property belongs to

the plaintiffs and in respect of the entire extent of 0.0622.0 square metres in suit survey number, based on the possession and title of the first plaintiff's husband Venkata Reddy, patta has been issued in his favour by the revenue authorities and the Plaintiffs 1,3 and 5 sold about 1747.5 square feet of the same to one Mani, wife of Thangavel by way of a registered sale deed dated 21.09.2004 and they are the absolute owners and in possession and enjoyment of the suit property described in the plaint and Venkata Reddy died intestate on 30.10.2004 leaving behind the plaintiffs as his legal heirs and thereby the plaintiffs succeeded to the suit proeprty as the legal heirs of the deceased Venkata Reddy. During his life time, Venkata Reddy and his wife Ellammal, the first plaintiff, his sons Nagarajan and Ravi, the plaintiffs 3 and 5 executed a registered power of attorney in favour of the first defendant on 04.07.2004 and later Venkata Reddy fell ill and was bed ridden and accordingly the plaintiffs 1, 3 and 5 had sold the extent of 1747.5 square feet to one Mani as above stated and from the date of the said sale, it is only Mani who is in possession and enjoyment of the said extent purchased by her. The performance of the first defendant was not satisfactory and so Venkata Reddy, his wife, the first plaintiff and his sons, the plaintiffs 3 and 5 have cancelled the registered power of attorney deed date 04.07.2004 in favour of the first defendant by way of a registered cancellation deed dated 19.10.2004 and in the meanwhile, the first defendant, in order to grab the property of the plaintiffs fraudulently, without the consent and knowledge of the plaintiffs, has falsely executed a registered sale agreement dated 04.10.2004 with his wife, the second defendant, in respect of the same and not informed about any such transaction either to Venkata Reddy or to the plaintiffs and further without any right, the first defendant had also sold about 4065 square feet in the suit survey number to the second defendant by way of a registered sale deed dated 27.10.2004 which has been effected after the cancellation of the registered power of attorney deed and the defendants have no right, title or possession of the suit property at any point of time and the abovesaid document had been created by the defendants fraudulently and without any right. The defendants had never been in the possession of the suit property and the sale deed dated 27.10.2004 was not acted upon. The defendants 1 and 2, in collusion with the third defendant, fraudulently created another sale deed dated 20.03.2008 in favour of the third defendant and further the defendants have no right over the suit property . In fact, the plaintiffs wanted to obtain loan from the bank and while so, they applied for encumbrance certificate from the Sub registrar office and on receiving the same, the plaintiffs came to know that the defendants had fraudulently created the abovesaid sale agreement and the sale deeds executed against the interest of the plaintiffs and without any right and hence according to

the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, after denying all the allegations contained in the plaint put forth the case that the patta had been granted in favour of Venkata Reddy, the first plaintiff's husband, however, denied the fact that the plaintiffs 1,3 and 5 sold an extent of 1747.5 square feet to Mani, wife of Thangavel and even if any such sale deed had been executed by them, the same could only be a sham and nominal document. The defendants had also denied that the plaintiffs are in the possession and enjoyment of the suit property. Venkata Reddy, during his lifetime along with Plaintiffs 1,3 and 5, executed a registered power of attorney in favour of the first defendant on 04.07.2004 and handed over the possession of the same to the first defendant on the same date and it is false to state that subsequently Venkata Reddy became ill and was bed ridden and in as much as Venkata Reddy had not joined the execution of the sale deed said to have been executed in favour of Mani, the same would disclose the fraud played by the plaintiffs in execution of the abovesaid sale deed. The first defendant executed a registered sale agreement dated 04.10.2004 and paid a sum of Rs.20,000/- to the first plaintiff's husband and the first plaintiff's husband received the said amount and permitted the first defendant to sell the suit property as his power agent. On 27.10.2004, the first defendant sold the suit property to his wife and paid a sum of Rs.20,000/- to the first plaintiff's husband and in toto the first defendant had paid a sum of Rs.40,000/- to the first plaintiff's husband and following the sale deed dated 27.10.2004, the second defendant had been enjoying the suit property as the absolute owner thereof by obtaining patta and it is false to state that the plaintiffs along with Venkata Reddy cancelled the power of attorney on 19.10.2004. The plaintiffs did not issue any notice either to the first defendant or to the other defendants as regards the abovesaid cancellation and only to get monetary benefits, the plaintiffs had created the abovesaid document without any right and after verification, the third defendant had purchased the suit property from the second defendant on 20.03.2008 for a sum of Rs.1,01,700/- and enjoying the suit property by obtaining patta and other documents from the revenue department and it is only the third defendant who is now in possession and enjoyment of the suit property and the plaintiffs knew about the same and the plaintiffs are not entitled to obtain the reliefs sought for as there is no cause of action for the suit and the suit is therefore liable to be dismissed.

6. In support of the Plaintiffs' case, PWs1 to 4 were examined and Exs.A1 to A7 were marked. On the side of the defendants Dws1 to 3 were examined and EXs.B1 and EX.B8 were

marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to dismiss the plaintiffs' suit. Agrrieved over the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- a) When the plaintiffs have proved that the evidence of PW4 is clear and unambiguous to the factum of passing on information about the cancellation of power, are the courts below correct in law in holding that non-examination of 1st plaintiff amounts to a deliberate avoidance of giving evidence to corroborate PW4 and are the courts below correct in drawing adverse inference as against the plaintiffs failing to examine the material witness on their part?
- b) When the power deed Ex.A3 is not coupled with interest, are courts below correct in holding that the notice of cancellation of power is mandatory, more particularly, when the plaintiffs have informed the defendants in persons that the power was cancelled under Ex.A5.

9. It is not in dispute that the deceased Venkata Reddy, the first plaintiff and the Plaintiffs 3 and 5 had executed a registered power of attorney deed dated 07.07.2004 in favour of the first defendant empowering him to alienate the suit property and the said power of attorney deed has been marked as Ex.B1 and the registration copy of the same has been marked as Ex.A3. On a perusal of Ex.B1/A3 power of attorney deed, it is evident that the first defendant had been authorised to sell the suit property as the power agent of the abovesaid plaintiffs and Venkata Reddy. The materials placed on record would go to show that following Ex.B1/A3 power of attorney deed, the first defendant had entered into a sale agreement with the second defendant, his wife in respect of the sale of the suit property and the sale agreement abovesated has been marked as Ex.B2 and the registrtrion copy of the same has been marked as Ex.A4. Now, it is the case of the plaintiffs, as avered in the plaint, in as much as the performance of the first defendant was found to be unsatisfactory and he had been found to be acting against the interest of the plaintiffs in dealing with the suit property, according to them, Ex.B1/A3 power of attorney deed executed in

favour of the first defendant had been cancelled by Venkata Reddy and the plaintiffs 1,3 and 5 by a deed of cancellation dated 19.10.2004 and the abovesaid cancellation deed has come to be marked as Ex.A5. According to the plaintiffs as averred in the plaint, the first defendant had sold the suit property in favour of the second defendant, his wife, by way of a registered sale deed dated 27.10.2004 and according to them, the abovesaid sale deed had come to be executed by the first defendant in favour of the second defendant much after the cancellation of the power deed under Ex.A5 and therefore, the abovesaid sale deed is not valid and by way of the same, the defendants cannot lay any claim of right in respect of the suit property. The sale deed dated 27.10.2004 has come to be marked as Ex.B3. It is also the further case of the plaintiffs that the first defendant with a view to grab the suit property fraudulently, without the consent and knowledge of the plaintiffs, has executed the registered sale agreement on 04.10.2004 in favour of the second defendant and the abovesaid sale agreement has come to be marked as Ex.B2 and the registration copy of the same has come to be marked as Ex.A4. It is also averred in the plaint that the defendants 1 and 2, in collusion with the third defendant, had created the sale deed in favour of the third defendant dated 20.03.2008 and according to the plaintiffs, by way of the abovesaid sale deed, the third defendant cannot lay any claim of right in respect of the suit property. The abovesaid sale deed has been marked as Ex.B5.

10. It is the specific case of the defendants that the plaintiffs had not issued any notice either to the first defendant or to the other defendants as regards the cancellation of the power of attorney deed. Therefore, as rightly found by the courts below, when it is seen that the plaintiffs had appointed the first defendant as the power agent with reference to the sale of the suit property and when the plaintiffs and Venkata Reddy deemed it necessary to cancel the said power of attorney deed for one reason or the other, though in law, they would be entitled to cancel the power of attorney deed, however, as rightly put forth, the plaintiffs should have put the first defendant on notice about the cancellation of the power of attorney deed in the manner known to law, accordingly, it is seen that as per Section 208 of the Contract Act, without notice to the power agent, the termination of the authority of his agent would not take effect and this could be seen from the position of law as outlined in Section 208 of the contract Act 1872 which reads as follows:-

208. When termination of agent's authority takes effect as to agent, and as to third persons. - the termination of the authority of an agent does not, so far as regards the agent, take

effect before it becomes known to him, so far as regards third persons, before it becomes known to them.

11. On a reading of the plaint, it does not state clearly as to whether the plaintiffs had brought the cancellation of the power of attorney deed to the notice of the first defendant or the other defendants, as the case may be. In this connection, though the plaintiffs would claim that as the performance of the first defendant was not satisfactory, they had cancelled the power of attorney deed executed in his favour, in what manner the performance of the first defendant was not satisfactory has not been detailed in the plaint. Similarly, though the plaintiffs, would in a vague manner aver and allege that fraud and foul play had been engineered by the first defendant in collusion with the defendants 2 and 3 in bringing about the sale agreement and the sale deeds in favour of the defendants 2 and 3, in what manner the abovesaid transactions are vitiated on the ground of fraud, foul play etc., had not been clearly explained in detail in the plaint. In this connection, as rightly put forth by the defendants' counsel, when the plaintiffs base their pleas based upon the mis-representation, fraud, breach of trust, willful default or undue influence and any other similar cases as adumbrated under Order VI Rule 4 of CPC, the plaintiffs should aver clearly, particularly, with reference to the same by giving dates and items, if necessary, so as to bring home the nature of the fraud and foul play alleged to have been committed by the defendants. However, insofar as this case is concerned, as rightly put forth by the defendants, other than stating that the first defendant's performance was not satisfactory and the defendants had created the sale agreement and sale deeds as abovestated in collusion, in what manner the acts of the first defendant had become tainted with fraud, foul play, etc., in what manner the abovesaid transactions had come to be tainted with the abovesaid factors and when with reference to the same, the plaint pleas are completely absent other than vague pleas, as rightly argued, the plaint cannot said to be in consonance with the principles of law as outlined under Order VI Rule 4 of the CPC. In this connection, the defendants' counsel placed reliance upon the decisions reported in (1976) 2 Supreme Court Cases 142 (Afsar Sheikh and another Vs. Soleman Bibi and others) and (1980) 2MLJ 398 (K.M.Madhavakrishnan Vs. S.R.Sami and Ors.)

12. Taking into consideration the principles of law outlined in the abovesaid decisions, as rightly put forth by the defendants' counsel, in cases of fraud, undue influence, coercion, etc., the parties pleading must set forth the full particulars and only then the case could be determined on the particulars as laid down by the said parties. Equally, as

regards the abovesaid factors, there could be no departure from them in evidence also and accordingly in such view of the matter, bare and general allegations are insufficient to deduce the fraud, undue influence, coercion, etc., and accordingly it is found that the plaint is completely and conspicuously absent as regards the particulars of fraud and foul play sought to be projected by the plaintiffs as against the first defendant and the other defendants.

13. Now coming to the cancellation deed marked as Ex.A5, on a perusal of the same, there is nothing averred in the said document that the first defendant had been acting against the interest of Venkata Reddy and the plaintiffs in respect of the suit property and he had been acting to defeat their interest by indulging in fraudulent acts or foul play, as the case may be, and accordingly his performance being unsatisfactory, they are cancelling the power of attorney deed executed in his favour. On the other hand, all that Ex.A5 would aver or recite is that, as per the wish of the executants, they had chosen to cancel the power of attorney deed executed in favour of the first defendant. Therefore, there is no averment contained in Ex.A5 that the first defendant's performance was unsatisfactory or he acted in a fraudulent manner or indulged in a foul play and thereby worked against the interest of Venkata Reddy and the plaintiffs and therefore they are cancelling the power of attorney deed executed in his favour. It is thus found that as rightly argued by the defendants' counsel, when Ex.A5 cancellation deed does not contain any allegation made against the first defendant, in such view of the matter, to say that the plaintiffs and Venkata Reddy had chosen to cancel the power of attorney deed executed in favour of the first defendant on account of his performance being unsatisfactory or that he had indulged in the fraudulent acts or foul play, etc., cannot at all be countenanced.

14. Be that as it may, as above noted, though Venkata Reddy and the plaintiffs would be entitled to cancel the power of attorney deed executed in favour of the plaintiffs, once they deemed it necessary to cancel the power of attorney deed as per law, they should put the first defendant on notice about the same or the other defendants as the case may be. Now, it has to be seen whether Ex.A5 cancellation deed had been brought to the notice of the first defendant. There is no clear averment in the plaint that the cancellation deed had been put on notice to the first defendant. In this connection, the plaint averment also does not contain any plea that the first defendant was orally communicated about the cancellation deed Ex.A5. Though it is argued on the part of the plaintiffs that as the relationship between the parties at the point of time was very cordial and smooth, they had orally informed about the

cancellation deed to the first defendant. However, when the abovesaid factum is disputed by the defendants as such, it is seen that it is for the plaintiffs to establish that they had put the first defendant on notice about the cancellation deed marked as Ex.A5. In this connection, the fourth plaintiff has been examined as PW1 and during the course of cross examination, PW1 would depose that at the time of execution of the cancellation deed, his father Venkata Reddy was bed ridden and according to him, the registrar was brought to the residence for obtaining the signature of Venkata Reddy and further according to him, Ex.A5 had been registered at the registration office. He would also depose that the first defendant was not communicated through documents about the cancellation deed, however, would still state that the first defendant had been apprised. Thus it is found from the evidence of PW1 that no notice had been sent to the first defendant as regards the cancellation of the power of attorney deed. Though PW1 would claim that the first defendant had been apprised, however, when there is no material with reference to the same, it is seen that, as such, the cancellation deed had not been brought to the notice of the first defendant. Accordingly, it is seen that, as rightly put forth by the defendants' counsel, PW1's evidence would not be of any use to sustain the plaintiffs' case that notice is attributed or sent to the first defendant as regards the cancellation of the power of attorney deed. Similarly, PW4, who is stated to be the attestor of the cancellation deed at the time of registration, has also not deposed clearly anything about the same having been brought to the notice of the first defendant in the manner known to law. He would only state that the first plaintiff Ellammal was directed by Venkata Reddy to apprise about the same to the first defendant and he was present once at that point of time. As to when the same occurred, there is no clear evidence on his part. Further Ellammal was not examined by the plaintiffs to sustain their case. As to why she has not been examined, there is no proper explanation. Therefore, it is seen that, absolutely, there is no evidence, no proof, whatsoever, on the part of the plaintiffs that Ex.A5 cancellation deed had been brought to the notice of the first defendant or the other defendants as the case may be. In such view of the matter, in the light of the decision reported in 2017 (5) CTC 369 (B.R.Srinivasa Rao and another Vs. Dr.B.R.Shankar and others), when it is seen that the first defendant had been duly authorised to sell the suit property under the power of attorney deed with full authority to sell the suit property and the plaintiffs have miserably failed to establish that the first defendant had acted against their interest or the interest of Venkata Reddy and accordingly they had chosen to cancel the power of attorney deed and when further it is found that Ex.A5 cancellation deed had not been brought to the notice of the first defendant in the manner known to law and

in fact, no notice had been served on the first defendant as regards the same and also not communicated orally qua the same, it is seen that as put forth by the defendants' counsel, the plaintiffs without any basis or evidence, has come forward with the case as if the first defendant had acted in a fraudulent manner and indulged in foul play in bringing about the sale agreement and the sale deeds in favour of the defendants 2 and 3.

15. The plaintiffs would claim that the first defendant had executed the sale agreement on 04.10.2004 in favour of the second defendant without the consent and knowledge of the plaintiffs, however, it is seen that the abovesaid sale agreement had been executed by the first defendant during the life time of Venkata Reddy and further according to the defendants, following the abovesaid sale agreement, the first defendant had paid Rs.20,000/- to Venkata Reddy and it is also the case of the defendants that following the sale deed dated 27.10.2004 in favour of the second defendant, the first defendant further paid a sum of Rs.20,000/- to Venkata Reddy. As regards the abovesaid case of the defendants, the plaintiffs had not repudiated the same as such by filing a reply statement. Be that as it may, the plaintiffs had also not avered anything about the failure of the first defendant in paying the amount received by him by way of the abovesaid transaction in favour of the second defendant. Though the plaintiffs would claim that the sale deed dated 27.10.2004 had come to be executed after the cancellation of power of attorney deed Ex.A5, however, when the fact remains that the cancellation deed Ex.A5 had not been brought to the knowledge of the first defendant or the other defendants as the case may be, and when only after the same had been brought to the knowledge of the first defendant or the other defendants as the case may be, the same would come into effect as adumbrated under Section 208 of the Contract Act 1872, it is seen that the contention of the plaintiffs that the sale deed executed by the first defendant in favour of the second defendant and following the same, the sale deed executed by the second defendant in favour of the third defendant on 20.03.2008 are all false and illegal documents, as such, cannot be countenanced, when they are found to have been emanated following the execution of the power of attorney deed in favour of the first defendant. As rightly argued, when the plaintiffs have failed to establish that the cancellation of the power of attorney deed had been brought to the knowledge of the first defendant, it is seen that in the absence of the proof of communication of the cancellation deed to the first defendant or the other defendants as the case may be, they are not bound by it and accordingly it is seen that when in the meanwhile, the first defendant is found to have acted in furtherance of the

power of attorney deed executed in his favour and thereby had executed the sale agreement and the sale deed in favour of the second defendant and following the same the second defendant had executed the sale deed in favour of the third defendant in respect of the suit property, the suit laid by the plaintiffs thereafter challenging the abovesaid sale transactions would be of no avail to the plaintiffs and this position of law could be gathered from the principles of law outlined in the decision reported in 2002 (2) CTC 462 (S.V.Doraisamy Vs. T.Dayalan and 8 others) whereunder, it has been held that the termination of agency would take effect only when such termination is brought to the agent's knowledge and accordingly sans notice of the same, the termination or cancellation would not take effect and the position of law with reference to the same has been outlined in the above decision as follows:

Contract Act, 1872, Section 202 - Agency coupled with interest - What is - Plaintiff put in possession of suit property pursuant to agreement of sale by defendants - Defendants executed power of attorney authorising plaintiff to prepare plans for layout, get approval of layout, mortgage property for raising money for developing property - power of attorney authorised plaintiff to incur such expenditure - power of attorney is not simple authorisation to carry out work on payment of any remuneration or commission - Agency is one coupled with interest and cannot simply be terminated.

Contract Act, 1872, Section 208 - Termination of agency will take effect so far as agent is concerned only when such termination is brought to his knowledge - Defendant having executed power of attorney revoked same by means of registered cancellation deeds - Defendants failed to produce any document to substantiate communication of revocation of agency to plaintiff - Such communication found to have been sent only after institution of suit - Termination of agency will not take effect.

20. Even assuming that the agency was revocable, it is very strange that the defendants should plead that the revocation was informed to the plaintiff orally. To prove the same, none of the plaintiffs had deposed any oral evidence. It is hard to believe that the defendants who have taken pains to register a series of documents cancelling the power of attorney had not even bothered to send a letter to the agent. A perusal of the cancellation deed shows that the only reason given for cancellation is as

follows:

"மேற்படி பத்திரத்தில் கண்ட டிரக்டுக்கள் படி திரு.எஸ்.துரைசாமி அவர்கள் எந்தவிதமான ஏற்பாடுகளும் செய்யாத காரணத்தினாலும், மேலும் மேற்படி சொத்தை நான் வேறுவிதமான ஏற்பாடு செய்ய வேண்டியுள்ளதாலும், இந்த ரத்து பத்திரத்தின் மூலம் மேற்படி பொது அதிகாரப் பத்திரத்தை ரத்து செய்கிறேன்."

21. After having found fault with him, it is strange that the defendants did not take sufficient care to send even a letter if not a legal notice. In fact, the reason given in the cancellation deed is contradictory to the facts stated in paragraph 6 of the counter. The fact that the layout was complied with is admitted in the counter and all that the respondents would say is that the expenses were borne by the respondents. It is in this context, the fact whether there was a proper and binding cancellation of the power of attorney assumes significance. Section 208 of the Contract Act specifically requires that the termination of the agency will not take effect so far as the agent is concerned unless it comes to his knowledge. Therefore, in the absence of proof of communication of the cancellation, the plaintiff is not bound by it. Any reliance on any communication after the institution of the suit would be of no value.

22. Therefore, I am inclined to hold that there are prima facie materials to show that the agency in favour of the plaintiff is one coupled with interest. Even otherwise, there being no materials to show that the cancellation was made known to the plaintiff before the institution of the suit, the plaintiff has sufficient cause of action to proceed against the defendants to prevent them from interfering with his rights. Hence, I am inclined to hold that the plaintiff had made out a prima facie case even ignoring the sale agreement and receipt relied upon by him.

16. The counsel for the plaintiffs contended that there is no clear cut evidence adduced on the part of the defendants with reference to the passing of sale consideration under the sale agreement and the sale deeds involved in the matter and accordingly it is urged by him that in as much as the abovesaid sale transactions had been brought about by the defendants in a fraudulent manner, there are contradictions on their side with reference to the same and accordingly on the basis of the same,

the courts below should have inferred that the defendants had acted fraudulently or committed foul play against the interest of the plaintiffs and therefore their defence should have been rejected. Countering the abovesaid contention put forth by the plaintiffs' counsel, it is argued by the defendants' counsel that even assuming for the sake of arguments, there are contradictions in the case of the defendants with reference to passing of the sale consideration under the abovesaid sale transactions, according to him, when the payment of sale consideration is not the sine qua non for the completion of the sale contemplated under Section 54 of the Transfer of Property Act, and the non payment of price would also not prevent the passing of title as such, according to him the abovesaid defect in the defence version cannot be taken advantage by the plaintiffs to sustain their reliefs. In this regard, the defendants' counsel placed reliance upon the decision reported in 2002-1-Law Weekly page 425 (Annamalai Mudaliar and 2 others Vs. Krishnaveni Ammal and 5 others). The principles of law outlined in the abovesaid decision is taken into consideration and followed as applicable to the case at the hand.

17. No doubt, there are some contradictions regarding the passing of consideration between the defendants under the sale agreement and the sale deeds involved in the matter, however, that would not in any manner militate against the defence version insofar as the validity of the abovesaid sale transactions in the light of the decision reported in 2002-1-Law Weekly page 425 (Annamalai Mudaliar and 2 others Vs. Krishnaveni Ammal and 5 others). Further, by way of the same, it cannot be inferred that the first defendant, as the power of attorney agent, had not parted with the sale price of the suit property to Ventaka Reddy or the plaintiffs as the case may be. Even assuming for the sake of arguments, when it is found that Venkata Reddy and the plaintiffs 1,3 and 5 had executed the power of attorney deed in favour of the first defendant giving him the full authority to convey the suit property to the third parties and following the same, the first defendant had effected the alienation in favour of the second defendant and thereafter the second defendant had executed the sale deed in favour of the third defendant, it is found that when the first defendant is found to have executed the abovesaid sale transactions on the strength of the power of attorney deed executed in his favour and the plaintiffs have miserably failed to establish that the cancellation deed had been brought to the knowledge of the first defendant or the other defendants as the case may be, it is found that the plaintiffs would not be entitled to seek the declarations as regards the abovesaid sale transactions and accordingly as rightly put forth, the only remedy if at all, in the event of the first defendant not settling the accounts property in favour of the plaintiffs as the case may be, the

said issue, being the matter between the principal and the agent, it is for the plaintiffs to work out their remedy by taking necessary and appropriate legal action against the first defendant and thus being the position, without any basis or material, we cannot hold that the sale transactions effected by the first defendant in favour of the defendants 2 and 3 are null and void. This position of law would also gather from the decision reported in 2017 (5) CTC 369 (B.R.Srinivasa Rao and another Vs. Dr.B.R.Shankar and others).

18. The plaintiffs' counsel would contend that the courts below had failed to take into consideration the sale deed executed by the plaintiffs 1,3 and 5 in favour of Mani on 21.09.2004 in respect of the portion of their property. Materials placed on record go to show that Venkata Reddy died only on 30.10.2004. In such view of the matter, it is seen that the sale deed executed on 21.09.2004 had not been brought about or executed by all the owners of the property. No reason has been offered by the plaintiffs as to why Venkata Reddy had not joined the execution of the sale deed on 21.09.2004. The daughters of Venkata Reddy had also not joined in the execution of the abovesaid sale deed. Furthermore, there is no material placed by the plaintiffs to hold safely that following the abovesaid sale deed, Mani had been put in the possession and enjoyment of the portion conveyed to her. With reference to the same there is no acceptable or reliable material projected by the plaintiffs. Equally the case of the plaintiffs that they are in the possession and enjoyment of the remaining portion of their property has not buttressed by acceptable or reliable material. The plaintiffs have miserably failed to establish that the suit property continues to be in their possession and enjoyment despite the execution of the power of attorney deed in favour of the first defendant. On the other hand, as could be seen from the materials placed on the side of the defendants, it is found that the suit property is only in the possession of the defendants and such being the position, the case of the plaintiffs that they continue to retain the possession of the suit property despite the execution of the power of attorney deed in favour of the first defendant sans material pointinf to the same, cannot be accepted in any manner.

19. The counsel for the plaintiffs, in support of his contentions placed reliance upon the decisions reported in (1994) 1 SCC (S.P.Chengalvaraya Naidu (dead) by Lrs Vs. Jagannath (dead) by Lrs. And others) and (2011) 6 MLJ 264 (Elof Hansson (I) Pvt. Ltd. Vs. Prithivi Softech Ltd and 8 another). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

20. In the light of the above discussions, when the plaintiffs have miserably failed to establish the factum of the passing of information about the cancellation of the power of attorney deed to the first defendant or the other defendants as the case may be, by adducing acceptable and reliable evidence and when the evidence of PW4 is not clear and pointing to the same and when the plaintiffs have miserably failed to examine the first defendant with reference to the same, it is seen that the courts below are justified in holding that the plaintiffs have failed to establish that the first defendant had been put on notice about the cancellation of the power of attorney deed and also entitled to draw adverse inference against the plaintiffs on the footing that the plaintiffs had failed to examine the material witness with reference to the same and there is no reason warranting any interference with reference to the same. When as per the terms of power of attorney deed, it is evident and clearly made out that the first defendant had been given the full authority to alienate the suit property, it is seen that the courts below are justified in holding that the plaintiffs without putting the first defendant on notice about the cancellation of the power of attorney deed, cannot be allowed to sustain the reliefs sought for. Thus, it is found that the notice of cancellation of power of attorney deed is mandatory as above discussed and in the absence of notice of the same to the first defendant or the other defendants, as the case may be, the cancellation deed would not have any force or take effect and accordingly, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiffs and in favour of the defendant.

21. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

bga

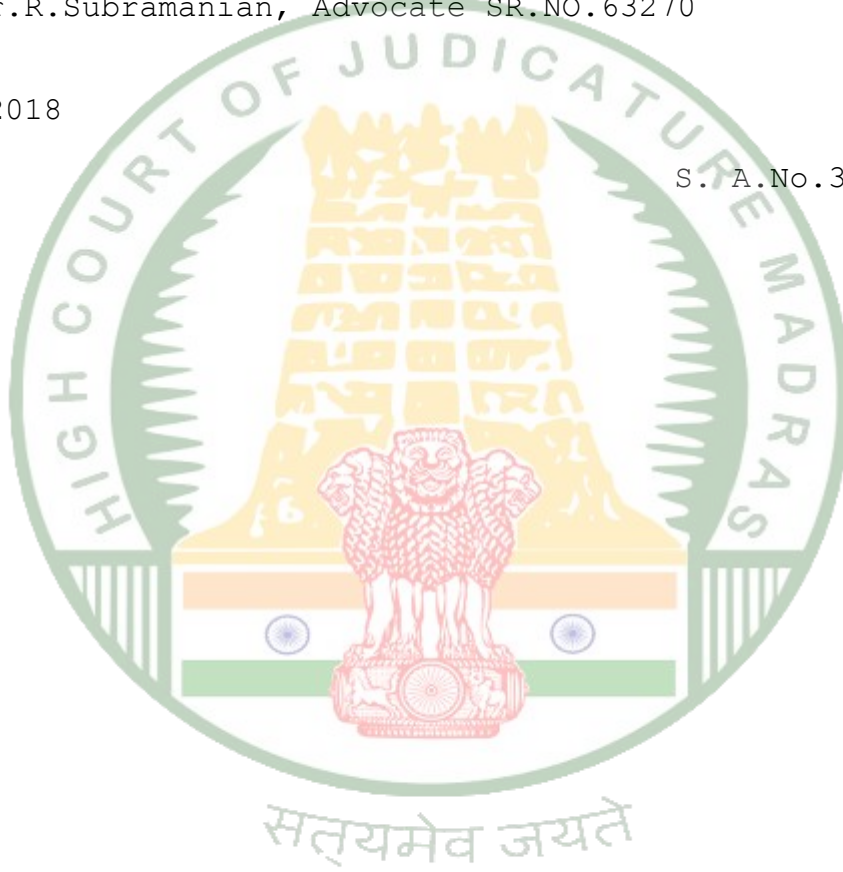
To

1. The Subordinate Judge, Mettur
2. The District Munsif, Mettur
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Sekar, Advocate SR.NO.63540
+1cc to Mr.R.Subramanian, Advocate SR.NO.63270

SAI(CO)
sm:16.10.2018

S.A.No.348 of 2015



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