

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.16998 of 2018 and
W.M.P.Nos.20247 & 20248 of 2018

Indrani Kailash

.. Petitioner

Vs.

1.The Debt Recovery Appellate Tribunal
rep by its Registrar
55, Wellington Estate, IV Floor,
Ethiraj Salai, Chennai - 600 105.

2.The Debts Recovery Tribunal - II
rep by its Registrar,
Deva Towers, IV Floor,
No.770-A, Anna Salai,
Chennai - 600 002.

3.Tamilnad Mercantile Bank Limited,
Pondy Bazaar Branch,
No.31, Theagarayar Road,
Chennai - 600 017.

4.M/s.Moolchand Exports Ltd.,
rep by Official Liquidator,
High Court, Chennai.

5.Moolchand Kothari
B.K.Kothari (Deceased)

6.Santhosh Kumar Kothari

7.Pradeep Kothari

8.Jayaprakash Kothari

9.Omprakash Kothari

10.Kasturibai

11.Shakuntala

12.M/s.Reeta Bottling Company
Suvarna Dharshan,
D.No.47, II Main Road,
Kottur Village,
Gandhi Nagar, Chennai - 600 020.

13.P.S.Kannan
14.Alagia Nambi
15.Mohan
16.A.D.Ravirajan
17.A.T.Sudharshan
18.Yousuf
19.B.K.Metal Products,
55, Godown Street,
Chennai - 600 001.
20.Kasthuri Devi Kothari
21.Rajkumar Bisani
22.Saroj Kumar Rathi

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records pertaining to order dated 16.05.2018 made in R.A.No.49 of 2018 by the Debt Recovery Appellate Tribunal, Chennai, the 1st respondent herein partially modifying the order dated 30.10.2009 made in O.A.No109 of 2007 (Old O.A.No.250 of 1997 on the file of the Debts Recovery Tribunal - I, Chennai) on the file of the Debts Recovery Tribunal - II, Chennai, the 2nd respondent herein and quash the same in so far as the liability of the petitioner and the alleged mortgage on her flat bearing No.A in the Ground Floor, Suvarna Darshan, D.No.47/1, II Main Road, Kottur Village, Gandhi Nagar, Chennai - 600 020 is concerned.

For Petitioner : Mr.A.V.Arun

For Respondents: R1 & R2 - Tribunal
Mr.V.Chandrasekaran (R3)
R4 - no appearance
R5 to R10 - Not ready in notice
R11 to R22 - given up

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records pertaining to order dated 16.05.2018 made in R.A.No.49 of 2018 by the Debt Recovery Appellate Tribunal, Chennai, the 1st respondent herein partially modifying the order dated 30.10.2009 made in O.A.No109 of 2007 (Old O.A.No.250 of 1997 on the file of the Debts Recovery Tribunal - I, Chennai) on the file of the Debts Recovery Tribunal - II, Chennai, the 2nd respondent herein and quash the same in so far as the liability of the petitioner and the alleged mortgage on her flat is concerned.

2.The 3rd respondent - Bank filed O.A.No.250 of 1997 for recovery of a sum of Rs.5,16,16,945/- together with interest and for other reliefs. The O.A., was filed on 25.03.1997. The said O.A. was subsequently transferred and to the file of Debts Recovery Tribunal - II, Chennai and re-numbered as O.A.No.109 of 2007. The Debts Recovery Tribunal, by order dated 30.10.2009, allowed the O.A. as prayed for.

3.It is the case of the petitioner that she purchased a Flat bearing No.A in the Ground Floor, Suvarna Darshan, D.No.47/1, II Main Road, Kottur Village, Gandhi Nagar, Chennai - 600 020 from the 8th defendant in O.A.No.109 of 2007 viz., Kasturi Bai, represented by her Power of Attorney Holder R.Murali, by a Sale Deed dated 24.11.1995. The petitioner was the 9th defendant in O.A.No.109 of 2007.

4.It is not in dispute that the 3rd respondent - Bank sanctioned various Working Capital Credit Facilities on 25.09.1994 and the 4th respondent, the borrower executed a demand promissory note on 06.05.1994. Admittedly, the petitioner viz., Indrani Kailash purchased the property under a registered Sale Deed dated 24.11.1995 (i.e.) after the mortgage and pro-note executed by the 4th respondent viz., M/s.Moolchand Exports Limited on 25.09.1994 and 06.05.1994 respectively. Therefore, it is clear that the petitioner has purchased the property only after the mortgage executed in favour of the 3rd respondent - Bank.

5.It is the case of the petitioner that she along with her husband Dr.Madhava Krishnan entered into Sale Agreement dated 19.03.1993 with M/s.Shri Sai Estates for the purchase of the Flat. The Partnership Firm was represented by the Managing Partner Visuwanath Sunku. Subsequently, the said Kasturi Bai executed a Power of Attorney in favour of one R.Murali to perform acts, deeds and things representing M/s.Shri Sai Estates.

6.The learned counsel appearing for the petitioner submitted that the Power of Attorney Deed executed by Kasturi Bai is only a Specific Power of Attorney meant for the acts, deeds and things representing M/s.Shri Sai Estates, a Partnership Firm.

7.On a perusal of the Power of Attorney Deed dated 25.02.1994, it could be seen that though Kasturi Bai has stated that R.Murali has been appointed as her Power of Attorney to perform the acts, deeds and things representing M/s.Shri Sai Estates, the partners of the Firm have not been arrayed as parties in the Deed. The said Kasturi Bai cannot appoint a Power of Attorney on behalf of M/s.Shri Sai Estates, if at all, she

can only appoint a Power of Attorney on her behalf. That apart, in Clause - 1 of the Power of Attorney Deed, she has given power to the Power Agent to deal with the property in any manner such as sale, mortgage and creation of charges over the said property. Further, she has also given power to the Power Agent to negotiate all terms for and to agree to and enter into and conclude any agreement for sale in respect of the property.

8. On a reading of the recitals found in the Power of Attorney Deed, it is clear that the said document cannot be termed as Specific Power of Attorney and it can be termed only as General Power of Attorney executed by Kasturi Bai. This finding is also supported by the recitals found in the Sale Deed dated 24.11.1995 executed by Kasturi Bai represented by her Power Agent R.Murali, in favour of the Writ Petitioner.

9. On a perusal of the Sale Deed dated 24.11.1995, it is clear that she has stated that she is represented by her duly constituted Power of Attorney Mr.R.Murali, which Deed of Power was registered as Document No.435/4 of 1994 on 13.04.1994 in the Office of the Sub Registrar, Adyar. The said Kasturi Bai has not mentioned a single word about M/s.Shri Sai Estates in the Sale Deed dated 24.11.1995. The petitioner has purchased the property only through the Power Agent of Kasturi Bai and got the Sale Deed executed and registered by the said Power Agent.

10. The learned counsel for the petitioner also submitted that Kasturi Bai has not taken any steps to revoke the Power of Attorney executed in favour of R.Murali or has taken any action against her Power Agent for fraudulently executing the mortgage in favour of the 3rd respondent - Bank.

11. The contention of the petitioner was that though Kasturi Bai has given a Specific Power of Attorney to deal with the property pertaining to M/s.Shri Sai Estates, the Power of Attorney had executed Mortgage Deed against the recitals found in the Power of Attorney Deed. This contention cannot be accepted for the reason that even in the letter written by the Power of Attorney to the Bank, he has mentioned his name as Power Agent of Kasturi Bai. That apart, though the Power of Attorney Deed was executed as early as in the year 1994, the vendor of the petitioner viz., Kasturi Bai has not taken any steps to revoke the Power of Attorney. If the mortgage was created fraudulently by the Power of Attorney, the petitioner's vendor should have taken criminal action against him for fraudulently mortgaging the property with the 3rd respondent -

Bank. The petitioner also purchased the property in the year 1995 and has not taken any action against her vendor for fraudulently selling the property to her inspite of the mortgage executed by her Power Agent. The principle of Caveat Emptor shall apply to the case of the petitioner.

12.The learned counsel, in support of his contention, relied upon a judgment reported in A.I.R. 1933 Privy Council 78 [O.A.P.R.M.A.R. Adaikappa Chettiar Vs. Thomas Cook & Son (Bankers) Ltd.] wherein the Privy Council held that the general words used in the subsequent Clauses of a Power of Attorney must be read with the special powers given in the earlier Clauses and cannot be construed so as to enlarge the restricted powers there mentioned.

13.In the case on hand, the recitals in the Power of Attorney clearly establishes that it is a General Power of Attorney and the same was also acted upon by the Principal as well as the Power Agent by executing a Sale Deed in favour of the petitioner.

14.In these circumstances, the judgment relied upon by the learned counsel for the petitioner is not applicable.

15.Though the Debts Recovery Tribunal had allowed the O.A. in toto, the Debt Recovery Appellate Tribunal has modified the same by restricting the liability of the petitioner to the sum realized out of the sale of her property.

16.For the reasons stated above, we do not find any ground to interfere with the order passed by the Debt Recovery Appellate Tribunal. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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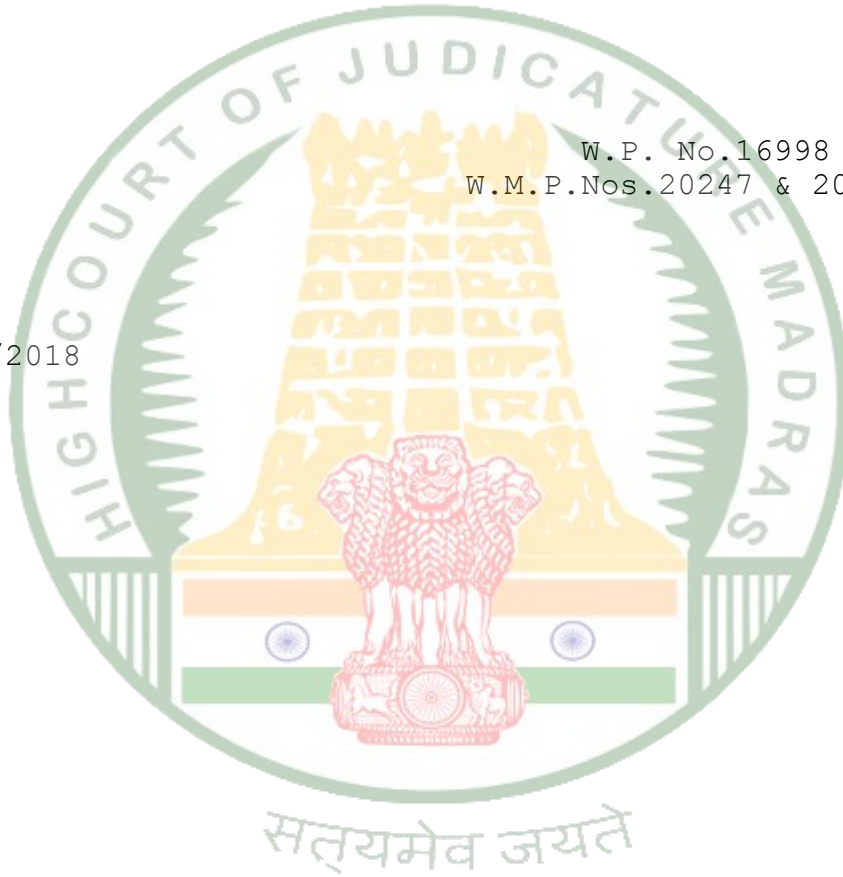
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+lcc to Mr.A.V.Arun, Advocate Sr.79492
+lcc to Mr.V.Chandrasekaran, Advocate Sr.79691

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