



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.03.2018

Delivered on: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A.(MD)No.477 of 2017

and

C.M.P.(MD)No.10093 and 11353 of 2017

Mokkamaaya Thevar

... Appellant / Appellant / Defendant

-Vs-

Rajamani Pillai(died)

1.R.Rajendran

2.R.Selvam

3.R.Seethiammal(died)

4.Rathinam

... Respondents / Respondents / Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 24.08.2017 made in A.S.No.64 of 1996 on the file of the Sub Court, Periyakulam, confirming the judgment and decree dated 16.04.1996 made in O.S.No.361 of 1991 on the file of the District Munsif Court, Periyakulam.

For Appellant : Mr.A.Arumugam

for M/s.Ajmal Associates

For Respondents : Mr.R.Balakrishnan

JUDGMENT

The defendant in the suit in O.S.No.361 of 1991 on the file of the District Munsif Court, Periyakulam is the appellant in this appeal.

2.The respondents 1 to 4 in this appeal as plaintiffs filed the suit in O.S.No.361 of 1991 before the District Munsif Court, Periyakulam, for a declaration that the suit property belongs to the plaintiffs and for the consequential relief to direct the defendant to deliver possession of the suit property to the plaintiffs.

3.The original plaintiff died during the pendency of the suit and respondents were impleaded as the legal heirs of the plaintiff. The case of the plaintiffs in the plaint are as follows:

3.1.The suit property belonged to the mother of the first plaintiff, who was the sole plaintiff, when the suit was filed. The first plaintiff's mother out of love and affection, executed a gift



deed in favour of the first plaintiff on 07.07.1975 under a registered document. The gift deed was irrevocable and that the first plaintiff took possession of the property. Patta was also changed in the name of first plaintiff. Since the first plaintiff was a public servant, he stayed away from the suit property and it was under the care of the first plaintiff's brother, one Ponnaiah Pillai.

3.2.The first plaintiff's father, by name, Parasuram Pillai, along with his other legal heirs, except first plaintiff, executed a mortgage. Since dispute arose between them in respect of the said transaction, the defendant refused for redemption. The defendant after getting a sale deed from the legal heirs of the said Parasuram Pillai, trespassed into the suit property in October-1988. The first plaintiff was always in possession and possession was never handed over to the defendant, as alleged by him. In response to the notice issued by the plaintiff, the defendant came forward with a false reply with untenable allegations and set up fraudulent document. It is the further case of the plaintiff that the defendant has no right in the suit property and that he was never in enjoyment of the same till he trespassed illegally. Since he has set up some fraudulent documents, the suit for declaration of title and for consequential relief of recovery of possession was necessitated by the plaintiff.

4.The suit was contested by the defendant on various grounds. It is pertinent to mention that the fact that the suit property belonged to first plaintiff's mother Nayagathammal is admitted. It is stated that the said Nayagathammal had five sons and three daughters. It is also stated that the one of the five sons of Nayagathammal, by name, Subramaniam Pillai executed a release deed and went away from the family. It is also stated that one of the daughters, by name, Shanmugathammal died. It is the specific contention of the defendant that the plaintiff, by misrepresentation and without disclosing the details of documents, has obtained thumb impression in an already prepared settlement deed. It is also stated in the written statement that Nayagathammal never desired to execute settlement deed in favour of the first plaintiff by neglecting other sons and daughters. In the written statement, the plaintiffs' contention of possession was also denied. It is also the case of the defendant that the first plaintiff, however, manipulated Patta in his name. It is the case of the defendant that the settlement was obtained by the first plaintiff by misrepresentation and fraud. It is further contended by the defendant that Nayagathammal cancelled the settlement deed dated 07.07.1975 on 07.08.1975, after coming to know about the fraud. The defendant further contended that Nayagathammal executed an 'othi' dated 08.09.1976 in favour of the defendant and handed over possession. The defendant further pleaded that a further "othi" deed was executed by Nayagathammal on 28.09.1977. It is also the defendant's case that the defendant has been in enjoyment of the property ever since, the execution of 'othi' deed in favour of the defendant and that the first plaintiff knew very well about the same and that



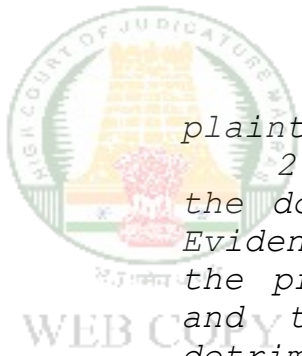
therefore, he kept quite, as the defendant is in enjoyment of property.

4.1. The defendant further pleaded that on 16.11.1984, some heirs of Nayagathammal including the plaintiff and the two sons jointly executed a general power of attorney to one Santhanampillai. On the basis of the said Power of Attorney deed, the power agent executed a sale deed in favour of the defendant on 16.09.1988 conveying the vendors' 5/6 share in the suit property. The defendant raised a legal issue by stating that the suit for declaration of title without a prayer to set aside the sale deed in favour of the defendant is not maintainable.

5. Before the trial Court, the second plaintiff examined himself as PW-1 and examined one Paramasivam as PW-2, attester of gift deed executed by Nayagathammal in favour of first plaintiff on 07.07.1975. The plaintiffs filed Ex-A1 to Ex-A14. On the side of the defendant, Ex-B1 to Ex-B12 were filed. Defendant examined himself as DW-1 and one Poosari Murugan as DW-2. The trial Court after framing necessary issues found that the gift deed under Ex-A1, dated 07.07.1975 is a valid document binding on Nayagathammal and her legal heirs. On the issue whether the cancellation of gift deed was acted upon, the trial Court found that the gift deed could not be cancelled by executor, after it was acted upon. Since the power of attorney document executed by the first plaintiff and his brothers in favor of one Santhanampillai was cancelled well before the sale deed executed by the power agent in favour of the defendant. Hence, the trial Court came to the conclusion that the sale deed obtained by the defendant is invalid. Though the execution of power of attorney deed by some of the legal heirs of the Nayagathammal is admitted by the plaintiff, the same was cancelled even before it was acted upon. Hence, the trial Court found that the recitals in the gift deed could not be taken against the plaintiffs on the plea of estoppel. As all the main issues were answered against the defendant, the trial Court ultimately decreed the suit as prayed for. Aggrieved by the judgment and decree of the trial Court, the defendant preferred an appeal in A.S.No.64 of 1996, before the Sub Court, Periyakulam. By judgment and decree dated 24.08.2017, the lower appellate Court also dismissed the appeal confirming the findings of the trial Court. Aggrieved by the same, the present appeal has been filed.

6. In the memorandum of grounds, the following substantial questions of law are raised and this Court admitted the second appeal on all the questions of law framed. The learned Counsel for the appellant reiterated all the points that are raised in the memorandum of grounds, which are extracted below:

"1. Whether 1st plaintiff is entitled to execute a gift deed in respect of the entire suit property in the absence of any evidence to show that the property is herself acquisition, especially when the admitted power deed clearly states that it is the ancestor property of the 1st



plaintiff and his brothers?

2. Whether the Courts below are wrong in not applying the doctrine of estoppel enshrined in Section 115 of the Evidence Act, in respect of the power deed which states the property is the ancestral property of the executants and the defendant relied on the said power to his detriment by purchasing the said property?

3. Whether the Courts below are wrong in not applying the principle underlying Section 110 of the Evidence Act regarding the connection between possession and ownership in the facts and circumstances of the case?

4. Whether the judgment of the Courts below are liable to set aside since they have not applied the provision contained in Section 208 of the India Contract Act?

5. Whether the failure of the trial Court in not framing proper issues under Order 13 Rule 1 CPC, has vitiated its judgment to the detriment of the defendant leading to the decreeing of the suit?

6. Whether the failure of the 1st Appellate Court in not framing proper points for consideration under Order 41 Rule 31 of CPC has vitiated the ultimate outcome of the appeal resulting in dismissal of the appeal?

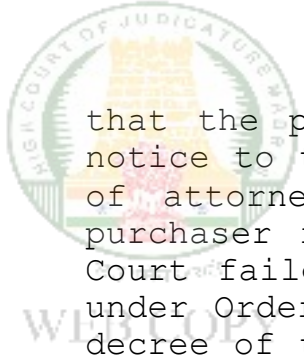
7. Whether the partial cancellation of the Power Deed can invalidate the sale in favour of the defendant in its entirety and in such a case whether a suit for possession is maintainable or a suit for partition will lie?

8. Whether the failure on the part of the plaintiff in not filing the suit for the cancellation of the sale deed in which the plaintiff's power agent is a party will make the suit not maintainable?

9. Whether the power deed can be revoked after it is partly given effect to by means of the sale agreement in favour of the defendant?

10. Whether the findings of the Courts below that the plaintiff is the owner of the suit property is as a result of admission of immaterial irrelevant and inadmissible evidence and rejection of admissible material and relevant evidence and whether such a perverse and legally unacceptable finding is liable to be set aside under Section 100 of CPC?"

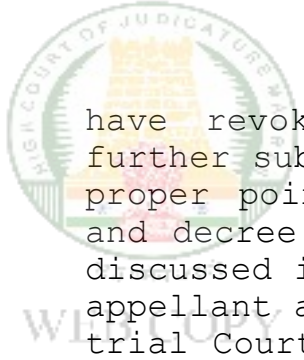
7. The learned Counsel for the appellant submitted that Nayagathammal is not the owner of the property in the absence of any evidence showing that the property is her self acquisition. He relied upon the recitals of power of attorney deed and submitted further that the suit property is the ancestral property of the first plaintiff and his brothers. It is also contended by the learned Counsel for the appellant that the first plaintiff is estopped from pleading a case contrary to the recitals of the power of attorney deed executed by the first plaintiff and others in favour of the third party. The learned Counsel further submitted



that the power of attorney deed in this case was revoked without notice to the appellant and that therefore, the revocation of power of attorney may not bind the defendant, who is the *bona fide* purchaser for value. He further submitted that the lower appellate Court failed to frame proper points for consideration as required under Order 41 Rule 31 of CPC and that therefore, the judgment and decree of the lower appellate Court is vitiated. Since the original power of attorney was executed by the first plaintiff along with other sharers, the learned Counsel for the appellant submitted that partial cancellation of power of attorney, by the first plaintiff and his sons alone, cannot be valid.

8. In the written statement filed by the defendant, the defendant categorically admitted that the suit property originally belonged to Nayagathamml, mother of first plaintiff. It is also stated in the written statement that the plaintiff obtained thumb impression of Nayagathamaml in an already prepared settlement deed fraudulently and that Nayagathamml never desired to execute gift deed in favour of the first plaintiff by neglecting her other sons and daughters. The defendant also pleaded that the gift deed under Ex-A1 was specifically cancelled by executing Ex-B2, dated 07.08.1975. Having regard to the admitted fact that the defendant himself has admitted the title of Nayagathamml, the contention of the defendant that the suit property is the ancestral property of first plaintiff and other heirs cannot be countenanced. It is not in dispute that Nayagathamml executed a gift deed on 07.07.1975. The learned Counsel for appellant though submitted that the cancellation of power of attorney document will not vitiate, the sale deed executed in favour of the defendant in view of the position that the cancellation of power of attorney was not acted upon in accordance with Section 208 of Indian Contract Act. Considering the factual position that this issue was not raised before the Courts below, this Court is of the view that the appellant cannot be permitted to raise this question as this involves facts.

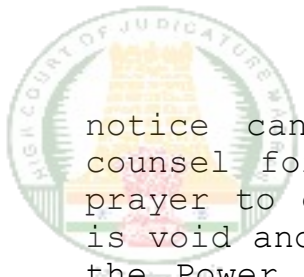
9. In this case, the reason for executing the power of attorney deed in favour a third party stranger is not pleaded. There was no consideration for the general power of attorney deed. The power of attorney deed was not coupled with interest. The question whether the power of attorney agent and the defendant had knowledge about the cancellation of power of attorney document is a question of fact and the same cannot be allowed to be raised at the second appeal stage. In this case, the power of attorney deed was executed by the first plaintiff and others on 16.11.1984. However, the same was cancelled by a cancellation deed dated 18.12.1985. However, the sale deed was executed by power agent in 1988 long after, it was revoked. Further cancellation of Power of Attorney is by a registered document. However the contention that the appellant / defendant is a *bona fide* purchaser cannot be accepted. In such circumstances, this Court is of the view that the said revocation of power of attorney deed is valid and that the sale deed executed in favour of the defendant is null and void insofar as the plaintiff and others, who



have revoked the power. The learned Counsel for the appellant further submitted that the lower appellate Court has failed to frame proper points for determination. From the reading of the judgment and decree of the lower appellate Court, it is evident that it has discussed in detail touching all the points and issues raised by the appellant and dismissed the appeal and confirmed the findings of the trial Court on each issue. Though the points for determination were not framed, the object of Order 41 Rule 31 of CPC is fully complied with and hence this Court is not inclined to entertain this plea. Since the lower appellate Court has applied its mind and considered all the issues in the light of pleadings, evidence and the oral evidence adduced on both sides, the plea of learned Counsel for the appellant is not appealing to this Court.

10. The learned Counsel for the appellant then pointed out that the power deed was executed by several persons but the cancellation of power was only by plaintiffs and others. It was therefore, contended by the learned Counsel for the appellant that partial cancellation of the Power of Attorney would not invalidate the sale. When a Power of Attorney deed is executed by several persons having independent right, there is no legal impediment for some of them to revoke the authority given by them as to prevent the agent from representing them in future in his capacity as agent. The revocation may not invalidate the authority given by others, who have not revoked the power. In this case, the plaintiffs have revoked the power by another registered document. It has now been held by this Court that the first plaintiff is the absolute owner of the property by virtue of the irrevocable gift deed executed by his mother. When the Power of Attorney deed executed by him is revoked, by a registered document, the sale deed executed by the agent long after the cancellation of Power by a registered document is invalid and the sale deed is void. Similarly, the Power of Attorney deed cannot be a source of title for the executants. Since other persons, who had joined in the execution of Power of Attorney deed had no title, the fact that they have not revoked the power deed will have no legal consequences. Thus from any angle, the contention of learned counsel for the appellant has no merits.

11. Yet another legal issue raised by the learned counsel appearing for the appellant is that the plaintiffs are estopped from contending that the said property is the property of Nayagathamal in view of the recitals in the Power of Attorney deed to the effect that the property is the ancestral property of executants of Power of Attorney deed. In this case, the defendant admits the fact that the suit property in the written statement. When the defendant knows the real fact, there can be no estoppel. Further the Power of Attorney document was revoked before it was acted upon. When the subsequent deed of sale was executed nearly two years after the Power of Attorney was cancelled by registered document, the defendant, who has obtained an invalid sale, cannot plead estoppel under the pretext that he had no knowledge of its cancellation. By registration of cancellation of Power of Attorney deed, public



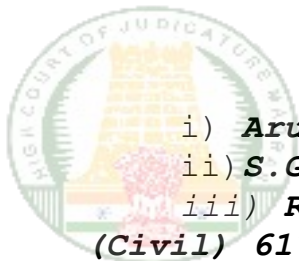
notice can be inferred. The residual argument by the learned counsel for appellant that the plaintiffs' suit without seeking a prayer to cancel the sale deed has no legal basis as the sale deed is void and cannot bind the plaintiffs. The further submission that the Power of Attorney agent has entered into an agreement of sale and that therefore, the sale deed in enforcement of the agreement cannot be invalidated and has no merits. The defendant at best could file a suit for specific performance against the plaintiffs and cannot sustain the sale, which was after cancellation of power. Except in cases, where Power of Attorney is coupled with interest, it is revocable and in this case, it has been revoked. From the recitals of power of attorney deed no argument is advanced that the power deed is irrevocable. The Power of Attorney in order to be one coupled with interest, the agent should have an interest in the property, which is the subject matter of Power of Attorney.

12. Learned Counsel for the respondent relied upon a judgment of this Court in the case of **S. Subramaniam and others vs. R. Dayananthan and others** reported in **(2013) 2 MLJ 668**, wherein, a learned Judge of this Court has held as follows:

"..... 7. Further, the entering into an agreement by the first respondent with the second respondent before termination of agency also cannot be construed as an interest accrued under the agency and that is only a power given to the agent to enter into an agreement of sale or to sell the property and that cannot be construed as an interest in the subject matter of agency. Therefore, when the agency is a power and a simple one and not coupled with interest as per Section 202 of the Indian Contract Act, such agency can be revoked by the principal and as per Section 205, even in case where the agency should be continued for any period of time and the agency is revoked by the principal before expiry of that time, the remedy available to the agent is to apply for compensation for the earlier revocation of the agency without sufficient cause and as per Section 206 of the Indian Contract Act, reasonable notice must be given of such revocation failing which damages can be claimed by the affected party.

8. Therefore, having regard to the recitals in the power of attorney deed, it is only an agency/power and simple one which is capable of revocation by the principal without any notice and therefore, the prayer in the suit for a declaration that the revocation is void and non est is a clear abuse of process of Court....."

13. In view of the discussion above, the question of law vide 2, 4, 7 to 9 are answered against the appellant. The learned Counsel for the respondents relied upon the following judgments for the proposition that a valid gift or settlement deed cannot be unilaterally revoked and cancelled:



- i) **Arukkani vs Subramanian**, reported in (2007) 3 MLJ 845:
ii) **S.Ganesan vs Bharathirajan** reported in 2009 (5) CTC 558:
iii) **Rayar Naidu vs Kartheepan** reported in 2012 (1) MWN (Civil) 617:
iv) **C.R.Gandhi and otehrs vs The Inspector General of Registration, Santhome, Chennai and others** reported in 2014 (3) TNCJ 25 (MAD) (MB); and
v) **Santharaju and another vs Chinnamma** reported in 2012-1-L.W.432.

14.Further the learned Counsel for the respondent referring to the written statement and submitted that the defendant has admitted the title of Nayagathammal. He further submitted that admitted facts need not be proved. It is a settled position that admission is the best piece of evidence. In this case, the admission in the written statement regarding Nayagathammal's title is unambiguous and hence the first question of law has no substance. Having regard to the concurrent findings of lower Courts and the conclusion arrived at by this Court earlier, this Court do not find any substance in any other question of law framed in this appeal.

15.As a result, this Second Appeal is dismissed and the judgment and decree in A.S.No.64 of 1996 on the file of the Sub-Court, Periyakulam, confirming the judgment and decree in O.S.No.361 of 1991 on the file of the District Munsif Court, Periyakulam is affirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Periyakulam.
- 2.The District Munsif Court, Periyakulam.
3. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.R.Balakrishnan , Advocate in SR No. 68065
+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 68176

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Judgment made in
S.A. (MD) No.477 of 2017
12.06.2018