

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2019

PRONOUNCED ON : 25.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.368 of 2006

D.Neela

...

Appellant/Plaintiff

Vs.

1.K.V.Kumar
2.P.Saraswathy
3.R.Balakrishnan
4.V.Sankaranarayanan
5.G.Mallika
6.Minor Innayath Basha
7.Minor Hasan Basha
(Both represented by the
next friend and father
Mr.Anser Basha)
8.S.Arul
9.M.Chakaravarthy
10.K.Sivaprakasam
11.R.Perumal
12.Santha Bai
13.K.Ramamoorthy
14.R.Rajagopal
15.N.Ravikumar
16.Tyagaraaj
17.Udyakumar
18.Ramesh
19.Suresh
20.Varalakshmi
21.Santhi

सत्यमेव जयते

Respondents

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 28.02.2005 passed in A.S.No.68 of 2003 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 25.03.2003 passed in O.S.No.343 of 1997 on the file of the Principal District Munsif Court, Kancheepuram.

For Appellant

: Mr.K.Bijai Sundar

For Respondent

: Mr.R.Rajesh

Nos.1 to 9, 11, 15 & 17

For Respondent

: No appearance

Nos.16, 19, 20 & 21

set exparte vide order
dated 11.02.2019.

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.02.2005 passed in A.S.No.68 of 2003 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 25.03.2003 passed in O.S.No.343 of 1997 on the file of the Principal District Munsif Court, Kancheepuram.

2.The second appeal has been admitted on the following substantial questions of law:

"a).Whether the revocation of power of attorney made against the agent and the knowledge about the revocation of the same shall not be presumed from the compelling circumstances and subsequent acts of the agent and the sale transactions entered into by the agent subsequent to the knowledge of revocation is void or not?

b).Whether the acts of the agent in violation of the condition stipulated in power of Attorney will render the sale transactions entered into by the agent is sham and nominal and not binding on the principal?

c).Whether the act of the agent utilising the sale consideration at his whims and fancies without any authority or the prior consent of the principal will render the transactions entered into by him invalid or not?"

3.Considering the scope of the issues involved in the second appeal between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5.Suffice to state that the suit has been laid by the plaintiff against the defendants for the reliefs of declaration and recovery of possession.

6.Materials placed on record go to show that the suit property originally belonged to the plaintiff and it is seen that the plaintiff had authorised the first defendant as her power of attorney agent to sell the suit property to the third parties and in connection with the same, she is found to have executed a General Power of Attorney deed on 20.12.1991, the copy of which has been marked as Ex.A3 and the original power

of attorney deed has been marked as Ex.B7. On a perusal of the recitals contained in Ex.A3/B7, as rightly found by the Courts below, it is seen that the plaintiff has empowered the first defendant to sell the suit property as her power agent and it is seen that the power deed does not prescribed any time limit for enabling the first defendant to sell the suit property. It is thus seen that the Courts below had negatived the case of the plaintiff that the first defendant had been granted only one year period of time to alienate the suit property by way of the power of attorney deed and on the other hand, as abovenoted, there is no time restriction for the first defendant in selling the suit property to the purchasers/third parties. It is found that the plaintiff had chosen to revoke the abovesaid power of attorney deed executed in favour of the first defendant and accordingly, it is noted that she had executed a revocation deed dated 25.11.1993 marked as Ex.A4. Now, according to the plaintiff, she had orally informed about the revocation of the power of attorney deed done by her by way of Ex.A4 to the first defendant and further, according to the plaintiff, subsequent thereto, on a verification of the encumbrance certificate pertaining to the suit property marked as Ex.A5, she had come to know that the first defendant, without any authority and despite having knowledge about the revocation of the power of attorney deed executed in his favour by way of Ex.A4, had alienated the suit property to the defendants 2 to 16 and inasmuch as the first defendant had acted beyond his jurisdiction, also without any authority and contrary to law, in conveying the suit property to the defendants above stated and also further putting forth the case that inasmuch as the sale transactions effected by the first defendant in favour of the defendants 2 to 16 are invalid/sham and nominal and no consideration had been passed under the same and no amount had been paid by the first defendant to the plaintiff, it is claimed by the plaintiff that the abovesaid sale transactions are not binding upon her and further also, the plaintiff had taken the plea that the first defendant has acted beyond the terms of the power deed and thereby, contending that the sale transactions effected by the first defendant in favour of the defendants 2 to 16 are not valid and binding upon her and asserting that she continues to retain the title to the suit property and entitled to the recovery of the possession of the suit property from the defendants, the plaintiff has come forward with the suit.

7.The defendants had challenged the case put forth by the plaintiff contending that the plaintiff has not communicated the revocation of the power deed made under Ex.A4 either to the first defendant or to the other defendants as per law and in such view of the matter, challenged the case of the plaintiff that she had conveyed the revocation deed to the first defendant orally and accordingly, put forth the case that based upon the power deed, the first defendant had conveyed the suit property in various moieties to the

defendants 2 to 16 as detailed in the written statement and further, put forth the case that valid consideration had been passed under the abovesaid sale transactions and furthermore also put forth the case that following the same, the first defendant had discharged the various debts of the plaintiff due to the finance company and also adjusted the said amount for meeting the expenses in levelling the suit property etc., accordingly, contended that the plaintiff is not entitled to seek the reliefs prayed for.

8. Even as per the case of the plaintiff, she had communicated the revocation of the power deed to the first defendant only orally, when he visited her residence. The abovesaid fact had been stoutly refuted by the defendants, particularly, the first defendant. When as per Ex.A3/B7, the first defendant had been given the General power of attorney to sell the suit property on behalf of the plaintiff and no time limit has been prescribed thereunder for completing the abovesaid transaction, though the plaintiff would be entitled to cancel/ revoke the power of attorney given to the first defendant, it is seen that as per law, the plaintiff should have put the first defendant on notice about the cancellation of the power of attorney deed in the manner known to law and 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.

9. As abovenoted, though the plaintiff claims that she had revoked the power of attorney given to the first defendant by way of Ex.A4 deed, the fact remains that the same had not been communicated to the first defendant or the other defendants by the plaintiff in the manner known to law and when with reference to her case that she had communicated the same to the first defendant orally, particularly, when the same is being challenged by the defendants in toto, merely on the ipsi dixit testimony to the plaintiff with reference to the same, it cannot be construed or held that the plaintiff had conveyed the revocation of the power deed to the first defendant or the other defendants as per law and as contemplated under Section 208 of the Indian Contract Act. Thus, it is seen that for the first time, only on 03.10.1996, the plaintiff had chosen to issue a notice to the defendants as regards the revocation of power deed under Ex.A4 deed and prior to the same, there is no material to hold safely that the revocation of power deed had

been validly communicated by the plaintiff to the first defendant or the other defendants.

10. Meanwhile, it is found that based on the power of attorney granted to him, the first defendant during the period from September, 1994 to December 1994 had effected the various sale transactions in favour of the defendants 2 to 16 as detailed in the written statement for consideration as recited thereunder and it is seen that following the same, the purchasers had taken the possession of their respective properties and been enjoying the same by obtaining patta etc., and inasmuch as the abovesaid sale transactions had been effected by the first defendant based upon Ex.A3/B7 power of attorney granted to him by the plaintiff and when the plaintiff has miserably failed to establish that the abovesaid sale transactions had been effected by the first defendant to the other defendants having knowledge about the cancellation of the power deed marked as Ex.A4, it is found that the sale transactions effected by the first defendant in favour of the other defendants would be binding upon the plaintiff and in such view of the matter, it is found that the case of the plaintiff that the sale transactions effected by the first defendant in favour of the other defendants are not true and valid and not binding upon her as such cannot be countenanced. When the plaintiff has 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, the defendants are not bound by it and meanwhile, when it is seen that the first defendant is found to have acted in furtherance of the power of attorney deed executed in his favour and effected the sale transactions in favour of the other defendants and following the same, the purchasers / defendants had obtained the possession of the respective properties and enjoying the same as the true owners thereof by obtaining patta etc., and when it is further seen that the termination of the agency would take effect only when such termination is brought to the agent's knowledge and accordingly, sans any notice of the same, the termination or cancellation would not take effect. It is thus seen that the sale transactions effected by the first defendant in favour of the other defendants would be wholly binding upon the plaintiff and the abovesaid position of law could be gathered from the decision reported in 2002 (2) CTC 462 (S.V.Doraisamy Vs. T.Dayalan and 8 others) and the position of law as regards the subject matter is detailed in the abovesaid 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 உடரத்துக்கள்படி 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."

11. In this connection, it has to be mentioned that I had an occasion to follow the abovesaid decision in a case determined by me on 11.09.2018 in second appeal No.348 of 2015 reported in (2019) 1 MLJ 215 (Ellammal and others Vs. Shanmugham and others).

12. From the materials placed on record, it is found that following the sale transactions effected as regards the suit property, the first defendant is found to have discharged the various debts of the plaintiff as could be evidenced from Ex.B4 series of documents as well as accounted for the same, which could be evidenced from the documents referred as Exs.B5 and B6 and when furthermore, it is noted that the plaintiff had granted the power of attorney in favour of the first defendant only with a view to discharge the debts owed by her

to the finance company and others, which could be gathered from the recitals found in the power of attorney marked as Ex.A3/B7, in such view of the matter, the contention put forth by the plaintiff's counsel that the first defendant had acted beyond the scope of the power granted to him under the power of attorney, as such, cannot be readily countenanced and when the intention of the plaintiff in empowering the first defendant to sell the suit property by way of Ex.A3/B7 is found to be only for the purpose of discharging the debts, when the same had been accomplished by the first defendant as abovenoted, in tune with the intention of the plaintiff, the argument put forth by the plaintiff's counsel that the first defendant had exceeded his power granted under the power of attorney deed, as such, cannot be accepted.

13.As regards the passing of consideration under the various sale transactions effected by the first defendant in favour of the other defendants, there is clear evidence on the part of the defendants 1 & 2 with reference to the same and the same could also be verified by the discharge of the various debts of the plaintiff by the first defendant and the adjustment of the amount in other modes as pointed out by the plaintiff and determined by the courts below, which could be evidenced from the documents marked as Exs.B4 to B6 as above noted, in such view of the matter, the first defendant cannot be held to have acted in violation of the terms and conditions of the power of attorney deed and equally the argument put forth by the plaintiff that the sale transactions effected by the first defendant in favour of the other defendants are invalid/sham and nominal also could not be accepted and altogether when it is found that the first defendant had acted and executed the sale transactions in favour of the other defendants as per the power granted to him under Ex.A3/B7 and on the date of the abovesaid sale transactions, when it is seen that the power of attorney granted to the first defendant has not been validly rescinded or revoked in the manner known to law, in the light of the abovesaid authority referred to above, the sale transactions effected by the first defendant, in favour of the other defendants would be binding upon the plaintiff and therefore, the reliefs prayed for by the plaintiff cannot be accepted.

14.As rightly pointed out by the Courts below, if at all as put forth by the plaintiff, the first defendant had not accounted for the sale consideration received by him under the various sale transactions to her as per the terms of the power deed, as regards the same, the plaintiff has to only institute a suit against the first defendant for submitting the accounts and for the other allied reliefs and on the other hand, the contention of the plaintiff that despite the sale transactions effected by the first defendant in favour of the other defendants based on Ex.A3/B7 power of attorney deed, she continuously retain the title to the suit property and entitled to the recovery of the same as such cannot be accepted and it

is found that the same had been rightly declined by the Courts below on the basis of the proper appreciation of the materials placed on record, both oral and documentary, as well as the principles of law governing the same in all angles.

15. The counsel for the plaintiff during the course of arguments contended that inasmuch as the revocation deed had been duly registered, it is stated by him that the Registrar, who had registered the various sale transactions effected by the first defendant in favour of the other defendants, had knowledge of the same and accordingly, it is put forth by him that the Registrar should have put on notice about the cancellation of power deed to the purchasers and also should have not endeavoured to effect the registration as the first defendant had presented the sale documents for registration without any authority, in the light of the cancellation of his power of attorney deed and pointing out the various provisions of Registration Act and the rules pertaining thereto contended that on that score, the plaintiff should be granted the reliefs prayed for and in this connection, placed reliance upon the decisions reported in AIR 2016 Mad 123 (Asset. Reconstruction Company (India) Limited Vs. The Inspector General of Registration and ors), AIR 2011 SC 1653 (Deb Ratan Biswas and Ors Vs. Anand Moyi Devi and Ors), AIR 2013 Punjab and Haryana 38 (Ranjeet Singh and another Vs. Deputy Commissioner cum Registrar, Ambala and another), 2007 AIR (Madras) 159 (Pandurangan Vs. Sub-Registrar, Reddiar-palayam Pondicherry and Ors) and 2017 (5) CTC 311 (G. Muniratnam and Ors Vs. The District Collector, Tuticorin and ors).

16. However, the above argument does not merit acceptance. At the foremost, it is to be noted that the plaintiff has not come forward with the suit for a declaration that the sale transactions effected by the first defendant in favour of the other defendants are invalid on account of the various infractions of the provisions of the Registration Act and the Rules pertaining thereto as put forth by him. In such view of the matter and furthermore, when the plaintiff has not pleaded that the official acts of the registering authorities in connection with the transactions of the suit property stand vitiated for one reason or the other as put forth by him and when the registering authorities are also not made parties to the suit and when the abovesaid contention are also not projected by the plaintiff in the grounds set out in the second appeal, in my considered opinion, it is found that the abovesaid arguments is projected on air without any foundation or basis either by way of necessary pleas or evidence or after impleading necessary parties to the same and in such view of the matter, the abovesaid contention does not merit acceptance.

17. In the light of the above discussions, the substantial questions of law formulated in the second appeal are accordingly, answered against the plaintiff and in favour of

the defendants.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Kancheepuram.

2.The Principal District Munsif Court,
Kancheepuram.

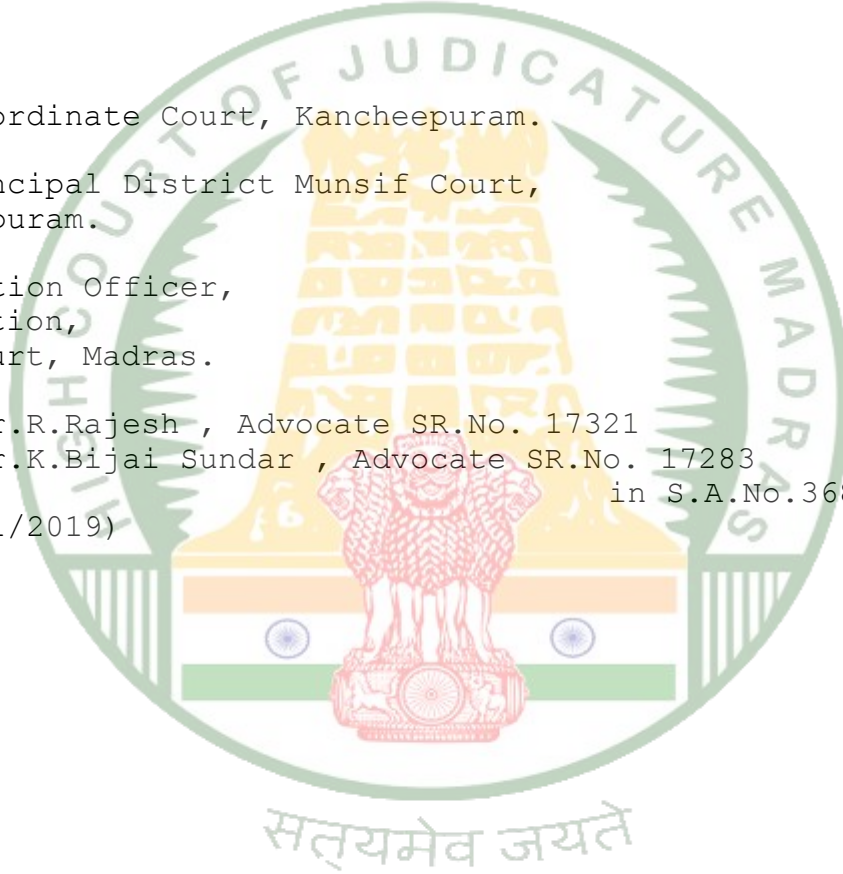
3.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Rajesh , Advocate SR.No. 17321

+1cc to Mr.K.Bijai Sundar , Advocate SR.No. 17283

in S.A.No.368 of 2006

A.SK(04/11/2019)



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