

Reserved on :29.03.2019
Pronounced on :09.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal Nos.1652 & 1653 of 2011 &
M.P.Nos.1 & 1 of 2011

1. K.S.Nagarajan (deceased)
2. Pramavathy
3. Priya
4. Udhayakumari
5. Nathiya
6. Srinivasan
7. Karthick

[appellants 2 to 7 have been brought on record as LRs of the deceased

first vide Order of the Court dated 18/08/2017
made in CMP.No.12111 to 12113 of 2017, 12114 to
12116/2017 in S.A.No.1652 & 1653 of 2011]

... Appellant in both
the Second Appeals

Vs

1. Mr.R.Rajakumari
2. Mr.R.Senthilkumar
3. Mr.R.Kumar
4. Mr.R.Sureshkumar
5. Mr.R.Bharathiraja
6. The Sub Registrar,
Sub-Registration Office,
Chavadi, Pallikonda.
7. The District Reigstrar,
District Registrar Officer,
Vellore Fort, Vellore District.

... Respondents
in both Second Appeals

Prayer :- Second Appeals have been filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Vellore dated 21.09.2011 made in A.S.Nos. 37 & 38 of 2010 confirming the judgment and Decree of dismissal passed by the learned Principal District Munsif, Vellore dated 29.06.2010 made in O.S.Nos. 631 and 633 of 2003.

For Appellants : Mr.V.Ragavachari
in both appeals for M/s.R.Munusamy

For Respondents 6 & 7 : M/s.Saraswathi Shivarama Iyer,
Government Advocate (CS)

For Respondents : Mr.E.Om Prakash (Senior
in both appeals Counsel)
Assisted by Mr.Elayarajkumar
for M/s.Ramalingam Associates -
R1, 3, 4
No appearance for R2 and R5

COMMON JUDGMENT

Aggrieved over the common judgment passed in A.S.No.37 of 2010 and 38 of 2010 confirming the judgment passed in O.S.No.631 of 2003 and 633 of 2003 and, these Second Appeals have been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The brief facts leading to filing of these appeals are as follows :

O.S.No.631 of 2003 has been filed against the reversal finding of the appellate authority in refusing to register the document dated 20.08.1995 executed by one Rajavelu when presented for compulsory registration under section 35 of the Registration Act. The suit has been filed under section 77 of the Registration Act. Similarly O.S.No.633 of 2003 has been filed against the Order of the Registrar refusing to register the document dated 20.08.1995 executed by one Rajavelu in favour of the plaintiff when presented for compulsory registration. The fact remains that the plaintiff in both the suits have presented two sale deeds dated 20.08.1995 for compulsory registration under section 35 of the Registration Act. The above documents were said to have been executed by one Rajavelu, brother of the plaintiff on the said date, were presented for registration. But the Sub Registrar, by an Order dated 12.03.1996, refused to register the above two documents. Thereupon, the appeal was filed against the said Order of the Sub Registrar before the Registrar. The appeal was preferred in A.No.1 of 96 and 2 of 96 before the Registrar and the Registrar by his Order dated 30.11.1998 refused to register the documents. As against which, statutory suits were filed by the plaintiff under section 77 of the Registration Act.

4. The following issues were framed in both the suits :

1. Whether the plaintiff is entitled to set aside the Order passed by the seventh defendant on the basis of the suit documents?

2. Whether the plaintiff is entitled to set aside the Order passed by the sixth defendant on the basis of the suit documents?

3. To what relief, the plaintiff is entitled?

5. In the trial Court, both the suits were tried together and on the side of the plaintiff P.W.1 to P.W.3 were examined and Ex.A.1 to A.9 were marked. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.9 were marked.

6. The defendants are the legal heirs of one Rajavelu. The undisputed fact is that the said Rajavelu, who is said to have executed two documents on 20.08.1995 died within a week on 27.08.1995. Hence, the above two documents were presented before the Sub Registrar for compulsory registration by the legal heirs. As stated above the Sub Registrar had refused to register the document by his Order dated 12.03.1996. The appeals filed by the plaintiff before the Registrar also failed. In the suit filed by the plaintiff, the trial Court after analysing the entire evidence has dismissed the suit. The first appellate Court also dismissed the appeal and confirmed the finding of the trial Court.

7. The following substantial questions of law have been formulated in the Second Appeals :

1. Have not the Courts below failed to decide the legality and validity of the impugned Orders passed by the defendants 6 & 7/Respondents 6 & 7 herein vide Ex.A2 to A4 on refusing for compulsory registration of Ex.A.1 & At sale deeds in the suit filed by the plaintiff/Appellant herein challenging the impugned Orders under Section 77 of the Registration Act?

2. Have not the Courts below confirmed jurisdictional error in not adverting to the material issue before it namely testing the legality and validity of the impugned Orders vide Ex.A.2 to A4 passed by the defendants 6 and 7, which are in total

violation of principles of natural justice and want of reasons for rejection, when they are exercising quasi-judicial powers?

3. Have not the Court below failed to frame relevant issue for decisions and totally misread the pleadings and evidences to dismiss the suit filed by the plaintiff under Section 77 of the Indian registration Act, basing its findings for reasons extraneous to the suit under Section 77 of the Indian Act and also improperly exercised its jurisdiction on sympathetic grounds for dismissal of the suit?

8. The learned counsel appearing for the appellant in both the appeals vehemently contended that the trial Court and the first appellate Court exceeded their jurisdiction in deciding the suit contrary to the provisions of Section 77 of the Registration Act. It is his contention that the jurisdiction of the Courts in a suit filed under section 77 of the Registration Act is analogous with the Registrar functioning under the Registration Act. The Court ought to have confined its jurisdiction only with regard to the execution of the document. Whereas, the trial Court and the first appellate Court have gone beyond the scope of Section 77 of the Registration Act and held that the suit property is a joint family property and sale deed could not have been executed. Besides, the Court below had held that the document has been fraudulently obtained. Such aspect is not in the power of the Court to give a finding beyond the scope of Section 77 of the Indian Registration Act.

9. It is the further contention of the learned counsel that the Registrar without making any enquiry with regard to the execution of the document has simply refused to register the documents. In fact, the legal heirs of the executant have not denied the execution of the document by late Rajavelu. That being the position, the Registrar ought to have registered the document. In the absence of denial of execution of the documents by the legal heirs, the sub Registrar with whom the documents were presented for compulsory registration ought to have registered those documents under section 35 of the Registration Act. The legal heirs of the executant have not appeared before the Sub Registrar. Therefore, the Sub Registrar ought to have executed the document.

10. Similarly, it is the contention of the learned Senior Counsel that even during the appeal proceedings before the Registrar, the legal heirs have not appeared before the Registrar and had not denied the execution of the document. Whereas, the plaintiff has clearly proved the execution by

examining the witnesses. The above witnesses have not been cross examined. Hence, the Registrar refusing to register the document is also not correct. The plaintiff has filed a statutory suit under section 77 of the Indian Registration Act seeking a decree directing the document to be registered in the Registrar Office. Even before the trial Court, the plaintiff has proved the execution of the documents by examining the witnesses. That being the position, the Courts below ought to have directed the Registrar for registration of the documents. But, the Courts below had gone into the issues which are beyond the scope of the Section 77 of the Registration Act and held that the sale deeds have been fraudulently obtained and created. Such finding of the Courts below is perverse and contrary to the provisions of Section 77 of the Indian Registration Act. The appellate Court also dismissed the appeal. The appellate Court has gone into very transaction and payment of consideration and held that the document has been fabricated. Such a finding is also against the scope of the Section 77 of the Registration Act.

11. As long as the execution is proved and the legal heirs have not denied the signature and execution, the registration of the document is mandatory. The authorities and the Courts have failed to consider the provisions of the Act. Hence, submitted that the appeals are to be allowed. In support of his submissions, he had relied upon the judgments of this Court dated 06.02.2012 Abdul Kalam Azad Vs. Ananthalakshmi, Alluru Bapanayya Vs. Chintalapati Bangarraju reported in 1949 (1) MLJ 479, judgment of the Division Bench of this Court in M.Ramaswami Chettia Vs. V.Srinivasa Pillai and others reported in 1993 Law Weekly 1000, Smt. Rami Bai Vs. Life Insurance Corporation reported in AIR 1981 MP 69 and Dattaraya Vs. Rangnath Gopalrao Kawathekar reported in AIR 1971 Supreme Court 2548.

12. The learned counsel for the respondent submitted that the so called executant was admitted as an inpatient for various ailments on 12.07.1995 and the alleged sale deeds said to have been executed on 20.08.1995 when he was in the hospital. It is his further contention that he was in coma stage few days prior to that in the hospital and the said Rajavelu died in the hospital on 27.08.1995. These are all admitted facts. The sale deeds were presented on 09.02.1996 for compulsory registration. It is his contention that the legal heirs of the said Rajavelu had specifically denied the execution of the documents by the said Rajavelu. Therefore, the Sub Registrar has rightly refused to register the document on 12.03.1996. In an appeal filed against such rejection, the Registrar has also passed an Order refusing to register the document on the ground

that the execution has not been proved. The trial Court in the suit filed for registration of the documents also found that the documents have not been executed by the said Rajavelu. Hence, submitted that when the authorities and the Courts below have found that the documents have not been properly executed and rejected the plea of the plaintiff, there is no merit in this appeal. The witnesses examined to prove the alleged execution of the sale deeds by the said Rajavelu itself show that the sale deeds have not been executed by the said Rajavelu and submitted that the Courts below rightly found that the documents have not been executed. Hence, prayed for dismissal of this Second Appeal. In support of his submissions, he has relied upon the judgment of the Honourable Division Bench of this Court in Sayyaparaju Surayya Vs. Koduri Kondamma reported in Manu/TN/0140/1949, the judgment of the Honourable Division Bench of Bombay in Thamabai Dajiba Khandale and Others Vs. Marotrao Ganpatrao Thakre reported in Manu/MH/0361/1977 and the judgment of Honourable Division Bench of Kerala in Muhammed Vs. Velayudhan and another reported in Manu/KE/0871/2001.

13. In the light of the above submissions, I proceed to decide this Second Appeal. The undisputed facts are necessary to decide the issue involved in this Second Appeal. One Rajavelu, brother of the plaintiff/appellant was admitted in the hospital as in-patient on 12.07.1995 and he died on 28.08.1995. The plaintiff claimed that two sale deeds were executed by the said Rajavelu while he was in the hospital on 20.07.1995. After his death, the documents have been presented under section 35 of the Indian Registration Act for compulsory registration. However, the Sub Registrar by his Order dated 12.03.1996 refused to register the documents. The appeal filed against the said Order has also been rejected by the Registrar. As against which statutory suits were filed under section 77 of the Indian Registration Act. The trial Court also did not accept the contention of the plaintiff. The trial Court while deciding the suit not only gone in to the issue of execution of the document, but also held that the document has been fraudulently created. The appellate Court also confirmed the finding of the trial Court.

14. In the above background, it is relevant to refer Section 35 of the Indian Registration Act, which reads as follows :

35. Procedure on admission and denial of execution respectively.-(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they

represent themselves to be, and if they all admit the execution of the document, or (b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or (c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive. (2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. (3) (a) If any person by whom the document purports to be executed denies its execution, or (b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or (c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII: 1 [Provided further that the 2 [State Government] may, by notification in the 3 [Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

Section 35(3) makes it clear that if any legal representative of the deceased denies the execution, the registering officer has no other option except to refuse to register the document. While refusing to register the document, he has to follow the procedure found in Section 72 namely Chapter XII of the Registration Act. He has to assign the reason for such refusal. The Order dated 12.03.1996 passed by the Registrar, which is marked as Ex.A.6 before the trial Court, makes it clear that the document was refused to be registered since the legal representatives of the deceased denied the execution of the document. Though the reasons assigned by the Sub Registrar does not indicate the denial of execution by the legal representatives, the fact remains that the legal representatives, namely the defendants in the suit denied the execution of the document in writing before the Sub Registrar.

15. The objections filed by the the legal representatives before the Sub Registrar were marked as Ex.B.3 to Ex.B.7 before the trial Court. It is to be that Ex.B.3 to Ex.B.7 are certified copies obtained from the Sub Registrar Office and filed before the trial Court. Ex.B.3 when carefully seen, the wife of the deceased has submitted a written objections stating that the documents have not been executed by her husband and the documents are not connected with her husband. Ex.B.4 is the objections filed by one of the son of the deceased denying the signature of his father in the sale deeds. Similarly, in Ex.B.5 another son also specifically stated that the signatures found in the documents is not that of his father's signature. Similarly Ex.B.6 is also an objection filed by the another legal heir denying the signature of the deceased. Ex.B.7 is also an objection filed by the another legal heir denying the signature of the deceased. The above documents are certified copies of the document filed before the Sub Registrar. From the above documents, it is very clear that the legal representatives of the deceased denied not only signature of the deceased but also execution of the documents by the deceased. Once the documents are presented for compulsory registration and the legal representatives of the executant denies such execution, the Registrar has no other option except to refuse to register the document. In fact, he shall refuse to register the document as per sub clause (3) of Section 35 of the Indian Registration Act. Therefore, merely because the registering Officer has not specified the reasons in his Order, the reasons about the denial of signature of the deceased in the document by the legal representatives in his Order dated 12.03.1996, the same cannot be taken advantage by the appellant that there was no denial in execution of the document. The denial need not be only by appearance before the Registrar. When the legal representatives filed objections denying the execution of the document by the dead person, such objections also is proper denial of execution. Hence, the contention of the appellant counsel that as long as there was no denial mentioned in the Order of the registering authority, he ought to have registered the documents cannot be countenanced.

16. Admittedly, the appeals were filed before the Registrar under section 73 of the Registration Act. Section 74 of the Registration Act deals with the procedure of the Registrar on such appeal where the registrar has a power to enquire whether the document has been executed and whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration as the case may be, so as to entitle the document for registration. Section 74 of the Registration Act makes it clear that the enquiry under the section is limited to the fact

of execution and compliance of the requirements of law. The Registrar conducted enquiry and counter has also been filed by the legal representatives denying the execution. The Registrar in fact enquired the plaintiff and two other witnesses produced by the plaintiff. The registrar has passed a detailed Order and come to the conclusion that the execution has not been proved. The Registrar had held that the alleged execution in the hospital has not been proved and no medical officer has been examined and passed an Order refusing to register the document. The registrar also taken note of the inconsistent evidence of the plaintiff with regard to the execution.

17. The plaintiff himself stated before the Registrar that the document was prepared at Pallikonda and signature alone obtained at Madras in the hospital. P.W1 has further stated before the registrar that at the time of obtaining the signature of Rajavelu, one Ramamurthy and Jambulingam were present. Whereas one of the witness Ramamurthy has stated before the Registrar that the signature was obtained in the veranda in the hospital. At that time, P.W.1 and his mother was very much present in the hospital. The mother of the plaintiff was also examined. She has stated that she has signed at Kazhanipakkam and not in the hospital. She has also stated before the Registrar that she did not know whether the signature of the said Rajavelu was obtained, while Rajavelu was in coma stage in the hospital. Considering these aspects, the Registrar has found that the execution has not been proved without any doubt and refused to register the document. The learned counsel has placed much reliance on the judgment of this Court in Alluru Bapanayya Vs. Chintalapati Bangarraju reported in 1949 (1) MLJ 479. It is relevant to refer of the judgment wherein it has been held as follows :

I am of opinion that this contention is sound and must prevail. In a suit under Section 77 of the Registration Act, the Civil Court has got to do only what the registering officer should and could have done under the powers conferred on him by the Registration Act. The Court should be guided by the same considerations which guide the Registrar in registering or refusing to register a document presented to him. Under Section 35 of the Registration Act, a Registrar is bound to register a document if the ostensible executant admits his signature to the document. This is the admission of execution referred to in Section 35 of the Registration Act. If a person admitting his signature or thumb impression proves that he signed

it under a misapprehension believing it to be a different kind of document from what it was or that he was induced to sign the document as a result of a deception practised upon him and that he was therefore unaware of the real nature of the document, it is a ground for setting aside the document or having it adjudged void and inoperative in an ordinary suit in a Civil Court. But neither the Registrar nor the Court in a suit under Section 77 of the Registration Act has jurisdiction to enter into these questions. In a suit under Section 77, the Court is concerned with two questions : (a) whether the document has been executed, that is to say, whether the document bears the genuine signature of the executant or his thumb impression if he is unable to sign his name; and (b) whether the requirements of the law for registering documents have been complied with. If these points are decided in favour of the plaintiff, then registration ought to be directed. The Court cannot, in such a suit, go into such defence as whether the document was obtained by fraud or misrepresentation or even a defence that the mind of the executant did not accompany his signature vide *Ramaswami Chettiar v. Srinivasa Pillai* (1933) 66 M.L.J. 424. Section 77 provides a statutory right of a suit of a very limited scope.

18. According to the learned counsel for the appellant, once signature is proved, it follows execution. The registrar ought to have registered the document. Similarly, in a judgment in *M. Ramaswami Chettiar Vs. V. Srinivasa Pillai* and others reported in 933 (66) M.L.J. 424, the Division Bench has held as follows :

"It has been admitted before us by the learned Counsel for the respondents that a great deal of evidence is beside the point in a suit of this sort. But he has contended strongly that the execution in question amounted to no execution at all. In this connection he quotes the case in *Foster v. Mackinnon* (1869) 4 C.P. 704 at 711, where it is stated that the document was invalid "not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended." That case does not however deal with execution from the point of view of the Registration Act and the admitted

signature for the purpose of the Registration Act may be quite good execution for purpose of registration and be an invalid execution, or no execution at all for enforcing the document. In the Indian Registration Manual under Section 35 it is said as regards Madras:

The admission of execution referred to in Section 35 is merely admission of the signature affixed to a document. Accordingly, where a person, although admitting his signature to a document presented for registration, states either (1) that he signed it under a misapprehension believing it to be a different document from what it really is, or (2) that when he signed it he did not by reason of the deception practised upon him know the contents of the document or the nature of the document, the registering officer is bound to register.

7. In fact the scheme of the Act appears to be that the Registrar is not to go into questions as to whether the parties understood the nature of the document or meant it to be something else than what it is. The only question which he has to decide in this respect is whether it bears the genuine signature of the alleged executant. In that view it is clear that even on his findings, the learned City Civil Judge should have ordered registration of the document.

8. Another point urged before us by the learned Advocate for the respondents is this that the refusal to register the document on account of the executant not having appeared within the four months prescribed is a matter wherein the Registrar exercised his discretion and that this discretion cannot be interfered with by the Court. It is also pointed out that it was not made any part of the pleadings in the suit or appeal that this reason for refusal was incorrect or that the exercise of the discretion was wrong.

Though the above dictum makes it clear that once the signature of the party is proved, it is valid execution. The counsel for the appellant has placed much reliance on the above judgment.

19. In this regard it is useful to refer the judgment of the Honourable Division Bench of this Court in Sayyaparaju Surayya Vs. Koduri Kondamma reported in MANU/TN/0140/19. In fact, later Division Bench had not agreed with the earlier

Single Judge judgment in Alluru Bapanayya Vs. Chintalapati Bangarraju referred above and has held as follows :

"On behalf of the appellant, a question of law was raised, viz, that in a suit under Section 77, Registration Act, or for the matter of that, when a document was presented for registration and the Registrar had to consider the registration of the document under Section 35 of the Act, if it purports to bear the signature or thumb impression of the executant the document must be registered, if the signature or thumb impression is admitted by the executant, as such an admission amounts to admission of execution within the meaning of Section 35, Registration Act. In support of this position reliance was placed by the learned Advocate for the appellant on a recent decision of a single Judge of this Court in Bapanayya v. Bangararaju, (1949)-1 M. L. J. 479 : (A. I. R. (36) 1949 Mad. 775). In that case which also arose out of a suit under Section 77, Registration Act the defendant denied the execution of the document and stated that his finger impression was taken by representing that his attestation on a document, i. e., a sale-deed executed by his brother in favour of the plaintiff was needed. Registration was refused and so the plaintiff instituted a suit under Section 77 of the Act for compelling registration. The suit was dismissed by the lower appellate Court; but on second appeal his decision was reversed by Vishwanatha Sastri J. According to the learned Judge, under Section 35, Registration Act it is the duty of the Registrar to register a document if the ostensible executant admits his signature to the document. This amounts to an admission of execution referred to in Section 35 of the Act. We are unable to read Section 35 in the manner in which the learned Judge did. What Section 35 requires is that there should be an admission of execution of the document. Section 35(1) (a) says :

"If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, the registering officer shall register the document as directed in Sections 58 to 61, inclusive."

Under Sub-section (3) :

"If any person by whom the document purports to be executed denies its execution, the registering officer shall refuse to register the document as to the person so denying."

20. The later Division Bench Judgment has thoroughly analysed and held that mere signature is not amount to execution of the document. However, this Court in the later judgment also held that Section 77 of the Registration Act being analogous and it is not open to the Court to go beyond the scope of Section 77 of the Registration Act. From the above judgment it makes it very clear that in a statutory suit filed under section 77 of the Registration Act, the Court should confine its attention only to the question of execution of the documents. The Courts cannot go to the question of fraud or misrepresentation, etc.

21. In the light of the above submissions, now when the facts are analysed, though the Courts below cannot go into the other issue of fraud etc., the Courts have also gone into the issue of execution of the document. Even though the Courts have exceeded their scope in the suit, the issue with regard to the execution of the document is also dealt by the Courts below. It is to be noted that as already discussed before the Registrar, P.W.1 has stated that the document was written at Pallikonda and signature alone obtained in the hospital. P.W.2 has also supported the version of P.W.1 before the Registrar. Whereas, P.W.2 has stated that P.W.3 mother is also very much present and signed the document. Whereas, mother has stated that she has signed only at Kazhanipakkam and not in the hospital. When the evidence of same parties regarding execution of the document before the trial Court, when carefully seen, P.W.1 in his evidence has stated that the sale deed was prepared in the hospital. Whereas in his evidence before the Registrar, he has stated that it was prepared at Pallikonda. Further, he has also stated that while the deceased was in bed, he obtained his signature. Whereas, before the Registrar he has stated that the signature of the deceased was obtained in the veranda in the hospital. P.W.3, Jambulingam is the other attesting witness. It is to be noted that he was not examined before the Registrar. He has also admitted that the sale deeds were prepared in Kilpauk Hospital and he does not know when the deceased was admitted in the hospital.

22. When the contradictory evidence for preparation of documents and obtaining signature of the deceased show that the execution has not been validly proved, the trial Court in fact

is right in disbelieving the execution. Ex.B.2, medical certificate filed before the trial Court also clearly show that the deceased was in the hospital from 12.07.1995 to 27.08.1995. He had gangrene in right foot at the relevant point of time. Therefore, the evidence of P.W.1 before the Registrar that he had obtained signature of the deceased in Veranda is highly improbable. A person having gangrene coming to veranda is high impossible. Similarly, two inconsistent versions are available with regard to the alleged execution, one before the Registrar and another before the trial Court. The trial Court has rightly disbelieved the execution. Though the Courts had also gone into the other issue of fraud and fabrication, which is not permissible in a statutory suit, primarily the Courts below have also disbelieved the execution on the basis of evidence.

23. The scope of the Suit under section 77 is well settled as per the dictum of the judgment referred above. The Courts power under section 77 of the registration Act is analogous to the power of the Registrar functioning under the Registration Act and the Court should confine its finding only to the extent of execution of the document. Merely because the Courts have gone into the other aspects, the finding of the Court below disbelieving execution on the basis of the evidence adduced on that aspect cannot be faulted. Ultimately the registrar has to satisfy execution. It is also relevant to extract Section 34 of the Registration Act and the same reads as follows :

"Enquiry before registration by registering Officer : -

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77 , 88 and 89, no document shall be registered under this Act, unless the persons executing such document, [and in the case of document for sale of property, the persons claiming under the document] or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under section 23, 34, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon -

[a] enquire whether or not such document was executed by the persons by whom it purports to have been executed;

[b] satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document [or they are claiming under the document]; and

[c] in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

[4] Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub - Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

[5] Nothing in this section applied to copies of decrees or orders."

24. When the document has been presented for registration, it is the duty of the registering officer to enquire whether any such document was executed by such person. A careful reading of Section 34, makes it very clear that the registering officer has a power to enquire whether the document was duly executed. Whereas, as per sub clause 3 of Section 35 of the Registration Act, the registering Officer has no power to enquire about the validity of the execution when the execution is denied by the legal representatives of the person purported to have executed the document. He shall refuse to register the document. Whereas, in the appeal under section 74 of the Registration Act, it is the Registrar who has the same power of registering officer provided under section 34 of the Registration Act to enquire whether the document is executed. Once, the registrar has satisfied himself that the document has not been executed, he has right in rejecting the appeal. Therefore, the contention of the learned counsel for the appellant that mere signing amounts to execution cannot be countenanced.

25. It now well settled that mere signing does not amount to execution. Execution implies the reading, understanding and signing the document. Mere signing cannot be construed as valid execution. The Registrar as well as the Courts below rightly found that the execution has not been proved. When the registering authority and the Registrar have considered the entire evidence of the parties, who seeks to prove execution and rightly come to the conclusion that the execution has not been proved and the Courts below have also held that the execution

has not been proved, the appellant cannot succeed in the second appeal. Though the Courts have gone into the issue which is beyond the scope of the suit under section 77 of the Registration Act, such as fraud, forgery etc., the fact remains that the execution of the documents has not been proved even before the trial Court. Hence, the substantial question of law have been answered against the appellant.

26. Accordingly, both the Second Appeals are dismissed. Consequently, the connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Subordinate Judge,
Vellore.
2. The Principal District Munsif,
Vellore.
3. The Sub Registrar,
Sub-Registration Office,
Chavadi, Pallikonda.
4. The District Registrard,
District Registrar Office,
Vellore Fort, Vellore District.

+1cc to Mr.R.Muniswamy, Advocate Sr.35449

+2cc to Mr. Ramalingam and Associates Advocate Sr.35046

Second Appeal Nos.1652 &
1653 of 2011

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srg 16/07/2019