IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.09.2019**

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.S.No.393 of 2018 &
O.A.No.574 of 2018

1.Chivukula Shantha Ram
2.Chivukula Sobha Rani (deceased)
3.Chivukula Upendra. J,

(Plaintiffs 1 to 3 represented herein
by their Power Agent
Mrs.Kalpana Murari,
Wife of N.Subramanian,
35/47, Arundale Beach Road,
Kalakshetra Colony, Besant Nagar,
Chennai - 600 090)

4.B.S.R.Murthy
5.B.Prashanth
6.Y.Sunitha
7.B.Anitha ... Plaintiffs

(Plaintiffs 4 to 7 brought on record
as LRs of the deceased second plaintiff
vide order dated 10.06.2019 in
A.No.3602 of 2019 in C.S.No.393 of 2018)

Vs

1.Satish V. Dulipati
2.D.Jyothi
3.N.Sirisha
4.G.Padmavathi
5.Sai Geetha
6.Sai Raj
7.Padmalatha Satish ... Defendants

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Plaint filed under order IV Rule 1 of O.S. Rules read with Order VII Rule 2 and 3 of C.P.C., praying for judgment and decree as follows:

a) Directing the first defendant herein to pay to the estate of Chivukula Satyanarayanamma, a sum of Rs.88,90,000/-, being a sum of Rs.70,00,000/- towards principal amount covered under the two Promissory Notes dated 14.05.2015 and Rs.18,90,000/- towards interest at 9% per annum calculated for 3 years from 14.05.2015 to 13.05.2018 on Rs.70,00,000/- along with future interest calculated at the rate of 9% per annum from the date of plaint till payment;

b) Granting specific performance of the General Power of Attorney / Agreement for sale dated 14.05.2015 executed by the seventh defendant in favour of the third plaintiff, by directing her to execute a sale deed conveying the schedule mentioned property to and in favour of the third plaintiff and on failure to do so, to direct the Registrar of this Court to execute the sale deed conveying the schedule mentioned property to and in favour of the third plaintiff, within a time frame;

c) Permanent injunction, restraining the defendants 1 to 7 or their servants, agents or any person claim through or under them, from alienating, encumbering or otherwise dealing with the schedule mentioned property;

d) Directing the first and seventh defendants to pay the costs of the present suit to the plaintiffs;

e) to pass such or other orders ;

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For Plaintiffs : Mr.R.Parthasarathy

For Defendants : Mr.Govi Shankar
Set ex-parte on 09.07.2018

JUDGMENT

The suit has been filed (a) for recovery of Rs.88,90,000/- along with future interest on Rs.70,00,000/- at the rate of 9% per annum from the date of plaint till payment; (b) grant of specific performance of the General Power of Attorney / agreement of sale, dated 14.05.2015 executed by the seventh defendant in favour of the third plaintiff; (c) for permanent injunction restraining the defendants 1 to 7, their men and agent from alienating, encumbering or otherwise dealing with the schedule mentioned property and for costs;

2. The facts in nutshell are as follows:-

The plaintiffs and the second defendant are the sons and daughter of one Chivukula Sathyanarayanamma. It is the case of the plaintiffs that the said Chivukula Sathyanarayanamma owned an immovable property measuring an extent of 3690 sq.ft situated at Plot No.174, Door No.18, 4th Cross Street,

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Purushotham Nagar, Chrompet, Chennai, and she wanted to develop or dispose of the said property. Since all of them were residing outside Chennai, they agreed for their mother to entrust the said property to the first defendant, who is none other than the son of the second defendant. The first defendant, through a Power Agent, sold the property to various person in bits and pieces, but failed to render proper accounts for the monies collected by them through the Power Agent.

3. The specific case of the plaintiffs is that the first defendant collected Rs.68,15,920/- being the sale consideration, as per the sale deed and another Rs.25,00,000/- from the proposed purchasers.

4. The plaintiffs would state that after repeated requests and negotiations, the first defendant agreed to pay Rs.95,00,000/- and an acknowledgment of the same, he executed two pronotes, dated 14.05.2015, one for Rs.25,00,000/- and another for Rs.45,00,000/-. In addition, the first defendant executed a General Power of Attorney, dated 14.05.2015 under which, he agreed to transfer the apartment bearing Door No.B-14, Vasanth Apartment, No.19 South Mada Street, Sri Nagar Colony, Saidapet, Chennai, standing in the name of his wife, the seventh defendant herein, in lieu of loan

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of Rs.25,00,000/- being part of sale proceeds of the house property in Chrompet. The plaintiffs would state that their mother passed away on 28.06.2015, leaving behind the plaintiffs and the second defendant as her legal-heirs. Since the agreed amount was not paid, the present suit.

5. Though the defendants received the suit summons and entered their appearance in 2018, no written statement was filed and hence, they were set ex-parte by this Court on 10.07.2019.

6. The plaintiffs, in order to prove their case, examined P.W.1 and marked the following documents as Exs.P1 to P13 as documentary evidence:-

Exs	***Documents***	***Dated***
P1	Original Power of Attorney issued by the plaintiffs 1 to 3 in favour of Ms.Kalpana Murari	07.02.2017
P2	Original Family Tree showing the genealogy of the parties with the present suit	-
P3 to P8	Certified copies of the Sale Deeds for the Chrompet property	-
P9	Original Pronote executed by the first defendant for Rs.25,00,000/-	14.05.2015

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Exs	*Documents*	*Dated*
P10	Original Pronote executed by the first defendant for Rs.45,00,000/-	14.05.2015
P11	Original Power of Attorney executed by the seventh defendant in favour of the third plaintiff	14.05.2015
P12	Xerox copy of the doctors' certificate certifying the death of Smt.Sathyanarayanamma	28.06.2015
P13	Xerox copy of the Family Member Certificate showing the legal-heirs of Smt.C.Sathyanarayanamma	-

7. The learned counsel for the plaintiffs submitted that the plaintiffs have proved their case by producing the oral and documentary evidence and they are entitled for decree sought for in the suit.

8. The defendants were set ex-parte on 10.07.2019. The said position continued as of now. Taking into consideration, the pleadings, the evidence of P.W.1 and Exs.P1 to P13, this Court is of the view that the plaintiffs have proved their case and entitled to decree sought for in the suit. Accordingly, the Suit stands decreed as prayed for. The seventh defendant is directed to execute the sale deed in favour of the third plaintiff within a period of 60 days from the date of receipt of a copy of this order. If the seventh defendant

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fails to execute the sale deed within the specified time, the Officer of the Court, shall execute sale deed in favour of the third plaintiff. No costs. Consequently, connected application is closed.

20.09.2019

Speaking Order / Non Speaking Order

Index : Yes/ No.
Internet : Yes /No.

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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K.KALYANASUNDARAM, J.,

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