

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2019

PRONOUNCED ON : 21.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.128 of 2016

C. Kalavathy ...Appellant/Plaintiff

Vs.

1. Periyannayagam
2. G. Gunavathy
3. G. Bhuvneshwari
4. Parameshwari
5. Bhuvaneshwari ...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.08.2015 made in A.S.No.227 of 2014 on the file of the XV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 22.10.2013 made in O.S.No.3158 of 2005 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. B. Harikrishnan

For Respondents: Mr. P. Prem Kumar for R2 & R3
R1, R4 and R5 - notice dispensed with
vide order dated 24.02.2016

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 21.08.2015 passed in A.S.No.227 of 2014 on the file of the XV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 22.10.2013 passed in O.S.No.3158 of 2005 on the file of the II Assistant Judge, City Civil Court, Chennai.

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

" Is not the lower appellate court correct in law in rejecting the power of attorney deed dated 07.07.1997 in Doc, No.867 of 1997 and accepting the one dated 07.07.1997 in Doc. No.866 of 1997 without considering the contents?"

3. Considering the scope of the issues involved 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. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. Originally, the suit has come to be laid by the plaintiff against the first defendant alone for the relief of permanent injunction. In the plaint, the plaintiff has described the suit property as an undivided 5% share and interest together with a flat bearing No.G3 having a built up space of 585 sq. ft., in the ground floor of the building complex bearing Door No.33, New No.24, 5th Main Road, Kasturibhai Nagar, Adyar, Chennai 600 020. It is found that while seeking the relief of permanent injunction against the first defendant in the relief column, the plaintiff has described the abovesaid flat as only bearing No.G2. Be that as it may, the abovesaid suit laid by the plaintiff had been resisted by the first defendant by filing a written statement and the first defendant had put up the case that he had purchased the flat No.G2 in the ground floor of the abovesaid premises and is not concerned with the Flat No.G3 claimed by the plaintiff and also further stated that he had sold the Flat No.G2 to one Mrs. Gunavathi and Mrs.Bhuvaneshwari and accordingly, for various other reasons prayed for the dismissal of the plaintiff's suit. It is only thereafter, subsequently, in the year 2007, the plaintiff is found to have amended the plaint by impleading the abovesaid Gunavathi and Bhuvaneshwari as the defendants 2 and 3 as well as the partners of Eswar Builders, namely, Parameshwari and Bhuvaneshwari as the defendants 4 and 5 and accordingly also amended the reliefs prayed for by her by seeking the relief of declaration that she is the owner of the suit property by stating that the suit property bears Flat No.G3 and also prayed for the recovery of possession of the same from the defendants 2 and 3.

6. It is not in dispute that the flat had been promoted in the premises / land by Eswar Builders, a partnership concern, and the defendants 4 and 5 are the partners of the abovesaid firm. It is also not in dispute that the land on which the building had been constructed by Eswar Builders belonged to P.A.Manickam. Now according to the plaintiff, by way of the Memorandum of Understanding dated 07.11.2000 marked as Ex.A1 and also by paying consideration both by way of cash and cheque, according to her, she had paid the entire cost of the suit property wholly both towards the cost of the flat as well as the cost of the undivided share in the land and accordingly, it is the case of the plaintiff that a Memorandum of Agreement had been entered into between her and Eswar Builders on 15.11.2000, which document has come to be marked as Ex.A2 and further it is put forth that she had obtained the

sale deed qua the undivided share in the land i.e. 5% of undivided share in the land from the power of attorney agent of P.A.Manickam, namely, Palaniappan as per the sale deed dated 20.11.2000 marked as Ex.A3 and the plaintiff has also marked certain receipts issued by the partners of Eswar Builders, marked as Ex.A4 series and also marked the agreement dated 04.05.2005 entered into between V.Bhuvaneshwari one of the partners of Eswar Builders and her husband S.K.Vivekanandan and the plaintiff with reference to the suit property and accordingly put forth that the flat in question had been delivered to her on 05.05.2005 and in this connection had marked a letter confirming the delivery of possession of the flat signed by V.Bhuvaneshwari, the partner of Eswar Builders and the said letter has been marked as Ex.A8 and accordingly, though would put forth the case that there had been certain lapses and delay on the part of Eswar Builders in the completion of the construction and delivery of the flat in question to her, however, would, as abovestated, obtain the possession of the flat on 05.05.2005 by way of Ex.A8 and accordingly put forth the case that the first defendant put forth the claim of ownership over the flat in question without any basis and thereby attempted to interfere with her possession and enjoyment of the flat and hence according to the plaintiff, she had been necessitated to levy the suit against the first defendant for the relief of permanent injunction. As above stated, after the written statement had been filed by the first defendant, the plaintiff had amended the suit by impleading the defendants 2 to 5 as well as had amended the said plaint and included the reliefs of declaration and possession qua the suit property.

7. Briefly stated, the defendants 1 to 3, in toto, would put forth the case, after disputing the claim of title of the plaintiff to the flat No. G2, contending that the first defendant entered into an agreement for construction with Eswar Builders as well as the undivided share in the land and purchased the flat No.G2 of the premises and subsequently sold the same to the defendants 2 and 3 and accordingly contended that the sale deed of undivided share in the land and the construction agreement, etc., were jointly executed in favour of the first defendant by both the partners of Eswar builders, namely, Parameshwari and Bhuvaneshwari and also in the capacity as the lawful power of attorney agent of P.A.Manickam, the land owner, and put forth the case that Parameshwari and Bhuvaneshwari, the partners of Eswar Builders had been appointed as the power of attorney agent by P.A.Manickam vide registered general power of attorney deed in document No.866 of 1997 and accordingly projected the sale deed dated 10.01.2003 for claiming title to the suit property. As abovenoted, it is the case of the defendants 1 to 3 that the first defendant had sold the flat No.G2 in favour of the defendants 2 and 3 and accordingly contended that the plaintiff has no title, possession and enjoyment of flat No.G2 and prayed for the dismissal of the said suit. The defendants

2 and 3 had pleaded that the first defendant had sold the flat No.G3 to them by way of the registered sale deed dated 16.03.2005 and put them in the possession of the abovesaid flat and accordingly contended that it is only they, who had been enjoying the said property by paying the property tax, etc., and plaintiff is not entitled to claim any title to the said flat and prayed for the dismissal of the said suit.

8. The fifth defendant has filed the written statement almost supporting the case of the plaintiff.

9. In support of the plaintiff's case P.Ws.1 to 3 were examined and Exs.A1 to A13 were marked. On the side of the defendants, D.Ws.1 to 3 were marked and Ex.sB1 to B6 were marked. Further, C.W.1 was examined and Exs.C1 to C14 were marked.

10. Based on the materials placed on record by the respective parties, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

11. Ex.A1 Memorandum of Understanding has been projected by the plaintiff for adjusting the payments said to have been paid by her to Eswar Builders in respect of the flat alleged to have been purchased by her. In my considered opinion, Ex.A1 Memorandum of Understanding does not assume importance for determining the claim of title of the suit property in dispute by the plaintiff. Be that as it may, as found by the courts below, as regards the correction in the month and year of the document in Ex.A1, there is no proper explanation on the part of the plaintiff. Furthermore, both the partners of Eswar Builders had not signed the same and only Bhuvaneshwari, one of the partners had signed the same and the confirming parties namely, Purushothaman and S.K.Vivekanandan had also not signed in the said document. Furthermore, there is no mentioning about the flat number and the other details of the property agreed to be alienated to the plaintiff by the parties thereto. The next document projected by the plaintiff is the Memorandum of Agreement dated 15.11.2000 marked as Ex.A2 entered into between Eswar Builders represented by its two partners and the plaintiff. Despite the same, as found by the courts below, Ex.A2 Memorandum of Agreement had been signed only by Bhuvaneshwari and not by the other partner Parameshwari. With reference to the same, there is no proper explanation and according to the evidence adduced in the matter through P.Ws.2 and 3, it is put forth that the partner Parameshwari had deserted the project promoted by Eswar Builders somewhere in the year 2004, but, when Ex.A2 Memorandum of Agreement is found to have been entered into on 15.11.2000, there is no explanation on the part of the plaintiff as to why the partner Parameshwari had not signed in the same. Furthermore, a reading of Ex.A2 agreement would go to show that Eswar Builders had assured to deliver the flat

within five months from the date of agreement. However, even as per the case of the plaintiff, the flat had been entrusted to her possession by Eswar Builders only on 05.05.2005. Therefore, the flat had not been delivered to the plaintiff within the time agreed to by the parties as stated in Ex.A2 agreement. The Memorandum of Agreement Ex.A2 is found to have been entered into between the parties thereto only as regards the 'C' schedule property described in the said document and the 'C' schedule property is described in Ex.A2 as an apartment measuring 585 sq. ft in the ground floor bearing apartment No.G---, in the building constructed in the schedule 'A' property. Therefore, as held by the courts below in Ex.A2, there is no specific mentioning of Flat number agreed to be allotted to the plaintiff, whether it bears the flat number G2 or G3. Therefore, Ex.A2 agreement would be of no use for enabling the plaintiff to either claim title to the flat number G2 or G3 as the case may be.

12. Ex.A3 is the sale deed dated 20.11.2000 said to have been executed in favour of the plaintiff by Palaniappan, the power of attorney agent of the land owner P.A.Manickam. The same has been seriously challenged by the contesting defendants. Now according to the plaintiff, P.A.Manickam had granted the power to Palaniappan to sell the flat in question by way of the power of attorney deed dated 07.07.1997 registered in document No.867 of 1997. The abovesaid power of attorney deed has been marked by the plaintiff only in the first appellate court as Ex.A14. The certified copy of the power of attorney deed dated 07.07.1997 executed by P.A.Manickam in favour of Palaniappan has come to be marked as Ex.A14 in the first appellate court. According to the contesting defendants, no such valid power had been granted by P.A. Manickam to Palaniappan to sell the flat in question. The power of attorney agent Palaniappan has been examined as P.W.2. According to the contesting defendants, P.A.Manickam had granted the power of attorney deed only in favour of the partners of Eswar Builders, namely, Parameshwari and Bhuvaneshwari to sell the flat in question and the abovesaid Power of attorney deed dated 07.07.1997 in document No.866 of 1997 is marked as Ex.C11. Therefore, it is found that two power of attorney deeds had come to be executed by P.A. Manickam on 07.07.1997, one in favour of the partners of Eswar Builders in document No.866 of 1997 and another in favour of Palaniappan in document No.867 of 1997. Therefore, it is obvious that the power of attorney deed in favour of the partners of Eswar Builders had come to be executed prior to the execution of the power of attorney deed in favour of Palaniappan. In this connection, Palaniappan examined as P.W.2 has admitted that he has seen the copy of the power of attorney executed on the same date by P.A.Manickam in favour of the partners of Eswar Builders. Thus, Palaniappan is found to have knowledge about the power of attorney deed executed by P.A.Manickam in favour of the partners of the Eswar Builders. Furthermore, Palaniappan, during the course of evidence, has

admitted that there is no reference about the power of attorney deed executed by P.A.Manickam in favour of the partners of Eswar Builders in the power of attorney deed executed in his favour by P.A.Manickam and therefore, when the land owner P.A.Manickam had already conveyed the power of attorney in favour of the partners of the Eswar Builders, without cancelling the same in the manner known to law, he would not be entitled to execute another power of attorney deed in favour of Palaniappan as put forth by the plaintiff. Now according to the contesting defendants, the power of attorney deed executed in favour of Palaniappan is only intended to be as a security for the financial assistance offered by Palaniappan to Eswar Builders. In this connection, the letter dated 26.09.1997 is pressed into service, which has been marked as Ex.A9. A reading of Ex.A9 letter would go to show that the same has been addressed by Eswar Builders to Palaniappan and there is a reference about the approach of Eswar Builders for the financial assistance from Palaniappan and accordingly in that context, Eswar Builders had arranged for the execution of general power of attorney in favour of Palaniappan by the land owner P.A.Manickam and the letter further reads that the abovesaid general power of attorney deed executed by P.A.Manickam in favour of Palaniappan in respect of the property remains unaltered and is not revoked or changed in any manner and shall continue to be the proper security in the hands of Palaniappan in respect of the financial assistance received from him by Eswar Builders. It is thus found that the power of attorney deed had come to be executed in favour of Palaniappan by P.A.Manickam only as a security document vis-à-vis the financial assistance provided by Palaniappan to Eswar Builders. The same has also been analysed by the courts below and in such view of the matter, when P.A.Manickam had also executed the power of attorney deed in favour of the partners Eswar Builders prior to the execution of the power of attorney deed in favour of Palaniappan and Palaniappan is also aware of the same and when by way of Ex.A9 letter, it has been made clear as to for what purpose the power of attorney deed in favour of Palaniappan had come to be executed and in such view of the matter, it is found that when the power of attorney deed executed in favour of the partners of Eswar Builders marked as Ex.C11 had not been validly revoked and rescinded by the land owner P.A.Manickam and when the power of attorney deed in favour of Palaniappan is found to have been executed only by way of a security qua the loan advanced by Palaniappan to Eswar Builders, in such view of the matter, the claim of the plaintiff that he had acquired a valid sale deed for 5% of undivided interest in the land in question from Palaniappan vide sale deed dated 20.11.2000 as such cannot be believed and accepted. Furthermore, P.W.2 Palaniappan, during the course of evidence has also admitted that Eswar Builders had obtained the power of attorney deed in his favour in connection with the loan received by them from him and would only state that he does not remember as to how much he had advanced as loan to

Eswar builders. Therefore, when in toto, it is found that Palaniappan had not been validly given the power to execute the sale deed in respect of the property in dispute to the plaintiff and in particular, when the power of attorney deed in favour of the partners of Eswar Builders had not been properly revoked, in such view of the matter, the courts below are found to be wholly justified in not placing reliance upon the sale deed Ex.A3 projected by the plaintiff for claiming title to the property in question.

13. According to the plaintiff, he had also paid the amount to the Eswar Builders apart from adjusting the payments vide Ex.A1 Memorandum of Understanding, also by way of cash and cheque and in this connection, four receipts had been projected by the plaintiff marked as Ex.A4 series. On a perusal of the same, it is found that the receipts dated 05.10.2001, 26.10.2001 had been signed only by Bhuvaneshwari, whereas, the receipt dated 20.10.2001 has been signed by both the partners of Eswar Builders and the receipt undated is also found to have signed by both the partners of Eswar Builders. As to why both the partners of Eswar Builders had not signed in the other two receipts, there is no proper explanation on the part of the plaintiff. Therefore, the receipts projected by the plaintiff themselves, would not enure to the case projected by the plaintiff for claiming title to the property in dispute. Ex.A5 agreement dated 04.05.2005 said to have been entered between the plaintiff and Bhuvaneshwari, one of the partners of Eswar Builders and her husband S.T.Vivekanandan and the said agreement is found to be pertaining to flat No.G3, that too, measuring an extent of 602 sq. ft. There is no proper explanation by the plaintiff as to how come the said agreement had been entered into for the flat measuring a extent of 602 sq. ft, when she had, all along, been projecting the case that she had purchased the flat only of an extent of 585 sq. ft. Furthermore, the other partner Parameshwari of Eswar Builders has not signed in Ex.A5 agreement. There is no proper explanation on the part of the plaintiff as to how comes he could claim that the flat No.G3 measuring 602 sq. ft had come to be agreed to be sold to her when the said document had not been executed by both the partners of Eswar Builders. Therefore, the abovesaid document also raises suspicion whether at all the plaintiff would have validly acquired the title to the flat No.G3 measuring an extent of 602 sq. ft from Eswar Builders as put forth by her.

14. Per contra, considering the documents projected by the defendants, it is found that the first defendant had validly obtained the undivided share of land as well as the flat No. G2 from the partners of Eswar Builders both in their capacity as the promoters of the flat as well as the power of attorney agents of the land owner P.A.Manickam and accordingly, it is found that various documents had been projected by the defendants in Exhibit C series and particularly, Ex.C3 dated 10.01.2003 is found to be the sale deed executed by the partners of Eswar Builders, as the power

agents of P.A.Manickam, alienating the undivided 5% share of land to the first defendant and Ex.C4, the Memorandum of Agreement dated 03.10.2002 entered into by both the partners of Eswar Builders with the first defendant, under which they had agreed to allot the first defendant the flat for a sum of Rs.8,54,000/-and the said agreement specifically mentions the same is entered into only in respect of the flat No.G2 measuring an extent of 610 sq. ft. Furthermore, the agreement of sale entered into between the first defendant and Eswar Builders with reference to the purchase of the flat as above stated has come to be marked as Ex.C5 and Ex.C6 sale deed dated 16.03.2005 is the document of title executed by the first defendant in favour of the defendants 2 and 3 for conveying the flat No.G2 measuring 610 sq. ft and accordingly it is found that the defendants 2 and 3 had taken the possession of the abovesaid flat and enjoying the same and in this connection, the defendants 2 and 3 have marked the Electricity Bill card standing in their names as Ex.C7 and the property tax receipts in their names marked as Ex.C8 series and the demand of house tax marked as Exs. C9 and C10 and as abovenoted Ex.C11 is the power of attorney deed dated 07.07.1997 executed by P.A.Manickam in favour of the partners of Eswar Builders for conveying the undivided share of land in favour of the prospective purchasers.

15. In the light of the abovesaid factual matrix, when the plaintiff has miserably failed to establish as to with reference to which flats he has entered into the agreement with Eswar Builders, whether it is flat No.G2 or G3 and also not sure about the extent of the flat, whether it is 585 sq. ft as put forth in the plaint or 602 sq. ft. as depicted in the Memorandum of Agreement dated 04.05.2005 marked as Ex.A5 and furthermore, when the plaintiff has miserably failed to establish that Palaniappan had the power to convey the undivided share of land in her favour, particularly, when the alleged power of attorney deed in favour of Palaniappan is found to be executed only as a security document vis-à-vis the loan advanced by him to Eswar Builders as could be gathered from Ex.A9 letter, which fact has also been admitted by Palaniappan examined as P.W.2 and when there is no material to hold that Eswar Builders had validly conveyed the flat whether G2 or G3 in favour of the plaintiff and the letter of delivery of possession projected by the plaintiff dated 05.05.2005 marked as Ex.A8 being also not signed by Parameshwari, one of the partners of Eswar Builders and furthermore, when even in the said letter of confirmation, the delivery of possession of flat number has been mentioned as G3 consisting of built up area of 602 sq. ft., however, the said document having not been signed by the partner Parameshwari of Eswar Builders and when there is no other material projected on the part of the plaintiff that following Ex.A8 letter, she had taken possession of the flat in question and enjoying the same and for the alleged possession and enjoyment of flat in question, the plaintiff has only projected the Electricity Bill card

marked as Ex.A13 and as rightly determined by the courts below, when the Electricity Bill card Ex.A13 does not in any manner point out that the same pertains to the flat in question and on the other hand, when the documents projected by the defendants, on the whole, go to show that the defendants have purchased the flat No. G2 measuring 610 sq. ft., from Eswar Builders in their capacity as the promoters of the flats as well as the power of attorney holders of P.A.Manickam, the land owner and also established that it is only they who are in the possession and enjoyment of the said flat, in such view of the matter, the courts below are found to be wholly justified in holding that the plaintiff has miserably failed to establish her claim of title, possession and enjoyment of the flat claimed to have been purchased by her as projected in the plaint. Furthermore, when the plaintiff examined as P.W.1 would admit that she does not know the first defendant Perianayagam, in such view of the matter, her claim that the first defendant attempted to interfere with her possession and enjoyment of the flat in question, cannot, at all, be believed and if really, there had been interference on the part of the first defendant, as held by the courts below, the plaintiff would have lodged necessary police complaint against the first defendant or for the matter, against the defendants 2 and 3 and on the other hand, no such complaint has been filed by the plaintiff to buttress her case. Furthermore, when as abovenoted, the plaintiff has miserably failed to establish her claim of purchase of the flat in question whether it is G2 or G3, whether it measures 585 sq .ft. or 602 sq. ft as put forth by her and as abovenoted, the plaintiff has also miserably failed to establish her claim of possession and enjoyment of the flat in question, in all, the courts below are found to be wholly justified in non suiting the plaintiff.

16. The plaintiff's counsel, in support of his contentions, after unable to sustain the case of valid claim of title on the part of the plaintiff to the flat in question, would state that the power of attorney deed projected by the defendants marked as Ex.C11 does not authorize the power holders, namely the partners of Eswar Builders, to convey the undivided share of land and accordingly further contended that on the basis of the said power of attorney deed, either the first defendant or for the matter the defendants 2 and 3, cannot claim to have acquired a valid title to the flat No.G2 consisting of the built up area of 610 sq. ft. and according to him, there is no clear recital in the said power of attorney deed empowering the partners of Eswar Builders to execute the sale deed in respect of the undivided share of land in favour of the first defendant. In this connection, he placed reliance upon the decision of this court reported in (1968) 2 MLJ 574 (Anantha Pillai vs. Rathnasabapathy Mudaliar and ors). In the abovesaid decision, the general principle regarding construction of power of attorney had been outlined and the same is extracted below.

power to execute documents on behalf of Janaki Ammal will include the power to execute an agreement to sell and also to execute a sale deed. In this connection the learned Counsel strongly relied on a sale deed executed by Janaki Ammal in favour of one Kuppuswami Naidu on 2nd June, 1953 as supporting his contention that the power-of-attorney executed by Janaki Ammal in favour of the first defendant contained the authority to enter into an agreement to sell. That sale deed, dated 2nd June, 1953 expressly refers to the fact that earlier to that her husband as power-of-attorney agent of herself had entered into an agreement to sell and she was completing the transaction by executing the sale deed itself. That it was found necessary for Janaki Ammal personally to execute the sale deed, will be a sufficient indication to show that the parties themselves were aware of the fact that the first defendant did not have such a power. Apart from that fact, that in one instance Janaki Ammal ratified the agreement to sell entered into by the first defendant and completed the sale by executing the deed of conveyance, does not establish that the power-of attorney itself conferred such a power on the first defendant. The general principles regarding the construction of a power-of-attorney are well-settled. Powers of-attorney must be strictly construed as giving only such authority as they confer expressly or by necessary implication. Where an act purporting to be done under the power-of-attorney is challenged as being in excess of the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either by express terms or by necessary implication. Some of the principles governing the construction of a power-of-attorney are : (1) the operative part of the deed is controlled by the recitals; (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts; (3) the general words do not confer general powers but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose; (4) a power-of-attorney is construed so as to include all medium powers necessary for its effective execution. Bearing these general principles in mind the question for consideration is whether the power-of-attorney in this case authorised the first defendant to enter into an

agreement to sell or authorised him to execute a sale deed. In my opinion the power granted to the first defendant to execute every type of document on behalf of Janaki Ammal will have to be understood with reference to particular acts specified in the documents itself, for which the power was granted. It must be remembered that the power was granted by a wife to a husband for managing her properties and not for liquidating the same. The apparent necessity for executing such a power was that being a woman she was not able to attend to the day-to-day requirements involved in the management of the properties and it is not as if she was not in a position to negotiate the terms of a sale or to execute a sale deed, which is not an every day occurrence. Mr. Rajagopala Iyer relied on the decision of this Court in 8/17/2019 Anantha Pillai vs Rathnasabapathy Mudaliar And ... on 26 March, 1968 <https://indiankanoon.org/doc/850854/> 5/9 Venkataramana Iyer v. Narasinga Rao 24 M.L.J. 180 : I.L.R. (1915) 38 Mad. 134, and contended that the power-of-attorney in this particular case was a general power-of-attorney. For the same purpose the learned Counsel relied on the decision of this Court in Krishna Phoopathi Deo v. Raja of Vizianagaram I.L.R. (1915)38 Mad. 832 : 26 M.L.J. 185. I must point out that there is no magic in the nomenclature of a power-of-attorney being a general power-of-attorney. The scope of the power has to be gathered from the language of the document. As was pointed out by this Court in the latter case relied on by the learned Counsel himself " Every document must be construed with reference to its particular terms, and differently worded documents afford but little assistance for correctly construing the document concerned in this case ". Therefore, even on the basis that the power-of-attorney executed by Janaki Ammal on 30th June, 1937, is a general power-of-attorney, still the question remains whether it authorised the first defendant to execute a document like Exhibit A-1. Learned Counsel relied on a decision of the Calcutta High Court in Narendra Nath v. Bimala Sundari (1938) 42 C.W.N. 718, for the position that the agent's power is not limited to the physical act of signing documents relating to transactions entered into by the principals but he has also the power to enter into contracts himself on behalf of the principals and to make the necessary documents. In my opinion the question is whether any such power can be gathered from the terms of the document in

question. I am clearly of the view that no such power can be gathered from the document in question. One feature I have already indicated is that the document does not confer expressly on the first defendant any power to alienate the properties either by way of sale, mortgage or otherwise. Secondly, the document is a detailed one referring to several acts to be done by the first defendant. Therefore, in the context of the detailed enumeration of the powers conferred on the first defendant to perform acts, the general words will have

to be understood as enabling him to do such things as are necessary for the purpose of effectively performing those functions enumerated and conferred on the first defendant. Thirdly, the occasion for executing the power-of-attorney was that Janaki Ammal being a woman was not in a position to look after the management of her properties and affairs personally, and certainly that does not indicate any inability or disability on her part to negotiate a sale or enter into an agreement for that purpose. In this context a decision of the Patna High Court in Loknath Prosad v. Sah Wahib Hussain is instructive. In that case a pardanashin lady executed a power-of-attorney in favour of her husband for the purpose of looking after her affairs and managing her properties. The power-of-attorney in that case began by reciting that the executant being a pardanashin lady it was difficult and impossible for her to look after and take care of the whole and entire village and Court affairs and cases and to execute every kind of deed personally. It went on to appoint the husband as the general power-of-attorney with full powers and then specified in detail the powers in relation to village and Court affairs and to instruments affecting moveable and immovable properties. As to the latter powers, the language used after enumerating different kinds of deeds such as deeds of sale, mortgage and lease, etc. was "the said general attorney shall either as (or through) attorney on his own behalf or personally on my behalf by his pen sign and acknowledge and get attested (these instruments) and present them before the Registrar and admit execution and get them registered." That is to say, the attorney had power to sign and consent to a deed of sale and get it attested and registered. Notwithstanding this language, the Patna High Court pointed out that the husband had no power to enter into an agreement for sale in respect of the wife's property. The learned Judges pointed out (at page

If the lady had intended that her attorney Should have power to sell, mortgage and lease, nothing would have been simpler than to say so; but this is not said.

The learned Judges further pointed out:

If there had been a power to sell, then by necessary implication there would have been the power to settle the terms of sale. But there is no power to sell.

If that was the decision of the Patna High Court in relation to a power-of-attorney where expressly the power was conferred on the husband to execute deeds of sale, mortgage, lease, etc. on behalf of the grantor of the power the position is a fortiori here, where there is no enumeration of any power to execute all types of documents on her behalf, which necessarily has to be understood in the context of the specified and enumerated powers conferred on the first defendant by Janaki Ammal. For these reasons, I am of the view that the power-of-attorney executed by Janaki Ammal in favour of the first defendant on 30th June, 1937 did not authorise the first defendant to execute Exhibit A-1 on behalf of Janaki Ammal and therefore the said document is not binding either on Janaki Ammal or the 2nd defendant."

The principles of law outlined in the above decision are taken into consideration and followed as applicable to the case at hand.

17. Considering the various recitals found in the power of attorney deed executed by P.A. Manickam in favour of the partners of Eswar Builders, when it is found that by way of the same, P.A. Manickam had empowered them to execute any sale agreement for conveying the property in question and to sign declarative statutory forms, tenements before the sub registrar or District Registrar for the purpose of registration of the sale deed in respect of the schedule mentioned property given in the power deed and to sign necessary papers, plans, applications, proposals, etc., regarding the schedule mentioned property and to appear before the various authorities like MMDA, Corporation of Madras for the same, to apply and obtain service connection from TNEB to the building construction for the schedule mentioned property and to execute and do all the other acts, deeds and needs that are necessary, which are considered to be necessary by the power holders in the conveyance of schedule mentioned property and also empowering them to do all such further acts and deeds instantly and are necessary for the proper execution of the acts, deeds and needs mentioned herein above and to

execute the revocation deeds, cancellation deeds and also such other documents as may be necessary and reasonably required from time to time in relation to the schedule mentioned property and when the schedule mentioned property is the Plot No.9 measuring an extent of 3960 sq. ft and considering the other recitals contained in the abovesaid power deed, in all, it is found that as rightly held by the courts below as well as contended by the defendants' counsel, there is a clear power granted to the power holders, namely, the partners of Eswar Builders by P.A. Manickam, the land owner empowering them to execute the sale deed in favour of the prospective purchasers and accordingly, it is found that on the strength of the abovesaid power of attorney deed, the partners of Eswar Builders had the entitlement and power to convey the sale deed infavour of the first defendant in respect of the flat No.G2 promoted by them in the premises concerned and accordingly they are also found to have conveyed the flat No.G2 measuring 610 sq. ft to the first defendant both in their capacity as the promoters of the flat as well as power of attorney holders of P.A.Manickam, the land owner and in such view of the matter, the argument put forth by the plaintiff's counsel that the the contesting defendants had failed to establish that the partners of Eswar Builders had the power to convey the property in question, cannot at all be countenanced and as above pointed out, in the light of the various recitals contained in the said power deed, it is clearly found that the power holders had all the entitlement and authority to execute the sale deed in favour of the first defendant and the other prospective purchasers of the property in the premises and therefore, the above argument advanced by the plaintiff's counsel for negating the case of the contesting defendants, as such, cannot be accepted in any manner.

18. In the light of the abovesaid discussions, the reasoning and conclusions of the courts below for non suiting the plaintiff are found to be based on the proper appreciation of the materials and the principles governing the same and the courts below are right in rejecting the power of attorney deed dated 07.07.1997 in document No.867 of 1997 and accepting the power of attorney deed dated 07.07.1997 in document No.866 of 1997 by rightly assessing and analysing the various recitals contained, particularly, in the power of attorney deed dated 07.07.1997 in document No. 866 of 1997 and also by holding that the power of attorney deed dated 07.07.1997 in document No.867 of 1997 had been intended to be only a security document vis-a-vis the financial assistance provided by Palaniappan in favour of Eswar Builders as determined by them, hence no interference is called for with reference to the abovesaid determination of the courts below. The substantial question of law formulated in this second appeal is accordingly answered against the plaintiff and in favour of the contesting defendants.

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

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bga

Copy to

1. XV Additional Judge, City Civil Court, Chennai.

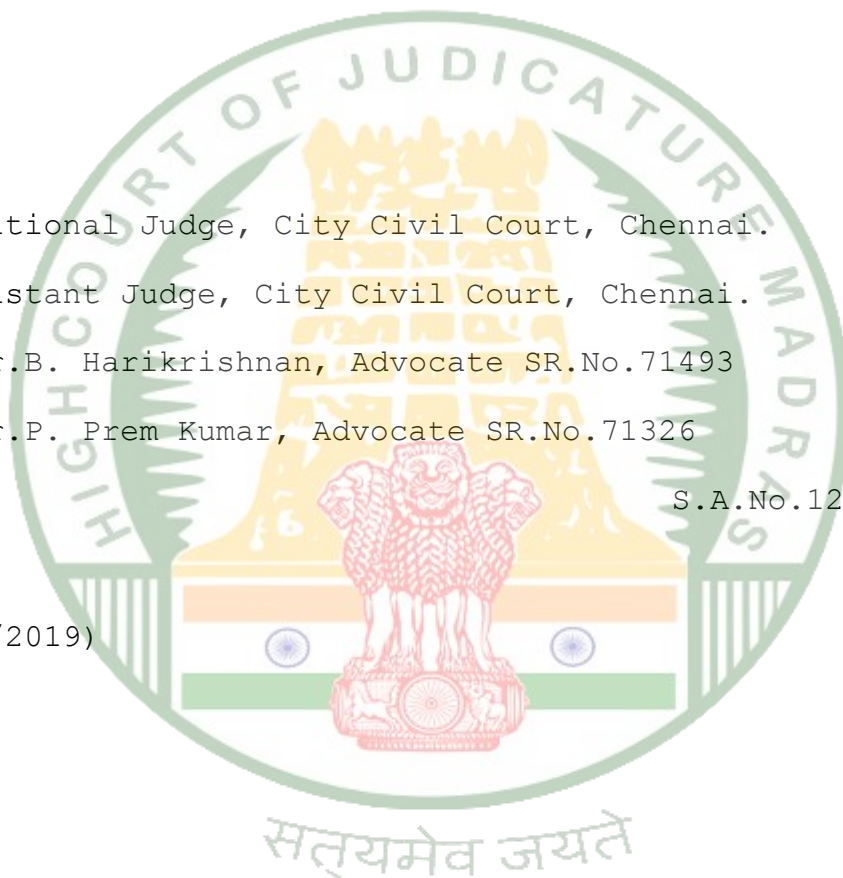
2. II Assistant Judge, City Civil Court, Chennai.

+1cc to Mr.B. Harikrishnan, Advocate SR.No.71493

+1cc to Mr.P. Prem Kumar, Advocate SR.No.71326

S.A.No.128 of 2016

NMI (CO)
GMY (25/11/2019)



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