

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.09.2020	Delivered on 05.10.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. NPD.No.3781 of 2018
and CMP No.21074 of 2018

S.Kotteswari
Representative of Power Agent S.Karuppannan,
(vide in C.M.P.No.3566/2007 in CRP No.1120/2005)
Door No.144/10A, Palani Swamy Strret,
Kovuthapadi Village, Bhavani Taluk,
Erode District, Tamil Nadu. .. Petitioner

Vs.

1. The Special Tahsildhar
Adi Dravidar Welfare,
Deputy Tahsildhar Office,
Sathyamangalam.

2. Kempappa .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by Learned Subordinate Judge, Gobichettipalayam fair and decretal order in I.A.No.3 of 2014 in C.M.A.No.6 of 2001 dated 20.08.2018.

For Petitioner : Mr. N.Manoharan

For Respondents : Mr. Y.T.Aravind Gosh,
Addl. Govt. Pleader for R1

Mr.J.Prithivi,
M/s.S.Kaithamalai kumaran

ORDER

This matter is taken up for hearing through Video-Conferencing.

A third party whose application for payment out of the compensation for the land acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was dismissed by the Trial Court, has come up with this Civil Revision Petition.

2. The facts leading to the Civil Revision Petition are as follows:

The larger extent of land in Survey No.178/2 of Gettavadi Village of Sathyamangalam Taluk, belonged to M/s. Kempappa and Mahadevappa. The said Kempappa and Mahadevappa entered into an agreement of Sale with one Karuppannan S/o. Subramaniam, agreeing to convey the said land measuring about 3 acres 27 cents for a consideration of Rs.1,48,785/- on 12.03.1997. On the same date, the brothers executed a power of attorney in favour of the said Karuppannan, authorising him to deal with the said property covered by the

agreement of sale.

3. While things stood thus, the Government of Tamil Nadu published a notification under Section 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, on 21.09.2000 proposing to acquire the lands in Survey No.178/2 measuring about 1.31.16 hectares equivalent to 3.23 acres. An award came to be passed on 16.02.2001 determining the compensation payable for the land at Rs.7,044/- per acre. Though the notice under Form III was issued to the Power Agent Karuppannan, the award was passed in favour of the original land owners viz., Kempappa and Mahadevappa. The Power Agent Karuppannan, preferred an Appeal against the said award in CMA No.6 of 2001 on the file of the Sub Court, Gobichettipalayam.

4. The learned Subordinate Judge allowed the appeal and enhanced the compensation payable to Rs.3,00,000/- per acre. The said fixation was challenged by the Government in CRP No.1120 of 2005. Though the said Revision was eventually dismissed, as per the interim order made in the said Civil Revision Petition, the Power Agent Karuppannan, was permitted to withdraw 25% of the award amount unconditionally. Even during the pendency of the Civil Revision Petition, the said Karuppannan, died on 22.08.2007. The petitioner herein got herself impleaded in the Civil Revision Petition as the

third respondent.

5. During the pendency of the Civil Revision Petition, the petitioner herein filed a suit in OS No.328 of 2007 on the file of the District Munsif Court, Bhavani, seeking a declaration that she is a Clause II heir of Karuppannan, and a mandatory injunction directing the defendants in the said suit viz., the Government of Tamil Nadu represented by its District Collector, Erode and the Tahsildar, Bhavani to issue a Legal Heirship Certificate recognising her as the Clause II heir. Curiously the land owners viz., Kempappa and Mahadevappa, were not made parties to the said suit. The suit came to be decreed on 26.09.2008. Armed with the said decree and an unregistered Will said to have been executed by Karuppannan, the petitioner filed the instant application in IA No.3 of 2014 seeking payment out of the award amount that is lying to the credit of CMA No.6 of 2001.

6. The original land owners viz., Kempappa and Mahadevappa, were not made parties to the original petition and it is seen from the records that only Kempappa was impleaded as the second respondent in IA No.3 of 2014 on 06.08.2016. Upon impleading Kempappa filed a counter claiming right over the property and contending that on the death of Karuppannan, on 22.08.2007,

the Power of Attorney ceased and it is also claimed that power of attorney was cancelled even on 07.06.2006 and 30.10.2006. Therefore, according to the second respondent, the said Karuppannan had no right to execute the Will bequeathing the compensation amount as it is payable only to Kempappa and Mahadevappa.

7. The learned Subordinate Judge, Gobichettipalayam, who heard the application, concluded that the power of attorney will not confer title on Karuppannan and therefore, Karuppannan had no right to execute a testamentary instrument bequeathing the compensation amount to the petitioner. The learned Trial Judge also concluded that an agent cannot transfer the agency. He also found that the power of attorney coupled with an agreement of sale will not create any right or interest in the immovable property or the compensation amount payable. On the above findings, the learned Trial Judge dismissed the application, aggrieved the petitioner has come up with this Civil Revision Petition.

8. I have heard Mr.N.Manoharan, learned counsel appearing for the petitioner, Mr.Y.T.Aravind Gosh, learned Additional Government Pleader appearing for the first respondent and Ms.J.Prithivi, learned counsel appearing for Mr.Kaithamalai Kumaran, for the second respondent.

9. Mr.N.Manoharan, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application. He would submit that having entered into an agreement of sale on 12.03.1997 and having paid the entire sale consideration on the said date, Karuppannan had acquired a right over the property. It is his further contention that the power of attorney executed by Kempappa and Mahadevappa, on 12.03.1997 is one coupled with interest since the entire sale consideration has been paid. Therefore, the vendee cum power agent acquires a right over the immovable property and such an agency being one coupled with interest cannot be terminated as per Section 202 of the Contract Act.

10. Mr.N.Manoharan, learned counsel would also invite my attention to the judgment of this Court in *S.V.Doraisamy v. T.Dayalan and 8 others*, reported in **2002 (2) CTC 462**, to contend that if the agency is coupled with interest the power of attorney cannot be simply terminated. That was a case where the power of attorney was executed by the land owners, authorising the plaintiff to prepare plans for lay out and get approval of the layout, permitting them to mortgage the property and raise monies for developing the property. It also authorised the agent to incur such expenditure and to meet the expenses.

While considering the scope of such a power, this Court concluded that the power is coupled with interest and therefore, it cannot be terminated to the prejudice of the agent.

11. The case on hand is slightly different. Though it is claimed by the second respondent that the power was terminated in 2006, there is no proof for such termination. But, however, the power of attorney dies with the death of the agent or the principal. This is not a case of cancellation of power, this is a case of termination by a supervening event. The question that is to be addressed here is, as to whether, the right of an agent, who has got a power of attorney coupled with interest, would devolve on his heirs upon his death.

12. Section 202 of the Contract Act only prohibits termination of agency to the prejudice of the interest of the agent, which has been acquired by the agent. The case on hand is not a case of voluntary termination. It is the death of the agent which results in termination of the agency. Therefore, unless it is shown that the contract is terminated by act of parties the prohibition contained in Section 202 would not apply.

13. Mr.N.Manoharan, learned counsel, would also invite my attention to the judgment of this Court in ***M.Karuppannan and others v. Mariyammal and***

others reported in **2019 (2) CTC 525**, wherein it has been held that the death of the principal would not render transactions which has been entered into by the agent, after the death, invalid where it is shown that the power of attorney was coupled with the interest. While concluding thus, this Court had referred to the judgment of the Division Bench in ***The Inspector General of Registration and Ors. vs. J. Barathan***, reported in **2016 (1) CTC 369**, wherein the Division Bench has pointed out that Section 202 of the Contract Act, would apply only to voluntary acts of termination and the Division Bench has also pointed out that what is prohibited by Section 202 is only a termination to the prejudice of the interest of the agent himself in the property, which forms subject matter of the agency. Therefore, unless it is shown that the agent has gained the interest in the property, pursuant to the power the protection under Section 202 of the Contract Act cannot be availed of.

14. It will not be out of place to point out that the Three Judges Bench of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Private Limited, through Director v. State of Haryana and another***, reported in **(2012) 1 SCC 656**, had held that the Power of Attorney coupled with an agreement of Sale will not have the effect of transfer of interest in immovable property. The Hon'ble Supreme Court has observed that such instruments viz., the Power of

Attorney coupled with an agreement of sale will not create any interest in the immovable property. While doing so, the Hon'ble Supreme Court has observed as follows:

“19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified

therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

Scope of Will

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

23. *Therefore, an SA/GPA/Will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank, that the "concept of power of attorney sales has been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/Will are unwarranted and not justified, unintentionally misleading the general public into thinking that SA/GPA/Will transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/Will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.*

24. *We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/Will transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable*

property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/Will transactions known as GPA sales.”
(Emphasis Supplied)

15. The above decision of the Hon'ble Supreme Court puts the controversy beyond the pale of doubt to the effect that a power of attorney coupled with an agreement of sale does not create any interest in the immovable property and therefore, the heirs of the power agent or any person claiming as a legatee of the power agent cannot claim right over the property which was possessed by him as an agent of a third party. In his attempt to overcome the effect of the judgment of the Hon'ble Supreme Court, Mr.N.Manoharan would

vehemently contend that the decision in ***Suraj Lamp and Industries Private Limited*** 's case would apply only prospectively and it should not apply to cases which arose prior to the said judgment. In support of the said contention, he would rely upon paragraph 26 and 27 of the said judgment which reads as follows:

“26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue

authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favor of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions."

16. I am unable to accept the contention of the learned counsel Mr.N.Manoharan, that the decision in ***Suraj Lamp and Industries Private Limited***'s case would have only a prospective effect. A reading of the paragraphs 26 and 27 above would clearly show that Hon'ble Supreme Court never laid down that the judgment would be prospective in its application, what were saved are the genuine transactions where power of attorneys were executed by a person in favour of the near relatives or for development agreements. Nowhere does the Hon'ble Supreme Court direct the judgment would have only prospective application.

17. Coming to the claim made by the petitioner on facts, she claims as a legatee under a Will said to have been executed by Karuppannan on 15.05.2006. Though, the Will has been produced, none of the attesting witnesses to the said Will have been examined. Mr.N.Manoharan, learned counsel would contend that Will has been proved in the suit in OS No.328 of 2007, the contesting respondent viz., the second respondent is not a party to the said suit. Moreover, the suit is one for a declaration that the petitioner is a Clause II heir of Karuppannan and for a consequential direction to the Authorities to issue a legal heirship certificate. The said judgment, in my

considered opinion, will not affect the rights to the second respondent, who is the owner of the property. A perusal of the Will also shows that there was no specific bequest of the amounts lying to the credit of CMA No.6 of 2001 to the petitioner by Karuppannan. The Will in its terms is very vague and it says that the amounts lying in Court deposit and the pension of Karuppannan are bequeathed the petitioner herein.

18. I do not think it would be safe to conclude that the said bequest would include the amounts lying to the credit of the CMA. Yet another factual aspect which compels me to reject the claim of the petitioner is that the CMA No.6 of 2001 was filed by Karuppannan only as the agent of Kempappa and Mahadevappa, Karuppannan during his life time never claimed that the property belongs to him and that he has acquired an interest in the property. Machinery is provided under Act 31 of 78 for determination of a dispute relating to ownership of the property. Admittedly Karuppannan, who was alive till 2007 did not make a claim over the property and raise a dispute regarding entitlement to the compensation.

19. I am therefore unable to accept the contentions of Mr.N.Manoharan, to the effect that the power of attorney coupled with the agreement created an interest in immovable property in favour of Karuppannan, which was capable

of being transferred by Karuppannan and that Karuppannan in exercise of such right had bequeathed the property to the petitioner and therefore, the petitioner would be entitled to the compensation amount which is now lying to the credit of CMA 6 of 2001.

20. I am therefore of the considered opinion that the Trial Court was right in dismissing the application filed by the petitioner for payment out of the compensation amount that is lying in Court deposit. In fine, the Civil Revision Petition is **dismissed**, confirming the order of the Trial Court. No costs. Consequently, the connected miscellaneous petition is closed.

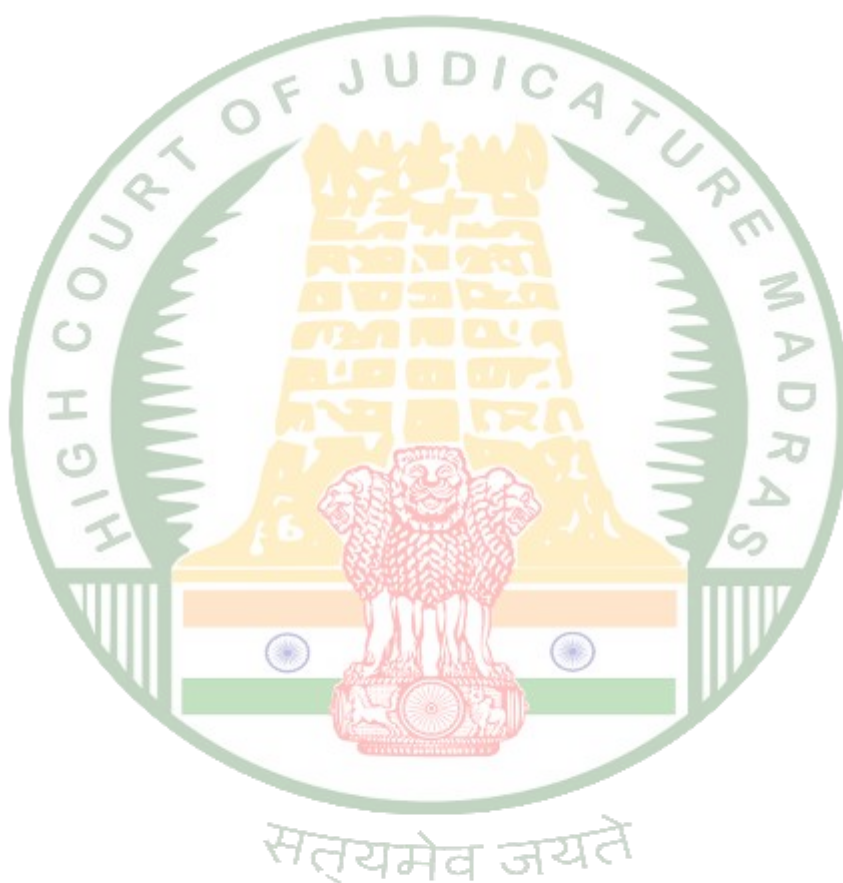
05.10.2020

jv
Index: Yes
Internet: Yes
Speaking order

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To

1. The Subordinate Judge,
Gobichettipalayam.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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